

SANCTUARY CITIES, IMMIGRATION REFORM AND POTENTIAL POLICY CHANGES IN THE CITY OF PHILADELPHIA

Abstract:

This article details the current Sanctuary City policy in Philadelphia, Pennsylvania and explains how this policy compares to those in other cities across America, drawing out the differences and outlining its shortfalls. The main focus of the article is why and how the policy became enacted, and includes suggestions on how to amend it. Additionally, evidence is presented to prove why an amendment is necessary and why it will help Philadelphia prosper in the future.

Sanctuary Cities and immigration reform are important topics in our political climate today because of the current, and future, impact that these policies have on all levels of government and on society. Being that Sanctuary Cities are a relatively new policy idea across the country, there is currently no single definition as it is defined differently depending upon the state, county, city or town that it is enacted in. As of 2012, there were an estimated 170,000 illegal immigrants living in Pennsylvania, which demonstrates a large increase from estimations taken in 2009.¹ This increase in Pennsylvania is reflective of a national trend of immigrant sprawl. Additionally because undocumented immigrants are located across the country, creating a national policy has become extremely complex. The lack of national, statewide or countywide policy has caused a number of issues in areas declared to be sanctuaries, including negatively impacting crime rates.

While crime rates in Philadelphia from 2014 (the year Philadelphia's Sanctuary City Policy was enacted) are unavailable, an increase is evident in undocumented immigrant crime rates in Philadelphia for 2012 and 2013. This increase provides further evidence of the need for an immediate policy reform concerning this issue. Although Philadelphia's general crime rate fell 26.6 points to 535.5 from 562.1 in 2012, these same crime rate statistics from 2013 indicated that out of the 78,022 primary-offense cases, 38.6% of them involved undocumented immigrants.² Further, 76% of these cases were immigration-related. Additionally, there were reportedly 22,878 drug-crime cases, of which 17.2% involved undocumented immigrants. Considering that these statistics were pulled from 2013 [prior to] Philadelphia's Sanctuary City Policy [which was created in 2014], these reports are indicative of the need to develop a policy to cut down

¹ Jeffrey S. Passel, "Chapter 1: State Unauthorized Immigrant Populations", Pew Research Center, <http://www.pewhispanic.org/2014/11/18/chapter-1-state-unauthorized-immigrant-populations/> (accessed October 5, 2015).

² City-Data "Crime rate in Philadelphia, Pennsylvania (PA): murders, rapes, robberies, assaults, burglaries, thefts, auto thefts, arson, law enforcement employees, police officers, crime map", <http://www.city-data.com/crime/crime-PhiladelphiaPennsylvania.html>

undocumented immigrant crime.³ Even though final crime statistics have not yet been published for 2014 and 2015, reports have indicated that the crime rate has increased in certain areas in 2015 thus far, most notably in respect to gun violence.⁴

This increase in crime can be attributed to two main factors. The first is that these undocumented immigrants are committing crimes, and while they are getting arrested and sometimes even incarcerated, they are not being deported by or reported to the federal government. This system is creating a very distinct divide and spurring further confusion for officials across the nation as to how to confront the growing problem of illegal immigrant crime. Specifically concerning Philadelphia, its executive order is a direct contradiction to the current federal policy of Immigration and Customs Enforcement (ICE) detainers. The second factor is that the immigration process is extremely long and inefficient, therefore deterring individuals from attempting to go through this arduous process and instead enter the country illegally. These problems are interrelated in that once the immigration process is reformed, arguably fewer immigrants will want to sneak across our borders and therefore a decrease in the undocumented immigrant population will amount to a decrease in illegal immigrant crime. However, the issue of undocumented immigrant crime is still one that is important to try to control today, while the federal government continues to attempt to resolve the lengthy timeline and problems that are involved in the process of becoming a citizen. These two issues have now come to the forefront in the political media and the 2016 Presidential election, further demonstrating that reform is needed.

In 2014, Philadelphia's Mayor Michael Nutter issued an executive order declaring Philadelphia a Sanctuary City. His order had two sections, the first of which states that "no person in the custody of the City who otherwise would be released from custody shall be detained pursuant to an ICE civil immigration detainer request pursuant to... nor shall notice of his or her pending release be provided, unless such person is being released after conviction for a first or second degree felony involving violence and the detainer is supported by a judicial warrant". The second states that, "the Police Commissioner, the Superintendent of Prisons and all other relevant officials of the City are hereby required to take appropriate action to implement this order".⁵ The specific problem with this executive order is that Philadelphia's police force will no longer be required to follow ICE detainers. An ICE detainer "is one of the key tools... [ICE] uses to apprehend individuals who come in contact with local and state law enforcement agencies and put them into the federal deportation system".⁶ Criterion for honoring a detainer is as follow: an individual must have "a prior conviction for a first or second degree felony offense involving violence and the detainer" must be "accompanied by a judicial arrest

³ Michelle Ye Hee Lee " 'Rapists?' Criminals? Checking Trump's Facts" Washington Post, http://www.philly.com/philly/news/politics/20150709__Rapists__Criminals__Checking__Trump_s_facts.html (accessed October 5, 2015).

⁴ Vernon Odom "Philadelphia Violent Crime Rate on the Rise" 6ABC, <http://6abc.com/news/philadelphia-violent-crime-rate-on-the-rise/927865/> (accessed October 5, 2015).

⁵ Philadelphia Government, "Executive Order No.1-14", Executive Orders, "<http://www.phila.gov/ExecutiveOrders/Executive%20Orders/EO%201-14.pdf> (accessed September 24, 2015).

⁶ ACLU, "Immigration Rights", ACLU, <https://www.aclu.org/issues/immigrants-rights/ice-and-border-patrol-abuses/immigration-detainers> (accessed October 5, 2015).

warrant. [The Executive] order also prohibits notice to ICE of the pending release of subjects of interest to ICE unless the above criteria is met".⁷ The limitations that the executive order puts on the police makes it nearly impossible for them to detain anyone of interest, making it extremely difficult to deport those who are repeatedly committing crimes and being released back into cities and states without notice. This becomes an even greater issue when the same person continues to break the law and get released back into society. When undocumented immigrants who have committed multiple crimes are going unreported in our cities and states, it is a clear act of negligence in a system that they know is working to protect them.

Prior to leaving office, former Mayor Nutter was in the news for admitting to wanting to pull back this specific executive order by changing the verbiage so that it fell in line with federal directives. However, Mayor-Elect Jim Kenney has gone on the record stating that if the Mayor were to overturn his own executive order, he would declare the same order himself to maintain Philadelphia's current policy.⁸ So what does this mean for Philadelphia? In the short term, the policy may change under Nutter, though Kenney certainly seems to have his own personal beliefs as to what the policy for the city should be. As we have seen nationwide, and in Philadelphia on a smaller scale, the problems with this policy are constantly evolving and so will the policies for resolving it. Before former Mayor Nutter's executive order, there was not much policy in place with regard to how to handle undocumented immigrant criminals within Philadelphia's city limits. Once the United States begins to get a firm grip, nationally, on handling the volume of immigration, undocumented immigrant crime will begin to dissolve in result. One concern that is relevant is the amount of time that it will take to reform the immigration system. The fact that it needs reformation is not the issue so much as how it can be done in a way that promotes immigration, without admitting terrorists and other nefarious individuals who are looking to gain citizenship for malicious reasons. In a world congested with terrorism and fear of post-911 attacks, it is certainly a main priority to sustain our freedom and equality without compromising our safety.

Further, it is crucial to develop an alternative to the City of Philadelphia's current executive order in order to have a safer community, while maintaining its' diversity. There are two alternative options to the current executive order that this analysis will be outlining. The first alternative would be to develop a new program that would allow people who are in the States illegally to enter into the immigration system to become an American citizen, after a probationary period. The second alternative would be to follow the federal government directive by eliminating the current executive order and strictly adhering to the ICE agency detainers via the federal government.

The first alternative could be called the Immigrant to Citizen Program (ICP). What this program would do is create a connected yet independent agency from the ICE agency that would be solely responsible for tracking and monitoring those undocumented immigrants who commit crimes. After an undocumented immigrant commits a crime, their name and fingerprints will be added to a database that is run and up-kept by the ICP. Once they are released from prison, or

⁷ Brian Griffith, "Map: Sanctuary Cities, Counties, and States", Center for Immigration Studies, <http://cis.org/sanctuary-cities-map> (accessed October 5, 2015).

⁸ Brian Hickey. "Kenney: If Nutter reverses 'sanctuary city' order, I'll flip it right back" Philly Voice <http://www.phillyvoice.com/kenney-if-nutter-reverses-sanctuary-city-order-ill-flip-it-right-back/> (accessed October 5, 2015).

police custody, depending on the situation, they will be given a probationary period set according to the severity of their crime. ICP personnel will continue to track and monitor these individuals using ankle bracelets and other probationary techniques until their probation period is up. At which point the individuals may then either apply to become a United States citizen via another new and unique branch that will be created for people currently in The United States, or they will be reported to the federal government and would then be deported immediately through an ICE detainer. The new branch responsible for those in the ICP who want to become citizens will work dependently as part of the ICE agency and could be called the Intranational Illegal Immigrant Agency (IIIA). This agency will work with illegal immigrants who are in America who have or have not committed crimes, in order to provide a reform to the current path to citizenship for all of the undocumented immigrants in the country.

In comparison to the current executive order, this alternative would cost sufficiently more time and money to accomplish the necessary goals. While it would create new jobs, it is going to cost money to start two new government agencies. That being said, this alternative will create a better sense of equality, equity and fairness, while still maintaining the same justice that is currently being served with the current ICE policy. By putting the option into the hands of the undocumented immigrant who committed the crime as to whether they would like to begin the citizenship process or be deported, the government is washing their hands of making the decision releasing them back into society to commit a crime again. It is also a way to develop the community to include those who eventually want to become contributing members of society.

In respect to funding, the best way to kick-start the program would be to reallocate funds currently designated for ICE detainees. If the program is successful and requires development and growth, a tax on the cities and states that utilize the federal agency most would be the most efficient way to grow funding to keep the agency in operation. Getting both sides of the argument to come together to support this idea will be difficult. The main concerns for approval will arise from those who typically lean to the right will be concerns over government expansion, more government spending for non-citizens, and time lapse. Growing the government's immigration program by adding more agencies will not be seen as a positive because governmental power will be transferred from smaller local governments to the larger federal government. That being said, the expansion, proponents can argue, is to the economy by providing more jobs, which those on the right consistently campaign on and therefore will most likely support. Government spending for non-citizens could be spun as a positive also, due to the fact that funds are being spent to limit crime and that taxes would only be increased if the program proves to be successful in its' first few years. Further, the spending could be looked at as a benefit for increasing our safety, and be presented as to whether or not it is possible to put a price tag on safety and National Security. The last concern to gain the rights support is that of time. This program implements a probationary period between the crime committed, and potential deportation but does not guarantee deportation, which they will find fault with. However, until a solution is permanently developed for illegal immigration, the country needs a plan to deal with the undocumented immigrant's who are already in America, which is exactly what the IIIA would be aiming to accomplish.

The potential tradeoff in adopting this alternative policy would be maintaining the current process, which has more gray area than this new proposed policy has. Since this alternative would strengthen the federal governments role in handling illegal immigrant crime in Philadelphia, the city government would be succeeding a certain amount of power to the federal

government, which, as previously stated, is never a popular policy. A benefit to this would be that the issue would not longer fall on the city to develop a policy that is specifically unique to Philadelphia's immigration problem. Illegal immigration is a national issue and Philadelphia is not a city that is bordering another country. So the fact that this issue is a pertinent problem in Philadelphia, and cities like it, speaks volumes to the scale of this problem on a national level. Therefore, it would be a benefit for the federal government to step in and develop this agency to facilitate the situation with undocumented immigrant crime and how it is handled. This type of uniformity would also be a good platform to push this idea to go national because the American public is more likely to vote for a solution that is uniformly resolved throughout the country, rather than differing policies dependant on the particular city and state. People may be less likely to vote for multiple, confusing pieces of legislation over one comprehensive, unified law.

The second alternative would be to follow the federal government directives by eliminating the current executive order. The current federal policy in regard to criminal undocumented immigrants is through the ICE agency. The ICE agency has prioritized their deportation into three different levels, which are distinguished from one another by the severity of crime and the level of harm they could inflict in American communities. Level 1 are people who have been convicted of "(1) an "aggravated felony," as defined in § 101(a)(43) of the Immigration and Nationality Act, or (2) two or more crimes each punishable by more than one year, commonly referred to as "felonies"[10]. Level 2 are "offenders are aliens convicted of any other felony or three or more crimes each punishable by less than one year, commonly referred to as "misdemeanors"". Level 3 are those undocumented immigrants who have been "convicted of "misdemeanor" crime(s) punishable by less than one year". The main difference in this alternative in comparison to the current policy and the first alternative would be the utilization of the ICE agency.⁹

Deportation is a very definitive response to this situation, however it is not be the most popular. Deporting these criminals will be the most cost efficient, because they will not have an opportunity to commit the same crime and once again take the tax payers money by going through our justice system. It is the most just, considering that they are not citizens of our county, and should not have the same rights as citizens do when they commit crimes. Though, it is not the most community driven since a large part of the community of the city are people who share a culture and ethnicity to these undocumented immigrants, which goes back to the socio-economic gap discussed earlier on. Practically speaking however, this is the most legal and linear way to handle this situation. There will be no confusion as to how future issues like this should be handled as this demonstrates an end all, clear cut solution that the city may continue to look to for guidance now and in the future.

An argument from the left will be that this policy has not been working since it has been introduced as federal policy, so clearly trying something new would be best. A counterargument to that would be that these types of policies take time to go into full effect, and that they need years to develop as the issues they seek to resolve are constantly evolving, as well. A second counter-argument that may arise is that will arise will be that we are pushing away people who

⁹ Department of Homeland Security "Immigration Enforcement." ICE Immigration Removals, <https://www.ice.gov> (accessed October 5, 2015).

need our help. The issue with this argument is that they need to be willing to help themselves before we are able to help them. It is clear to understand that people who break the law in our country are not here for a positive reason. However, there are most certainly people who are here for the right reasons, people who truly want a better life, but undocumented immigrants who continuously break the law are not helping anyone or society. A way that would gain the left's vote for this federal policy would be to pose this as a unified federal law with a sunset clause for re-evaluation after five years. In general, the left are advocates for a strong, central government that makes unified policies across the nation. Further, the sunset clause would allow the situation to develop over time due to shifts in the situation in the future. This also creates a window of opportunity to develop a better solution, one that they are more comfortable with, and one that is more evolved as the problem develops moving forward. Even without the sunset clause, gaining the left's support for this alternative will be extremely difficult specifically because the make up of Philadelphia. Politically speaking, Philadelphia is very left leaning. There will be little to no support from those who currently hold office in the city, and it will be very unpopular amongst citizens as well for the same reasons.

The potential tradeoffs to adopting this alternative policy would be alienating future generations of people from coming to America. By demonstrating zero tolerance for undocumented immigrant crime, Philadelphia's actions could be interpreted two ways. The first is that the city is cracking down on safety and leaving no room for error, which would be a good interpretation. However another interpretation of this policy's implementation could be that the city is attempting to limit the amount to diversity in the city by getting rid of undocumented immigrants who commit crimes. In response to this interpretation, there is potential backlash coming from those citizens who want to encourage diversity and opportunity in the city. A solution that will help resolve this issue will come from the knowledge that the policy that is being implemented will create a concrete answer for future generations, and it will promote legal immigration moving forward. This will then eventually perpetuate legal immigration in the city, and nationwide. Philadelphia will benefit from a clear-cut policy such as this, because the city will be projecting itself as one city that takes their citizen's safety seriously. Further, this argument is a hard one to cut down because few people would argue to make a city unsafe. Safety is an area that everyone from both sides of the aisle can agree on as being at the forefront of creating new policy alternatives.

A close analysis shows that the first alternative is the option that seems to incorporate the best of both sides of the aisle concerning this issue. Incorporated in this option is disciplinary measures, followed by a second chance via a probationary period, and finally either citizenship or deportation, leaving the option to the individual. The second alternative may be too polarized in favor of the right, even though it does fall in line with current federal policy. Philadelphia's executive order as it reads today, leaves too much grey area as to how many times these undocumented immigrants can break out law and be re-released onto the streets of the city. Additionally, the policy currently in place is not fair to the citizens of the city or the taxpayers putting some of these individuals into the prison system, no matter for how short a time, to punish or hold them for their crimes. Therefore, the first alternative to create a new agency seems to correct the executive order currently in place and has potential to gain support from both sides of the aisle.

The main problem that the city needs to concern itself with when looking to change the current executive order policy for Philadelphia as a Sanctuary City is the security and safety of

the city and those citizens living in it. The current executive order compromises public safety and the security of the city, and thus change is needed. Because the first alternative is more balanced, while increasing safety and security measures, it is a very practical solution to developing the policy. Looking to future generations, the city and nation, alike, want to ensure that different groups of people from different backgrounds will have an opportunity to grow together in harmony. While America will continue to welcome people from all over the world, there needs to be a line as to how many of our own values we are willing to compromise. Values of security and safety should never be compromised, and cities like Philadelphia need to keep that in mind when moving forward with their Sanctuary City policies.