



8 U.S.C. § 1373

An FAQ on the federal law regarding communication with federal immigration authorities.



1. What is 8 USC § 1373?

8 USC § 1373(a)¹ is a federal statute that prohibits local and state governments and agencies from enacting laws or policies that limit communication with Immigration & Customs Enforcement (ICE) or Customs and Border Protection (CBP)² about “information regarding the immigration or citizenship status” of individuals. The statute prohibits such policies, but does not contain any affirmative requirement for specific action. The full text of 8 USC § 1373 is attached in the Appendix.

2. How does 8 USC § 1373 affect local jurisdictions and policies?

- 8 USC § 1373 does not require any action from local or state agencies, officers, or governments. It does not compel compliance with ICE requests such as detainers or requests for notification of release dates. It only prohibits the enactment of certain policies about sharing immigration status information. It does not cover, include or mention information about criminal case information, custody status, or release dates of prisoners.³
- 8 USC § 1373 does not impose any affirmative obligation to share information or to collect information. It only prohibits limitations on sharing immigration status information.
- 8 USC § 1373 does not prohibit enactment of a local policy against informing ICE about the release dates of inmates from jail. Criminal case information, such as a person’s custody status or release date, is different from citizenship or immigration status, and is not mentioned in the statute at all.

3. Do Sanctuary Policies violate 8 USC § 1373 or other federal laws?

No, sanctuary policies are entirely consistent with federal laws.⁴ There are many varieties of local policies that might be considered “sanctuary policies.” 8 USC § 1373 only governs restrictions on communication with DHS about individuals’ citizenship or immigration status, not other policies limiting the expenditure of state and local resources on

¹ The same statutory language is also at 8 USC § 1644.

² Both ICE and CBP are agencies within the Department of Homeland Security.

³ See *Steinle v. City and County of San Francisco, et. al*, No. 3:16-cv-02859 (N.D. Cal. filed Jan. 6, 2017) (“[N]o plausible reading of [the statute] encompasses the release date of an undocumented inmate.”)

⁴ We are not aware of any ‘sanctuary’ policies that violate 8 USC § 1373 or other federal law.

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immigration enforcement or detention. Cities and counties around the country have policies against local officials questioning individuals about their immigration status; such rules do not conflict with 8 USC § 1373 because they do not address communication with ICE (or CBP). Even if a local policy does regulate communication of citizenship or immigration status information, it may still be lawful and consistent with federal law.⁵

Policies that limit or prohibit compliance with immigration holds and requests for notice of release dates do not violate 8 USC § 1373. Immigration detainers are civil, not criminal, and are explicitly not mandatory. Electing not to respond to them is entirely within the discretion of local law enforcement.⁶ Moreover, nothing in federal law requires localities to enforce immigration laws and regulations. To the contrary, immigration regulation and enforcement are federal functions.⁷

4. Can the federal government require local police or jails to help with immigration enforcement or comply with immigration detainers?

No. The Tenth Amendment precludes federal government from coercing state or local governments to use their resources to enforce federal laws or regulations, like immigration. Immigration holds and requests for notice of release dates are not mandatory, because forcing states or localities to assist in immigration enforcement, such as complying with ICE detainer requests, would violate the separation of powers between state and federal governments.⁸ Consequently, 8 USC § 1373 does not and could not require such assistance.

Removal proceedings to deport noncitizens from the U.S. is a civil – not a criminal – process. As such, local law enforcement officers do not have authority to arrest or detain noncitizens for civil violations of immigration law or hold them post-release pursuant to an ICE detainer. There is no violation of federal law in declining ICE detainers or refusing to provide immigration officials with release date information. Many federal courts have found local detention pursuant to an ICE detainer to be illegal.⁹

5. Can a city or county with a sanctuary policy certify to the federal government that it is in compliance with federal law?

⁵ *City of New York v. United States*, 971 F. Supp 789 (S.D.N.Y 1997), *aff'd*, 179 F.3d 29 (2d Cir. 1999) (observing that 8 USC § 1373 and 1644 might not survive a constitutional challenge in the context of general confidentiality policies necessary to municipal functions).

⁶ See *Galarza v. Szalczyk*, 745 F.3d 634, 645 (3d Cir. 2014).

⁷ See *Arizona v. United States*, 132 S.Ct. 2492 (2012).

⁸ See *Printz v. United States*, 521 U.S. 898, 923-24 (1997); *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014).

⁹ *Miranda-Olivares v. Clackamas County*, No. 3:12-cv-02317-ST, 2014 WL 1414305 (D.Or. April 11, 2014); *Jimenez-Moreno v. Napolitano*, No. 1:11-cv-05452, Docket Entry 230 at 16-17 (N.D. Ill. Sept. 30, 2016); *Morales v. Chadbourne*, 996 F. Supp. 2d 19 (D.R.I. 2014) *aff'd in part, dismissed in part*, 793 F.3d 208, 215-216 (1st Cir. 2015); *Mercado et al. v. Dallas County*, No. 3:15-CV-3481 (N.D.Tex filed Jan. 17, 2017).

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Yes. Unless the city or county restricts communication between local agencies and ICE (or CBP) about individuals' immigration or citizenship status, then 8 § USC 1373 does not apply. Federal law does not require any affirmative actions or assistance in enforcement of immigration law. Therefore, non-participation in immigration enforcement is a valid choice that does not violate federal law. Such policies do not affect a jurisdiction's certification of compliance with applicable federal laws as required for certain federal grants.

APPENDIX

8 U.S. Code § 1373 - Communication between government agencies and the Immigration and Naturalization Service

(a) In general

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) Additional authority of government entities

Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

- (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.
- (2) Maintaining such information.
- (3) Exchanging such information with any other Federal, State, or local government entity.

(c) Obligation to respond to inquiries

The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.

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