

Immigrant Confidentiality Policies

THE PROBLEM

Fear of disclosing immigration status deters many immigrant families from seeking health and public services, including police protection, benefits, and economic supports. These fears are understandably amplified during periods of increased anti-immigrant sentiment. Six years ago, for example, a public hospital employee in New York City reported an undocumented immigrant to federal authorities, resulting in immigrant families “cancel[ing] doctor appointments or not seek[ing] care in clinics”; the hospital system strengthened and reaffirmed its privacy policy in response.² More recently, the creation of a list of nearly 1,200 suspected undocumented immigrants by a government employee in Utah using the state’s Department of Workforce Service database garnered national attention and provoked renewed discussion regarding the protection of immigration status.³

A patchwork of federal laws governs when federal and state agencies may collect information about immigration status, and when or if they must share it.⁴ Two such laws, specifically pertaining to state and local governments’ ability to restrict the sharing of immigration-related information, bear mention here. In 1996, the federal government enacted the Welfare Reform Act and the Illegal Immigration Reform and Immigrant Responsibility Act, both of which contained provisions relating to state and local government communication with the then-Immigration and Naturalization Service (INS).⁵ Both were explicitly enacted to “prevent any State or local law, ordinance, executive order, policy, constitutional provision, or decision of any Federal or State court that prohibits or in any way restricts any communication between State and local officials and the INS.”⁶ However, cities like New York responded by enacting executive orders that cover the confidentiality of a broad range of private information—for example, sexual orientation, victim status, public benefits recipient, as well as immigration status.⁷

THE SOLUTION

Numerous jurisdictions around the country, including New



“If you say to people we’re not going to give you a zone of protection when you’re sick and seeking treatment in a hospital, in effect, we’re saying we’re going to put you at peril and you’ll be deported or expelled if you seek treatment.”

– former New York City Mayor **Rudolph Giuliani**, defending the city’s immigrant confidentiality policy.¹

York, NY; San Francisco, CA; Seattle, WA; Durham, NC; New Haven, CT; Takoma Park, MD; and, most recently, Suffolk County, Long Island, NY among others, have enacted policies to protect the confidentiality of information relating to immigration status.⁸

POLICY ISSUES

In general, immigrant confidentiality policies do one or both of the following: (1) they prohibit local government employees from *collecting* information about immigration status and/or (2) they prohibit or limit local government employees from *sharing* information about immigration status with federal authorities, except where required by law (for e.g. for benefits eligibility). A variety of mechanisms have been used to implement such policies, including city ordinances, resolutions, executive orders, and administrative directives.

GROUPS PROTECTED: As discussed above, it is wise for municipalities considering immigrant confidentiality policies to cover more than immigration status within the policy, such as sexual orientation, receipt of public benefits, crime victim status, information contained on tax returns, and status as a victim of domestic violence. Doing so can help to build a broader coalition in support of the confidentiality policy.

ADDITIONAL ELEMENTS OF THE POLICY: Municipalities can also consider including agency staff training requirements into their confidentiality policies, to ensure that city employees understand how to implement the policy, its interactions with other federal, state, and local laws, and the importance of the policy in promoting trust and inclusion of immigrant communities, among others. One innovative approach would focus on the city attorney's office and requiring that city law departments, in proceedings where the city is a party, oppose the efforts of other parties to discover the immigration status of complainants or witnesses, unless the issue is central to the dispute.⁹

LANDSCAPE AND RESOURCES

The **Center for Popular Democracy** has been supporting local campaigns on immigrant confidentiality, including an ongoing effort in **Aurora, CO** and the recently enacted policy in **Suffolk County, Long Island**, and can provide assistance on policy development, bill drafting, and campaign strategy.

NOTES

1. Speech of Rudolph W. Giuliani, "Personal Responsibility and Work Opportunity Reconciliation Act of 1996" (September 11, 1996), available at: www.nyc.gov/html/records/rwg/html/96/welfare.html.
2. Letter of Alan D. Aviles, President, New York City Health and Hospitals Corporation to All HHC Employees (May 18, 2006).
3. MSNBC, "Utah concludes state resources were used in immigrant list" (July 15, 2010), available at: http://www.msnbc.msn.com/id/38263433/ns/us_news-life/t/utah-concludes-state-resources-were-used-immigrant-list/#.UKMS1YfO2xU
4. For a helpful summary, please see: National Immigration Law Center, "Confidentiality, Verification, and Reporting: What happens to information that immigrants give to the government," in the Guide to Immigrant Eligibility for Federal Programs (4th ed. 2002).
5. 8 U.S.C. 1644.
6. H.R. Rep. No. 104-725, at 383 (1996).
7. City of N.Y. Exec. Order 34 (May 2003).
8. For a summary of these local immigrant confidentiality provisions, among other local efforts to promote immigrant inclusion, see Cristina M. Rodriguez, "The Significance of the Local in Immigration Enforcement," *Michigan Law Review*, vol. 106, p. 567 (2007-2008)
9. See: Model Bill: Immigrant Assistance in Crime Fighting, developed by Bernie Horn, Progressive Majority (bhorn@ourfuture.org).

Local Progress is a national municipal policy network of local elected officials and partners who want to create more just and equitable cities. Our purpose is to build a broad network to support and learn from each other, share best practices and policies, and develop strategies for advancing shared goals.

The **Center for Popular Democracy** promotes equity, opportunity, and a dynamic democracy in partnership with innovative community-based organizations, elected officials, local and state networks, and progressive unions across the country. We work with our allies to design, pass, and implement cutting-edge state and local policies that deliver tangible benefits for working families.