

## TRANSCRIPT

### ALBANY LAW REVIEW FALL 2017 SYMPOSIUM: SANCTUARY CITIES

ALBANY LAW SCHOOL  
Dean Alexander Moot Courtroom  
*Thursday, November 9, 2017, 5:30pm*

**Introduction:** Dean Alicia Ouellette, *President and Dean of Albany Law School*

**Moderator:** Professor Andy Ayers, *Director of the Government Law Center and Visiting Assistant Professor, Albany Law School*

#### **Panelists:**<sup>1</sup>

Hon. Kathy M. Sheehan, *Mayor City of Albany*  
Philip L. Torrey, *Managing Attorney, Harvard Immigration and Refugee Clinical Program*  
Dina Francesca Haynes, *Professor of Law, New England Law*  
Jeremy McLean, *Staff Attorney, Worker Justice Center of New York*

#### I. WELCOME & OPENING REMARKS

**Dean Alicia Ouellette:** Welcome everyone. I am Alicia Ouellette, the President and Dean of Albany Law School and I am thrilled to welcome you to tonight's symposium on sanctuary cities.

The word sanctuary comes from the Latin roots, *sacer* and *sānctus*, both meaning holy. *Sacer* led to sacred and sacrifice, which initially referred to a holy offering. Of course, the meaning of the word has changed, but the roots remain. In churches, Anglo-Saxon England, churches and church yards provided forty days of sanctuary, immunity from prosecution, as well as care and comfort for refugees and fugitives.

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<sup>1</sup> Remarks of the panelists are substantially preserved in their original form and do not necessarily reflect the views of members of the *Albany Law Review*.

For slaves in the underground railroad, churches often provided sanctuary space for organizing meetings. In the 1980's, U.S. churches provided sanctuary to political refugees from Central America. And for the most part, the U.S. government chose not to interfere.

Sanctuaries provide safe harbor, allowing refugees time to escape prosecution, giving them time to negotiate alternatives. Today we talk about sanctuary cities, cities that limit cooperation with the national government in its effort to enforce immigration laws. There are hundreds of sanctuary cities in this country. By some counts, 300 to 700. There are also sanctuary counties and sanctuary states.

Why do cities seek sanctuary status? Leaders and citizens of sanctuary cities want to support their residents and neighbors, regardless of immigration status. They want to reduce the fear of deportation, and the possible break up of families. They want their children to enroll in the schools, to use health and social services to report crimes.

Opponents of sanctuary cities argue that cities should assist the federal government in enforcing its laws. Of course, the decision to become a sanctuary city raises important legal and policy questions. It even raises moral questions. What kind of city do we want to be? What kind of country do we want to be?

Today on our panel, we have leaders and experts who will help to answer these questions. I want to congratulate the Albany Law Review, for putting together a great program. I want to especially congratulate Olivia Pedersen, who has done all the work to put this program together.

And I will now turn the program over to Olivia Pedersen.

**Olivia Pedersen:** Good evening. Thank you to Dean Ouellette for that fantastic opening. Both Albany Law School and Albany Law Review take the responsibility to foster conversations about important legal topics very seriously. In that spirit, I want to welcome you to the Albany Law Review Fall Symposium on Sanctuary Cities. I would also like to thank our faculty advisor, Professor Bonventre, and our Editor-in-Chief, Emma Tiner. Without further ado, because I think that this is a topic that deserves as much time to talk about as possible, I would like to introduce our moderator, Professor Andy Ayers.

Professor Ayers graduated from Georgetown Law at the top of his class. After graduating, he worked for the New York Attorney General's office for nine years. He then clerked for Judge Lynch at

the U.S. District Court for the Southern District of New York and if that is not impressive enough, he also clerked for Justice Sotomayor on the Second Circuit, prior to her appointment and confirmation as a Supreme Court Justice. Currently, Professor Ayers is working on a law review article discussing immigration and state sovereignty at the moment. So, Professor Ayers.

**Professor Andy Ayers:** Thank you so much. I'm really honored that the students at the Albany Law Review asked me to moderate tonight. Olivia, thank you so much for that introduction.

So, my name is Andy Ayers. I'm the Director of the Government Law Center and I teach here at the law school. My goal for tonight is to have a conversation that will help people understand more about what a sanctuary city is. It's an issue that has inflamed the public debate. I doubt very much if there's any lawyer in the world who would claim to fully understand it because of how complicated everything gets when you start talking about immigration law, much less immigration law and how it overlaps with criminal law, local law, constitutional law, labor law and all of the other kinds of law that intersect around the issue of sanctuary cities.

Before I introduce the panelists, I thought I'd take just a couple minutes to give my best attempt at explaining what kinds of things we are talking about when we are discussing sanctuary cities to frame the conversation.

So, here are six kinds of sanctuary. The idea is when a government entity declares itself a sanctuary city, a sanctuary town, or a sanctuary state, it can mean many different things. Different government entities below the federal level, do different things that affect non-citizens.

As the Director of the Government Law Center, which studies state and local government, it's exciting to me to talk about this issue because I think that when so many people hear immigration law, they think of the federal government. Rightly so. If you're deported, that's who deports you. But there's a lot more in the lives of non-citizens affected by the government, where it really is state government and local government that makes the decision that affects peoples' lives. So, part of my hidden agenda for tonight is to convince you that state and local government is extremely important, even on issues that generally get discussed in the federal context.

That said, the general idea of a sanctuary is to not help the federal government with enforcement of immigration law. In our area, Albany, Hudson, Syracuse, Rochester, and Ithaca have declared

themselves sanctuaries. Those are all cities. So is the town of Bethlehem, and the county of Tompkins, which is where Ithaca is located. And the state of New York, is not a sanctuary state, in the sense that some others are, but we do have sanctuary policies and I'll talk about what that means.

Here are six kinds of sanctuary. The first relates to detention. Before the federal government removes people, they're often in detention. A sanctuary, in the strictest sense, the sense that the Justice Department of the United States has recently announced as the definition for sanctuary as a jurisdiction that when asked to detain a non-citizen, says "no." And I say asked and not ordered because the context in which this comes up is a document called "The Detainer." A detainer is a funny form that comes from the federal government, it's addressed to a state entity and asks politely, "I see you have someone in custody, would you be so kind as to detain them, longer than you otherwise would have or in a context where you otherwise might not have, so that we can consider whether to take an immigration enforcement action against them?"

It's a funny document in several senses. One of them is that only fifteen percent of detainers actually lead to Immigration and Customs Enforcement ("ICE") appearing to take custody of that person. Therefore, it is not a guarantee that they are after you.

So, in New York State, jurisdictions like New York City, which have announced themselves as sanctuaries, will not honor a detainer, meaning they will say, "no." But all of these kinds of sanctuaries are on a spectrum. There's hardly ever a simple yes or no. So, in New York City, the general answer is no, but New York City will respond to a detainer, honor a detainer, if the person has been convicted of, "a violent or serious crime and if there's a judicial warrant pending for their arrest."

So yes, there are sanctuary jurisdictions unless you are a certain kind of convicted criminal.

I hope you understand that to call oneself a sanctuary jurisdiction is a complicated advertisement that may oversimplify the benefits that are available to people who come to rely on that declaration. Another issue I want to point out that complicates the detention side is that local jurisdictions have control over whether you end up in ICE custody in more than just one way. Detainers are not the only way we affect that if we are a city.

For example, district attorneys decide what charges to bring against a non-citizen who's been accused of a crime. Some kinds of

convictions will make you removable, i.e., deportable, and some will not. There are some district attorneys, whether or not they are in sanctuary jurisdictions who will take that into account when considering, “Well if I bring a certain kind of charge, that might end up with the person being deported. Whereas if I decide to charge it another way, it might not.” Conversely, jurisdictions, such as New York City, has been criticized by advocates for calling itself a sanctuary jurisdiction, even though it prosecutes certain kind of low-level offenses that put people into the pipeline that will someday lead to their removal.

Another question is whether you provide information to the federal authority. Do you as a government employee come into possession of information about someone’s immigration status? And if you do, do you share it? Two questions there, are you collecting information? Do you ask? Well almost every government entity sometimes has occasion to ask what someone’s immigration status is. In the state context, welfare benefits can depend on your immigration status. Eligibility for professional licensure can depend on your immigration status. You may just become aware of it—a school counselor may learn that someone, or their parents are undocumented.

Do you maintain that information? Do you keep it in a database somewhere? Do you try to wash it out of your brain as quickly as you can upon learning it and wished you’d never heard it? And then, do you share it with feds, with the federal enforcement? This is complicated. Governor Cuomo signed an executive order that directs state entities not to inquire into immigration status. Fine. There’s a federal statute though that says, and this may come up in the panel, it’s a crime to prohibit any government entity or official from sharing information with ICE about immigration status. And I say this because one of the first questions that comes up about sanctuary is, “Is it legal to be a sanctuary jurisdiction?” And I’ve seen recent statements by a number of state and local officials saying, “I don’t want to be a sanctuary because I want to follow the law.” Do you break the law by becoming a sanctuary? So far nothing I’ve said suggests anybody’s trying to break the law, but that may be a more complicated question.

The problem with information sharing is, states and local jurisdictions share information with the federal government all the time. Whenever you get booked into a local jail, they take your fingerprints, and that goes to the FBI; the FBI shares it with ICE, along with other entities. That happens in sanctuary jurisdictions

and in non-sanctuary jurisdictions. The policy that makes you a sanctuary is when we can share and choose not to share. That is not a guarantee that no information gets to ICE about your status, so again, it's a spectrum.

The third category is a catch-all for other ways in which a state entity is made to participate in federal enforcement actions. Are you riding along with ICE? Are you sharing information, not about immigration status, but about when the Saratoga Racetrack opens that may help ICE decide they're going to go conduct an enforcement action there? Are you sharing office space? There are all kinds of ways that local law enforcement can cooperate apart from information sharing.

Then there's the question of physical access. If you're a sanctuary jurisdiction, there were a few stories about New York City where people were shocked to find that ICE agents were conducting raids in New York City, even though it was a sanctuary jurisdiction. You can't keep ICE off a public street. And the Supremacy Clause of the U.S. Constitution makes it very hard to keep ICE out of anything as a local government. But there's been public statements by chief judges and justices of courts in several states, showing deep, deep concern about ICE conducting raids or arrests. What happens when a federal enforcement officer comes onto state property to arrest someone? Is there something states can do? I'm not going to pretend to have an answer for that question, but it is a very live issue.

The last two categories may not be the sort that get traditionally listed on definitions of sanctuary jurisdictions, but I think they're important. Law enforcement is one aspect of the way in which local governments and state governments interact with non-citizens, and it's an important one. But local jurisdictions can also do a lot to support non-citizens if they choose in other ways. One way is to provide direct support for lawyers. There's a very active program in the state and particularly in New York City to provide direct legal services to non-citizens who are in removal proceedings.

There's a report that just came out that if you have a lawyer, and by the way, removal proceedings are civil, so you don't have a right to a lawyer when you're facing deportation. If you do have a lawyer, at least according to this one study, you're twelve times more likely to succeed in establishing a legal right to remain in this country. Having a lawyer or not may end up being much more consequential than whether the police are sharing information or not in the life of a particular non-citizen. Does a city or state choose to help with that

kind of service?

There are other ways, completely apart from the removal context, concerning active support for refugee settlement, which is a big issue in a lot of upstate New York. As many of you know, upstate New York has an ongoing problem with population loss, and in some upstate cities, Buffalo for example, the reason for a city to not experience population loss can be attributed directly to an inflow of non-citizens. The kind of support you provide to the immigrant community outside of the law enforcement context I think should also at least be talked about.

The last aspect of sanctuary that I want to mention is as Dean Ouellette mentioned, the moral aspect, that sometimes you declare yourself something or other to send a message, completely apart from the direct legal impact of that. I think it's very, very significant, as somebody who studies government and the relationship between local governments, that sanctuary, announcing oneself as a sanctuary jurisdiction is sometimes something governments want to shy away from. We actually have several jurisdictions in the area that say, "Well we're welcoming jurisdictions, but not sanctuary jurisdictions." So, they're clearly trying to avoid something.

On the other hand, you have declarations of sanctuary, sometimes by entities where it's difficult to attribute any direct legal effect to that at all. The message of sanctuary, I think, has a lot to do with why the debate gets so inflamed, because declaring yourself a sanctuary for some people means *not my problem*. I'm a local government, it's not my job to enforce federal immigration law. It's my job to run the city, or the town, as best I can. That is a decision to not take a position at all. But for others, it's #theresistance. For some people, it's part of a direct statement of opposition to federal policy. It's intended as a criticism. It's a moral position that federal immigration policy is wrong.

I find it absolutely fascinating to think of governments as part of #theresistance. It's strange to think, but of course, Governor Cuomo know that's the whole point of our checks and balances structure. That there can be this kind of opposition, and this kind of message-sending. Something I hope we talk about during the panel is, what is the message that people want to send by being a sanctuary? And what kind of message are we sending? And is it a good thing or a bad thing?

It's particularly fascinating, because there are cases where the main categories of sanctuary are done, but there are other things you

can do. There's a French farmer, doesn't count under any American legal analysis, but who's decided he's going to keep helping immigrants sneak across the border from Italy and sheltering them on his farm. And he's gone to jail several times, and announces he's going to keep doing it because in his view, it's the right thing to do. This is a form of civil disobedience that I think some people expect from governments when they hear sanctuary jurisdiction. Well, we don't want to be a sanctuary city because we don't want to be like that French farmer, actually breaking the law or acting in civil disobedience. The truth is, it wouldn't surprise me to learn, that although I cannot say from personal experience, that there are in fact people in various levels of government who knowingly forget that they found out someone was undocumented.

Or in the other direction, there were reports under the last administration of federal enforcement officers who disagreed with some of President Obama's policies giving relief to non-citizens, and tried to arrange for their removal anyway. Civil disobedience by government becomes a huge controversial issue in the sanctuary context.

Clearly there's no end to the things that we can think talk about under the umbrella of sanctuary cities. We have a fantastic panel to discuss those issues. We're going to split the evening's discussion into roughly two segments. I'm going to introduce the panelists all at once now.

We are joined by Philip Torrey who is a lecturer in law at Harvard Law School, and also the supervisor of what's called the Crimmigration Clinic. For those who are not familiar with the jargon, crimmigration is a word that started being used in 2006 to describe many of the areas in which immigration law and criminal law overlap. The Crimmigration Clinic gives advice to criminal defense attorneys about the immigration consequences of criminal charges, as well as providing direct litigation support and conducts policy advocacy. He also teaches a course on Crimmigration law, and has worked on a lot of the issues that we're going to be talking about tonight.

Professor Dina Haynes from the New England School of Law teaches constitutional law, immigration law, legal ethics, international women's issues, and refugee and asylum law. She's also been the Director General of the Human Rights Department for the Organization for Security and Cooperation in Europe, in Bosnia and Herzegovina. She's the co-author of a recent major article called



*Understanding Sanctuary Cities*, which I strongly recommend to anyone who wants to understand the issue. She also has a lot of experience with human trafficking issues, which I think come up in the context of who does sanctuary affect and how?

We also have Jeremy McLean who is a staff attorney at the Worker Justice Center in New York, where Jeremy does work on labor issues, defending the rights of workers who have been subjected to various kinds of labor violations. This also brings him into contact with a lot of immigration questions. In the upstate economy, non-citizen labor is really important for a lot of sectors. When you work for workers you find yourself caught up in immigration issues.

One of the messages of this evening, I think, is that immigration is everywhere. Criminal law, labor law, and everywhere else, and so Jeremy is going to talk about some of the ways in which both labor law and trafficking issues come into play when you think about which jurisdictions are sanctuaries and which are not.

I'm also very happy to say we are joined by Mayor Kathy Sheehan of Albany, a 1994 graduate of the law school and a member of the Albany Law Review while she was here. The mayor was re-elected on Tuesday night and has still made time for us. Congratulations.

In April of this year, as I know the mayor is going to talk about, she sent a resolution reaffirming Albany's status as a sanctuary city, so she can give us a lot of useful perspective on that.

I'll ask Mayor Sheehan to start us off. But please join me in welcoming the mayor, and Phil Torrey, and all of our panelists. Thank you so much for being here.

## II. PANEL DISCUSSION

**Mayor Kathy Sheehan:** It's fascinating to listen to even just a conversation around, "What does sanctuary city mean?" For me as an elected official it became very clear early on in this debate that what was happening is that this term was being taken and used for all the different things that you just talked about. We had residents who thought that sanctuary city meant that we were hiding undocumented immigrants in the basement of City Hall. But then we had advocates who said, "No. We absolutely have to be a sanctuary city," and it was really more aligned with the guidance that was issued by the New York State Attorney General, Eric Schneiderman, and the U.S. Conference of Mayors, which was a legal analysis around what it meant to be a sanctuary city.

Then you had President Trump, who was taking that term and, from my viewpoint, really adding a lot of confusion and usurping it to mean something completely different from either of those definitions. In the face of that, we were looking at all of that guidance and looking at what it really meant to be a sanctuary city, and all of the dialogue around it.

In the midst of that you have people who are truly living in fear. The travel ban is going on. There's so much confusion around that. What does it even mean? In context, we sort of step back. Let's talk about George Washington. George Washington in 1783 said, "America is open to receive not only the opulent and respectable stranger, but the oppressed and persecuted of all nations and religions, whom we shall welcome to participation in all our rights and privileges, if by decency and propriety of conduct they appear to merit the enjoyment."

Those words are from one of our founding fathers. In no city do you see more of the impact of immigration than in Albany. We are a city of immigrants. We are a city that has a resettlement agency here. We are constantly seeing refugees who are coming here from war-torn countries who have been through incredible hardships and are finally here. They're walking into this maelstrom of anti-immigration sentiment, and just all of the language around it was creating real challenges for our residents. That's who I represent ultimately. The people who live here.

One in ten of the residents of the city of Albany was born in a country other than the United States. Citizenship status is one of the most significant barriers that prevent crime victims and witnesses from reporting crimes. That's been true since before President Trump brought this debate front and center. We've always known that, which is why we've always sought to do significant outreach in the immigrant communities, with our police department, to build those relationships. To reach out to leaders within various communities, particularly the refugee community, so that we can have those relationships and have the ability to have contacts, and those who will seek to advocate for people who become crime victims, who become abused by their employers.

There's so much fear that exists, and a distrust of government that is deep-seated in many of the refugees who are coming here because of the experiences that they had in their home countries.

Notice that I say citizenship status. This is not about legal status to me. This is not about documented or undocumented because, as

you've heard, non-citizens are subject to deportation if they commit certain crimes. Crimes that if you and I committed we would not be deported. Crimes that most of us would not even consider very serious crimes. But it can subject people to deportation. This isn't just, "I'm undocumented and I'm afraid to call the police." This is, "I am here legally, and I am afraid that if I call the police, something could happen that would result in my getting sent away from this country, and being sent home." Which for refugees, who make up a large part of our immigrant population, is not even an option.

Some of these families have been living in refugee camps for over a decade and in some cases their entire lives. We have young people who were born in refugee camps and come here as teenagers and young adults. It is really that context that created the framework for, how do we as a city respond to that? We wanted to make sure and we want to continue to make sure that every resident feels as comfortable as possible when they're contemplating the possibility of reporting illegal activity, or just seeking out a city service.

We don't provide the social services in the city. That's a county function. But if you need a birth certificate, if you need a marriage certificate, if you need to pay a parking ticket, if you need to interact with city government to pay your water bill because you have a question about it, you have to come to city hall. It's bad enough that when you come to city hall you have to go through a metal detector, right? We're a courthouse, and so because of that, you have to go through a metal detector. That's a court system requirement. If we didn't have courtrooms in city hall, we wouldn't subject people to that, because again, fear, right? You walk in, and now you say, "Okay. I'm going to be searched." This is a scary proposition because in some places, things appear when you're being searched that were not on your person at the time that you arrived, right?

I'm very mindful that all of this can be in the back of the mind of a person coming into city hall. So, I signed an executive order in April of 2017. To me, there was nothing particularly radical about that. We were reaffirming the guidance provided by the Attorney General and the policies that have been in place in the city of Albany with respect to how we do or do not cooperate with federal immigration authorities. The executive order directs the police department to refrain from collecting information with respect to immigration status. That was our policy to begin with, but the executive order reiterates that. It prohibits any city office from obtaining that information, again, unless it's required by law. There are certain

instances, as was pointed out, that we are required to collect that information by law. But for the city of Albany, it's very rare. If you come to work for the city, you have to prove that you can work, so you know, that whole I-9 process.

It also directs the Albany Police Department to refrain from entering into any agreement that allows police officers to perform the functions of the federal immigration office. You know, one of the things when I was knocking on doors when I was running for office, and Rahm Emanuel had his hands full in Chicago. Because he has a legal obligation based on civil rights abuses that took place in Chicago that they have to release somebody. I think it's within 48 hours. They cannot hold somebody for more than 48 hours. It might even be 24 hours. You know, he's like, "I have to. That's my legal obligation. I'm not going to hold people for longer than that."

And so, I would have people screaming at me, "We shouldn't be a sanctuary city. Blah, blah, blah, blah, blah." I said, "You know, let me put it in terms that Republicans can understand, this is an unfunded mandate, right? What President Trump is talking about is an unfunded mandate. He wants us to do the work of federal immigration officers, and we're not going to do it. We're not getting paid to do it, and we're not going to do it." It was amazing how many people went, "Oh, okay. Yeah, you're right. If our officers aren't getting paid to do this, we shouldn't have to do it."

We have legal scholars here who can talk about attorney general's executive order, and the legal guidance, and the constitutionality with respect to what the Supreme Court has said we can and cannot do from a legal standpoint. But I want to go to the moral issue of fighting back against the Trump administration, because again, we joined the *Darweesh v. Trump*<sup>2</sup> case. We also joined as *amicus* on a number of the other cases and lawsuits that have all been successful, as I point out to people all the time, fighting against what the Trump administration is trying to do.

I don't take lightly the fact that we do get millions of dollars in federal aid, and that we need that money. We need that money to pay for our streets. We need that money to pay for certain things in our police department. We need that money to pay for programs that we provide, funding that we get through HUD. So, we have to be mindful of that, but we also have to recognize that as a city with a

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<sup>2</sup> *Darweesh v. Trump*, No. 17 Civ. 480 (AMD), 2017 U.S. Dist. LEXIS 13243 (E.D.N.Y. Jan. 28, 2017).

large immigrant population, we need to ensure that we're doing all that we can to make sure that our residents feel safe, and that they are safe, and that they recognize that they're welcome here, and that we want them to thrive here. You know, that really is the long and the short of the legal framework for what we laid out.

The other thing that we have to remember is that this is also about economic development, right? Not a lot of people are moving to the northeast. We have had a loss of population. We have seen population shift and our population is aging. From an economic development standpoint, and as economists look at this issue, at this point in our history, we should be incentivizing immigration rather than discouraging immigration which is what we are doing with these policies.

In a city like Albany where I am told by employers time and time again, "I can't find people to fill jobs," and those are jobs at every level, you know, whether it's a warehouse job to coding, we have trouble finding people to fill jobs, and we have an aging population. For all of us, if we want to continue to have a healthy, thriving city and region, we need to be encouraging immigration. So even with the eleven million undocumented immigrants that are here, they are so essential to our economy, and Albany is no different. You know, and we've run these numbers because we have an upstate revitalization initiative and a lot of work that's going on with respect to job development and economic development. All of that work recognizes the fact that if we don't grow our population, we are going to see economic stagnation and decline in this region, and immigration is a key component for that happening.

This myth that there are all these people hiding away somewhere dying for these jobs that are being filled by immigrants is just wrong and I see it every day. We have enough employers in this region to have full employment. We are working really hard to train those people who've taken themselves out of the employment pool as quickly as we can to fill the jobs and the opportunities that are here. That's sort of my very, very abbreviated [standpoint].

I'm able to answer questions, but from a moral perspective, from a public safety perspective, from a legal perspective, and from an economic development perspective, ensuring that your city is welcoming immigrants and is doing all that it can to send the message that this is a community that is doing everything in its power to ensure that immigrants who come here can thrive and can be successful is what every city across the country should be doing,

notwithstanding threats.

**Professor Ayers:** We're able to take questions. I invite the other panelists to ask questions if they have them. The audience is welcomed to as well.

**Philip Torrey:** Mayor, I'm wondering if you have any advice for other mayors out there who are contemplating sanctuary-like policies similar to what you have here in Albany and are apprehensive to do so. What would you tell them?

**Mayor Sheehan:** I think in looking at the legal framework and the groundwork, reading some of the amicus briefs that have been written. They have very compelling arguments for declaring sanctuary status and pushing back on the federal government on what the President is saying. When you look at the language that the President uses, it is vague. I defy anybody to figure out what it really means and what could result in federal funding being removed from a city.

I went to a panel discussion at the Muslim Community Center early on, right after the Muslim ban had been put in place. I sat in a room and listened to people, some of whom had been in this country for decades. I looked out at a room full of doctors, and scientists, and engineers, and people who were contributing, small business owners. And they were terrified. I think as an elected official, we have to look at that and say, "We're the ones. We're the front line, and we have to do something about it. Nobody should be living in fear in our communities." I think just for that purpose, it's important to do it, because it's not even necessarily about undocumented.

These policies and this rhetoric is frightening to anybody. God forbid you get pulled over for a DUI. God forbid there's a domestic dispute, and instead of counseling, which would be offered to a citizen, you find yourself being deported back to a country that you fled. To me, that's really the compelling argument to do it.

**Professor Ayers:** Yes, Professor Haynes.

**Dina Haynes:** A lot of families are mixed-status families, and I'm wondering whether the other community agencies like hospitals and schools are considered sanctuaries?

*[Additional question concerning whether or not people are less likely to access education and health care because of the ripple effect of the travel ban].*

**Mayor Sheehan:** That's something that from the standpoint of where we get that information. For me, it's the schools where I see the impact. I think the school district in Albany has done a very good

job of sending a very clear message, we want your kids in the seats, we want your children here. Because if parents are afraid to send their kids to school, then that creates lots and lots of other issues.

With respect to access to health care, I don't know the answer to that question. It's certainly something that with the work that we're doing around the Delivery System Reform Incentive Payment program we can certainly ask and see whether hospitals are seeing more serious cases because people afraid to bring somebody in until they are literally on their deathbed.

Those are excellent examples of the ripple effect. The language barrier is a challenge. This is a city of less than one hundred thousand people and there are fifty-three separate languages spoken in our schools. It's a school district with less than ten thousand kids, fifty-three languages. It's really challenging because there are various dialects, these are not languages where it's necessarily easy to find interpreters. We know that we have a lot of work to do in the city of Albany. We have a service that we use that the state uses as well, it's an interpretation service. You can call that interpretation service at two o'clock on a Sunday and they'll say we don't have anybody that speaks that dialect of Korean, sorry, we can't help you.

It can be, not only frustrating, but it can be dangerous when you are trying to determine if somebody needs to go to the hospital, or what really happened here? It can be very challenging. We are working with the University of Albany and we are working with the refugee round table. We have a grant that we are working on because part of that welcoming has to be around language access as well. I have an equity advisory committee and they are working on language access, and we can't translate every document into fifty-three languages, but we are identifying the top ten languages that we need to be translating our important documents into and we've started that work already.

**Audience Member:** There are some cases where sanctuary cities have not worked. So, I was wondering how would you respond to that? In cases where it hasn't worked at all.

**Mayor Sheehan:** You mean from the standpoint of, and again I think this goes to the definition of what is a sanctuary city? From the standpoint of sanctuary in that, you are literally taking people and housing them in city hall so they can't be deported, that's not what sanctuary city means in the City of Albany. Because, the sanctuary movement was this movement. I remember in the 80's where churches were literally providing sanctuary to prevent the

deportation of families.

From the city standpoint, and what happens in some jurisdictions, police officers take on the role of immigration officers. So, when they pull somebody over, they are not just asking for their license, they're asking are you here legally? And can you prove that you're here legally? And where are your documents? And then they're holding you and calling immigration and saying, I have somebody here who hasn't been able to provide their documents. So, what we mean when we say sanctuary is this idea that that is not the role of local law enforcement. That is a federal role and we will not inquire as to immigration status when somebody calls as a victim of a crime or when we're interacting with somebody. It's only if it becomes an issue, right? The murders that occurred in Guilderland of a Chinese family, their immigration status became part of the investigation status, with respect to that particular crime. That's atypical. For Albany, we don't share information about immigration status. We don't collect information about immigration status, so if you look at the attorney general's memo on this it really lays out from a municipal standpoint what sanctuary city means.

With respect to people who say, well why are you spending all this time talking about refugees and immigrants, I talk about the fact that this is one city, one community, and that it is surprising to many of our residents when I say that more than one in ten of our residents was not born in the United States. You can't be successful as a city, you can't have a safe, economically vibrant, equitable city if you're not addressing the issues and the needs of every community. It's not as though this is a teeny tiny part of our city. This is a growing part of our population. That tends to resonate with our residents, and they do see the connection.

One of the things that we have a challenge with is trash in the city and when people put their garbage out. But if you give people the rules only in English how do you expect an immigrant family who's here to follow the rules? There are a lot of people who read the rules and still don't recycle. Using that argument as well, we have to do this because we want to have a safe, healthy, economically vibrant city, so there are certain things that we need to do and groups that we need to work with to make sure that we are giving them the opportunity to be good citizens and good residents and to take advantage of the opportunities that are here.

Imagine navigating the school district without the benefit of knowing the language. Some of these parents that are coming here,



never had the opportunity to go to school. It's really using all of those as opportunities to say, look we all benefit when we work together to ensure that every resident has the opportunity to succeed. With respect to attracting, we've got to be doing everything. It's attracting immigrants, it's attracting young New Yorkers, it's attracting anyone and everyone with respect to the opportunities that are here.

**Audience Member:** *[Question about knowing your rights and what police and ICE officers can and cannot ask].*

**Mayor Sheehan:** One of the things we do throughout the city is Know Your Rights workshops. The thing that I like about our Know Your Rights workshops is that . . . I said, "I don't want the ACLU and the Center for Law and Justice, all these groups, developing Know Your Rights training, sort of in a silo. I said, "Why don't you let our guys in? Let's have APD there because I want my officers to know that you know what your rights are." I want them to know like, "Hey you know what? They can say 'No, you can't ask me about my legal status.'"

We've developed that curriculum. It's been developed by the ACLU and the Center for Law and Justice but we include police officers in that. We train all of our summer youth employees. Every summer there are 900 kids that get that exposure to that. We also do it in community forums. We go into mosques. We get asked to come to Centro Civico. Anyone who asks, we'll come in and provide that. We really try to make sure that we're reaching out in the community so that people do know what their rights are.

**Audience Member:** *[Question about jurisdictions and if it is where you live or where you are located at a particular time that dictates where the sanctuary cities are].*

**Mayor Sheehan:** Well, it's not even where you live. If you are pulled over in a city that does not provide these protections, then you are subject to the jurisdiction where you are located. It doesn't really matter where you live. That's why again, I think, you look at New York State and the state has provided state-wide guidance for the state, but again, law enforcement is controlled at the local level. It's why you saw what you saw out in Arizona and in other places. Where to me it was just blatant abuses that took place. Even in Albany County, we have a county jail. That county jail will hold people that ICE places there. So, if ICE makes an arrest and somebody needs to be held pending transfer to another federal location, they will be housed at the Albany County jail. That's a county decision that is made that they do provide that.

**Audience Member:** *[Follow-up question about the jurisdictional protection of sanctuary cities].*

**Professor Ayers:** I do not think that the question is so much where are you as it is about which official of what government are you interacting with? What do they have the power to do there? If it happens to be a state police officer who's in North Green Bush, or Rensselaer County, or Troy, they have whatever power it is they have as a state trooper. If it happens to be an Albany Department of Social Services officer who's there for a different reason, they're going to be controlled by the policies of that jurisdiction. Saying that one becomes a sanctuary jurisdiction is no guarantee of any kind of protection to anyone. It's a commitment to not take certain kinds of action. What it means is you may be able to depend on I think anyone who works for the city of Albany to not take certain kinds of action and you'd look to Mayor Sheehan's order to understand what it is that they've committed to not do. Nowhere in any sanctuary jurisdiction that I'm aware of has anyone committed to sort of protect you from ICE in the way that sanctuary churches traditionally announced an intention to do. That is to offer their walls as a safeguard to try to get an agreement from ICE to not come there.

**Mayor Sheehan:** To be clear, if ICE comes to the City of Albany with a warrant to come arrest somebody we cannot prevent ICE from executing that warrant.

**Audience member:** *[Question about the number of deportations and immigrant population].*

**Mayor Kathy Sheehan:** There are still refugee families that are coming in, but the Trump Administration limits the number of refugees that the United States will take in. So it depends on the refugee resettlement organizations that the number that's been cut in half are going to be sent to. The USCRI is our local resettlement agency and I don't think they know yet what the impact is going to be on their numbers going forward.

**Audience Member:** *[Question about local officials holding immigrants].*

**Mayor Sheehan:** We will not hold them. ICE has to have a warrant. We are not going to break the law. If there's a warrant, we will follow the law. They have to have a warrant. Again, it's the county jail that then holds people over night but we will not hold them without a warrant.

To me, it's just common sense. Be nice. Welcome people. We want them here. Again, I think it's so easy to see through just the lens and

I'll end with this. You see through your own lens. You say, "Why would you be afraid of a police officer? Why would you be nervous about talking to a police officer?" We have to walk in people's shoes. Many, many, many of the immigrants who are here, are here legally but they are here because, again, of our refugee population. Tremendous trauma. Tremendous distrust of authority. Some of these people's families were murdered in front of them by the authorities. It's that empathy that we need to be looking at. If we had a little more empathy, I think every city would be a sanctuary city.

**Professor Ayers:** Thank you so much for being with us. I think that was an amazing chance to see the perspective of someone in government who's decided to make a city a sanctuary jurisdiction and why. Professor Torrey has worked with the city of Boston as they went through the process of deciding to become a sanctuary jurisdiction. I'd love to hear about your experience and anything you want to tell us, but particularly, what was your sense of what drove that decision? What was persuasive and what wasn't? What motivates a jurisdiction to become a sanctuary jurisdiction? What were the fears that people had as you went through that?

**Professor Torrey:** Sure, I'm happy to talk about that. First of all, I just wanted to say thank you to Albany Law School and Albany Law Review and all of you for planning, and putting this all together. It's great to be back in upstate New York. I lived here in the area for about eight years a while ago.

I started working on sanctuary issues about four years ago. It first started actually with a bill that was pending in the Massachusetts state legislature, at that point called the Trust Act, now called the Secure Communities Act. The organizing team, the Sanctuary Coalition, in Massachusetts was getting a lot of questions from state legislatures about the constitutionality of these sanctuary policies, mainly the decoupling policies between ICE detainers and local law enforcement. What we did was put together basically a legal memo discussing why these policies were in fact constitutional. Although that bill continues to be pending in the Massachusetts state legislature, like many bills do, the Boston City Council was very interested in an ordinance that would decouple local Boston police officers and immigration enforcement.

We, the sanctuary coalition, started working the Boston city council. There was a city councilman who was in particular very interested in this. There was a lot of interest amongst local police

officers as well. National Association of Chiefs of Police support these kinds of policies. We can talk, for a number of reasons, about why that is. When this ordinance first started at the city council level, one interesting thing that happened was that there were a lot of carve outs within the ordinance, a lot of exceptions in terms of the kinds of detainer requests that Boston police department would in fact honor. Exceptions for certain kinds of past criminal convictions, severity of certain pending criminal charges and what not.

After a lot of back and forth trying to amend the ordinance, we were able to get a lot of those exceptions out of that ordinance. One of the big reasons I think, getting back to your question, was that there was some cases that started to come out. District court cases in Massachusetts, and in Oregon, in which courts found that local police departments could be liable for holding individuals beyond the time that local police departments normally would hold that person. The cost for that would be borne by the tax payers, and local police departments didn't want to accept that liability. I think that was a big pressor in addition to all of the community policing policies that we talked about earlier. The Mayor was referencing in terms of creating an atmosphere where everybody, regardless of their immigration status, was comfortable going to the local police station to report a crime, help an investigation, or be a witness in a criminal trial. All of those things came together and the ordinance was passed.

**Professor Ayers:** I'm glad you raised the issue of liability. There's this question about if you get a civil detainer from ICE that says please hold someone for a certain period of time after they would otherwise be released, and the question is under what authority exactly is the local jurisdiction holding that person? If they have no authority, they can be sued, and certainly my experience working in government was that fear of liability is often one of the most powerful motivators around, as it should be since the taxpayers bear that cost.

So, I know you've also done some work on a case in Massachusetts that directly presented this question of whether it's lawful to detain someone in response to a civil detainer so maybe you could talk about the issues that come up there.

**Professor Torrey:** Absolutely. Just to back up a little bit, a civil ICE detainer is just that. It is a civil detainer that courts around the country have said that: (A) it is voluntary on the part of the local law enforcement officer as to whether they honor it or not because you can't have commandeering issues because of the Tenth Amendment and (B) it requires probable cause because it is in fact an additional

arrest. And in order to arrest somebody that arrest has to meet certain Fourth Amendment probable cause requirements which include particularized facts and in some cases a neutral magistrate overseeing the process. ICE detainers do not meet those requirements. They do not meet those Fourth Amendment requirements. They are simply a request by a federal immigration enforcement agent on a state criminal local law enforcement agent to detain someone for up to forty-eight hours beyond the time they normally would detain an individual because that federal immigration enforcement agent thinks there may be some reason why that person could potentially be deportable.

So, courts around the country have said that potential for deportation does not meet constitutional muster to detain someone for that period of time.

**Professor Ayers:** Doesn't a detainer usually say there's probable cause to think that the person is removable or there's probable cause so why isn't that probable cause enough to support detention? ICE can detain someone upon probable cause that they're removable, I assume, because they do so why can't the rest of us I guess.

**Professor Torrey:** Yes, so what is interesting is in this probable cause issue that's being litigated, ICE changed their forms to say, "Oh and by the way there's probable cause to do this," which courts said that's not sufficient, but one of the big issues is, and Professor, you referenced this earlier in your introductory remarks, is one of the real complications in this area is, you've got two different sovereigns. You've got a state and a federal government, and you've got civil and criminal law, and all four of those pieces are sort of colliding at this point.

What state law enforcement officers are authorized to do is hold somebody if there is probable cause to believe that they've committed a crime or in the process of committing a crime. What they don't have authorization to do is hold somebody for a civil federal enforcement purpose so that's sort of where the sticky issue comes in.

**Professor Ayers:** Interesting. So, the detainer is the communication between the federal government and the state law enforcement official. I'm glad the issue came up about churches and sanctuaries because if you're not a jail official and you're thinking about what might ICE come to me for, you're thinking about things like warrants, and there's a whole complicated world of if you are a pastor at a church and ICE comes knocking at the door, what sort of document are they holding? Is it a judicial warrant, an admin-

istrative warrant, or just an angry note?

I know you've done some work with churches in that context so talk a little bit about what the issues are that they face.

**Professor Torrey:** Exactly. So, as you pointed out the word warrant is used to describe two different things, one of which is a warrant and one of which is not so that's confusing, right?

This is the world of immigration law. It's great.

An administrative warrant is not a warrant as I mentioned for reasons we were just talking about, it doesn't meet fourth amendment probable cause requirements. The judicial warrant does. So, the judicial warrant is enforceable, whereas the administrative warrant is simply a request on an immigration enforcement officer to pick somebody up. In Massachusetts this summer there was a decision of the Supreme Judicial Court, the highest court in Massachusetts, in which it said that state officials do not have the, statutory authority to detain somebody pursuant to one of these ICE detainer requests. So that was sort of a landmark decision that came out this summer.

The issue with churches is a very complicated issue that raises a whole host of additional issues so the work with churches that I've done started probably a year ago today, to be honest. It was a couple of days after the election, and I had received a couple of phone calls from different organizations that were thinking about providing physical sanctuary to individuals. This is where the term sanctuary actually means sanctuary. It means physically housing, providing services to an individual who may or may not be here without status. Sanctuary policies in terms of cities, as the mayor was clearly pointing out, there's nothing to prevent ICE from actually enforcing immigration laws. It just means that state officials aren't going to use their resources to do so.

So, in the religious institutions context, there are essentially three types of federal laws that are potentially at play. There's the harboring statute, there's the transporting statute, and the inducing statute. There is the attempt and conspiracy charge that could be attached to any one of the statutes. As Professor Haynes was talking about earlier, the harboring statute in particular was used in the eighties during the Reagan administration. The FBI actually infiltrated a number of churches that were down on the Arizona border and charges were filed and certain individuals were convicted of those charges. That has not happened in that kind of context in the last thirty-plus years. The kinds of cases that I've seen that have

been brought on harboring, transporting, or inducing are really more cases of human trafficking. They are folks who have set up trafficking rings to bring people in, to exploit them for labor purposes or sex trafficking, and they're apprehended in either transporting the individual or in trying to pay for them to be here or actually physically housing that person.

I think there are strong arguments that, for two reasons, that churches would not be subject to these criminal provisions. One is that there is this sensitive locations memo that the Trump administration has said that they are supposedly still following, although in some context not, in which it says that churches and places of worship are places in which federal immigration enforcement actions will not occur. That's an internal policy memo so it's not a law. It's not part of the constitution, obviously.

I do think there are some arguments in particular when it comes to religious freedom, the Religious Freedom Act, as well as there is a particular carve out in the harboring statute related to religious institutions as well.

I do not know what to provide as far as legal advice here. Obviously, that's been sort of an ongoing theme here. I represent a woman who is in sanctuary at a church in Harvard Square, and to be perfectly clear I represent her and her immigration proceedings. I have nothing to do with her decision in terms of where she physically lives. That's completely outside of my representation and it's wholly her decision and her family's decision as to where she lives . . . I can tell you a little bit about the case, since it's public knowledge. She's from Ecuador. She has two small U.S. citizen children. She is absolutely terrified for her life if she is deported back to Ecuador, mainly for certain actions that the Ecuadorian government has been taking in the last year specifically targeting members in her community. She is now going through a process in which we are trying to reopen her case based upon her fear of returning. I'm hopeful that that case will be successful, but there is this real, very real palpable fear. I mean for somebody to upend their entire life to move into a church with two small children in a space that's the size of a New York City apartment really says a lot in terms of the fear that the Mayor was talking about earlier.

**Professor Ayers:** The harboring statute is a federal, criminal statute that provides for criminal penalties for people who commit the actions it describes. There is a policy in effect by the Department of Homeland Security ("DHS") that says that they'll respect churches

as, quote, “sensitive locations,” which means, I take it, that ICE officers are not supposed to conduct raids on churches.

But the people who decide whether to bring charges under the harboring statute are not the Department of Homeland Security right? That would be a federal prosecutor whose appointed by the President, but then functions relatively in a given jurisdiction, and given discretion to decide whether to bring charges. The statute criminalizes because it states that you have to know that the alien has entered in violation of law or remains in violation of law. So, visa overstays are covered too.

But transports or moves or attempts to transport or move within the United States? Sounds so impossibly broad, and that’s not even getting to the part about concealing or harboring or shielding from detection. I wonder, given the way this statute is written, are you seeing a chilling effect in the community of people who are networking to support non-citizens out of fear that charges could be brought under the statute, even though you haven’t, you said, seen that yet?

**Professor Torrey:** I was actually speaking to a church a couple weeks ago, and there wasn’t a single question about this particular statute or criminal concerns that criminal charges would be brought. It was, in some ways, it seemed to be automatically assumed that there was some risk that they were taking on their part, and they were 100 percent comfortable with that, given the state of affairs currently.

I will say, what I’ve seen just in researching how this statute has been applied in a lot of cases around the country, one of the key elements is the concealing piece, and what a lot of churches, I think, have done is to be very public and open about what it is, what their policies are, and in some cases who it is that’s in the church, and affirmatively telling ICE what their policies are so that there isn’t this sort of concealing element that gets involved.

**Professor Ayers:** Interesting. That’s a fascinating unintended impact of the statute.

**Professor Torrey:** Yes.

**Professor Ayers:** The transporting portion of the statute seems pretty important. It states if you’re transporting “in furtherance of such violation of law,” that is a crime. Which I take it means that if you drive your client to court, you’re not, or are you, furthering a violation of law?

**Professor Torrey:** Well, if I was interpreting that, I would say



no. I query whether Attorney General Sessions would agree with that, but as I was saying, the cases that I've seen in which this statute or these provisions within the harboring statute have been applied are pretty narrow, egregious cases of trafficking. There is one example, I won't get into all the facts on it, in which actually an INS officer was prosecuted successfully for the inducing piece. There was sort of a sting operation set up in which she was employing somebody who told her that she did not have status, and the only reason she was able to stay in the country was because the INS officer was paying her to clean her house, and the INS officer was actually prosecuted under that statute. But there was a lot of politics involved in that particular case.

**Audience Member:** [*Question about asylum compared to refugees and sanctuary cities*].

**Professor Torrey:** Basically, asylum, in fact, requires you to be in the country. It's a form of protective status that say I'm here and I have a well-founded fear of returning to my home country because of a particular reason that has to fit within a statute. A refugee determination is slightly different; it's the same kind of standard, but that determination is made from outside the country, and the person comes in on a refugee visa. So that's where asylum and refugees differ

**Audience Member:** [*Question about religious institutions protecting immigrants by openly declaring they are providing sanctuary*].

**Professor Torrey:** I don't pretend to have any clarity on that. I cannot say for sure that revealing the fact that you are housing somebody at a church is somehow a silver bullet to get you out of this kind of potential prosecution. I think it's a strategy that a lot of religious institutions have taken to get around this "in furtherance of or concealing" piece, that they're sort of open and public about it as sort of a defense to this application of this statute.

But it's a very murky area that really hasn't come up in any significant degree related to religious institutions in over thirty years.

**Professor Ayers:** I think it's an interesting example of how legal change can be driven by people who don't know what the law is, with the intent to push the envelope of what's permissible at personal risk, sometimes. Other questions?

**Audience Member:** [*Question about referenda and voting for sanctuary cities*].

**Professor Torrey:** I know that there are some referenda out there in localities for that very reason, in which elected officials have said “This is the decision that should be made via a broader vote,” and perhaps that adds to the messaging piece that we talked about earlier.

**Audience Member:** [*Question about the importance of individual city ordinances and their effectiveness*].

**Professor Torrey:** Well, there’s probably a number of levers that they could pull. I know Professor Haynes is going to talk about federal funding, so I won’t get into that, but one issue we had sort of been talking about previously was officers that are sort of on the front lines, and perhaps those officers, and we’re sort of seeing it in different contexts in Massachusetts, that have sort of gone rogue to . . . just give you sort of one quick example in terms of the Boston ordinance.

Part of the Boston ordinance requires the Boston Police Department to report every year that they are complying with this ordinance. In the last report that came out, the Boston Police Commissioner basically said that they had handed over nine individuals directly to ICE. And so that immediately concerned us, because we thought we had written an ordinance that said they could not do that, but after investigating that what we found was happening was that, sort of, front line officers were calling ICE to say, “Hey, this person, I believe they’re undocumented or I know you’ve issued a detainer for them. We are going to release them on this date at this time if you’re here, you can come and pick them up.” And so I think an important piece actually that is in the Albany ordinance, that’s not in the Boston ordinance, is this protection from providing nonpublic information to ICE.

**Audience Member:** So, if somebody is without status and they are pursuing some form of immigration relief, to regularize their status is there some kind of policy or statute that protects them from immigration enforcement in that time period?

**Phillip Torrey:** The short of it is I think that, what’s happening is in some cases enforcement actions are actually being taken against people while they are pursuing forms of relief. People have been getting picked up while they are seeking a green card. Or they show up for an interview to get their green card and they are picked up, while they are there at the interview. Or they have applied for U-Visa or valid petition and immigration enforcement officials have shown up to put them into proceedings, so that’s starting to happen

it seems like. Hopefully, it's, we were just talking about this earlier, I don't know if these are isolated incidents or this is a preview of coming attractions.

**Audience Member:** [*Question about whether individuals have hearings before deportation*].

**Professor Torrey:** I think, in most cases, an individual would have a hearing in front of an immigration judge before they're deported. I mean there are exceptions to that, but in most cases, that's right.

**Audience Member:** [*Question about exceptions for removal proceedings*].

**Professor Torrey:** There are expedited removal proceedings in which you don't actually end up seeing an immigration judge or administrative removal if you have a certain kind of criminal conviction in your past. But in many cases if ICE is trying to remove somebody they issue a Notice to Appear, which generally requires that person to show up in immigration proceedings at which point they can pursue relief in front of an immigration judge.

**Professor Ayers:** But there are some the principles about what happens to you while you are seeking relief. You say I have a right to stay in the country, because I am afraid of being persecuted in my home country. You may be in detention when you say that or you may be at liberty while you say that, there's questions about what they are going to do in the meantime while that question works its way through the system. And to some extent, that question depends on policies rather than laws that ICE has developed, so we won't fly somebody over the border while their proceeding is pending, but I believe there have been cases recently where that has, in fact, happened. Where ICE has, in fact, flown somebody to another country even though there was a pending proceeding in which they were claiming an entitlement to relief.

And I think there's an extent to which immigration law, probably like a lot of bodies of law, depends on informal norms, in terms of not just what the text of the law says but what the practice has been. And one of the things that we are seeing as we change from the last administration to the current administration is enormous variation in what those informal norms are and the extent to which the policies are, that they will be respected. So, I think there has been a lot of concern about the extent to which people will be permitted to remain in the country while they try to establish an entitlement to relief going forward.

**Audience Member:** [*Question about “illegal” documentation*].

**Professor Torrey:** There is an important distinction between having a fake document and having a document that is somebody else’s information so if you’re committing identity theft that’s significantly different than fabricating a social security number. Neither of which are permissible. But there is an important distinction there. In terms of, when or how that sort of gets you into the immigration enforcement system . . . You know I suppose it could happen if there was a workplace raid or depending on the kind of job you had received via these fake documents that were checked by federal authorities, that could be picked up in that way.

[*Final discussion from Professor Torrey on prosecutorial discretion and the erosion of discretion through the personal experience of a client*].

**Professor Ayers:** And on that note, it seems like a great word to end on, let me thank Professor Torrey for being here to answer our questions. Thank you so much. And I’d like to invite Professor Haynes and Jeremy McClain to come up and take a seat. And there’s a question about what kind of federal government due to sanctuary jurisdiction . . . so happily, Professor Haynes is going to be able to talk about some of the litigation over that issue and over the federal government’s attempts to strip funding, I suppose, among other things they’d like to do to sanctuary cities. Thanks so much for being here.

**Professor Haynes:** My pleasure. Thank you for asking me. I’m going to be speaking about what some cities are doing and the arguments that they’re making in response to some of the federal actions.

So, I saw that you had a recent panel discussion on one of the other executive orders that was what we now call the refugee travel ban. I’m going to be speaking about the executive order that was signed in January called Enhancing Public Safety in the Interior of the United States.

And this executive order announced that sanctuary jurisdictions across the United States willfully violate federal law in an attempt to shield aliens from removal from the United States. And these jurisdictions have caused immeasurable harm to the American people and to the very fabric of our republic. That’s the language from the executive order.

Sanctuary cities disagree. And several of them filed suit. The executive order in question included a lot of things like the wall which

you may have heard about. It also included things like creating a victim hotline that would take tips on crime committed by aliens which you may have heard was immediately trolled by people calling and reporting aliens from outer space but also begs the question: How do you know that you have had a crime committed against you by an illegal alien?

And I think one thing that would be great to talk about after this is racial profiling in the extent to which everything that we have discussed has the potential to exacerbate racial profiling. And maybe what sanctuary does most successfully is, if not eliminate at least mitigate somewhat the extent to which racial profiling happens within a community.

So, this executive order also did something which everyone else here has alluded to which is it created a sort of lowest hanging fruit approach to detention. Whereas, under the previous administration there was a focus, allegedly, and it seemed to be actual, on criminal aliens. You may have heard that President Obama was responsible for deporting more people than any other president . . . more than the four preceding presidents put together.

From time to time, DHS has resorted to what they actually admit is a lowest hanging fruit approach to detention. And now they're sort of formally doing that. They're picking up people where they're easiest to pick up. And one thing that is important to remember is that anybody who's out of status or anybody who entered without inspection or through an unauthorized point of entry bears the burden of proving that they didn't do that. And they can be picked up at any time by ICE.

What ICE has been doing in going to criminal courthouses and picking people up and going to hospitals and picking people up. Going to asylum offices and picking people up as they apply for asylum. Some of us are wondering if it's a show of force against sanctuary cities and sanctuary jurisdictions? And I think that's a question that is important for us to consider in this total calculation. If it is true, I think the most recent operation that ICE initiated was actually Operation Safe City. And it seemed to be a pretty explicit message to sanctuary jurisdictions that we are going to come to you because you can't stop us.

The executive order in question also telegraphs the intention of the administration to hire more both Customs and Border Protection ("CBP") and ICE. Ten thousand was the number in the executive order. And I think John Kelly, before he moved to the administration,

when he was at DHS, also requested that the background checks be obviated for CBP. Because it was too hard to hire people, he suggested eliminating background checks for CBP which was interesting.

Crucially for the purposes of this talk, the executive order ordered the Attorney General to take appropriate enforcement action against any entity that violates. The order is the language of the order, 8 U.S. Code Section 1373, which I'll explain, or which has in effect a statute, policy, or practice that prevents or hinders the enforcement of a federal law.

Section 1373 is a federal statute that forbids state and local governments from restricting the distribution of information regarding individual citizenship or immigration status to the government. And sanctuary jurisdictions have responded in multiple different ways, but there's a sort of "don't ask" policy that many of them have instituted in order to not offend that particular statute.

And the argument goes, if we don't collect that information in the first place, we can't be accused of having offended this federal statute in not transmitting it to the federal government.

The problem for cities and some federal jurisdictions that have instituted sanctuary is that, as people have already discussed, law enforcement for years has led the way on these polices and the notion that it makes the entire community safer if people feel free to report that they're victims of crime or they witness crime. And they've done a lot of things in addition to proposing sanctuary.

Law enforcement were the proponents of the U-visa. After the Virginia sniper, the Troopers Union proposed the creation of a visa for victims of serious crimes of violation so that people would feel comfortable going to police to report crime. They were also the first to challenge the Arizona law because of fears that they had about violating in Fourth Amendment and so forth.

A number of cities and states have sued the President for this executive order. And the two arguments that I'll speak about boil down to, essentially, a separation of powers argument and a federalism argument. And if you were wondering whether your constitutional law class had real world effect, I'm about to lay some *Youngstown Steel*<sup>3</sup> on you.

So again, these are the cities' arguments, but I should say that I'm amici on the San Francisco and Santa Clara briefs, and I think you

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<sup>3</sup> *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

are too. Some of these arguments are core components that challenge the part of the executive order that threatened to withhold all federal funding from cities if they essentially became sanctuary jurisdictions. And the two things that the federal government takes issue with in the executive order are refusing detainers and refusing to comply with 1373. And of course, there are differences of opinion, obviously, about what it means to refuse to comply with 1373.

The separation of powers argument goes like this. The President has both usurped Congress's power, their spending power, in a clear overreach of executive authority under Article I and exceeded the Constitutional limits of the spending power itself. In other words, the President doesn't have the power even if Congress exercised the power because it would be exceeding the spending power.

**Professor Ayers:** In case people are not lawyers, can you say what the spending power is?

**Professor Haynes:** Yes. So, there are Articles I, II, and III of the Constitution that govern essentially the core powers of Congress, the president, and the courts. Through constitutional interpretation and case law, it has been determined by the Supreme Court that one of the core and biggest powers of Congress is its spending power and its commerce clause power and so forth. This intersects with the next part about federalism, but only Congress has the authority to make certain decisions about how monies are spent and tell states what they can and can't do with those monies, essentially.

If you are a law student, you should remember there was a case called *Youngstown Steel* where President Truman in 1952, seized the steel mills because he was afraid that there wouldn't be enough steel to support the Korean War. It turns out, he was completely wrong, but the point of the case, 20/20 hindsight we know he was wrong because there was a strike, and there was, in fact, enough steel to support the U.S. Army and the Korean War.

But the holding from the case said a number of things. One of which is that the Separation of Powers doctrine requires each branch to stay on its own rail, so to speak, and even Congress can't give some powers away to the federal government. There are other cases like *New York v. Clinton*<sup>4</sup> that established that further. I'm trying to walk a line here of not getting too technical, but also letting law students know that the cases that you learned will have some meaning for you.

So, Article II, which sets forth the President's powers under the

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<sup>4</sup> *Clinton v. City of New York*, 524 U.S. 417 (1998).

Constitution, does not grant the power to condition the receipt of federal funds which, arguably, is what the Executive Order in question was trying to do. This is an exercise of the spending power which belongs to Congress. Even assuming that Congress could delegate some elements of this power to the executive branch, the President, it didn't do so in this case. Congress hasn't weighed in on this matter. It could. Some of these things that we've discussed today were initiated by Jeff Sessions when he was a member of Congress, so with enough support, this could happen, but it hasn't. One of the core arguments that the cities are making is that the President exceeded his authority by attempting to do things that don't belong to the power of the President. If Congress does something in some respects, but not all, we are back to the drawing board with some of these arguments because there's another set of arguments that said even if Congress had done this, this too would have been exceeding congressional authority.

The second separation of powers problem is that the Executive Order purports to exercise spending power that even Congress does not have the right to exercise. Section 9 of this Executive Order, the States say violate the four-part test set out in *South Dakota v. Dole*,<sup>5</sup> if you remember that case from Constitutional Law, and the argument goes like this: Congress has to act in the interest of national security and public safety when it issues a decision about funding to the States. So, *South Dakota v. Dole* was about trying to get South Dakota to raise the drinking age or the federal government would withhold highway funds. The Court said Congress couldn't do that.

Now we are talking about a task that applies to Congress which isn't even the case here because the Executive Order was written by President Trump. The four-part test is that the spending that's being threatened has to be in the national interest, it has to be unambiguous what the federal government wants to achieve, there has to be nexus between the condition and the thing that they're trying to withhold funds for, and that this is the biggie, that the financial inducement can't be so coercive as to become a compulsion.

In *NFIB v. Sebelius*,<sup>6</sup> which is better known as the Obamacare case, the courts said that a state can be successful in withstanding congressional attempts to withhold funding if the State can show that

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<sup>5</sup> *South Dakota v. Dole*, 483 U.S. 203 (1987).

<sup>6</sup> *Nat'l Fed. of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012).



it would be crippling effectively to the State budget. The State successfully made that argument in *Sebelius*. So, even though the Affordable Care Act went forward, this one particular element was struck because Congress exceeded its authority and attached too much compulsion to the states. I know that that's complicated. Here, the Executive Order purports to cut all funds from sanctuary jurisdictions far exceeding the amount that states said were threatened in the Obamacare case which was about ten percent.

Secondly, there's no nexus at all between the funds that the cities and states have under threat under the Executive Order and what the Government wants to achieve. The Government hasn't put forward any evidence about how restricting federal funds from the cities which are being used for things like housing and shelter and things for residents relate in any way to this particular objective of interior enforcement. That's the essential separation of powers argument which ties into the spending clause argument.

The second challenge is a federalism challenge and like the spending clause arguments, you may have noted this already, they're really interesting because they rely on cases that were recently raised by red states to prevent federal incursion. Now, they're being raised by blue states and blue jurisdictions to prevent federal incursion. So, there's a little bit of "you asked for it, now you're going to get it handed back to you in this." In some this argument goes and this language was already utilized by some of the speakers earlier, you can't commandeer local law enforcement. Federal Government, you have a job to do—this is the *Printz*<sup>7</sup> case, if you recall from Constitutional Law. If you have a job that you're trying to do, you can't do it by commandeering local law enforcement to carry out your particular bailiwick.

Those are essentially the two arguments that cities are using to push back against the federal government threat to withhold federal funding that don't have to do with Fourth Amendment which is a different set of arguments that was already raised. The *Printz* argument, the commandeering argument is tied up intimately with the Tenth Amendment. Federalism is an argument that says the federal government and states share power and we know this because the Tenth Amendment makes explicit that powers not directly delegated to the federal government belong to the states. Then the *Prince* case which was about federal government attempting to

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<sup>7</sup> *Printz v. United States*, 521 U.S. 898 (1997).

implement the Brady Act which was a response to James Brady, President Reagan's Press Secretary, being shot. The federal government was attempting to use state officers to register people who purchase guns, and the court said you cannot do that if you are commandeering the local police. If you're requiring them to use their state budgets and their state resources which they would typically be using for local policing, you can't do it.

That's what Mayor Sheehan was talking about earlier. That local police in their states are at their strongest level of power when they're focusing on the health and security the state policing powers that they carryout in order to secure the safety of the community. The federal government cannot redirect without the consent of the local police, how they utilize their resources. So, that's essentially the second part of this argument that the states are making.

In sum, and the big question for all of us is sort of where I started here, where this is likely to lead. The cases are still going forward in the federal circuit courts and what I perceive as a battle of wills ensuing because it does seem quite clear that when the governor of California says: "Not only are you trying to withhold our funds, but you're withholding funds that we, as the sixth largest economy in the world provided to you in the first place to utilize, and you can't do that. Those are funds that our state citizens are paying."

ICE shows up and says: "Oh yes. We can."

To the extent that all of this is really in part about that fact that there are millions of people in the country. Estimates ranged as high as fourteen million around 2009 and then tapered off after the recession. But there are millions of people in the country that ICE could pick up for any reason at any time.

The only question is whether they're being prioritized. There are only, what 25,000 ICE offices right now? There will never be capacity even if we hire a million ICE officers. There will never be capacity to pick up everyone immediately. So it's always been a question of prioritizing where ICE focuses their efforts. Right now, it looks like, at least in the splashy cases, that immigration lawyers are paying attention to. It looks like they're exerting that authority in places that have adopted sanctuary because they can.

I think that's something that we want to consider as we continue to discuss all this.

**Professor Ayers:** Thank you. Any questions for Professor Haynes? Let me ask one. It seems like that in response to the litigation, I gather the Justice Department, or the federal

government has narrowed the scope of the federal funding that they purport to be threatening. The executive order seems to say all federal funding, which I know is what President Trump said originally. Now, has that been walked back a bit or changed?

**Professor Haynes:** Yes. It goes to funds that are specifically given to cities and jurisdictions that take funds in order to hold people in detention or hold people in federal detention.

But some cities, like the city of Los Angeles still maintain a decent argument under, an FBI sort of analysis, that that would still cut in. It's a tough argument because it goes both ways, but it would still cut in too deeply beyond the four-part spending test on *South Dakota v. Dole*, to be a legitimate use of spending power.

And remember, that's Congress' power and it's being used here, exercised by the Executive. So, I think that, there's a good argument regardless, that there's a separation of powers violation.

**Professor Ayers:** It does seem like somebody's been reading *South Dakota v. Dole*. That somebody said there's this nexus thing, so now we'll threaten the specific funds that we think. As you say there are others using the case but I do feel like it's fascinating to see.

The text of 21373, likewise it seems like somebody's reading the commandeering cases and realizing: "We are not allowed to say 'You have to enforce the immigration law for us.' That would be commandeering the local law enforcement, making them do our jobs. So, what we'll say is 'You're prohibited from adopting a policy that forbids people.'"

**Professor Haynes:** Yes. There was a case, and I do not know that I have all the facts right so anybody else should feel free to weigh in. There was a woman, I believe who worked in a hospital in Salt Lake City, who transmitted 3,000 names of people in various immigration statuses including undocumented, to the federal government. They city fired her. So the question there, or the argument raised by the federal government is, you cannot institute a policy that would formally threaten . . . I guess, I'll rephrase that. The question is, can a state institute a policy that would threaten firing a staff member for having done that? Can you make it a formal policy and not violate 1373? The state of New York argues, yes you can do that. That it does not violate 1373.

I think that's one thing that the federal government is still trying to push the envelope a little bit in arguing what this actually means. But I think it would take another case like that and somebody being fired in order to see the scope.

**Professor Ayers:** Speaking about people being fired makes a really appropriate segue.

We're fortunate to have Jeremy Mclean who has done work with people who are being fired and otherwise have claims against their employers and various conducts.

**Jeremy Mclean:** What I want to talk about is just some of the practical implications of this topic and the immigration rhetoric that we're all experiencing as far as an organization like mine, in trying to enforce labor law. And have people get paid for the work that they do.

I work for the Worker Justice Center of New York. We try to focus on low wage workers and see how we can help them enforce their rights.

One of the things that we have been doing for decades beyond just labor and employment law and civil representation is focusing on human trafficking victims in the state of New York. And what we can do to provide them legal remedies for the exploitation that they've suffered.

Generally, we try to do whatever we can to help low wage workers when they are being exploited. Some of the things that I want to talk about are just vulnerability, generally of an immigrant workforce who may or may not be undocumented and how that leads to exploitation.

The current rhetoric that we are all hearing from the federal government, complicates these issues and leads to, in my opinion, a furthering of that exploitation.

One of the things I want to address really quickly is the response of the administration often is that, someone who enters unauthorized into the country is a criminal, and is maybe more prone to further criminal activity, and that's not always the case.

Lastly, one of the benefits from an organization like mine's point of view, that sanctuary cities does, is it establishes a trust relationship between government and exploited workers, so that there is a remedy to someone who experiences wage theft, or is a victim of human trafficking. The best way for me to explain how this all effects the work that I do is to tell some stories.

In 2010, there was a fair vendor who was accused of human trafficking at the State Fair in New York. Everybody's been to the State Fair in New York? It's right down the road. This stuff does not always happen in the far reaches of the city or under disguise, in cloak and dagger scenarios. This is an hour-and-a-half from here.

The basic facts are, that there were nineteen workers who were here legally with work visas. The federal program they were working under stipulated that they were to be paid \$10.70 an hour and that their work week should have been around forty hours a week.

Nonetheless, these men were made to work incredibly long hours, were given very inadequate food, water, and breaks. The pay that they actually received ended up being around a dollar per hour, that they worked. Then, the general conditions that they lived in was just abhorrent.

The reason that my organization came into contact with these men, is at the State Fair in New York, after months of working in various locations, were so exhausted, dehydrated and malnourished, that they abandoned the work in the State Fair to seek medical attention, because they could not go on any longer. That is the only reason we were able to discover that these men were being exploited.

These workers were not here undocumented. They had work authorization. They had access before they came to this country with contracts and the terms and conditions of their employment. Nonetheless, they spent months working under these conditions in violation of their contracts and violation of their human rights, just treated very, very poorly. Why? Why did they remain? Why did they stay? Why didn't they speak up after the first week of not receiving the pay that they were promised?

These are some of the factors that we see when we're dealing with immigrant workers and why they are exploited by employers and occasionally by human traffickers. There are cultural language barriers that impede them from understanding the system, or to convey their concerns or abuses. Not in negative context, but that lead to ignorance. They just don't know what their rights are, or where they can turn for help. Because of these barriers, they're isolated and marginalized, they're hidden, and they're not able to easily access the help that they might be seeking. Their situations create vulnerabilities that exploiters, employers, traffickers use to force them into poor conditions of work. Generally, they're afraid. They're afraid of the consequences that their exploiters have conveyed to them repeatedly.

What are those consequences, typically? Intimidation. That is one of the biggest levers that is used by someone who wants to exploit an undocumented worker. If you complain, I'll report you. You will be deported. With these workers in particular, they don't have to worry about being here without documentation without status, but they

were told: “If you don’t like it, leave. But if you leave, I will report you to ICE, you can lose on your employment, you’ve broken the terms of your contract. You’ll be deported and you’ll never be able to get a work visa again.” The whole reason that these men came here to this country was to have better opportunities, provide for their families. The risk of not being able to participate in this type of program in the future was a huge concern of theirs, so they put up with it for months.

This happens all over the place. The National Employment Law project did a survey on low wage workers, not just undocumented workers, but found that low wage workers regularly experience wage theft. You’re talking about, not a lot of money in the first place, but they’re also being robbed of ten percent or more on average. There are other violations that this work force experiences and it is because of this vulnerability that we are talking about it. The main one here, for our concern is immigration status.

This is just some other studies and some graphs so that we can see how documentation and being from another country can exponentially affect the percentage of exploitation. If you are an immigrant and a woman, you have almost a fifty percent chance of being subjects to wage theft.

Overtime violations. This population is not paid overtime in the great majority, but if you do not have documentation status your percentage of exploitation is even further increased.

These factors create vulnerabilities that employers who want to have a competitive advantage and traffickers that want to exploit human beings, will use. Now, in the current political context, how is that complicated by what we hear from the Executive Office? These cases have been brought up by the other panelist, but when federal agents become the embodiment of the threats of the employers, that fear is realized.

In a case in Texas, a woman seeking help for domestic violence reported to the court and was apprehended by ICE and deported. We have clients that have heard about these stories here in New York. There’s situations where, for certain benefits, immigration benefits, especially for tracking victims and victims of other violent crimes. You must interface with law enforcement. If you don’t do that, you can’t receive the benefit.

These stories come out, and our clients say, “There’s no way. There’s no way I’m talking to Homeland Security Investigations. There’s no way I’m talking to the FBI or the cops or anybody, because

people are being deported, because they don't have documentation. I need to support my family, that's why I came to this country and I cannot risk that. I will put up with whatever abuse I need to, to support my family." Because of this rhetoric, this anti-immigrant sentiment from the federal government our government is becoming part of this exploitation, because again, it is becoming a fulfillment of the threats of those who exploit disadvantaged workers.

Another example. In Denver, not just in Texas. Some interesting quotes from different sources that talk about how these news stories and this rhetoric affect the mentality of exploited workers. There have been reports of workers who experienced wage theft, and turned down the checks that were written and administered through the Department of Labor for the wage theft that they experienced, because they thought that somehow that would expose them to the risk of deportation.

Because of these efforts of the federal government, you are enabling and giving a competitive advantage to unscrupulous employers to exploit workers without consequence. Now, workers don't know where to turn, they don't know who to trust, and they're unable to find help, because of their fear of deportation.

Traditionally we have been involved in labor trafficking cases in the agricultural context, but over the last three years, I would say, most of my trafficking clients have been victims of sex trafficking. One of my clients, in the last few years, was from Mexico. She was recruited by a man from a certain area in Mexico who has a certain "MO." Where they go to rural towns, entice young girls with fancy cars, nice clothes, gifts, take them away from their home town, and then through various means of exploitation and coercion, get them to enter into prostitution.

In this particular case, the trafficker impregnated the client and then removed the child from her custody into a different city and used that point of pressure to keep her in a state of sexual bondage. She, before she prosecuted herself in Mexico City, was then convinced by her trafficker that: "If we went to New York City, you could do this for a less amount of time, make some more money, we can be a family, you're working for our son, for me, you won't have to do it very long." He smuggled her into the United States, where she was forced to prostitute herself in New York City, again with her son being that point of pressure that was used to keep her in the situation.

Finally, she decided that she had enough and she left and her first encounter after liberating herself from this situation is with local law

enforcement I would just like to know, from your thoughts, whether you plan on being prosecutors, civil attorneys, public interest attorneys, or just a citizen in general, what in your mind, from this fact pattern, would be the primary concerns in helping this woman?

Safety is obviously a huge concern. The main two concerns that we had beyond safety for this woman were her son and her status. When we come in contact with this woman, she's a victim of trafficking, and would be able to obtain a T-Visa for the abuse that she suffered. But, how do we then protect her in this precarious status of not having documentation? Of needing personal security? And needing to manage international law to the extent to find her son in Mexico and bring him to the United States, if he decides to stay here? It's a huge dilemma for us to know where do we turn? Who do we trust?

We are a small public interest law firm. For us to really ensure her personal safety, know what law enforcement agency we can turn to, and try to manage international law is a huge task, a huge challenge for us. We have to know what partners we can go to and who we can trust. Someone said healthcare, several people said healthcare. If you don't live in a state like New York, where maybe if you go to a public state-run hospital you do not have to worry about her immigration status being inquired upon, or reported, where do you turn? Where can you take her? These are huge risks that you have to consider when you're dealing with exploited individuals that are very complicated.

I think we are fortunate in this state to have some of the local protections that we do. But that's not the case everywhere. A little further on, I'd like to get into some of those differences in jurisdiction. But typically, the response to this public safety concern that sanctuary cities try to address, is that this is a simple law enforcement issue. These people are undocumented, they have violated the law, and deserve to be punished, deported, whatever. That also extends into this argument that undocumented immigrants are more prone to commit crimes generally. That's not true.

This juxtaposition of law enforcement, the rule of law versus public safety really is an interesting argument. In my opinion, because typically, first generation immigrants are less criminal, less prone to commit violent crimes, than the rest of us. Usually, in sanctuary cities, in most cases, you would find a lower level of violence in sanctuary cities than you would in similar size cities where not holding those sanctuary values as part of their jurisdiction. I think that's really important to realize, that these vulnerable populations



are not criminals because they do not have immigration documents.

All right, one of the things that has been talked about is the Executive Order that the Governor signed earlier this year. There have been other administrative actions as far back, that I know of, as 2011 where particularly the state troopers were ordered to not inquire for immigration status when they conduct traffic stops. Another, I guess small story is we've come across cases where these orders, these Executive decisions have not been followed by state police, for example. Again, that complicates the job that we're trying to do when we need law enforcement partners to help protect vulnerable clients to help them obtain immigration remedies or go through a criminal process when we can't ensure them that even though there are these Executive Orders out there, the state actors will always obey the orders that have been issued.

This has come up in the western part of the state in Geneseo, and in Rochester, in the past six months where state troopers not only are inquiring about immigration, but for some officers, they're default response to Spanish speakers is to call border patrol for interpretation services. Again, that creates huge complications when we're trying to find law enforcement agencies that follow the rules we need to involve in order to protect our clients. So, we had here in New York, we have cities like Albany that have declared that this is a value that they want to show, that they hold in this community, this sanctuary. We have Executive Orders from the Governor that says that state employees will not be concerned with immigration status.

There is still a crossroads because there are other local governments that are not in line with the Executive and with the City of Albany. We found out recently that the County of Albany, in Rensselaer, that they have applied for funds from the federal government to participate in this section 287(g) program, where they would receive funding and training from the federal government to essentially act as immigration officers. Again, that complicates our job when we are trying to find where we can go for help and assistance and cooperation when we have victims who need the help of law enforcement.

This is just a really small practical view of why the values of a sanctuary city or jurisdiction are important. Sometimes the choice is do you enforce immigration law or do you enforce labor law? There are a lot of crossroads here where the complicated issues have really long-lasting effects on exploited and vulnerable populations. It is important for us, in representing undocumented, in particular

undocumented workers, that we have law enforcement and government partners that we can turn to provide services to these individuals. As all of you mature in your careers and decide what you are going to do, I think it is a great example of how complicated these issues are. To really take into mind the long-term effects of these decisions and how we really want to treat the most vulnerable among us.

**Audience member:** [*Question about participating in the political process*].

**Jeremy Mclean:** There is always room for the public to participate in the political process. I think if you don't live in a sanctuary jurisdiction, there is a lot of lobbying and effort that can be done to encourage that those values are represented in the community. I think beyond politics, an agency like mine needs good partners. We need to know where we can turn to provide services to exploited individuals and we do turn to fake communities quite often to fulfill some of the things that we can't do. We are lawyers. We are not social workers, a lot of the time. And the needs that someone, especially victims of serious abuse, trafficking, a lot of times before you can address legal needs you really have to look to some of these social and health needs, whether that's physical health or mental health. That is where I think the community at large can really help and address some of these issues and needs where we're not equipped to do all of that, as attorneys.

### III. CLOSING REMARKS

**Professor Ayers:** Well, thank you so much. I feel lucky to have been here. We got to hear from Mayor Sheehan about the decision to become a sanctuary city, from Professor Torrey about what's involved in that process, and what's involved in the real world of sanctuary litigation. And from Professor Haynes about what is at stake and what could be inflicted on communities that make this jurisdiction and last about what it is like on the ground for people who are working, trying to advocate for the people who are most affected by these decisions. Thank you everyone so much for being here. Congratulations again to Oliva and the students of Albany Law Review for doing this. Thank you for allowing me moderate.