



December 23, 2024

Via email

Jim McDonnell
Los Angeles Chief of Police
100 W. 1st St.
Los Angeles, CA 90012
contact.lapdonline@lapd.online

Dear Chief McDonnell:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified Los Angeles as a sanctuary jurisdiction that is violating federal law. In fact, as Los Angeles Chief of Police, you have clearly stated your support for the city to ignore federal law, stating on November 8, 2024 that the LAPD, "will not cooperate with mass deportations," thereby stating your intent to blatantly violate federal immigration law. Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.³

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ Jim Newton, *New LA police chief's resistance to Trump deportation plans has little to do with liberal politics*, CAL MATTERS, (Nov. 14, 2024), <https://perma.cc/5PML-MEDV>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. The examples are many and include El Salvadorean illegal alien Victor Antonio Martinez-Hernandez, accused of attacking a Los Angeles woman and her daughter, only to be later released from custody, after which he traveled to Maryland and was charged with the murder of Rachel Morin. Additionally, between 2021 and 2024, ICE Enforcement and Removal Operations arrested almost 20,000 illegal aliens in L.A., 7,255 of whom had prior criminal convictions.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Christina Coulter, *Los Angeles becomes sanctuary despite dozens of murderous, child-preying illegals arrested in city this year*, FOX NEWS, (November 26, 2024), <https://perma.cc/ZXV2-MUSL..>

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

⁹ U.S. CONST. Art. I, § 8, cl. 4.

¹⁰ *Arizona*, 567 U.S. at 394 (citation omitted).

¹¹ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary law or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting

¹² See, e.g., 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary law or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁸ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁹ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); *accord United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); *see also United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²¹ 18 U.S.C. § 371.

U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761

policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

(N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Karen Bass
City of Los Angeles
200 N. Spring St.
Los Angeles, CA 90012
mayor.bass@lacity.org

Dear Mayor Bass:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people’s elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called “sanctuary” jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified Los Angeles as a sanctuary jurisdiction that is violating federal law. In fact, on November 12, 2024, you publicly stated to those in the city illegally, “[n]o matter where you were born, how you came to this country, Los Angeles will stand with you and this will not change,” thereby stating your intent to blatantly violate federal immigration law. Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation’s laws.³

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ Jim Newton, *New LA police chief’s resistance to Trump deportation plans has little to do with liberal politics*, CAL MATTERS, (Nov. 14, 2024), <https://perma.cc/5PML-MEDV>.

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Moreover, your sanctuary policies have had a real impact on your local residents. The examples are many and include El Salvadorean illegal alien Victor Antonio Martinez-Hernandez, accused of attacking a Los Angeles woman and her daughter, only to be later released from custody, after which he traveled to Maryland and was charged with the murder of Rachel Morin. Additionally, between 2021 and 2024, ICE Enforcement and Removal Operations arrested almost 20,000 illegal aliens in L.A., 7,255 of whom had prior criminal convictions.⁶

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary law or policies from criminal exposure and long prison sentences.

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VI. Conclusion

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December 23, 2024

Via email

Rob Bonta
Attorney General, State of California
P.O. Box 944255
Sacramento, CA 94244-2550
rob.bonta@doj.ca.gov

Dear Attorney General Bonta:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified California as a sanctuary state that is violating federal law. As Attorney General, on December 4, 2024, you stated that the State of California will not enforce federal immigration laws, encouraging defiance by all California jurisdictions and stating, "[m]any public institutions already have policies in place for how to respond to immigration enforcement authorities – and we advise those who do not to make a plan today." This rhetoric illustrates the State's intent to blatantly violate federal law. Such lawlessness subjects you and your subordinates to

¹ 8 U.S.C. § 1324.

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significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.³

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. The examples are many and include 25-year-old Fraylee Hernandez, who was found earlier this year dismembered and mutilated in his car in Fresno County, allegedly murdered by an 18-year-old illegal immigrant from El Salvador who had been on probation for assaulting his own mother.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can

³ *In Response to Increased Threats to California Immigrant Communities, Attorney General Bonta Provides Guidance to Public Institutions to Protect Immigrants’ Rights Under the Law*, ROB BONTA ATTORNEY GENERAL, (Dec. 4, 2024), <https://perma.cc/A75W-N75G>..

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Stepheny Price, *California Teen illegal immigrant arrested in connection to murder, mutilation of California man found in car*, FOX NEWS, (April 9, 2024), <https://perma.cc/73YZ-32DG>..

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

⁹ U.S. CONST. Art. I, § 8, cl. 4.

¹⁰ *Arizona*, 567 U.S. at 394 (citation omitted).

neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

¹¹ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹² See, e.g., 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary law or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary law or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁸ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁹ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the

²¹ 18 U.S.C. § 371.

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

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²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Chairwoman Nora Vargas
San Diego County Board of Supervisors
1600 Pacific Highway, Room 335
San Diego, CA 92101
District1community@sdcounty.ca.gov

Dear Chairwoman Vargas:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified San Diego County as a sanctuary jurisdiction that is violating federal law. In fact, on December 12, 2024, the San Diego County Board of Supervisors passed a resolution stating the County will not assist or cooperate with federal Immigration and Customs Enforcement (ICE), "including by giving ICE agents access to individuals or allowing them to use County facilities for investigative interviews or other purposes, expending County time or resources responding to ICE inquiries or communicating with ICE regarding individuals' incarceration status or release dates, or otherwise participating in any civil immigration enforcement activities." This resolution clearly violates federal law and subjects those who abide by it to significant risk of criminal and

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation’s laws.³

The importance of this issue is not just abstract or hypothetical. According to ICE, as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, in April 2024, ICE arrested four illegal aliens who had been convicted of drug trafficking or multiple drug possession-related offenses involving methamphetamine, fentanyl, cocaine, heroin, or synthetic drugs. San Diego was named in May as the top entry point for illegal aliens crossing into the United States after 37,370 unlawful entries into San Diego in April alone. In response, County Supervisor Jim Desmond admitted that “human smugglers have identified California, particularly the San Diego border sector, as the path of least resistance for illegal immigration.”⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to

³ Adam Shaw and Bill Melugin, *California county votes to ramp up sanctuary policies ahead of Trump deportation push: ‘Radical policy’*, FOX NEWS, (Dec. 10, 2024), <https://perma.cc/QY27-K4X6>; Adopting a Board Policy on Immigration Enforcement to Enhance Community Safety (Districts: All), San Diego Cnty. Bd. of Supervisors (Dec. 10, 2024), <https://perma.cc/Q7G2-3K72>.

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *ERO San Diego arrests 4 noncitizens with drug-related convictions during nationwide law enforcement effort*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, (April 8, 2024), <https://perma.cc/ME93-TZKU>; Shari Rendall, *Illegal Aliens Flock to San Diego, Making it the Top Entry Point for Illegal Aliens*, FAIR, (May 20, 2024), <https://perma.cc/A9B4-DZXA>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

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By complying with your jurisdiction’s sanctuary law or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

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Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit,

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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December 23, 2024

Via email

Governor Jared Polis
State of Colorado
200 E Colfax Ave
Denver, CO 80203
governor.polis@state.co.us

Dear Governor Polis:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified Colorado as a sanctuary state that is violating federal law. As Governor, on November 18, 2024, you publicly stated your opposition to enforcement of federal immigration law, wrongly alleging that it "would devastate our economy and our society if someone were to come in and forcibly take our neighbors away from us." This rhetoric illustrates the State's intent to blatantly violate federal law. Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.³

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ Jeff Arnold, *Sanctuary cities plan to resist Trump's mass deportation plans*, NEWS NATION, (Nov. 21, 2024), <https://perma.cc/MUL6-544R>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, as recently as this week, police in Aurora, Colorado reported the armed home invasion of an apartment complex by 13 to 15 suspects, who law enforcement stated were “without question” members of a gang. The victims were kidnapped, bound, assaulted, pistol-whipped, and beaten. This is the same apartment complex where armed members of the Venezuelan gang Tren de Aragua were caught on video.⁶

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⁶ Pilar Arias, *14 detained in armed Aurora, Colorado home invasion are likely illegal gang members: police*, FOX NEWS, (December 17, 2024), <https://perma.cc/4DSV-LP42>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

¹¹ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹² See, e.g., 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary law or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary law or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁸ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁹ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the

²¹ 18 U.S.C. § 371.

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Mike Johnston
City of Denver
1437 Bannock St # 350
Denver CO 80202
mayorsoffice@denvergov.org

Dear Mayor Johnston:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified Denver as a sanctuary jurisdiction that is violating federal law. As Mayor, on November 22, 2024, you publicly stated your opposition to enforcement of federal immigration law, declaring your willingness to go to jail instead of complying with federal law. Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.³

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ Adam Shaw, *Denver Mayor says he's prepared to go to jail over opposition to Trump deportations of illegal immigrants*, FOX NEWS, (Nov. 25, 2024), <https://perma.cc/9QXT-8ZQ5>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, as recently as this week, police in Aurora, Colorado reported the armed home invasion of an apartment complex by 13 to 15 suspects, who law enforcement stated were “without question” members of a gang. The victims were kidnapped, bound, assaulted, pistol-whipped, and beaten. This is the same apartment complex where armed members of the Venezuelan gang Tren de Aragua were caught on video.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Pilar Arias, *14 detained in armed Aurora, Colorado home invasion are likely illegal gang members: police*, FOX NEWS, (December 17, 2024), <https://perma.cc/4DSV-LP42>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

⁹ U.S. CONST. Art. I, § 8, cl. 4.

¹⁰ *Arizona*, 567 U.S. at 394 (citation omitted).

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Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary law or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or

¹² See, e.g., 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

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remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary law or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

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²¹ 18 U.S.C. § 371.

directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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James Rogers
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²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Brandon Johnson
City of Chicago
121 N La Salle St, UNIT 507
Chicago, IL 60602
letterforthemayor@cityofchicago.org

Dear Mayor Johnson:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified Chicago as a sanctuary city that is violating federal law. As Mayor, on November 12, 2024, you publicly stated your opposition to enforcement of federal immigration law, stating, "we're not going to bend or break or cover to someone's threat" and that "I'm going to protect" illegal aliens in the city. This rhetoric illustrates your intent to blatantly violate federal law. Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.³

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ Jeff Arnold, *Sanctuary cities plan to resist Trump's mass deportation plans*, NEWS NATION, (Nov. 21, 2024), <https://perma.cc/MUL6-544R>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. The examples are many and include a Venezuelan named Elvis Hernandez-Pernalete, who was charged in March 2024 with criminal sexual abuse, aggravated battery and strangulation, robbery, and attempted robbery after he allegedly followed a woman out of a Chicago train station, grabbed her from behind, stole her belongings, and sexually assaulted her. Until the attack, he had been living in a migrant shelter.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

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⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Adam Shaw, Bill Melugin, Griff Jenkins, *Illegal immigration status revealed in shooting of Jewish man in Dem-controlled city*, FOX NEWS, (October, 30, 2024), <https://perma.cc/PQR9-S84T>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

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¹⁵ U.S. CONST. art. VI, cl. 2.

anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary law or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁸ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁹ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); *accord United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); *see also United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²¹ 18 U.S.C. § 371.

U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761

policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

(N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Governor JB Pritzker
State of Illinois
207 State House
Springfield, IL 62706
governor@state.il.us

Dear Governor Pritzker:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified Illinois as a sanctuary state that is violating federal law. As Governor, on November 13, 2024, you publicly stated your opposition to enforcement of federal immigration law, declaring your intent "to do everything that I can to protect our undocumented immigrants." This rhetoric illustrates the State's intent to blatantly violate federal law. Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.³

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ Kristine Parks, *Dem governor JB Pritzker vows to 'do everything I can to protect our undocumented immigrants'*, FOX NEWS, (Nov. 14, 2024), <https://perma.cc/3EX6-348X>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. The examples are many and include the shooting of a 39-year old Jewish man who was dressed in traditional Jewish clothing. He was shot multiple times on his way to a Chicago synagogue two months ago. The suspect, Sidi Mohamed Abdallahi, a Mauritanian illegal alien who had been apprehended but then released into the U.S. last year, was charged with 14 felony counts, including six for attempted murder. While ICE had requested a detainer on Abdallahi, Cook County sanctuary policies prohibited cooperation.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Adam Shaw, Bill Melugin, Griff Jenkins, *Illegal immigration status revealed in shooting of Jewish man in Dem-controlled city*, FOX NEWS, (October, 30, 2024), <https://perma.cc/PQR9-S84T>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

⁹ U.S. CONST. Art. I, § 8, cl. 4.

¹⁰ *Arizona*, 567 U.S. at 394 (citation omitted).

neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

¹¹ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹² See, e.g., 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary law or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary law or policies from criminal exposure and long prison sentences.

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¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁸ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁹ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the

²¹ 18 U.S.C. § 371.

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Governor Maura Healey
Commonwealth of Massachusetts
State House, Office of the Governor
Boston, MA 02133
GOffice@state.ma.us

Dear Governor Healey:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified Massachusetts as a sanctuary state violating federal law. As Governor, on November 8, 2024 you publicly stated your opposition to enforcement of federal immigration law, declaring your intent "to use every tool in the toolbox" to shield illegal aliens from removal from the country. This rhetoric illustrates the Commonwealth's intent to blatantly violate federal law. Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist you comply with our nation's laws.³

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ Adam Shaw, *Dem governor threatens to use 'every tool' to fight back against Trump-era deportations*, FOX NEWS, (Nov. 8, 2024), <https://perma.cc/ACX7-7K93>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. The examples are many and include the October 2024 arrest by ICE of an illegal immigrant from Colombia who had previously been arrested by the Boston Police Department for enticing a child under 16, distribution of obscene matter, and lascivious posing and exhibiting a child in the nude. ICE had lodged a detainer with the Boston Police, but the Department did not honor it, and the man, Mateo Hincapie Cardona, had been released from custody. Additionally, in November 2024, ICE arrested an illegal alien named Julio Esteban Batista-Castillo in Boston. Batista-Castillo was charged with kidnapping, malicious destruction of property, breaking and entering, and home invasion, in addition to several assault and battery charges.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Andrea Margolis, *Migrant accused of violent crimes arrested by ICE after Massachusetts court refused to honor detainer*, FOX NEWS, (December 3, 2024), <https://perma.cc/UN4M-CWSK>; Adam Shaw and Bill Melugin, *ICE nabs another illegal immigrant in Mass. charged with child sex crime, as gov snubs Trump deportations*, FOX NEWS, (November 12, 2024), <https://perma.cc/YL9N-NDAF>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

⁹ U.S. CONST. Art. I, § 8, cl. 4.

power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary law or policies from criminal exposure and long prison sentences.

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¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁸ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁹ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the

²¹ 18 U.S.C. § 371.

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Michelle Wu
City of Boston
1 City Hall Square
Boston, MA 02201
michelle.wu@boston.gov

Dear Mayor Wu:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified Boston as a sanctuary city that is violating federal law. As Mayor, on November 17, 2024, you publicly stated your opposition to enforcement of federal immigration law, stating "we are doing our part to protect" illegal aliens in the city and "that we are not cooperating with ... efforts" to remove illegal aliens. This rhetoric illustrates your intent to blatantly violate federal law. Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.³

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ Peter Pinedo, *Another major blue city doubles down on vow to obstruct Trump's mass deportations plan*, FOX NEWS, (Dec. 5, 2024), <https://perma.cc/TWC9-HSMV>; Adam Shaw, *Boston Mayor Michelle*

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. The examples are many and include the October 2024 arrest by ICE of an illegal immigrant from Colombia who had previously been arrested by the Boston Police Department for enticing a child under 16, distribution of obscene matter, and lascivious posing and exhibiting a child in the nude. ICE had lodged a detainer with the Boston Police, but the Department did not honor it, and the man, Mateo Hincapie Cardona, had been released from custody. Additionally, in November 2024, ICE arrested an illegal alien named Julio Esteban Batista-Castillo in Boston. Batista-Castillo was charged with kidnapping, malicious destruction of property, breaking and entering, and home invasion, in addition to several assault and battery charges.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore,

Wu vows to defy Trump’s mass deportation push: ‘Protect our residents’, NEW YORK POST, (Nov. 19, 2024), <https://perma.cc/YTH8-4VKQ>; Sharman Sacchetti, *‘They can say whatever they want’; Wu reacts to warning from Trump’s border czar*, WVCB, (Nov. 20, 2024), <https://perma.cc/EJM9-NV4S>.

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Andrea Margolis, *Migrant accused of violent crimes arrested by ICE after Massachusetts court refused to honor detainer*, FOX NEWS, (December 3, 2024), <https://perma.cc/UN4M-CWSK>; Adam Shaw and Bill Melugin, *ICE nabs another illegal immigrant in Mass. charged with child sex crime, as gov snubs Trump deportations*, FOX NEWS, (November 12, 2024), <https://perma.cc/YL9N-NDAF>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

⁹ U.S. CONST. Art. I, § 8, cl. 4.

the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

¹⁰ *Arizona*, 567 U.S. at 394 (citation omitted).

¹¹ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹² See, e.g., 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary law or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary law or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁸ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁹ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); *accord United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); *see also United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public

²¹ 18 U.S.C. § 371.

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Governor Phil Murphy
State of New Jersey
125 W State St
Trenton, NJ 08608
constituent.relations@nj.gov

Dear Governor Murphy:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified New Jersey as a sanctuary state that is violating federal law. As Governor, on November 8, 2024, you publicly stated your opposition to enforcement of federal immigration law, declaring that "we will be very aggressive, both with bullhorn, with legal action, with any other action we deem to be necessary" to oppose the removal of illegal aliens from the country. This rhetoric illustrates the State's intent to blatantly violate federal law. Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.³

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. The examples are many and include Jose H. Ramos-Solis, an illegal alien, who on November 21, 2024, stabbed a man at an Italian restaurant in Oakland, New Jersey.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can

³ Khaleda Rahman, *Donald Trump’s Deportation Plan Faces Rebellion from Democratic Governors*, NEWSWEEK, (Nov. 8, 2024), <https://perma.cc/WKR8-BXXD>.

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Lori Comstock, *Charges filed, details revealed in stabbing at Oakland restaurant*, NORTH JERSEY, (Nov. 22, 2024), <https://perma.cc/R2H7-TLZX>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

⁹ U.S. CONST. Art. I, § 8, cl. 4.

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neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

¹¹ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹² See, e.g., 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary law or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary law or policies from criminal exposure and long prison sentences.

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¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

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²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the

²¹ 18 U.S.C. § 371.

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Governor Michelle Lujan Grisham
State of New Mexico
490 Old Santa Fe Trail #400
Santa Fe, NM 87501
gov@gov.state.nm.us

Dear Governor Lujan Grisham:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people’s elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called “sanctuary” jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified New Mexico as a sanctuary state that is violating federal law. As Governor, on November 21, 2024, you publicly stated your opposition to enforcement of federal immigration law, declaring that “we are not going to cooperate any way in that effort” to remove illegal aliens from the country. This rhetoric illustrates the State’s intent to blatantly violate federal law. Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.³

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. The examples are many and include Jesus Sandoval-Martinez, an illegal alien from Mexico, who in July 2024 was charged with two counts of vehicular homicide, reckless driving, and leaving the scene of an accident after killing a 22-year-old in a DUI hit-and-run in Albuquerque.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can

³ Alex Ross, *Lujan Grisham says New Mexico will not assist in mass deportation*, ROSWELL DAILY RECORD, (Nov. 24, 2024), <https://perma.cc/KP9H-GWZN>.

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Sarah Rumpf-Whitten and Bill Melugin, *Illegal immigrant caused DUI collision that killed 22-year-old in tragic hit-and-run: ICE*, FOX NEWS, (July 3, 2024), <https://perma.cc/KWW9-5AY2>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

⁹ U.S. CONST. Art. I, § 8, cl. 4.

¹⁰ *Arizona*, 567 U.S. at 394 (citation omitted).

neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

¹¹ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹² See, e.g., 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary law or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary law or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁸ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁹ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the

²¹ 18 U.S.C. § 371.

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Eric Adams
City of New York
City Hall
New York, NY 10007
mayoreric@cityhall.nyc.gov

Dear Mayor Adams:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people’s elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called “sanctuary” jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified New York City as a sanctuary city that is violating federal law. As Mayor, on November 4, 2024, you publicly stated your opposition to enforcement of federal immigration law, stating, “mass deportation — that is not going to happen in New York City.” This rhetoric illustrates your intent to blatantly violate federal law. Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation’s laws.³

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ Emma G. Fitzsimmons and Luis Ferré-Sadurní, *What Trump’s Victory Could Mean for New York City*, NEW YORK TIMES, (Nov. 6, 2024), <https://perma.cc/6AQV-WEN3>; Jeff Arnold, *Sanctuary cities plan to resist Trump’s mass deportation plans*, NEWS NATION, (Nov. 21, 2024), <https://perma.cc/MUL6-544R>; Luis Ferré-

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. The examples are many and include a Venezuelan named Bernardo Castro Mata, who entered the United States illegally and who, in June 2024, shot and wounded two New York City police officers as they tried to wrestle away his illegal gun. He was already under suspicion for involvement in several violent robberies targeting women. In a separate incident, a Venezuelan named Brandon Simosa was arrested in November 2024 for allegedly robbing one of District Attorney Bragg’s prosecutors in her apartment building. Simosa entered the United States by illegally crossing the border and has apparent ties to the Tren de Aragua gang. Additionally, Raymond Rojas Basillo, a Mexican illegal alien who had been removed from the United States five times and illegally reentered, sexually abused an 11-year-old child in Brooklyn. Despite this, he was only sentenced to 60 days’ incarceration and six years’ probation. Just last week, ICE arrested him in Queens. The ICE field officer director noted that New York’s “non-cooperation policies” had kept ICE from taking immediate custody of Rojas after his sentencing.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power

Sadurní and Wesley Parnell, *Trump’s Deportation Vow Fuels Fear and a Potential Showdown in New York*, NEW YORK TIMES, (Nov. 9, 2024), <https://perma.cc/3GXN-WS5Q>.

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Joe Marino, Jennie Taer, Amanda Woods and Emily Crane, *Venezuelan migrant with ties to Tren de Aragua grins after being arrested in lewd robbery of NYC prosecutor*, NEW YORK POST, (November 20, 2024), <https://perma.cc/4NBN-HS93>; Larry Celona, et al., *Dramatic details of NYPD shootout reveals migrant gunman who shot 2 cops recently crossed into US: sources*, NEW YORK POST, (June 3, 2024), <https://perma.cc/C23A-U6CK>; Peter Pinedo, *Illegal immigrant sexually abused child in the U.S. after being removed from the country five times*, FOX NEWS, (December, 20, 2024), <https://perma.cc/5VQ5-RQRG>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement to assist federal officials in enforcing immigration law.¹² No federal law, however, allows them to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS, stating that “[n]otwithstanding any other provision of Federal, State, or local law, a ... State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status ... of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

⁸ *Id.* at 394 (citation omitted).

⁹ U.S. CONST. Art. I, § 8, cl. 4.

¹⁰ *Arizona*, 567 U.S. at 394 (citation omitted).

¹¹ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹² *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who were previously removed and convicted of felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

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III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary law or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary law or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

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¹⁹ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (disjunctive nature of list means not all three elements must be proved and Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit,

²¹ 18 U.S.C. § 371.

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Manuel Castro
New York City Commissioner for Migrant Affairs
253 Broadway, 4th Floor
New York, NY 10007-2300
AskMOIA@cityhall.nyc.gov

Dear Commissioner Castro:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified New York City as a sanctuary city that is violating federal law. As Commissioner for Migrant Affairs, on November 9, 2024, you publicly stated your opposition to enforcement of federal immigration law, vowing not to follow "the instructions of the federal government in cases of mass deportations." This rhetoric illustrates your intent to blatantly violate federal law. Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.³

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ Emma G. Fitzsimmons and Luis Ferré-Sadurní, *What Trump's Victory Could Mean for New York City*, NEW YORK TIMES, (Nov. 6, 2024), <https://perma.cc/6AQV-WEN3>; Jeff Arnold, *Sanctuary cities plan to resist*

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, 222,141 non-detained illegal aliens with pending criminal charges are in the United States with final orders of removal. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. The examples are many and include a Venezuelan named Bernardo Castro Mata, who entered the United States illegally and who, in June 2024, shot and wounded two New York City police officers as they tried to wrestle away his illegal gun. He was already under suspicion for involvement in several violent robberies targeting women. In a separate incident, a Venezuelan named Brandon Simosa was arrested in November 2024 for allegedly robbing one of District Attorney Bragg’s prosecutors in her apartment building. Simosa entered the United States by illegally crossing the border and has apparent ties to the Tren de Aragua gang. Additionally, Raymond Rojas Basillo, a Mexican illegal alien who had been removed from the United States five times and illegally reentered, sexually abused an 11-year-old child in Brooklyn. Despite this, he was only sentenced to 60 days’ incarceration and six years’ probation. Just last week, ICE arrested him in Queens. The ICE field officer director noted that New York’s “non-cooperation policies” had kept ICE from taking immediate custody of Rojas after his sentencing.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power

Trump’s mass deportation plans, NEWS NATION, (Nov. 21, 2024), <https://perma.cc/MUL6-544R>; Luis Ferré-Sadurní and Wesley Parnell, *Trump’s Deportation Vow Fuels Fear and a Potential Showdown in New York*, NEW YORK TIMES, (Nov. 9, 2024), <https://perma.cc/3GXN-WS5Q>.

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Joe Marino, Jennie Taer, Amanda Woods and Emily Crane, *Venezuelan migrant with ties to Tren de Aragua grins after being arrested in lewd robbery of NYC prosecutor*, NEW YORK POST, (November 20, 2024), <https://perma.cc/4NBN-HS93>; Larry Celona, et al., *Dramatic details of NYPD shootout reveals migrant gunman who shot 2 cops recently crossed into US: sources*, NEW YORK POST, (June 3, 2024), <https://perma.cc/C23A-U6CK>; Peter Pinedo, *Illegal immigrant sexually abused child in the U.S. after being removed from the country five times*, FOX NEWS, (December, 20, 2024), <https://perma.cc/5VQ5-RQRG>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement to assist federal officials in enforcing immigration law.¹² No federal law, however, allows them to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS, stating that “[n]otwithstanding any other provision of Federal, State, or local law, a ... State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status ... of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

⁸ *Id.* at 394 (citation omitted).

⁹ U.S. CONST. Art. I, § 8, cl. 4.

¹⁰ *Arizona*, 567 U.S. at 394 (citation omitted).

¹¹ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹² *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who were previously removed and convicted of felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary law or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary law or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁸ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁹ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (disjunctive nature of list means not all three elements must be proved and Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit,

²¹ 18 U.S.C. § 371.

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Governor Ned Lamont
State of Connecticut
210 Capitol Avenue
Hartford, CT 06106
Governor.Lamont@po.state.ct.us

Dear Governor Lamont:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ CT Gen Stat § 54-192h (2018), <https://perma.cc/D97T-ZLZJ>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, the Hartford Correctional Center released a Honduran illegal immigrant who had been charged with sexually assaulting a minor even though ICE had requested to take custody of him upon release. The alien was free for almost two months before ICE was able to find and apprehend him.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Adam Shaw, *‘Significant threat’: ICE tracks down illegal immigrant charged with child sex crime*, FOX NEWS, (April 22, 2024), <https://perma.cc/FNZ8-46PY>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

⁹ U.S. CONST. Art. I, § 8, cl. 4.

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Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual's immigration status.

The INA specifically preempts State and local restrictions on local officials' communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction's sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or

¹² See, e.g., 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA's prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁸ 8 U.S.C. § 1324(a)(1)(A)(v).

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²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); *accord United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); *see also United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²¹ 18 U.S.C. § 371.

directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Muriel Bowser
District of Columbia
1350 Pennsylvania Avenue NW
Washington, DC 20004
eom@dc.gov

Dear Mayor Bowser:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, in February 2024, a Salvadoran illegal alien named Noel Granados-Trejo was arrested in connection with the murder of a 2-year-old boy and his mother who were both caught in crossfire earlier that month. Charged with first and second-degree murder, and other counts, Granados-Trejo was already the subject of a deportation order that had been issued by a DOJ immigration judge over a year prior. Yet, Granados-Trejo remained in the United States and committed additional crimes. Despite ICE having lodged an immigration detainer with the Montgomery County Detention Center (MCDC), MCDC refused to honor it and instead released Granados-Trejo, resulting in the senseless murder of an innocent mother and child.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Emmanuel Alejandro Rondón, *An illegal Salvadoran immigrant is arrested, accused of several crimes, including murder of a 2-year-old boy in DC*, VOZ, (Feb. 27, 2024), <https://perma.cc/U8NC-A33A>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

⁹ U.S. CONST. Art. I, § 8, cl. 4.

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neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

¹¹ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹² See, e.g., 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁸ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁹ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the

²¹ 18 U.S.C. § 371.

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

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²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Kelly Girtz
City of Athens
562 Pulaski St
Athens, GA 30601
kelly.girtz@accgov.com

Dear Mayor Girtz:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, the brutal murder of 22-year-old nursing student Laken Riley earlier this year shook the world. This young woman went out for a run near her home and was brutally murdered by illegal alien Venezuelan and Tren de Aragua gang member Jose Ibarra. He was found guilty on all ten charges, including for malice murder, felony murder, and kidnapping.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

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⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Alex Caprariello, *Jose Ibarra gets life without parole in the death of Laken Riley*, NEWSNATION, (Nov. 20, 2024), <https://perma.cc/D5F8-M7MN>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or

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remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not

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Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary

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December 23, 2024

Via email

Mayor Andre Dickens
City of Atlanta
55 Trinity Ave SW #2500
Atlanta, GA 30303
adickens@atlanta.gov

Dear Mayor Dickens:

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Moreover, your sanctuary policies have had a real impact on your local residents. For example, an illegal alien from Mexico named Angel DeJesus Rivera-Sanchez was arrested in Atlanta on October 28, 2024 for murdering a young woman. At the time of his arrest, he was trying to flee back to Mexico.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

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⁶ Allie Griffin, *Suspect in murder of Georgia mom Minelys Zoe Rodriguez-Ramirez was in the US illegally: lawmakers*, NEW YORK POST, (Nov. 5, 2024), <https://perma.cc/8AXY-SGZH>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

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Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual's immigration status.

The INA specifically preempts State and local restrictions on local officials' communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction's sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or

¹² See, e.g., 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA's prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁸ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁹ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

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²¹ 18 U.S.C. § 371.

directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Chairman Doug Duncan
Columbia County
630 Ronald Reagan Drive
Building B 2nd Floor
Evans, GA 30809
commissioners@columbiacountyga.gov

Dear Chairman Duncan:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, in November 2024, the Grovetown Police Department targeted online predators as part of an undercover operation and caught three individuals who were arrested and charged with sexual exploitation of children. One of these individuals was Jose Polidectio Lemus, an illegal alien.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

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⁶ Alexandra Koch, *Hundreds of suspects identified in Grovetown child predator sting*, THE AUGUSTA CHRONICLE, (Nov. 4, 2024), <https://perma.cc/RAM8-CU49>.

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VI. Conclusion

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December 23, 2024

Via email

Mike Repay
President, Lake County Board of Commissioners
Building A, 3rd Floor
2293 N. Main Street
Crown Point, IN 46307
repaymc@lakecountyin.org

Dear President Repay:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

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The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, in September 2024, Dimas Gabriel Yanes, an illegal alien with ties to the international gang MS-13, stabbed a teen girl at a baseball park. Yanes had previously been deported to Honduras in 2018 but reentered the United States and committed crimes in five states, including New York, Illinois, Georgia, Ohio, and Indiana.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

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⁶ *Man with ties to MS-13 charged in Lake County, Indiana stabbing of teen girl: sheriff*, ABC 7 CHICAGO, (Sep. 3, 2024), <https://perma.cc/2ULQ-5HFK>.

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¹² See, e.g., 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA's prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁸ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁹ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); *accord United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); *see also United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²¹ 18 U.S.C. § 371.

directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor LaToya Cantrell
1300 Perdido St
New Orleans, LA 70112
mayor@nola.gov

Dear Mayor Cantrell:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, Hector Mondragon-Flores, an illegal immigrant, was indicted with three others for kidnapping and conspiracy to commit kidnapping. Additionally, Mondragon-Flores was charged with assaulting a federal officer with a deadly weapon. Mondragon-Flores and his compatriots kidnapped a victim and held him for ransom, threatening to murder the victim if his father or girlfriend did not provide ransom money.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Melissa Davenport, *New Orleans Quartet Faces Life in Prison on Federal Kidnapping and Conspiracy Charges*, HOODLINE, (Nov. 18, 2024), <https://perma.cc/7945-N5Y4>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

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Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or

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²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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James Rogers
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²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Brandon M. Scott
100 Holliday Street
Baltimore, MD 21202
mayor@baltimorecity.gov

Dear Mayor Scott:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final

¹ 8 U.S.C. § 1324.

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orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, Luis Portillo-Henriquez, an illegal alien from El Salvador, had a long criminal history when he was convicted of sexual abuse of a minor in August 2023. In 2010, Portillo-Henriquez had been convicted for DUI, for which he was given probation. In 2017, he was convicted of driving without a license, for which he was also given probation. He was arrested and charged with two DUIs in 2021. He was arrested for driving with a suspended license on March 1, 2023. Twelve days later, Portillo was arrested and charged with multiple counts of sex offenses, for which he was convicted of sexual abuse of a minor. He was sentenced to 25 years’ imprisonment, but the court suspended all but 18 months of his sentence. By April 2024, he was already back on the streets and was fined for a traffic violation. It was not until June 10, 2024 that ICE officers were able to find, apprehend, and detain him pending proceedings to remove him from the United States.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can

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⁶ *ERO Baltimore arrests unlawfully present Salvadoran convicted of sexually assaulting Maryland minor*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, (June 18, 2024), <https://perma.cc/BMP5-859S>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

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Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

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¹⁸ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁹ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the

²¹ 18 U.S.C. § 371.

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Police Commissioner Richard Worley
City of Baltimore
601 E Fayette St
Baltimore, MD 21202
richard.worley@baltimorepolice.org

Dear Commissioner Worley:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, Luis Portillo-Henriquez, an illegal alien from El Salvador, had a long criminal history when he was convicted of sexual abuse of a minor in August 2023. In 2010, Portillo-Henriquez had been convicted for DUI, for which he was given probation. In 2017, he was convicted of driving without a license, for which he was also given probation. He was arrested and charged with two DUIs in 2021. He was arrested for driving with a suspended license on March 1, 2023. Twelve days later, Portillo was arrested and charged with multiple counts of sex offenses, for which he was convicted of sexual abuse of a minor. He was sentenced to 25 years’ imprisonment, but the court suspended all but 18 months of his sentence. By April 2024, he was already back on the streets and was fined for a traffic violation. It was not until June 10, 2024 that ICE officers were able to find, apprehend, and detain him pending proceedings to remove him from the United States.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *ERO Baltimore arrests unlawfully present Salvadoran convicted of sexually assaulting Maryland minor*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, (June 18, 2024), <https://perma.cc/BMP5-859S>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

⁹ U.S. CONST. Art. I, § 8, cl. 4.

¹⁰ *Arizona*, 567 U.S. at 394 (citation omitted).

neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

¹¹ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹² See, e.g., 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁸ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁹ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

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²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
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²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Executive John Olszewski
Baltimore County
400 Washington Avenue
Mezzanine Level
Towson, MD 21204
johnnyo@baltimorecountymd.gov

Dear County Executive Olszewski:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, an illegal alien from Honduras named Arles Efrain Avila who had been repeatedly arrested by ICE and deported to Honduras was arrested in January 2023 in Baltimore County for multiple child sex crimes. Shockingly, almost ten percent of recent defendants in child sex cases in Baltimore County have been illegal immigrants from Central American countries.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Gary Collins, *Baltimore County judges often give light sentences to illegal immigrant sex offenders*, FOX 45 NEWS, (July 17, 2024), <https://perma.cc/SSW5-HP4G>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

⁹ U.S. CONST. Art. I, § 8, cl. 4.

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Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual's immigration status.

The INA specifically preempts State and local restrictions on local officials' communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction's sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or

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¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

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Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not

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²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Reuben B. Collins II
President of Board of Commissioners, Charles County
County Government Building
200 Baltimore St.
La Plata, MD 20646
collinsr@charlescountymd.gov

Dear President Collins:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, an illegal alien from Guatemala named Henry Argueta-Tobar was arrested on December 22, 2023 by the Charles County Sheriff’s Office and charged with rape. On December 27, 2023, ICE lodged an immigration detainer with the Charles County Detention Center in La Plata. However, the detention center refused to honor the detainer and released Argueta from custody.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *ERO Baltimore arrests Guatemalan national convicted of rape in Maryland*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, (Aug. 14, 2024), <https://perma.cc/J58A-LF6G>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

⁹ U.S. CONST. Art. I, § 8, cl. 4.

¹⁰ *Arizona*, 567 U.S. at 394 (citation omitted).

¹¹ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual's immigration status.

The INA specifically preempts State and local restrictions on local officials' communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction's sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or

¹² See, e.g., 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA's prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁸ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁹ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); *accord United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); *see also United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²¹ 18 U.S.C. § 371.

directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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December 23, 2024

Via email

County Executive Calvin Ball
Howard County
George Howard Building
3430 Court House Drive
Ellicott City, MD 21043
cball@howardcountymd.gov

Dear County Executive Ball:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

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The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, an illegal alien named Nahum Ortiz-Izaguirre, who had previously been deported twice, was recently convicted of distributing cocaine. He received a 20-year sentence but only served five months in jail. Because Howard County refuses to cooperate with immigration authorities and release aliens to ICE from custody, a team of ICE agents was forced to surround Ortiz-Izaguirre’s house and take him into custody in front of his wife.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Rebecca Pryor, *ICE agents arrest two convicted criminals after Baltimore & Howard Co. dismiss detainees*, WJLA, (June 11, 2024), <https://perma.cc/6LMY-8XVL>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

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For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not

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Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary

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Best regards,

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Senior Counsel
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December 23, 2024

Via email

Mayor Robert Croslin
City of Hyattsville
4310 Gallatin Street
Hyattsville, MD 20781
rcroslin@hyattsville.org

Dear Mayor Croslin:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

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The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Hyattsville votes to become 'sanctuary' city for immigrants*, WTOP NEWS, (April 18 2017), <https://tinyurl.com/yun6f94v>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, in 2016 an illegal alien and MS-13 gang member was charged with first-degree murder, second-degree murder, and several charges of conspiracy to commit murder and assault. He was given a 10-year prison sentence. However, he was released early in January 2019, and Prince George’s County ignored his detainer and released him into custody. It was not until December 2023 that ICE arrested him in Hyattsville.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Adam Shaw, *ICE nabs illegal immigrant MS-13 gang member released back onto streets after manslaughter conviction*, FOX NEWS, (Dec. 16, 2023), <https://perma.cc/4QPS-487Y>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

⁹ U.S. CONST. Art. I, § 8, cl. 4.

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Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or

¹² See, e.g., 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁸ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁹ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²¹ 18 U.S.C. § 371.

directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

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policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Executive Marc B. Elrich
Montgomery County
101 Monroe St., 2nd Floor
Rockville, MD 20850
marc.elrich@montgomerycountymd.gov

Dear County Executive Elrich:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

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425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, ICE requested twice in 2023 that Nilson Granados-Trejo, an illegal alien from El Salvador, be held for deportation proceedings twice. Instead, the County released him from custody on both occasions. Unfortunately, he was later involved in a shooting that tragically killed 2-year-old Jermy Poou-Caceres and his mother in February 2024.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

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⁶ Neal Augenstein, *ICE says it tried to detain this man twice last year, He's now charged in a Maryland toddler's killing*, WTOP NEWS, (Feb. 29, 2024), <https://perma.cc/5EPE-JQTD>.

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December 23, 2024

Via email

County Executive Tara H Jackson
Prince George's County
Wayne K. Curry Administration Building
1301 McCormick Drive, Suite 4000
Largo, MD 20774
countyexecutive@co.pg.md.us

Dear County Executive Jackson:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

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The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, as recently as two months ago, Honduran illegal alien and MS-13 gang member Willaim Pavon Mancock was arrested and charged with first-degree murder after he shot a man multiple times in the chest with an Uzi submachine gun. Mancock illegally entered the United States in 2017. Before the murder, he had already been arrested twice for serious crimes. When he was arrested for stealing a car in October 2023, ICE issued a detainer requesting that he be held until ICE agents could detain him pending removal proceedings. The detainer request was not honored, and he was soon released. In November 2023, he was arrested on drug charges. Once again, ICE’s detainer request was ignored and he spent only 57 days in jail before being released. If those ICE detainer requests had been honored, then Mancock would not have been free at the time of the murder, and the murder would likely have never happened.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent

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power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

¹⁰ *Arizona*, 567 U.S. at 394 (citation omitted).

¹¹ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹² See, e.g., 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁸ 8 U.S.C. § 1324(a)(1)(A)(v).

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For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the

²¹ 18 U.S.C. § 371.

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

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²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Chairman Dave Woodward
Oakland County
1200 North Telegraph Road
Pontiac, MI 48341
woodwardd@oakgov.com

Dear Chairman Woodward:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, just last month an illegal alien from Colombia was driving a car and struck a pedestrian who was walking in the crosswalk. The victim was in grave condition after being hit.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Aileen Wingblad, *Sheriff: Pedestrian still in ‘grave condition’ after being struck by car driven by illegal migrant*, THE OAKLAND PRESS, (Nov. 6, 2024), <https://perma.cc/CR62-MXC2>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

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Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

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The INA specifically preempts State and local restrictions on local officials' communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction's sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or

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remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

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Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

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²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Executive Warren C. Evans
Wayne County
500 Griswold St #1050
Detroit, MI 48226
ceohelp@waynecounty.com

Dear County Executive Evans:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

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Moreover, your sanctuary policies have had a real impact on your local residents. For example, coordinated crews of aliens from South America have been breaking into homes in Wayne County and conducting home invasions, as well as jewelry store and vehicle robberies. Many of the crew members enter the United States by illegally crossing the southern border.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

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⁶ Cassidy Johncox, *3 charged in high-end home invasions in Metro Detroit, but they aren’t behind latest thefts*, CLICK ON DETROIT, (Dec. 12, 2023), <https://perma.cc/G32C-4DXH>; Bill Laytner, *Police: ‘Transnational gangs’ targeting mansions in Bloomfields, Grosse Pointes, for thefts*, DETROIT FREE PRESS, (Dec. 6, 2023), <https://perma.cc/K6WP-A78Z>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

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²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); *accord United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); *see also United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²¹ 18 U.S.C. § 371.

directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Administrator Jim Dickinson
Anoka County
2100 3rd Avenue, Suite 700
Anoka, MN 55303
jim.dickinson@anokacountymn.gov

Dear County Administrator Dickinson:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, Alonzo Pierre Mingo, an illegal alien, murdered three members of a family, including a mother, husband, and son, on January 26, 2024, in Coon Rapids, Minnesota.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ David Griswold and Dana Thiede, *Additional murder charges filed in Coon Rapids triple homicide*, KARE 11, (Apr. 4, 2024), <https://perma.cc/4TTZ-9LGB>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

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Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or

¹² See, e.g., 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

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remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Administrator David J. Hough
Hennepin County
Government Center A2303
300 South 6th Street
Minneapolis, MN 55487-0233
county.admin@hennepin.us

Dear County Administrator Hough:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

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The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, Alejandro Coronel-Zarate, an illegal alien and Venezuelan gang member of Tren de Aragua, was released by the Hennepin County Sheriff’s Department despite court evidence that he had assaulted a woman and threatened to kill her. In August 2024, Coronel Zarate attacked a woman and child in Prairie du Chien, Wisconsin.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

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⁶ Jim Piwowarczyk, *Minnesota ‘Sanctuary’ Jail Freed Noncitizen Gang Member Accused in Prairie du Chien Attack*, WISCONSIN RIGHT NOW, (Sep. 27, 2024), <https://perma.cc/3LWW-RUX8>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Roger Garcia
Chairman, Douglas County Board of Commissioners
Omaha-Douglas Civic Center
1819 Farnam Street, LC2
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Dear Chairman Garcia:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, in 2016 an illegal alien from Honduras named Edwin Mejia was charged with motor vehicle homicide after he hit and killed a young woman in Omaha while he was street racing. He had a blood-alcohol content more than three times the legal limit. He was released after posting \$5,000 bail and has never been seen since. Additionally, on February 8, 2024, two illegal aliens—one from Mexico and the other from Nicaragua—who were outside a nightclub in Omaha opened fire on two off-duty police officers who had been working security. The officers returned fire and killed the two assailants.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Mike Bell, *Family and friends gather to mourn Sarah Root, 2 years after her death*, OMAHA WORLD-HERALD, (Feb. 1, 2018), <https://perma.cc/9XUU-BCXY>; Associated Press, *Off-duty police officers in Nebraska cleared after fatally shooting 2 illegal immigrants*, FOX NEWS, (Feb. 9, 2024), <https://perma.cc/FUD8-LU67>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

⁹ U.S. CONST. Art. I, § 8, cl. 4.

¹⁰ *Arizona*, 567 U.S. at 394 (citation omitted).

neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

¹¹ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹² See, e.g., 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁸ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁹ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the

²¹ 18 U.S.C. § 371.

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Attorney General Matt Platkin
State of New Jersey
Richard J. Hughes Justice Complex
25 Market St
Trenton, NJ 08611
Matthew.Platkin@law.njoag.gov

Dear Attorney General Matt Platkin:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ Attorney General Law Enforcement Directive NO. 2018-6 v2.0, STATE OF NEW JERSEY, OFFICE OF THE ATTORNEY GENERAL, (November 19, 2018), <https://perma.cc/M2EN-RFKK>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, on November 21, 2024, Jose H. Ramos-Solis, an illegal alien, stabbed a man at an Italian restaurant in Oakland, New Jersey.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Lori Comstock, *Charges filed, details revealed in stabbing at Oakland restaurant*, NORTH JERSEY, (Nov. 22, 2024), <https://perma.cc/R2H7-TLZX>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

⁹ U.S. CONST. Art. I, § 8, cl. 4.

¹⁰ *Arizona*, 567 U.S. at 394 (citation omitted).

¹¹ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual's immigration status.

The INA specifically preempts State and local restrictions on local officials' communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction's sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or

¹² See, e.g., 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA's prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

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Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

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directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary

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²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Manager Cindy Chavez
Bernalillo County
415 Silver Ave SW
Albuquerque, NM 87104
Manager@bernco.gov

Dear County Manager Chavez:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, in July 2024, Jesus Sandoval-Martinez, an illegal alien from Mexico, was charged with two counts of vehicular homicide, reckless driving, and leaving the scene of an accident after killing a 22-year-old in a DUI hit-and-run in Albuquerque.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Sarah Rumpf-Whitten and Bill Melugin, *Illegal immigrant caused DUI collision that killed 22-year-old in tragic hit-and-run: ICE*, FOX NEWS, (July 3, 2024), <https://perma.cc/KWW9-5AY2>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

⁹ U.S. CONST. Art. I, § 8, cl. 4.

¹⁰ *Arizona*, 567 U.S. at 394 (citation omitted).

¹¹ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or

¹² See, e.g., 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁸ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁹ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); *accord United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); *see also United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²¹ 18 U.S.C. § 371.

directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
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²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Kathy Sheehan
City of Albany
24 Eagle St #102
Albany, NY 12207
mayor.sheehan@albanyny.gov

Dear Mayor Sheehan:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, Sakir Akkan, an illegal alien from Turkey, raped a 15 year old girl Albany in June 2024.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Jennie Taer et al., *Turkish migrant arrested for allegedly raping 15-year-old girl in his car in Albany*, NEW YORK POST, (June 27, 2024), <https://perma.cc/P3KG-85Q6>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

⁹ U.S. CONST. Art. I, § 8, cl. 4.

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¹¹ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual's immigration status.

The INA specifically preempts State and local restrictions on local officials' communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction's sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien's unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry,

law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

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¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

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Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence

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²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

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Senior Counsel
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²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Executive Daniel P. McCoy
Albany County
Harold L. Joyce Albany County Office Building
112 State St., Room 1200
Albany, NY 12207
county_executive@albanycountyny.gov

Dear County Executive McCoy:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

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³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, Sakir Akkan, an illegal alien from Turkey, raped a 15 year old girl in Albany in June 2024.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Jennie Taer et al., *Turkish migrant arrested for allegedly raping 15-year-old girl in his car in Albany*, NEW YORK POST, (June 27, 2024), <https://perma.cc/P3KG-85Q6>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

⁹ U.S. CONST. Art. I, § 8, cl. 4.

¹⁰ *Arizona*, 567 U.S. at 394 (citation omitted).

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Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual's immigration status.

The INA specifically preempts State and local restrictions on local officials' communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction's sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or

¹² See, e.g., 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA's prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

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¹⁹ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); *accord United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); *see also United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²¹ 18 U.S.C. § 371.

directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Executive Bruce Blakeman
Nassau County
Office of the County Executive
1550 Franklin Ave.
Mineola, NY 11501
ncexecutive@nassaucountyny.gov

Dear County Executive Blakeman:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, in November 2024, Wilson Castillo Diaz, an illegal alien from Honduras, raped a 5-year-old girl on Long Island.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

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⁶ Steven Vago and Emily Crane, *Illegal migrant arrested for allegedly raping 5-year-old girl on Long Island: cops*, NEW YORK POST (Nov. 1, 2024), <https://perma.cc/7DCW-VXU5>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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December 23, 2024

Via email

County Executive Kevin M. Byrne
Putnam County
40 Gleneida Avenue, 3rd Floor
Carmel, New York 10512
CountyExecutive@putnamcountyny.gov

Dear County Executive Byrne:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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Moreover, your sanctuary policies have had a real impact on your local residents. For example, in November 2024 in the Hudson Valley, Fernando Jimenez, an illegal alien from Chile, shot his girlfriend and her two children, killing one of her sons and leaving her and her other son wounded. He was apprehended in Putnam County.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

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⁶ Bobby Welber, *Illegal Immigrant Accused Of Killing Hudson Valley Teen, ICE*, HUDSON VALLEY POST, (Nov. 1, 2024), <https://perma.cc/UF2H-L2XP>; Jennie Taer, Carl Campanile and Jorge Fitz-Gibbon, *Chilean shooter charged in NY teen’s murder is illegal immigrant previously deported 20 years ago: ICE*, NEW YORK POST, (Oct. 31, 2024), <https://perma.cc/Q6D9-CLTZ>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction's sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or

¹² See, e.g., 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA's prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁸ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁹ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); *accord United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); *see also United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²¹ 18 U.S.C. § 371.

directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Executive Ed Romaine
Suffolk County
100 Veterans Memorial Hwy # 3
Hauppauge, NY 11788
county.executive@suffolkcountyny.gov

Dear County Executive Romaine:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, in October 2024, Juan Pablo Chuqimarca Guzman, an illegal alien from Ecuador, was arrested in Suffolk County and charged with possession of 4,000 videos of child pornography.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Alleged sex offender arrested twice in one week*, NEW YORK STATE POLICE, (Nov. 4, 2024), <https://perma.cc/NX9M-VA7W>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

⁹ U.S. CONST. Art. I, § 8, cl. 4.

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Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

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remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

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For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not

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Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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December 23, 2024

Via email

County Executive George Latimer
Westchester County
148 Martine Ave # 900,
White Plains, NY 10601
ce@westchestercountyny.gov

Dear County Executive Latimer:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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Moreover, your sanctuary policies have had a real impact on your local residents. For example, in November 2024, Fernando Jimenez, an illegal alien from Chile, shot his girlfriend and her two children in Westchester County, killing one of her sons and leaving her and her other son wounded.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

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⁶ Jennie Taer, Carl Campanile and Jorge Fitz-Gibbon, *Chilean shooter charged in NY teen’s murder is illegal immigrant previously deported 20 years ago: ICE*, NEW YORK POST, (Oct. 31, 2024), <https://perma.cc/Q6D9-CLTZ>; Bobby Welber, *Illegal Immigrant Accused Of Killing Hudson Valley Teen, ICE*, HUDSON VALLEY POST, (Nov. 1, 2024), <https://perma.cc/UF2H-L2XP>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁸ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁹ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); *accord United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); *see also United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²¹ 18 U.S.C. § 371.

directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Governor Kathy Hochul
State of New York
110 State St.
Albany, NY 12207
Governor.Hochul@exec.ny.gov

Dear Governor Hochul:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people’s elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called “sanctuary” jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation’s laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Drivers License Access and Privacy Act*, STATE OF NEW YORK, (July 17, 2019), <https://perma.cc/N6VJ-GPDT>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, in September 2024 an illegal alien from the Dominican Republic named Julio Cesar Pimentel-Soriano was arrested for the murder of a family of four in upstate New York.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Jasmine Baehr, *Illegal alien from the Dominican Republic suspected in murder of New York state family: police*, FOX NEWS, (Sep. 13, 2024), <https://perma.cc/H8Z8-XXJE>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

⁹ U.S. CONST. Art. I, § 8, cl. 4.

¹⁰ *Arizona*, 567 U.S. at 394 (citation omitted).

¹¹ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or

¹² See, e.g., 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

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²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); *accord United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); *see also United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²¹ 18 U.S.C. § 371.

directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Chairwoman Nida Allam
Durham County
104 Wellwater Avenue
Durham, NC 27703
nallam@dconc.gov

Dear Chairwoman Allam:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, an illegal alien from Mexico named Carlos Heriberto Mendoza-Martinez, was convicted of manslaughter in the United States in 2010 and removed from the country in 2013. At some point after that, he illegally re-entered the United States. In April 2021 and June 2024, Durham police arrested and charged him with assaulting a woman and for domestic violence. Additionally, he is a confirmed member of the Norteños Latin Street Gang. Notwithstanding all of this, the Durham County Sheriff’s Office ignored the detainers that ICE placed on him when he was arrested in 2021 and 2024.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *ERO arrests Mexican national convicted of manslaughter*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (July 25, 2024), <https://perma.cc/36ZA-LBYV>; Jason Hopkins, *‘Sanctuary’ County Repeatedly Ignored Detainers On Street Gang Member Convicted Of Manslaughter*, Daily Caller, (July 26, 2024), <https://perma.cc/C8WL-SXBS>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

⁹ U.S. CONST. Art. I, § 8, cl. 4.

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neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

¹¹ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

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¹³ 8 U.S.C. § 1373(a) (emphasis added).

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III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

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For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the

²¹ 18 U.S.C. § 371.

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Chairman Melvin Alston
Guilford County
301 W. Market Street
Greensboro, NC 27401
Salston1@guilfordcountync.gov

Dear Chairman Alston:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, on June 3, 2024, an illegal alien named Francisco Romero-Ramirez was arrested in Guilford County for a number of crimes, including receiving or transferring stolen vehicles and larceny of a motor vehicle.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Analysis: Nine illegal aliens arrested in North Carolina for crimes including murder and sexual abuse*, OLD NORTH NEWS, (July 19, 2024), <https://perma.cc/NF8A-YKYB>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

⁹ U.S. CONST. Art. I, § 8, cl. 4.

¹⁰ *Arizona*, 567 U.S. at 394 (citation omitted).

¹¹ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual's immigration status.

The INA specifically preempts State and local restrictions on local officials' communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction's sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or

¹² See, e.g., 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA's prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁸ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁹ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²¹ 18 U.S.C. § 371.

directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Chairman Mark Jerrell
Mecklenburg County
Charlotte-Mecklenburg Government Center
600 E. 4th St.
Charlotte, NC 28202
Mark.Jerrell@MeckNC.gov

Dear Chairman Jerrell:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

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Moreover, your sanctuary policies have had a real impact on your local residents. For example, in February 2024, Luis Enrique Garcia-Morillo, an illegal alien, kidnapped a woman he met at a nightclub in Raleigh and drove her to Charlotte, where he raped her and threatened to kill her and her family if she told anyone.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

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⁶ Mary Smith, *Man charged with sexually assaulting two victims faces Wake County judge*, WAKE COUNTY NEWS, (Nov. 12, 2024), <https://perma.cc/YD92-U8AS>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

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December 23, 2024

Via email

Chairman Matt Calabria
Wake County
P.O. Box 550,
Raleigh, NC 27602
Matt.Calabria@wakegov.com

Dear Chairman Calabria:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

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The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, in February 2024, Luis Enrique Garcia-Morillo, an illegal alien, kidnapped a woman he met at a nightclub in Raleigh and drove her to Charlotte, where he raped her and threatened to kill her and her family if she told anyone.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Mary Smith, *Man charged with sexually assaulting two victims faces Wake County judge*, WAKE COUNTY NEWS, (Nov. 12, 2024), <https://perma.cc/YD92-U8AS>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

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Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or

¹² See, e.g., 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁸ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁹ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

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²¹ 18 U.S.C. § 371.

directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Governor Kelly Armstrong
State of North Dakota
600 East Boulevard Avenue
Bismarck, ND 58505-0100
governor@state.nd.us

Dear Governor Armstrong:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, in November 2024, a Venezuelan illegal alien and possible Tren de Aragua member named Henry Santiago Theis was arrested in West Fargo for stealing approximately \$100,000 from local ATMs.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

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⁶ Jennie Taer, *Cops in one of America’s most remote states beg for feds’ help over Tren de Aragua infiltration*, NEW YORK POST, (Dec. 15, 2024), <https://perma.cc/J83H-NM9J>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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VI. Conclusion

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December 23, 2024

Via email

President Kevin L. Boyce
Franklin County
373 S. High Street, 26th Floor
Columbus, Ohio 43215-6314
klboyce@franklincountyohio.gov

Dear President Boyce:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

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Moreover, your sanctuary policies have had a real impact on your local residents. For example, in July 2023, an illegal alien from Guatemala named Gerson Fuentes was sentenced to life imprisonment for raping a 9-year-old girl in Columbus.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or

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⁶ Jordan Laird, *Man who raped, impregnated Columbus girl in abortion case gets life sentence*, THE COLUMBUS DISPATCH, (Jul. 5, 2023), <https://perma.cc/G3UL-3FXY>.

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual's immigration status.

The INA specifically preempts State and local restrictions on local officials' communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction's sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien's unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry,

law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁸ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁹ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); *accord United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); *see also United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²¹ 18 U.S.C. § 371.

under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Governor Tina Kotek
State of Oregon
900 Court St NE
Salem, OR 97301
Governor.Kotek@oregon.gov

Dear Governor Kotek:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ O.R.S. § 181A.820 (Enforcement of Federal Immigration Laws), available at <https://perma.cc/A45N-HWNG>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, an illegal alien from Guatemala was arrested in March 2024 in Florida based on outstanding warrants from Oregon against him for rape and sexual abuse. However, authorities in Washington County, Oregon initially declined to request his extradition, and the Florida authorities were forced to temporarily release him until ICE authorized his re-arrest.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Steve King and John Iz, *Suspect wanted in Oregon on rape charges arrested in Martin County after dispute among authorities*, WPBF NEWS, (Mar. 4, 2024), <https://perma.cc/6R68-N5HU>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

⁹ U.S. CONST. Art. I, § 8, cl. 4.

¹⁰ *Arizona*, 567 U.S. at 394 (citation omitted).

¹¹ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual's immigration status.

The INA specifically preempts State and local restrictions on local officials' communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction's sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or

¹² See, e.g., 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA's prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁸ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁹ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²¹ 18 U.S.C. § 371.

directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
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²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Cherelle Parker
City of Philadelphia
City Hall, Office 215
Philadelphia, PA 19107
Cherelle.Parker@Phila.gov

Dear Mayor Parker:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, in June 2024, an illegal alien from Guatemala named Enrique Lopez Gomez was arrested in the Philadelphia area for the murder of a 21-month-old toddler.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or

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⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ John Binder, *Guatemalan Migrant Charged with Murdering 21-Month-Old Boy in Pennsylvania*, BREITBART, (Jul. 2, 2024), <https://perma.cc/C2Y5-AJ3B>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

⁹ U.S. CONST. Art. I, § 8, cl. 4.

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¹¹ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

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law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

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¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

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For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁸ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁹ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); *accord United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); *see also United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²¹ 18 U.S.C. § 371.

under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Governor Dan McKee
State of Rhode Island
82 Smith Street
Providence, RI 02903
rigov@gov.state.ri.us

Dear Governor McKee:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Enforcement and Removal Operations - Weekly Declined Detainer Outcome Report*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (February 3, 2017), <https://tinyurl.com/28jttajt>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, in November 2024 an illegal alien from Guatemala named Felix Meletz Guarcas was arrested in Rhode Island by immigration authorities for the alleged sexual assault of a child. ICE submitted an immigration detainer request to the Rhode Island Department of Corrections, which was ignored. ICE agents were consequently forced to arrest find him themselves and arrested him in a public parking lot, rather than in a safe custodial environment.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Louis Casiano, *Migrant accused of sex crimes against child arrested after detainer request ignored, ICE says*, FOX NEWS, (Dec. 4, 2024), <https://perma.cc/3SSF-9MCV>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

⁹ U.S. CONST. Art. I, § 8, cl. 4.

¹⁰ *Arizona*, 567 U.S. at 394 (citation omitted).

¹¹ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual's immigration status.

The INA specifically preempts State and local restrictions on local officials' communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction's sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or

¹² See, e.g., 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA's prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁸ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁹ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²¹ 18 U.S.C. § 371.

directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
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²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Administrator Bill Tuten
Charleston County
4045 Bridge View Drive
North Charleston, SC 29405
BTuten@charlestoncounty.org

Dear County Administrator Tuten:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, in August 2024, Rovilson Rivera Hernandez, an illegal immigrant from Honduras, was convicted in Charleston of felony DUI resulting in great bodily injury and was sentenced to 15 years’ imprisonment.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Patrick Phillips, *Prosecutors: Man in U.S. illegally sentenced in Charleston Co. felony DUI case*, LIVE 5, (Aug. 14, 2024), <https://perma.cc/4BBD-ASKF>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

⁹ U.S. CONST. Art. I, § 8, cl. 4.

¹⁰ *Arizona*, 567 U.S. at 394 (citation omitted).

¹¹ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

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The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

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¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

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For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not

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directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary

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²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Lee Harris
Shelby County
160 N Main Street, 11th Floor
Memphis, TN 38103
Lee.Harris@shelbycountyttn.gov

Dear Mayor Harris:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, in February 2024, ICE agents in Memphis arrested an illegal immigrant from El Salvador who had been convicted of felony sexual exploitation of a minor. That same month, they also arrested an illegal immigrant from Mexico who was an aggravated felon for drugs and firearms violations.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *ICE arrests 275 noncitizens with sex offense convictions during nation-wide law enforcement effort*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (Feb. 23, 2024), <https://perma.cc/AU2N-V858>; *ERO New Orleans locates, arrests aggravated felon in Memphis*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (Feb. 1, 2024), <https://perma.cc/Y5A4-LW8A>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

⁹ U.S. CONST. Art. I, § 8, cl. 4.

¹⁰ *Arizona*, 567 U.S. at 394 (citation omitted).

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Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or

¹² See, e.g., 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁸ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁹ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²¹ 18 U.S.C. § 371.

directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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December 23, 2024

Via email

Governor Spencer J. Cox
350 N. State Street, Suite 200
P.O. Box 142220
Salt Lake City, UT 84114-2220
governor@utah.gov

Dear Governor Cox:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

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The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Sanctuary State Designation for the State of Utah*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (May 31, 2024), <https://perma.cc/6UUN-VKC7>.

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Moreover, your sanctuary policies have had a real impact on your local residents. For example, the notorious Venezuelan gang Tren de Aragua—of which a significant proportion of members are illegal aliens—have expanded operations into Utah and are allegedly operating a prostitution ring and committing assaults in the State.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

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⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Jennie Taer, *Tren de Aragua is terrorizing Utah — as Venezuelan dissident warns that local authorities ‘are not ready’*, NEW YORK POST, (Dec. 16, 2024), <https://perma.cc/XU6H-YFHH>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

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December 23, 2024

Via email

Governor Phil Scott
Office of Governor Phil Scott
109 State Street, Pavilion
Montpelier, VT 05609
phil.scott@vermont.gov

Dear Governor Scott:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

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The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, in November 2024, a Venezuelan citizen was arrested illegally crossing the border from Canada into Derby Line, Vermont, carrying a handgun, a suppressor, 80 rounds of ammunition, and multiple knives. And in 2018 an illegal alien from the Ivory Coast with an outstanding felony warrant for molestation of a child was arrested by Border Patrol agents near Alburgh, Vermont.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Newport Dispatch, *Venezuelan man charged after heavily armed illegal border crossing in Derby Line*, VERMONT DAILY CHRONICLE, (Nov. 12, 2024), <https://perma.cc/TP6Y-BD7D>; *Border Patrol Agents in Vermont Arrest Illegal Alien Wanted for Child Molestation*, U.S. CUSTOMS AND BORDER PROTECTION, (Apr. 26, 2018), <https://perma.cc/DAV2-JLUK>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

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Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual's immigration status.

The INA specifically preempts State and local restrictions on local officials' communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction's sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or

¹² See, e.g., 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA's prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

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remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

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directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
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December 23, 2024

Via email

Mayor Justin Wilson
City of Alexandria
301 King Street
Alexandria, VA 22314
justin.wilson@alexandriava.gov

Dear Mayor Wilson:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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Moreover, your sanctuary policies have had a real impact on your local residents. For example, on November 19, 2024, an illegal alien from Honduras named Denis Humberto Navarette Romero was arrested for abduction with the intent to defile and rape. Navarette Romero is accused of grabbing the victim on the W&OD Trail and assaulting her before she was able to escape and seek help.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

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December 23, 2024

Via email

County Manager Mark Schwartz
Arlington County
2100 Clarendon Blvd., Suite 302
Arlington, VA 22201
countymanager@arlingtonva.us

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The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or

¹² See, e.g., 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

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¹⁹ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²¹ 18 U.S.C. § 371.

directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
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²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Executive Bryan Hill
Fairfax County
12000 Government Center Parkway
Fairfax, VA 22035
CoExec@fairfaxcounty.gov

Dear County Executive Hill:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, on November 19, 2024, an illegal alien from Honduras named Denis Humberto Navarette Romero was arrested for abduction with the intent to defile and rape. Navarette Romero is accused of grabbing the victim on the W&OD Trail and assaulting her before she was able to escape and seek help.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Matt Delaney, *Honduran migrant charged in rape on Virginia running trail, has history of sex offenses*, WASHINGTON TIMES, (Nov. 20, 2024), <https://perma.cc/6SF7-CA73>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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December 23, 2024

Via email

County Administrator Tim Hemstreet
Loudon County
1 Harrison Street SE, 5th Floor
P.O. Box 7000
Leesburg, VA 20177-7000
coadmin@loudoun.gov

Dear County Administrator Hemstreet:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

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The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, Maryln Medrano-Ortiz, an illegal immigrant and MS-13 gang member, was arrested on October 25, 2024 for a double homicide in Sterling.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

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⁶ Vernon Miles, *Suspect arrested for murder of Arlington man in Sterling*, ARLNOW, (Oct. 25, 2024), <https://perma.cc/N7F7-UGKL>.

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For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

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²⁰ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); *accord United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); *see also United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²¹ 18 U.S.C. § 371.

directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Michelle Davis-Younger
City of Manassas
9027 Center St.
Manassas, VA 20110
mdavis-younger@manassasva.gov

Dear Mayor Davis-Younger:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, Jesus Enrique Ramirez Cabrera, who is an illegal immigrant from Peru, was arrested in September 2024 after allegedly abducting a female high school student in Manassas, Virginia who was walking to school. The Manassas Police Department charged him with abduction, robbery, impersonation of law enforcement, and petit larceny.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

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Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual's immigration status.

The INA specifically preempts State and local restrictions on local officials' communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction's sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or

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¹³ 8 U.S.C. § 1373(a) (emphasis added).

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¹⁵ U.S. CONST. art. VI, cl. 2.

remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

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December 23, 2024

Via email

County Executive Chris Shorter
Prince William County
1 County Complex Ct.
Prince William, VA 22192
communications@pwcgov.org

Dear County Executive Shorter:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

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Moreover, your sanctuary policies have had a real impact on your local residents. For example, Jesus Enrique Ramirez Cabrera, who is an illegal immigrant from Peru, was arrested in September 2024 after allegedly abducting a female high school student in Manassas, Virginia who was walking to school. The Manassas Police Department charged him with abduction, robbery, impersonation of law enforcement, and petit larceny.⁶

I. The Federal Government has authority over immigration and aliens.

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²⁵ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Governor Jay Inslee
State of Washington
P.O. Box 40002
Olympia, WA 98504-0002
Governor.Inslee@Governor.wa.gov

Dear Governor Inslee:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people’s elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called “sanctuary” jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation’s laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ R.C.W. § 10.93.160 (Immigration and citizenship status—Law enforcement agency restrictions), available at <https://perma.cc/C4XT-4LKW>; R.C.W. §43.10.315 (Immigration enforcement model policies—Adoption by law enforcement agencies).

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, ICE recently arrested a 23-year-old Mexican citizen who had been convicted of felony rape in Spokane. ICE also arrested a 24-year-old Mexican citizen in Fife, Washington who had been convicted of possession of child pornography.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *ERO Seattle arrests 12 noncitizens with sex offense convictions as part of nationwide law enforcement effort*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (Feb. 26, 2024), <https://perma.cc/MG8A-6LDN>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

⁹ U.S. CONST. Art. I, § 8, cl. 4.

¹⁰ *Arizona*, 567 U.S. at 394 (citation omitted).

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Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or

¹² See, e.g., 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁸ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁹ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

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²¹ 18 U.S.C. § 371.

directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Executive Melissa Agard
City County Building, Room 421
210 Martin Luther King Jr. Blvd.
Madison, WI 53703
County.Executive@danecounty.gov

Dear County Executive Agard:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, illegal alien Luis Gerardo Perez Lucas is currently being detained in Wisconsin pending prosecution for sexual assault of a child and for incest. Notwithstanding these heinous alleged crimes, the court issued an order of “declined to hold” in response to an apparent request from ICE that he be detained for removal from the country.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

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⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Resident Detail: Luis Gerardo Perez Lucas*, DANE COUNTY SHERIFF'S OFFICE, (accessed on Dec. 18, 2024), <https://perma.cc/4PGZ-TCPY>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

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December 23, 2024

Via email

County Executive David Crowley
Milwaukee County Courthouse, Room 306
901 N. 9th Street
Milwaukee, WI 53233
david.crowley@milwaukeecountywi.gov

Dear County Executive Crowley:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

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² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

Moreover, your sanctuary policies have had a real impact on your local residents. For example, in 2023 an illegal immigrant from Mexico named Juan Felix-Avendano killed a Special Olympian athlete and injured his parents when he hit them in his car as they drove to church in Milwaukee. He was drunk and had also smoked crystal meth. He was so intoxicated that he did not remember leaving his house, the speedometer in his car was stuck at 110 mph.⁶

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁷ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁸ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁹ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”¹⁰ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹¹

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ Jim Piwowarczyk, *Illegal Immigrant in Milwaukee Killed Special Olympian in Horror Crash*, WISCONSIN RIGHT NOW, (Sep. 29, 2024), <https://perma.cc/W2JA-9TBS>.

⁷ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁸ *Id.* at 394 (citation omitted).

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Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹² No federal law, however, allows state or local officials to *subvert* or *ignore* the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹³

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹⁴ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁵

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or

¹² See, e.g., 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹³ 8 U.S.C. § 1373(a) (emphasis added).

¹⁴ *Arizona*, 567 U.S. 399.

¹⁵ U.S. CONST. art. VI, cl. 2.

remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁶ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁷ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁸ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁹

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.²⁰ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²¹ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁸ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁹ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

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²¹ 18 U.S.C. § 371.

directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²² This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²³ This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²⁴ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁵ Thus, any individual who has been harmed by your jurisdiction’s sanctuary

²² 18 U.S.C. § 372.

²³ 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²⁴ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

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policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁶

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁷ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁷ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7. 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

CEO Michael Thurmond
DeKalb County
1300 Commerce Drive, 6th Floor
Decatur, GA 3003
CEOMichaelThurmond@dekalbcountyga.gov

Dear CEO Thurmond:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

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For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

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James Rogers
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December 23, 2024

Via email

Commission Chairwoman Romona Jackson Jones
Douglas County
8700 Hospital Drive
Douglasville, GA 30134
rjacksonjones@douglascountyga.gov

Dear Chairwoman Jones:

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Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

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The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²⁰ 18 U.S.C. § 371.

²¹ 18 U.S.C. § 372.

intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Chairman Ronald Funk
Power County
Power County Courthouse
543 Bannock Ave
American Falls, ID 83211
rjffarms@gmail.com

Dear Chairman Funk:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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¹⁰ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g)

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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James Rogers
Senior Counsel
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²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Monroe County Board of Commissioners
100 W Kirkwood Ave
Bloomington, IN 47404
commissionersoffice@co.monroe.in.us

Dear Monroe County Board of Commissioners:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final

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orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

President Carl H. Baxmeyer
St. Joseph County
277 W Jefferson Boulevard
South Bend, IN 46601
sjccom@sjcindiana.com

Dear President Baxmeyer:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual's immigration status.

The INA specifically preempts State and local restrictions on local officials' communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction's sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien's unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁸ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

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Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

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Best regards,

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²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Board of Commissioners
Wayne County
401 East Main Street
Richmond, IN 47374
boc@co.wayne.in.us

Dear Board of Commissioners:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

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I. The Federal Government has authority over immigration and aliens.

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VI. Conclusion

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James Rogers
Senior Counsel
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December 23, 2024

Via email

Chairwoman Karen Willey
Douglas County
1100 Massachusetts Street
Lawrence, KS 66044
kwilley@dgcoks.gov

Dear Chairwoman Willey:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

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We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁸ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

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²⁰ 18 U.S.C. § 371.

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Board of Commissioners
Campbell County
1098 Monmouth St,
Newport, KY 41071

Dear Board of Commissioners:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final

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orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

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As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

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Best regards,

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James Rogers
Senior Counsel
America First Legal Foundation

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December 23, 2024

Via email

Mayor Layne Wilkerson
Franklin County
315 W. Second Street,
P.O. Box 697
Frankfort, KY 40601
lwikerson@frankfort.ky.gov

Dear Mayor Wilkerson:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

(allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction's sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction's sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction's sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years' imprison-

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁸ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

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²⁰ 18 U.S.C. § 371.

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ment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction's sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

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you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Metro City Council
Jefferson County
601 W. Jefferson St.
Louisville, KY 40202
first.last@louisvilleky.gov

Dear Metro City Council:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

⁸ U.S. CONST. Art. I, § 8, cl. 4.

⁹ *Arizona*, 567 U.S. at 394 (citation omitted).

¹⁰ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

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For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Craig Greenberg
Louisville
527 W Jefferson St #600
Louisville, KY 40202

Dear Mayor Greenberg:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final

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orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

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The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

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Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁴ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Burney Jenkins
Scott County
117 N Water Street
Georgetown, KY 40324
wendy.robinson@georgetownky.gov

Dear Mayor Jenkins:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

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¹⁰ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁸ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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James Rogers
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²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Manager James H. Gailey
Cumberland County
142 Federal St.
Portland, ME 04101
gailey@cumberlandcounty.org

Dear County Manager Gailey:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

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VI. Conclusion

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James Rogers
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December 23, 2024

Via email

Chairman John Wombacher
Hancock County
50 State Street, Suite 7
Ellsworth, ME 04605
john.wombacher@hancockcountymaine.gov

Dear Chairman Wombacher:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

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The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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¹⁰ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁸ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²⁰ 18 U.S.C. § 371.

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁴ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

President of Board of Commissioners James J Moran
Queen Anne's County
Board of County Commissioners
Liberty Building
107 North Liberty St.
Centreville, MD 21617
jmoran@qac.org

Dear President Moran:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

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/s/ James Rogers
James Rogers
Senior Counsel
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December 23, 2024

Via email

Mayor Monique Ashton
City of Rockville
111 Maryland Ave
Rockville, MD 20850
mayorcouncil@rockvillemd.gov

Dear Mayor Ashton:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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³ Andrew Metcalf, *Opposition Dwindles Before Rockville City Council Passes Controversial Immigration Ordinance*, MoCo360, (JUNE 20, 2017), <https://perma.cc/8V9W-FH24>.

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁸ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²⁰ 18 U.S.C. § 371.

²¹ 18 U.S.C. § 372.

intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁴ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

President of Board of Commissioners James R. Guy
St. Mary's County
Governmental Center
23115 Leonard Hall Drive
Leonardtown, MD 20650 - 0653
randy.guy@stmaryscountymd.gov

Dear President Guy:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>; Policy 413, ST MARY COUNTY SHERIFF'S OFFICE, (February 3, 2024), <https://perma.cc/V297-9AH6>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

⁸ U.S. CONST. Art. I, § 8, cl. 4.

⁹ *Arizona*, 567 U.S. at 394 (citation omitted).

¹⁰ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g)

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

(allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

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above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction's sanctuary laws or policies from criminal exposure and long prison sentences.

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For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

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²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Chairwoman Tami Rey
Kalamazoo County
201 West Kalamazoo Avenue
Kalamazoo, MI 49007
Tami.Rey@kalcounty.com

Dear Chairwoman Rey:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

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For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

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²⁰ 18 U.S.C. § 371.

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁴ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

²⁵ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Chairman Stan Stek
Kent County
County Administration Building
300 Monroe Avenue NW
Grand Rapids, MI 49503
stan.stek@kentcountymi.gov

Dear Chairman Stek:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

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¹⁰ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g)

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

(allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction's sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction's sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction's sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years' imprison-

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ment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

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Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

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you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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December 23, 2024

Via email

Mayor Andy Schor
City of Lansing
124 W Michigan Ave
Lansing, MI 48933
lansing.mayor@lansingmi.gov

Dear Mayor Schor:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Executive Order 2017-01 Creation of City Policy with Respect to Immigrants and Refugees*, CITY OF LANSING, MICHIGAN (April 3, 2017), <https://perma.cc/6TMA-84WU>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

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Best regards,

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Senior Counsel
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December 23, 2024

Via email

Chairman Ty Wessell
Leelanau County
8527 E Government Center Dr #101
Suttons Bay, MI 49682
twessell@leelanau.gov

Dear Chairman Wessell:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

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The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

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³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Chairwoman Michelle Clark
Luce County
401 W Ave A
24517 Co Rd 98
Newberry, MI 49868
Clarkm46@michigan.gov

Dear Chairwoman Clark:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

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The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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James Rogers
Senior Counsel
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December 23, 2024

Via email

Chairman Charles Nash
Muskegon County
1903 Marquette Avenue
Suite A111
Muskegon, MI 49442
nashch@co.muskegon.mi.us

Dear Chairman Nash:

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The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

(allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction's sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction's sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction's sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years' imprison-

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²⁰ 18 U.S.C. § 371.

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ment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction's sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁴ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring "a RICO action against the municipal officers themselves"); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were "proper RICO persons" who could be sued for triple damages).

you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Chairman Justin Hodge
Washtenaw County
1500 Stamford Rd
Ypsilanti, MI 48198-3201
hodgej@washtenaw.org

Dear Chairman Hodge:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

⁸ U.S. CONST. Art. I, § 8, cl. 4.

⁹ *Arizona*, 567 U.S. at 394 (citation omitted).

¹⁰ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

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For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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Best regards,

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James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Executive Joe Porterfield
Wexford County
437 E. Division St
Cadillac, MI 49601
administration@wexfordcounty.org

Dear County Executive Porterfield:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Cottonwood County Commissioners
Cottonwood County
900 3rd Avenue
Windom, MN 56101

Dear Cottonwood County Commissioners:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final

¹ 8 U.S.C. § 1324.

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³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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¹⁰ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁸ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Manager Heidi Welsch
Dakota County
1590 Highway 55
Hastings, MN 55033
board@co.dakota.mn.us

Dear County Manager Welsch:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

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December 23, 2024

Via email

County Administrator Ryan Krosch
Jackson County
405 4th St
Jackson, MN 56143
County.Administrator@co.jackson.mn.us

Dear County Administrator Krosch:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

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¹ 8 U.S.C. § 1324.

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³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁸ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Administrator Kelsey Baker
Kandiyohi County
2200 23rd St NE #2020
Willmar, MN 56201
kelsey.baker@kcmn.us

Dear County Administrator Baker:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

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Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
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December 23, 2024

Via email

County Administrator Aimee Primus
Lincoln County
319 N Rebecca
PO Box 29
Ivanhoe, MN 56142
aimee.primus@courts.state.mn.us

Dear County Administrator Primus:

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

(allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction's sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction's sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction's sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years' imprison-

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

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¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); *accord United States v. Francisco*, 30 F. App'x 48, 49 (4th Cir. 2002); *see also United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²⁰ 18 U.S.C. § 371.

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ment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction's sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

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you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Administrator Loren Stomberg
Lyon County
607 West Main Street
Marshall, MN 56258
lorenstomberg@co.lyon.mn.us

Dear County Administrator Stomberg:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

⁸ U.S. CONST. Art. I, § 8, cl. 4.

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¹⁰ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

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For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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Best regards,

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James Rogers
Senior Counsel
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²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Administrator Bruce Heitkamp
Nobles County
315 10th Street (Third floor)
P.O. Box 757
Worthington, MN 56187
administration@co.nobles.mn.us

Dear County Administrator Heitkamp:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

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³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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ment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction's sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

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you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

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December 23, 2024

Via email

County Administrator Steve Ewing
Pipestone County
Pipestone County Courthouse
416 Hiawatha Ave. S
Pipestone, MN 56164
steve.ewing@pcmn.us

Dear County Administrator Ewing:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

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¹⁰ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g)

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

(allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹² 8 U.S.C. § 1373(a) (emphasis added).

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¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction's sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction's sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction's sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years' imprison-

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Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

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As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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December 23, 2024

Via email

County Manager Ling Becker
Ramsey County
15 W Kellogg Blvd
St Paul, MN 55102

Dear County Manager Becker:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final

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orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

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December 23, 2024

Via email

Dillon Melheim
Chairman, Watonwan County Board
710 2nd Avenue S
St. James, MN 56081
Dillon.Melheim@watonwancountymn.gov

Dear Chairman Melheim:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

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425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁸ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²⁰ 18 U.S.C. § 371.

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mark Wilson
Chairman, Arthur County Commission
205 W Wilson Road
Lemoyne, NE 69146
twobartwo@neb-sandhills.net

Dear Chairman Wilson:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

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425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
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²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Robin Darnall
Chairwoman, Banner County Commission
204 State Street
Harrisburg, NE 69345
commissionerdarnall@gmail.com

Dear Chairwoman Darnall:

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The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²⁰ 18 U.S.C. § 371.

²¹ 18 U.S.C. § 372.

intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁴ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Roger Guggenmos
Chairman, Blaine County Commission
145 Lincoln Ave
Brewster, NE 68821-9700
rcguggie@neb-sandhills.net

Dear Chairman Guggenmos:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

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⁹ *Arizona*, 567 U.S. at 394 (citation omitted).

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¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

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The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

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By complying with your jurisdiction's sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien's unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

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For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
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²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Terry Lerdall
Chair, Gosper County Commission
507 Smith Ave E
Elwood, NE 6893
district1@gospercountyne.gov

Dear Chair Lerdall:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

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Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Chairman Jordan Foltz
Greeley County
PO Box 287
Greeley, NE 68842
foltzy@hotmail.com

Dear Chairman Foltz:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁸ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Chairman Bryan Crisp
Hooker County
PO Box 403
Mullen, NE 69152
handyman@nebnet.net

Dear Chairman Crisp:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

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I. The Federal Government has authority over immigration and aliens.

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VI. Conclusion

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Best regards,

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December 23, 2024

Via email

Chairwoman Kathy Hirschman
Howard County
830 Hardy Rd.
St. Paul, NE 68873

Dear Chairwoman Hirschman:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

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orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Chairman Robert Doyle
Logan County
105 County Rd 90
PO Box 237
Stapleton, NE 69163

Dear Chairman Doyle:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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I. The Federal Government has authority over immigration and aliens.

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

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Best regards,

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James Rogers
Senior Counsel
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December 23, 2024

Via email

Chairman John E Bryant
McPherson County
200 Bryant Drive
North Platte, NE 69101

Dear Chairman Bryant:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

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The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

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¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²⁰ 18 U.S.C. § 371.

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Kim Kwapnioski
Chairwoman, Platte County Commission
2610 14th Street
Columbus, NE 68601
district3@plattecounty.ne.gov

Dear Chairwoman Kwapnioski:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

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¹⁰ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

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For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
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²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Joshua Skavdahl
Chairman, Sioux County Commission
325 Main St.
Harrison, NE 69346

Dear Chairman Skavdahl:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final

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orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Administrator Chad D. Monier
Hillsborough County
Suite 114
329 Mast Road
Goffstown, NH 03045

Dear County Administrator Monier:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

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¹⁰ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁸ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²⁰ 18 U.S.C. § 371.

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Manager Bill Williams
Chaves County
1 St. Mary's Place
Roswell, NM 88203

Dear County Manager Williams:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final

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³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

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The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

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VI. Conclusion

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Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

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December 23, 2024

Via email

County Manager Monte Gore
Colfax County
230 North 3rd Street
Raton, NM 87740

Dear County Manager Gore:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

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¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁸ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Manager Amanda Lucero
De Baca County
248 E Avenue
Fort Sumner, NM 88119

Dear County Manager Lucero:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final

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Best regards,

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James Rogers
Senior Counsel
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December 23, 2024

Via email

County Manager Scott Andrews
Dona Ana County
845 N Motel Blvd
Las Cruces, NM 88007

Dear County Manager Andrews:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

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¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²⁰ 18 U.S.C. § 371.

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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²⁴ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Manager Mike Gallagher
Eddy County
Administration Complex
101 W Greene Street
Carlsbad, NM 88220

Dear County Manager Gallagher:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

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²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

City Manager Robert Mayes
City of Farmington
City Hall
800 Municipal Drive
Farmington, NM 87401
rmayes@farmingtonnm.gov

Dear City Manager Mayes:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *New Mexico Freedom City Policies + FAQ*, ACLU, (2024), <https://perma.cc/7VRL-ZMY6>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

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Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction's sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

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you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Manager Charlene Webb
Grant County
1400 Highway 180 E
P.O. Box 898
Silver City, NM 88061-7837
cwebb@grantcountynm.gov

Dear County Manager Webb:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

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¹⁰ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g)

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

(allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction's sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction's sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction's sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years' imprison-

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ment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction's sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

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you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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December 23, 2024

Via email

County Manager Tisha Green
Hidalgo County
305 Pyramid Street
Lordsburg, NM 88045
tisha.green@hidalgocounty.org

Dear County Manager Green:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

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I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

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Best regards,

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James Rogers
Senior Counsel
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²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Eric Enriquez
City of Las Cruces
700 N Main St.
Las Cruces, NM 88001
eenriquez@lascruces.gov

Dear Mayor Eric Enriquez:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

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The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Resolution Ensuring Immigrant Student Access to the Full Benefits of an LCPS Education*, LAS CRUCES PUBLIC SCHOOLS, (April 18, 2017), <https://perma.cc/VU8Z-RAP2>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

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⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²⁰ 18 U.S.C. § 371.

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Manager Randall Camp
Lincoln County
300 Central Avenue
P.O. Box 711
Carrizozo, NM 88301
rcamp@lincolncountynm.gov

Dear County Manager Camp:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

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³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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/s/ James Rogers
James Rogers
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December 23, 2024

Via email

County Manager Anne Laurent
Los Alamos County
Los Alamos County Administrative Offices
1000 Central Avenue
Los Alamos, NM 87544, USA

Dear County Manager Laurent:

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The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²⁰ 18 U.S.C. § 371.

²¹ 18 U.S.C. § 372.

intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Manager Chris Brice
Luna County
700 S. Silver Ave.
Deming, NM 88030
chris_brice@lunacountynm.us

Dear County Manager Brice:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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⁹ *Arizona*, 567 U.S. at 394 (citation omitted).

¹⁰ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

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For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

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Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
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²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Manager Anthony Dimas
McKinley County
207 West Hill Ave
P.O. Box 70
Gallup, NM 87305

Dear County Manager Dimas:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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The INA specifically preempts State and local restrictions on local officials' communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Manager Pamela Heltner
Otero County
1101 New York Avenue
Room 106
Alamogordo, NM 88310
pheltner@co.otero.nm.us

Dear County Manager Heltner:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

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¹⁰ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g)

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

(allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

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¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction's sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction's sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction's sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years' imprison-

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Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

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Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

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you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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Senior Counsel
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December 23, 2024

Via email

County Manager Daniel Zamora
Quay County
PO Box 1246
Tucumcari, NM 88401
daniel.zamora@quaycounty-nm.gov

Dear County Manager Zamora:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

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I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

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VI. Conclusion

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December 23, 2024

Via email

County Manager Jeremy G. Maestas
Rio Arriba County
Rio Arriba County Administrative Complex
149 State Road 162
Tierra Amarilla, NM 87575

Dear County Manager Maestas:

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The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Manager Annette Kirk
Roosevelt County
109 W 1st Street
Portales, NM 88130

Dear County Manager Kirk:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

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³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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Best regards,

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James Rogers
Senior Counsel
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²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Manager Jessica Hudson
San Juan County
100 S. Oliver Dr.
Aztec, NM 87410
mike.stark@sjcounty.net

Dear County Manager Hudson:

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²⁰ 18 U.S.C. § 371.

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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²⁴ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Manager Joy Ansley
San Miguel County
500 W National Ave.
Las Vegas, NM 87701

Dear County Manager Ansley:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

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VI. Conclusion

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Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
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²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Manager Wayne Johnson
Sandoval County
1500 Idalia Road, Building D
P.O. Box 40
Bernalillo, NM 87004
wjohnson@sandovalcountynm.gov

Dear County Manager Johnson:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

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³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction's sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁴ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring "a RICO action against the municipal officers themselves"); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were "proper RICO persons" who could be sued for triple damages).

you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Alan Webber
City of Santa Fe
200 Lincoln Ave
Santa Fe, NM 87501
mayor@santafenm.gov

Dear Mayor Webber:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ Resolution No.2017-19, CITY OF SANTA FE, (February 22, 2017), <https://perma.cc/95GD-7RE2>
Resolution No. 1999-6, CITY OF SANTA FE, (January 13, 1999) <https://perma.cc/R5WT-2ARZ>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

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⁹ *Arizona*, 567 U.S. at 394 (citation omitted).

¹⁰ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual's immigration status.

The INA specifically preempts State and local restrictions on local officials' communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction's sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien's unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁸ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²⁰ 18 U.S.C. § 371.

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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Senior Counsel
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²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Manager Gregory S. Shaffer
Santa Fe County
102 Grant Avenue
Santa Fe, NM 87501
gshaffer@santafecountynm.gov

Dear County Manager Shaffer:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

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Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

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Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Manager Amber Vaughn
Sierra County
1712 N. Date, Suite D
Truth or Consequences, NM 87901
avaughn@sierraco.org

Dear County Manager Vaughn:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

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The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

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³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Manager Andrew Lotrich
Socorro County
198 Neel Ave
PO Box D
Socorro, NM 87801
alotrich@co.socorro.nm.us

Dear County Manager Lotrich:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

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I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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James Rogers
Senior Counsel
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December 23, 2024

Via email

County Manager Brent Jaramillo
Taos County
105 Albright Street
Suite G
Taos, NM 87571
brent.jaramillo@taoscountynm.gov

Dear County Manager Jaramillo:

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The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

(allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

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¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction's sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction's sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction's sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years' imprison-

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

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ment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction's sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

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you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Executive Sue Serino
Dutchess County
Dutchess County Office Building
22 Market Street, 6th Floor
Poughkeepsie, NY 12601
CountyExec@DutchessNY.gov

Dear County Executive Serino:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

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¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g)

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

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For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years' imprison-

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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James Rogers
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December 23, 2024

Via email

County Executive Adam J. Bello
Monroe County
110 County Office Building
39 W. Main St.
Rochester, NY 14614
countyexecutive@monroecounty.gov

Dear County Executive Bello:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

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² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

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ment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction's sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁴ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring "a RICO action against the municipal officers themselves"); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were "proper RICO persons" who could be sued for triple damages).

you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Executive Steven M. Neuhaus
Orange County
255 Main Street
Goshen, NY 10924
ceoffice@orangecountygov.com

Dear County Executive Neuhaus:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

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¹⁰ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁸ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

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²⁰ 18 U.S.C. § 371.

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

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Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Executive Ed Day
Rockland County
Allison-Parris County Office Building
11 New Hempstead Rd
New City, NY 10956
countyexec@co.rockland.ny.us

Dear County Executive Day:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

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³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

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Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

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VI. Conclusion

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Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
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December 23, 2024

Via email

County Administrator Steve Bulger
Saratoga County
40 McMaster Street
Ballston Spa, NY 12020
steve.bulger@outlook.com

Dear County Administrator Bulger:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²⁰ 18 U.S.C. § 371.

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Manager Joshua Potosek
Sullivan County
County Government Center
100 North Street
PO Box 5012
Monticello, NY 12701

Dear County Manager Potosek:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

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We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

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I. The Federal Government has authority over immigration and aliens.

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Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

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/s/ James Rogers
James Rogers
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December 23, 2024

Via email

County Administrator Lisa Holmes
Tompkins County
125 East Court Street, Old Jail Bldg.
3rd Floor
Ithaca, NY14850

Dear County Administrator Holmes:

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The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²⁰ 18 U.S.C. § 371.

²¹ 18 U.S.C. § 372.

intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Executive Jen Metzger
Ulster County
6th Floor County Office Building
244 Fair Street
Kingston, NY 12401
exec@co.ulster.ny.us

Dear County Executive Metzger:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

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⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

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James Rogers
Senior Counsel
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December 23, 2024

Via email

Chairman Kevin B. Geraghty
Warren County
Warren County Municipal Center
1340 State Route 9
Lake George, NY 12845
Kevin.Geraghty@TownOfWarrensburg.net

Dear Chairman Geraghty:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

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³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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ment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction's sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁴ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring "a RICO action against the municipal officers themselves"); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were "proper RICO persons" who could be sued for triple damages).

you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Administrator Rick House
Wayne County
26 Church Street
Lyons, NY 14489
rhouse@co.wayne.ny.us

Dear County Administrator House:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

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¹⁰ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁸ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

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Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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December 23, 2024

Via email

County Administrator Jessica Mullins
Yates County
417 Liberty St
Suite 1002
Penn Yan, NY 14527
nflynn@yatescounty.org

Dear County Administrator Mullins:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

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Best regards,

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December 23, 2024

Via email

Chairwoman Amanda Edwards
Buncombe County
77 Pine Forest Dr.
Weaverville, NC 28787
amanda.edwards@buncombecounty.org

Dear Chairwoman Edwards:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²⁰ 18 U.S.C. § 371.

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Chairwoman Karen Howard
Chatham County
P. O. Box 1809,
Pittsboro, NC 27312
karen.howard@chathamcountync.gov

Dear Chairwoman Howard:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

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I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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/s/ James Rogers
James Rogers
Senior Counsel
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December 23, 2024

Via email

Chairman Don Martin
Forsyth County
6307 Tobaccoville Road
Tobaccoville, NC 27050
Contact Form

Dear Chairman Martin:

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The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

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¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²⁰ 18 U.S.C. § 371.

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Chairwoman Jamezetta Bedford
Orange County
300 W. Tryon St.
Whitted Bldg. Rm-220
Hillsborough, NC 27278
Jbedford@orangecountync.gov

Dear Chairwoman Bedford:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

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⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

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The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

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Best regards,

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James Rogers
Senior Counsel
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²⁵ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

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December 23, 2024

Via email

County Administrator Deron Geouque
Watauga County
814 West King Street
Suite 205
Boone, NC 28607
deron.geouque@watgov.org

Dear County Administrator Geouque:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

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The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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ment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction's sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁴ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring "a RICO action against the municipal officers themselves"); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were "proper RICO persons" who could be sued for triple damages).

you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

President of Commissioners Alicia Reece
Hamilton County
138 East Court Street, Room 603
Cincinnati, OH 45202
alicia.reece@hamiltoncountyohio.gov

Dear President Reece:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

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¹⁰ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁸ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

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Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

President of Commissioners Jeff Riddell
Lorain County
226 Middle Avenue 4th Floor
Elyria, OH 44035
jriddell@loraincounty.us

Dear President Riddell:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

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I. The Federal Government has authority over immigration and aliens.

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VI. Conclusion

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Best regards,

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December 23, 2024

Via email

Commissioner David C. Ditzler
Mahoning County
21 W Boardman Street, 2nd Floor
Youngstown, OH 44503

Dear Commissioner Ditzler:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

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orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

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⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²⁰ 18 U.S.C. § 371.

²¹ 18 U.S.C. § 372.

intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Executive Sara Innamorato
Allegheny County
101 County Courthouse
436 Grant Street
Pittsburgh, PA 15219
web.comm@alleghenycounty.us

Dear County Executive Innamorato:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

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I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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/s/ James Rogers
James Rogers
Senior Counsel
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December 23, 2024

Via email

Chair Commissioner Christian Y. Leinbach
Berks County
13th Floor
633 Court Street
Reading, PA 19601

Dear Chair Commissioner Leinbach:

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The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Diane M. Ellis-Marsegalia
Chair, Bucks County Board
Bucks County Administration Building
55 East Street Doylestown, PA 18901
CommEllisMarsegalia@buckscounty.org

Dear Chair Ellis-Marsegalia:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

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Best regards,

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²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Chair of County Commissioners Josh Maxwell
Chester County
313 West Market Street, Suite 6202
West Chester, PA 19380
cccommissioners@chesco.org

Dear Chair Maxwell:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Executive Director Barbara O'Malley
Delaware County
210 W. Front Street
Media, PA 19063
OMalleyB@co.delaware.pa.us

Dear Executive Director O'Malley:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁸ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

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Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
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²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Danene Sorace
City of Lancaster
120 N. Duke St. P.O. Box 1599 Lancaster, PA 17602
dsorace@cityoflancasterpa.gov

Dear Mayor Sorace:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final

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orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

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VI. Conclusion

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Best regards,

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James Rogers
Senior Counsel
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December 23, 2024

Via email

County Executive Phil Armstrong
Lehigh County
Government Center 17 South 7th St. Allentown, PA 18101
philarmstrong@lehighcounty.org

Dear County Executive Armstrong:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

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The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final

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orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Commissioner Kevin P. Kodish
Mifflin County
20 North Wayne Street
Lewistown, PA 17044
kkodish@mifflincountypa.gov

Dear County Commissioner Kodish:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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Best regards,

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James Rogers
Senior Counsel
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December 23, 2024

Via email

Chief Operating Officer Lee Soltysiak
Montgomery County
P.O. Box 311
Norristown, PA 19404-0311
coo@montgomerycountypa.gov

Dear Chief Operating Officer Soltysiak:

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The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²⁰ 18 U.S.C. § 371.

²¹ 18 U.S.C. § 372.

intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Chairman of the County Commissioners Rebecca A. Dressier
Montour County
435 East Front Street
Danville, PA 17821

Dear Chairman Dressier:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

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⁹ *Arizona*, 567 U.S. at 394 (citation omitted).

¹⁰ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

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For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Executive Lamont G. McClure
Northampton County
669 Washington Street
Easton, PA 18042
LMcClure@northamptoncounty.org

Dear County Executive McClure:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
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²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Chief of Staff Daryl Price
Washington County
95 West Beau Street, Suite 605
Washington, PA 15301

Dear Chief of Staff Price:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final

¹ 8 U.S.C. § 1324.

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³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁸ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Executive Jeff Richardson
Albemarle County
401 McIntire Road
Charlottesville, VA 22902
cddinquiry@albemarle.org

Dear County Executive Richardson:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

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December 23, 2024

Via email

County Administrator Reid Walters
Alleghany County
9212 Winterberry Avenue Covington, VA 24426
rwalters@co.alleghany.va.us

Dear County Administrator Walters:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

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The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final

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orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Administrator Jeremy Bryant
Amherst County
153 Washington St
P.O. Box 390
Amherst, VA 24521
jsbryant@countyofamherst.com

Dear County Administrator Bryant:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

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I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

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James Rogers
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December 23, 2024

Via email

County Administrator Susan M. Adams
Appomattox County
153A Morton Lane
Appomattox, VA 24522
susan.adams@appomattoxcountyva.gov

Dear County Administrator Adams:

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The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

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¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²⁰ 18 U.S.C. § 371.

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Steve Trivett
Ashland
121 Thompson Street
P.O. Box 1600
Ashland, VA 23005
strivett@ashlandva.gov

Dear Mayor Trivett:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

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As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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James Rogers
Senior Counsel
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²⁵ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Administrator Timothy K. Fitzgerald
Augusta County
County Administrator's Office
18 Government Center Lane
PO Box 590
Verona, VA 24482
coadmin@co.augusta.va.us

Dear County Administrator Fitzgerald:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

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The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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ment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction's sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

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you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Administrator Michael J. Bender Jr.
Bath County
65 Courthouse Hill Road
P.O. Box 309
Warm Springs, VA 24484
mike.bender@bathcountyva.gov

Dear County Administrator Bender:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g)

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

(allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

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¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction's sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction's sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction's sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years' imprison-

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Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

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Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

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you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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December 23, 2024

Via email

Mayor Tim Black
Bedford
215 E Main Street
Bedford, VA 24523
tblack@bedfordva.gov

Dear Mayor Black:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

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I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

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Senior Counsel
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²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Administrator Robert Hiss
Bedford County
122 East Main St.
Suite 202
Bedford, VA 24523
rhiss@bedfordcountyva.gov

Dear County Administrator Hiss:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

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⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

(allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

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¹³ *Arizona*, 567 U.S. 399.

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¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

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above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction's sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction's sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction's sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years' imprison-

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ment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction's sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

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you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Administrator Leslie R. Weddington
Brunswick County
228 N. Main Street, Suite 300
P.O. Box 399
Lawrenceville, VA 23868
lweddington@brunswickco.com

Dear County Administrator Weddington:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

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The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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VI. Conclusion

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James Rogers
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December 23, 2024

Via email

County Administrator Sandy Stiltner
Buchanan County
4447 Slate Creek Road
PO Box 950
Grundy, VA 24614
sandy.stiltner@buchanancounty-va.gov

Dear County Administrator Stiltner:

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The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

(allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

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above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction's sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction's sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction's sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years' imprison-

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ment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction's sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Administrator Frank J. Rogers
Campbell County
Haberer Building - 2nd Floor
47 Courthouse Lane
P.O. Box 100
Rustburg, VA 24588
administration@campbellcountyva.gov

Dear County Administrator Rogers:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

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For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

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December 23, 2024

Via email

County Administrator Charles M. Culley Jr.
Caroline County
212 N Main Street
P.O. Box 447
Bowling Green, VA 22427
cculley@co.caroline.va.us

Dear County Administrator Culley:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

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The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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ment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction's sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

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you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Interim County Administrator Bill Coad
Charles City County
10900 Courthouse Road
P.O. Box 128
Charles City, VA 23030
bcoada@charlescityva.us

Dear County Administrator Coad:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

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¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g)

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

(allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

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¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction's sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction's sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction's sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years' imprison-

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Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

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December 23, 2024

Via email

County Administrator Daniel Witt
Charlotte County
250 LeGrande Ave., Suite A
P.O. Box 608
Charlotte Court House, VA 23923
dwitt@charlottecountyva.gov

Dear County Administrator Witt:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

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We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

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I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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VI. Conclusion

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Best regards,

/s/ James Rogers
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December 23, 2024

Via email

Mayor Juandiego Wade
Charlottesville
P.O. Box 911
Charlottesville, VA 22902
wadej@charlottesville.org

Dear Mayor Wade:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁸ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²⁰ 18 U.S.C. § 371.

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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²⁴ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Dr. Richard W. West
Mayor, Chesapeake
306 Cedar Road
Chesapeake, VA 23322
rwest@cityofchesapeake.net

Dear Mayor West:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

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425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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VI. Conclusion

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Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Administrator Dr. Joseph P. Casey
Chesterfield County
9901 Lori Road
Chesterfield, VA 23832
countyadministrator@chesterfield.gov

Dear County Administrator Casey:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

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The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²⁰ 18 U.S.C. § 371.

²¹ 18 U.S.C. § 372.

intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor T. Greg Kochuba
Colonial Heights
201 James Avenue
P.O. Box 3401
Colonial Heights, VA 23834
Kochubag@colonialheightsva.gov

Dear Mayor Kochuba:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

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¹⁰ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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James Rogers
Senior Counsel
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December 23, 2024

Via email

Mayor Tom H. Sibold Jr.
Covington
318 E. Mallow Rd.
Covington, VA 24426
tsibold@covington.va.us

Dear Mayor Sibold:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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²⁴ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Administrator Larry Barton
Dickenson County
818 Happy Valley Drive
Clintwood, VA 24228
lbarton@dickensonva.org

Dear County Administrator Barton:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁸ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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Best regards,

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²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Administrator Kevin Massengill
Dinwiddie County
14010 Boydton Plank Road
P.O. Drawer 70
Dinwiddle, VA 23841
kmassengill@dinwiddieva.us

Dear County Administrator Massengill:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

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VI. Conclusion

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Best regards,

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December 23, 2024

Via email

Mayor Derrick R. Wood
Dumfries
17739 Main Street
Suite 200
Dumfries, VA 22026
hondwood@dumfriesva.gov

Dear Mayor Wood:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

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We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

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² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

(allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

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¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction's sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction's sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction's sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years' imprison-

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ment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction's sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

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you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Carolyn Carey
Emporia
201 South Main Street
P.O. Box 511
Emporia, VA 23847
cityclerk@ci.emporia.va.us

Dear Mayor Carey:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

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I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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James Rogers
Senior Counsel
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December 23, 2024

Via email

County Administrator April Rounds
Essex County
202 South Church Lane
P.O. Box 1079
Tappahannock, VA 22560

Dear County Administrator Rounds:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

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The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

(allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction's sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction's sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction's sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years' imprison-

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁸ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); *accord United States v. Francisco*, 30 F. App'x 48, 49 (4th Cir. 2002); *see also United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²⁰ 18 U.S.C. § 371.

²¹ 18 U.S.C. § 372.

ment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction's sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁴ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring "a RICO action against the municipal officers themselves"); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were "proper RICO persons" who could be sued for triple damages).

you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Robert Cutchins
Franklin
139 Crescent Drive
Franklin, VA 23851
franklincitymayor@franklinva.com

Dear Mayor Cutchins:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

⁸ U.S. CONST. Art. I, § 8, cl. 4.

⁹ *Arizona*, 567 U.S. at 394 (citation omitted).

¹⁰ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual's immigration status.

The INA specifically preempts State and local restrictions on local officials' communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction's sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien's unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

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Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Administrator Carol E. Steele
Gloucester County
6489 Main Street, Suite 333, Gloucester, VA 23061
county.administrator@gloucesterva.info

Dear County Administrator Steele:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from re-quiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final_____

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² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

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For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁴ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Administrator Charlette T. Woolridge
Greensville County
1781 Greensville County Circle
Emporia, Virginia 23847
cwoolridge@greensvillecountyva.gov

Dear County Administrator Woolridge:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

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¹⁰ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁸ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

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Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Administrator Scott R. Simpson
Halifax County
1050 Mary Bethune Street
Halifax, VA 24558
srs@co.halifax.va.us

Dear County Administrator Simpson:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

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VI. Conclusion

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Best regards,

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James Rogers
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December 23, 2024

Via email

Mayor Donnie Tuck
Hampton
22 Lincoln Street
8th Floor, City Hall
Hampton, VA 23669
dtuck@hampton.gov

Dear Mayor Tuck:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

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¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

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⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

(allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

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¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction's sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction's sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction's sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years' imprison-

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ment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction's sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

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you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
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²⁵ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Administrator John A. Budesky
Hanover County
7516 County Complex Road
Hanover, VA 23069
ctyadm@hanovercounty.gov

Dear County Administrator Budesky:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

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I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

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Best regards,

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December 23, 2024

Via email

Mayor Deanna R. Reed
Harrisonburg
409 South Main Street
Harrisonburg, VA 22801
deanna.reed@harrisonburgva.gov

Dear Mayor Reed:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²⁰ 18 U.S.C. § 371.

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁴ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Ken Luerson
Haymarket
15000 Washington Street #100
Haymarket, VA 20169
kluerson@townofhaymarket.org

Dear Mayor Luerson:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
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²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Johnny Partin
Hopewell
300 N Main Street
Hopewell, VA 23860
jpartin@hopewellva.gov

Dear Mayor Partin:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

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Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁴ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

²⁵ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Administrator Randy R. Keaton
Isle of Wight County
17090 Monument Cir.
P.O. Box 80
Isle of Wight, VA 23397
adm@isleofwightus.net

Dear County Administrator Keaton:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

⁸ U.S. CONST. Art. I, § 8, cl. 4.

⁹ *Arizona*, 567 U.S. at 394 (citation omitted).

¹⁰ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g)

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

(allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction's sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction's sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction's sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years' imprison-

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

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²⁰ 18 U.S.C. § 371.

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ment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction's sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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James Rogers
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December 23, 2024

Via email

County Administrator Scott Stevens
James City County
101 Mounts Bay Road
Building D
Williamsburg, VA 23185
scott.stevens@jamescitycountyva.gov

Dear County Administrator Stevens:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

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Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction's sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
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December 23, 2024

Via email

County Administrator Seay
King and Queen County
242 Allens Circle, Suite L
P.O. Box 177
King & Queen C.H., VA 23085
vseay@kingandqueenco.net

Dear County Administrator Seay:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

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¹ 8 U.S.C. § 1324.

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³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

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⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

(allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

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¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction's sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction's sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction's sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years' imprison-

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ment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction's sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Administrator Stacey Davenport
King William County
180 Horse Landing Road #4 King William, VA 23086
stacey.davenport@kwc.gov

Dear County Administrator Davenport:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final

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orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

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James Rogers
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December 23, 2024

Via email

County Administrator Robby Wright
Lee County
Lee County Courthouse
Room 111
P.O. Box 367
Jonesville, VA 24263
rwright@leecova.org

Dear County Administrator Wright:

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

(allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction's sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction's sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction's sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years' imprison-

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

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²⁰ 18 U.S.C. § 371.

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ment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction's sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁴ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring "a RICO action against the municipal officers themselves"); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were "proper RICO persons" who could be sued for triple damages).

you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Stephanie Reed
Lynchburg
900 Church Street
Lynchburg, VA 24504
Stephanie.Reed@lynchburgva.gov

Dear Mayor Reed:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

⁸ U.S. CONST. Art. I, § 8, cl. 4.

⁹ *Arizona*, 567 U.S. at 394 (citation omitted).

¹⁰ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

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For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Jeanette Rishell
Manassas Park
100 Park Central Plaza
Manassas Park, VA 20111
j.rishell@manassasparkva.gov

Dear Mayor Rishell:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor LC Jones
Martinsville
55 West Church St.
P.O. Box 1112
Martinsville, VA 24112
lcjones@ci.martinsville.va.us

Dear Mayor Jones:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

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¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g)

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

(allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

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¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction's sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction's sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction's sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years' imprison-

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ment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

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Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

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you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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December 23, 2024

Via email

County Administrator Ramona Wilson
Mathews County
50 Brickbat Road Suite 101
Matthews, VA 23109
rwilson@mathewscountyva.gov

Dear County Administrator Wilson:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

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I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

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VI. Conclusion

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Best regards,

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²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Administrator Alex Gottschalk
Mecklenburg County
350 Washington Street
Boydton, VA 23917
alex.gottschalk@mecklenburgva.com

Dear County Administrator Gottschalk:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

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The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

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³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Administrator Matt Walker
Middlesex County
877 General Puller Highway
PO Box 428
Saluda, VA 23149
m.walker@co.middlesex.va.us

Dear County Administrator Walker:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

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The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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VI. Conclusion

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James Rogers
Senior Counsel
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December 23, 2024

Via email

County Administrator Candy McGarry
Nelson County
84 Courthouse Square
PO Box 226
Lovingsston, VA 22949
cmcgarry@nelsoncounty.org

Dear County Administrator McGarry:

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The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

(allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

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¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction's sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction's sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction's sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years' imprison-

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

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ment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction's sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

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you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Phillip Jones
Newport News
Office of Mayor Phillip Jones 2
400 Washington Ave. 10th Floor
Newport News, VA 23607
mayorsoffice@nnva.gov

Dear Mayor Jones:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

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For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

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you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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James Rogers
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December 23, 2024

Via email

Mayor Kenneth Cooper Alexander
Norfolk
810 Union Street
Norfolk, VA 23510
mayor@norfolk.gov

Dear Mayor Alexander:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

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I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

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²¹ 18 U.S.C. § 372.

intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Luttrell Tadlock
Northumberland County
72 Monument Place
PO Box 129
Heathsville, VA 22473
ltadlock@co.northumberland.va.us

Dear Mayor Tadlock:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

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¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g)

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

(allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction's sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction's sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction's sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years' imprison-

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ment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

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Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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December 23, 2024

Via email

Mayor Joseph Fawbush
Norton
618 Virginia Avenue NW
PO Box 618
Norton, VA 24273
jfawbush@nortonva.gov

Dear Mayor Fawbush:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

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³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

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I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

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Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

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VI. Conclusion

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Best regards,

/s/ James Rogers
James Rogers
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December 23, 2024

Via email

Mayor Earnest W. Porta Jr.
Occoquan
314 Mill Street
PO Box 195
Occoquan, VA 22125
eporta@occoquanva.gov

Dear Mayor Porta:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

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² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

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⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

(allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

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¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction's sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction's sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction's sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years' imprison-

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ment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction's sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

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you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

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²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Samuel Parham
Petersburg
135 N Union Street
Petersburg, VA 23803
sparham@petersburg-va.org

Dear Mayor Parham:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

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December 23, 2024

Via email

Mayor Gordon C. Helsel Jr.
Poquoson
710 Poquoson Ave
Poquoson, VA 23662
gordon.helsel@poquoson-va.gov

Dear Mayor Helsel:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²⁰ 18 U.S.C. § 371.

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Shannon E. Glover
Portsmouth City
P.O. Box 820
Portsmouth, VA 23705
mayor@portsmouthva.gov

Dear Mayor Glover:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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¹⁰ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

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Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
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²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Administrator Jeffrey D. Stoke
Prince George County
6602 Courts Drive Third Floor
Prince George, VA 23875
jstoke@princegeorgecountyva.gov

Dear County Administrator Stoke:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁴ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Kevin Brown
Quantico
Quantico Municipal Office
337 5th Avenue
Quantico, VA 22134
mayor@townofquantico.org

Dear Mayor Brown:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

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¹⁰ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g)

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

(allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction's sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction's sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction's sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years' imprison-

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²⁰ 18 U.S.C. § 371.

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ment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction's sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
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December 23, 2024

Via email

County Administrator Garrey W. Curry Jr.
Rappahannock County
P.O. Box 519
Washington, VA 22747-0519
gwccurry@rappahannockcountyva.gov

Dear County Administrator Curry:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

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⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

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Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

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/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Levar Stoney
Richmond
900 E Broad St # 201
Richmond, VA 23219
RVAMayor@rva.gov

Dear Mayor Stoney:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

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The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

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⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁸ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²⁰ 18 U.S.C. § 371.

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Administrator Hope D. Mothershead
Richmond County
101 Court Circle
P.O. Box 1000
Warsaw, VA 22572
hmothershead@co.richmond.va.us

Dear County Administrator Mothershead:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

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Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

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/s/ James Rogers
James Rogers
Senior Counsel
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December 23, 2024

Via email

County Administrator Stephen G. King
Rockingham County
Administration Center
20 East Gay Street
Harrisonburg, VA 22802

Dear County Administrator King:

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

(allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

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¹³ *Arizona*, 567 U.S. 399.

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¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction's sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction's sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction's sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years' imprison-

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

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²⁰ 18 U.S.C. § 371.

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ment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction's sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁴ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring "a RICO action against the municipal officers themselves"); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were "proper RICO persons" who could be sued for triple damages).

you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Administrator Lonzo Lester
Russell County
137 Highland Drive
P.O. Box 1208
Lebanon, VA 24266
lonzo.lester@russellcountyva.us

Dear County Administrator Lester:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

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¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g)

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction's sanctuary laws or policies from criminal exposure and long prison sentences.

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For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years' imprison-

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you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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James Rogers
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December 23, 2024

Via email

County Administrator Freda R. Starnes
Scott County
190 Beech Street, Suite 201
Gate City, VA 24251
fstarnes@scottcountyva.com

Dear County Administrator Starnes:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

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I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁴ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Administrator Evan Vass
Shenandoah County
600 North Main Street, Suite 102
Woodstock, VA 22664
evass@shenandoahcountyva.us

Dear County Administrator Vass:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁸ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Administrator Shawn Utt
Smyth County
121 Bagley Circle, Suite 100
Marion, VA 24354
sutt@smythcounty.org

Dear County Administrator Utt:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

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VI. Conclusion

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Best regards,

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December 23, 2024

Via email

County Administrator Brian S. Thrower
Southampton County
26022 Administration Center Dr.
P.O. Box 400
Courtland, VA 23837
bthrower@southamptoncounty.org

Dear County Administrator Thrower:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

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We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

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² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

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⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

(allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

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¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction's sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction's sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction's sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years' imprison-

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ment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction's sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

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you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Stephen W. Claffey
Staunton
116 W Beverley Street
Staunton, VA 24401
claffeysw@ci.staunton.va.us

Dear Mayor Claffey:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

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Senior Counsel
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December 23, 2024

Via email

Mayor Michael Duman
Suffolk
P.O. Box 1858
Suffolk, VA 23439
mayor@suffolkva.us

Dear Mayor Duman:

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The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²⁰ 18 U.S.C. § 371.

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Administrator Melissa Rollins
Surry County
45 School Street
P.O. Box 65
Surry, VA 23883
mrollins@surrycountyva.gov

Dear County Administrator Rollins:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

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¹⁰ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g)

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

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(allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction's sanctuary laws or policies from criminal exposure and long prison sentences.

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you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

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December 23, 2024

Via email

Andy Hrovatic, Chair of the Board of Supervisors
Tazewell County
197 Main Street
Tazewell, VA 24651
andyhrovatic@tazewellcounty.org

Dear Chair Hrovatic:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

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³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

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I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Robert M. Dyer
Virginia Beach
City of Virginia Beach City Hall
2401 Courthouse Dr.
Virginia Beach, VA 23456
mayorsoffice@vbgov.com

Dear Mayor Dyer:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

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¹⁰ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g)

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

(allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

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¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction's sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction's sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction's sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years' imprison-

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ment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction's sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

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you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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December 23, 2024

Via email

Cheryl L. Cullers, Chair of Board of Supervisors
Warren County
220 North Commerce Avenue
Front Royal, VA 22630
ccullers@warrencountyva.gov

Dear Chair Cullers:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

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I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

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December 23, 2024

Via email

Mayor Randall L. Phelps
Warsaw
78 Belle Ville Lane
Warsaw, VA 22572
Email contact link

Dear Mayor Phelps:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

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We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁸ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²⁰ 18 U.S.C. § 371.

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

County Administrator Jason Berry
Washington County
Government Center Building
1 Government Center Place, Suite A
Abingdon, VA 24210
jberry@washcova.com

Dear County Administrator Berry:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

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I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

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/s/ James Rogers
James Rogers
Senior Counsel
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December 23, 2024

Via email

Mayor Lana Williams
Waynesborough
503 W. Main Street
Suite 208
Waynesboro, VA 22980
lwilliams@ci.waynesboro.va.us

Dear Mayor Williams:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

(allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

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¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction's sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction's sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction's sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years' imprison-

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁸ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

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²⁰ 18 U.S.C. § 371.

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ment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction's sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

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you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Darryl E. Fisher, Chairman of Board of Supervisors
Westmoreland County
1520 Nomini Hall Road
Hague, VA 22469
dfisher@westmoreland-county.org

Dear Chairman Fisher:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

⁸ U.S. CONST. Art. I, § 8, cl. 4.

⁹ *Arizona*, 567 U.S. at 394 (citation omitted).

¹⁰ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

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Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

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For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

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VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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James Rogers
Senior Counsel
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²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Douglas G. Pons
Williamsburg
Municipal Building
401 Lafayette Street
Williamsburg, VA 23185
dpons@williamsburgva.gov

Dear Mayor Pons:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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ment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction's sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

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you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁵ See, e.g., *Polanco v. Diaz*, 76 F. 4th 918 (9th Cir. 2024); *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020); *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016); *Pena v. DePrisco*, 432 F. 3d 38 (2d Cir. 2005).

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Mayor Teresa Adkins
Wise County
501 West Main Street
P.O. Box 1100
Wise, VA 24293
tah7a@uvawise.edu

Dear Mayor Adkins:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

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¹⁰ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g)

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

(allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years' imprisonment *per alien* involved.¹⁸

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction's sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction's sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction's sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years' imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years' imprison-

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Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

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Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

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you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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December 23, 2024

Via email

County Administrator Mark Bellamy
York County
224 Ballard Street
P.O. Box 532
Yorktown, VA 23690
bellamy@yorkcounty.gov

Dear County Administrator Bellamy:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

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³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were 425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

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ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

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By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the

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Additionally, it is a crime carrying a penalty of up to 20 years' imprisonment for anyone who "knowingly ... engages in misleading conduct toward another person, with intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process" or to "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings."²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens' immigration violations or their failure to abide by conditions for release pending immigration proceedings.

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Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to "[a]ny person injured in his business or property by reason of a violation" and "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction's sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also,

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VI. Conclusion

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Best regards,

/s/ James Rogers
James Rogers
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December 23, 2024

Via email

Superintendent Maria Silao-Johnson
Winnebago Correctional Center
4300 Sherman Rd
Winnebago, WI 54985-0128
DOCGeneral@wisconsin.gov

Dear Superintendent Silao-Johnson:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

Federal law imposes serious consequences for obstructing the execution of federal immigration law. So-called "sanctuary" jurisdictions that forbid compliance with federal immigration law and cooperation with the officials who enforce it are, therefore, breaking the law. Moreover, sanctuary jurisdictions are strictly prohibited from requiring their employees to violate federal immigration law.

We have identified your jurisdiction as a sanctuary jurisdiction that is violating federal law.³ Such lawlessness subjects you and your subordinates to significant risk of criminal and civil liability. Accordingly, we are sending this letter to put you on notice of this risk and insist that you comply with our nation's laws.

The importance of this issue is not just abstract or hypothetical. According to U.S. Immigration and Customs Enforcement (ICE), as of September 25, 2024, there were

¹ 8 U.S.C. § 1324.

² 18 U.S.C. § 372.

³ *Detainer Acceptance Tracker - Limited and Non-Cooperative Institutions*, U.S. CUSTOMS AND IMMIGRATION ENFORCEMENT, (June 21, 2024), <https://perma.cc/5QZ2-8D64>.

425,431 convicted criminals in the United States who were illegal aliens with final orders of removal entered against them and who were not currently being detained.⁴ Additionally, there were 222,141 non-detained illegal aliens in the United States with final orders of removal who had criminal charges pending against them. This adds up to 647,572 illegal aliens. According to Acting ICE Director Patrick J. Lechleitner, one of the reasons for this high number of criminal aliens who are free from detention is that “‘sanctuary’ policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities.”⁵

I. The Federal Government has authority over immigration and aliens.

As the Supreme Court has explained, “[t]he federal power to determine immigration policy is well settled.”⁶ “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁷ The U.S. Constitution empowers Congress to “establish an uniform Rule of Naturalization.”⁸ Furthermore, the federal government’s power over immigration comes from its “inherent power as sovereign to control and conduct relations with foreign nations.”⁹ Conversely, “[u]nder the Constitution the states are granted *no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.”¹⁰

Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.¹¹ No federal law, however, allows state or local officials to *subvert* or

⁴ Adam Shaw, *Tens of thousands of illegal immigrants with sexual assault, murder convictions in US: ICE data*, FOX NEWS, (Sept. 27, 2024), <https://perma.cc/F4FM-6966>.

⁵ Letter from Patrick J. Lechleitner, Senior Official Performing the Duties of the ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), <https://perma.cc/A5BV-UUL5>.

⁶ *Arizona v. United States*, 567 U.S. 387, 395 (2012).

⁷ *Id.* at 394 (citation omitted).

⁸ U.S. CONST. Art. I, § 8, cl. 4.

⁹ *Arizona*, 567 U.S. at 394 (citation omitted).

¹⁰ *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (quoting *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (emphasis added)).

¹¹ *See, e.g.*, 8 U.S.C. § 1324(c) (arrests for criminal violation of the INA’s prohibitions against smuggling, transporting, or harboring aliens may be made not only by federal immigration officers, but also by “all other officers whose duty it is to enforce criminal laws”); *id.* § 1252c (authorizing state and local law enforcement to arrest unlawfully present aliens who have been previously removed and convicted of a felony); *id.* § 1103(a)(10) (empowering DHS to authorize state and local law enforcement officers, when an “actual or imminent mass influx of aliens . . . presents urgent circumstances requiring an immediate Federal response,” to perform functions of federal immigration officers); and *id.* § 1357(g) (allowing DHS to enter into written agreements with State or local governments to assist in “investigation, apprehension, or detention of aliens in the United States” and also specifically allowing such cooperation even without written agreements).

ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so.

II. Federal law preempts any State or local law prohibiting or restricting a State or local official from communicating with DHS about an individual’s immigration status.

The INA specifically preempts State and local restrictions on local officials’ communications with DHS. It states that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”¹²

The Supreme Court has clearly explained: “There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”¹³ Congress did exactly that in Section 1373 of the INA. Therefore, sanctuary policies forbidding State or local officials from communicating with DHS are unlawful.¹⁴

III. Concealing, harboring, or shielding aliens is a federal crime.

By complying with your jurisdiction’s sanctuary laws or policies, you and your subordinates appear to be engaging in facially criminal actions and potentially subjecting anyone implementing those policies to punishment. This is because anyone who “conceals, harbors, or shields from detection” “an alien [who] has come to, entered, or remains in the United States in violation of law,” or who attempts to do so, is committing a federal crime if that person knew or acted “in reckless disregard of the” alien’s unlawful presence or entrance in the United States.¹⁵ Similarly, it is a crime if an individual “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.”¹⁶ It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them.¹⁷ The penalty for any of the above crimes is five years’ imprisonment *per alien* involved.¹⁸

¹² 8 U.S.C. § 1373(a) (emphasis added).

¹³ *Arizona*, 567 U.S. 399.

¹⁴ U.S. CONST. art. VI, cl. 2.

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(iii).

¹⁶ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁷ 8 U.S.C. § 1324(a)(1)(A)(v).

¹⁸ 8 U.S.C. § 1324(a)(1)(B)(ii) (“for each alien in respect to whom such a violation occurs”).

Furthermore, because the language “come to, entered, or remains” is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present at the time of the conduct, so long as the alien had initially “come to” or “entered” the United States unlawfully.¹⁹ Accordingly, if an alien initially enters the United States illegally and later receives parole status or some other temporary quasi-lawful status, that later lawful status fails to insulate you or others implementing your jurisdiction’s sanctuary laws or policies from criminal exposure and long prison sentences.

IV. Your jurisdiction’s sanctuary policies could expose you and your subordinates to criminal liability for conspiracy to commit a federal offense and conspiracy to impede a federal officer.

Because your jurisdiction’s sanctuary laws or policies usually require multiple officials to coordinate their activities, all such officials could be criminally liable under multiple federal criminal conspiracy statutes.

For example, “[i]f two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,” then every person involved in the conspiracy faces a penalty of up to five years’ imprisonment.²⁰ Thus, because 8 U.S.C. § 1324 makes it a crime to conceal, harbor, or shield aliens, every employee in your agency who is involved in implementing sanctuary policies—even if they do not directly conceal, harbor, or shield an alien—would potentially face five years in prison.

Similarly, it is a crime for “two or more persons ... [to] conspire to prevent ... any person from ... discharging any duties” of “any office, trust, or place of confidence under the United States.”²¹ This crime carries a penalty of up to six years’ imprisonment. Thus, employees in your jurisdiction involved in implementing sanctuary policies that prevent federal immigration officers from carrying out their duties would potentially face six years in prison.

Additionally, it is a crime carrying a penalty of up to 20 years’ imprisonment for anyone who “knowingly ... engages in misleading conduct toward another person, with

¹⁹ *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); accord *United States v. Francisco*, 30 F. App’x 48, 49 (4th Cir. 2002); see also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002) (holding that the disjunctive nature of the list means that not all three elements must be proved for the statute to apply and that Section 1324 therefore applies “[s]o long as an alien has come to the United States unlawfully and the transporter knows this”).

²⁰ 18 U.S.C. § 371.

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intent to ... cause or induce any person to ... be absent from an official proceeding to which such person has been summoned by legal process” or to “hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of ... parole[] or release pending judicial proceedings.”²² This means that you and your subordinates could potentially face up to 20 years in prison for any misleading actions that help an alien to avoid removal proceedings. You and your subordinates would also potentially face the same risk for taking actions that prevent federal authorities from getting information about aliens’ immigration violations or their failure to abide by conditions for release pending immigration proceedings.

V. Your jurisdiction’s sanctuary policies could expose you and the other individual officials and employees involved to potential personal financial liability to private plaintiffs.

Concealing, harboring, or shielding aliens could also trigger liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute.²³ Civil RICO remedies are available to “[a]ny person injured in his business or property by reason of a violation” and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Public officials who have committed RICO violations may be sued in their individual capacities.²⁴ Thus, any individual who has been harmed by your jurisdiction’s sanctuary policies, such as victims of crimes committed by aliens you have harbored, may sue you and any other officials involved in harboring that alien for triple damages. Also, you and the other public officials and employees who enforce or follow your jurisdiction’s sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to

²² 18 U.S.C. § 1512(b)(2)(D) and (b)(3).

²³ See 18 U.S.C. 1961(1) (listing 8 U.S.C. § 1324 as a predicate RICO offense).

²⁴ *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 913 (3d Cir. 1991) (holding that plaintiffs could not sue municipality for triple damages under the RICO statute but that they could bring “a RICO action against the municipal officers themselves”); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998) (individual municipal officials sued in their individual capacities were “proper RICO persons” who could be sued for triple damages).

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the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

/s/ James Rogers
James Rogers
Senior Counsel
America First Legal Foundation

²⁶ Theodore Roosevelt, *Third Annual Message to the Senate and House of Representatives*, Dec. 7, 1903, available at <https://perma.cc/E7BD-ZQBS>.



December 23, 2024

Via email

Luther Propst, Board of County Commissioners Chairman
Teton County
Teton County Administration Building
2nd Floor 200 S Willow Street
P.O. Box 3594 Jackson, WY 83001
lpropst@tetoncountywy.gov

Dear Chairman Propst:

Federal law is clear: aliens unlawfully present in the United States are subject to removal from the country, and it is a crime to conceal, harbor, or shield them.¹ It is also a crime to prevent federal officials from enforcing immigration law.² These laws were duly enacted by the people's elected representatives. Under the Supremacy Clause of the U.S. Constitution, they are the law of the land and supersede any State or local laws to the contrary. In our democratic republic, *all* State and local officials must comply with them.

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you and the other public officials and employees who enforce or follow your jurisdiction's sanctuary policies could face liability under the substantive due process state-created danger doctrine.²⁵

VI. Conclusion

As President Theodore Roosevelt said, “[n]o man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”²⁶ The American people have spoken through their representatives. Your jurisdiction’s sanctuary laws or policies therefore make a mockery of American democracy and demonstrate a shocking disrespect for the rule of law. For these reasons alone, you should abandon them. But no matter your views on our Union, the fact of the matter is that you and the other officials who support or enforce sanctuary laws, policies, and regulations have a very personal stake in the matter – you each could face criminal prosecution and civil liability for your illegal acts. We urge you to do the right thing, protect your citizens, and comply with federal law.

Best regards,

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