



**TESTIMONY
OF:**

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(by request)

Before the Maryland State Senate

Judicial Proceedings Committee

On February 21, 2017

Regarding:

Maryland Law Enforcement and Governmental Trust Act

(S.B. 835)

Introduction:

Esteemed Members of the Maryland Senate Committee on Judicial Proceedings, thank you for inviting me to testify on behalf of Dēmos. Dēmos is a national, nonpartisan, nonprofit public policy organization working so that everyone has an equal say in our democracy and an equal opportunity in our economy. Our name is the root word of democracy, and it means “the people.” I am a Senior Counsel at Dēmos and co-author of a report published on January 13 entitled “*Sanctuary, Safety and Community: Tools for Welcoming Immigrants through Local Democracy*,” which I have submitted for the record today.¹ Co-authored with LatinoJustice PRLDEF, our report details the legal support for sanctuary policies enacted by state and local governments to protect immigrant rights as well as the fundamental value of inclusive democracy, at the community level. Since we published our report, on January 25, President Trump issued a series of three anti-immigrant orders on January 25. His Executive Order on Interior Enforcement threatens that state and local police will be asked to help enforce federal civil immigration law, while also threatening to take away funding from jurisdictions that do not permit or otherwise constitutionally limit such cooperation. I believe that many provisions of that Executive Order will be unconstitutional in their application, and my annotations regarding the Executive Order are also submitted for the record of this hearing.² I also want to acknowledge the tremendous assistance of my colleague Allie Boldt in researching this complex area of law. Although understanding the new administration’s anti-immigrant policies is complicated, we all must be vigilant in protecting the most vulnerable persons in our nation during this time of crisis.

The complicated, cumulative impact of the Trump administration policies—which have been promulgated in only the last several weeks—includes constitutionally infirm anti-immigrant measures,³ aggressive immigration enforcement in Maryland,⁴ and a series of Executive Orders that threaten thousands of Maryland residents who are immigrants. Before things become even worse, the state legislature should support the Maryland Law Enforcement and Governmental Trust Act (“Trust Act”) and its model of limiting state and local involvement with federal immigration law enforcement.⁵ These steps are needed to protect Maryland’s more than 911,582 foreign-born residents, who comprise over 15% of the state’s population, and to protect the safety, educational opportunities and well-being of their families and communities.⁶

To provide you with information on the constitutional support for the Trust Act, first I will discuss constitutional authority for sanctuary laws under the Tenth Amendment of the U.S. Constitution. Second, I will review important due process considerations, and third, protections needed against racial profiling. Finally, I will go over equal protection and rights to freedom from discrimination in Maryland schools, and conclude with brief recommendations.

I. Constitutional Authority for the Trust Act under the Tenth Amendment:

Enacting legislation to resist commandeering of local resources for federal immigration enforcement is well within the authority of state and local governments under the Tenth Amendment of the U.S. Constitution. Further, threats to cut federal funding of “sanctuary jurisdictions” are overblown, as the Tenth Amendment of the U.S. Constitution and Supreme Court cases clearly provide the ability of state and local jurisdictions to refuse to be coerced in this manner. As discussed in depth in *Sanctuary, Safety and Community*, many components of sanctuary policies fall under the local “police powers” authority to ensure public safety and well-being in state and local communities. Other components are not only constitutionally permissible, but required to avoid liability for Due Process or Equal Protection violations.

Federal authorities cannot indiscriminately slash federal funding to jurisdictions that have enacted sanctuary policies, and conservative threats of defunding should be resisted. While the federal government can incentivize state and municipal governments to do what it wants them to by placing conditions on receipt of federal grants, the conditions cannot be so coercive that they commandeer states into doing whatever the federal government wants. This is backed by Supreme Court cases clearly holding that threatening withdrawal of federal funding is coercive and commandeering, in violation of the Tenth Amendment, unless the text of the law unambiguously made the grants conditional on a specific policy.⁷ Even conservative constitutional experts agree that:

The Supreme Court has long ruled that conditions on federal grants to state and local governments are not enforceable unless they are ‘unambiguously’ stated in the text of the law ‘so that States can knowingly decide whether to accept those funds.’ In ambiguous cases, courts must assume that state and local governments are not required to meet the conditions in question. In sum, the Trump administration can’t cut off any federal grants to sanctuary cities unless it can show that those grants were clearly conditioned on cooperation with federal deportation policies.⁸

In fact, the great majority of federal funding received by state and local jurisdictions (most of which are the form of Community Block Grants, education grants and justice programs grants) are not tied to federal immigration enforcement, and therefore should not be withheld. Moreover, the taxpayers of Maryland paid for these programs, and should not have that funding depend on cooperation with draconian and possibly unconstitutional federal immigration enforcement policies.

II. Fourth Amendment Considerations:

The Trust Act would reduce liability for violations of the Due Process clause of the Fourth Amendment of the U.S. Constitution, which are highly likely when state and local police participate in federal civil immigration enforcement. This is clearly demonstrated by the 2013 holding by the Fourth Circuit in the case of *Santos v. Frederick County*,⁹ which the Supreme Court declined to review in 2014, as well as a series of similar cases around the country. These cases are discussed at length in my sanctuary report. To summarize the relevant law: because being undocumented is a civil law violation, akin to failure to pay taxes, state and local police do not have the requisite probable cause of a criminal violation needed to stop, arrest or detain any person based on suspicion of unlawful immigration status or an ICE detainer request. Moreover, asking about immigration status is often accompanied by legally questionable racial profiling, which is illustrated by cases brought by Latino U.S. citizens and Legal Permanent Residents who have been held by local law enforcement based on suspicion of being undocumented. Additionally, local law enforcement sharing immigration status information with the federal government may also lead to liability for constitutional violations. These practices have typically sown fear among immigrant communities and led to decreased public safety.

The January 25 Executive Order on Interior Enforcement and other measures taken by the new federal administration increase these risks exponentially. The Executive Order's stated "Enforcement Priorities" includes anyone who is undocumented, effectively targeting all 11 million undocumented persons in our country.¹⁰ According to the text of the order, even Legal Permanent Residents and others with legal status may be targeted. Section 5 of President Trump's order "prioritizes" for removal those who have been adjudicated for removal under the appropriate sections of the Immigration and Nationality Act, "as well as removable aliens who:

- (a) Have been convicted of any criminal offense;
- (b) Have been charged with any criminal offense, where such charge has not been resolved;
- (c) Have committed acts that constitute a chargeable criminal offense;
- (d) Have engaged in fraud or willful misrepresentation in connection with any official matter or application before a government agency;
- (e) Have abused any program related to receipt of public benefits;
- (f) Are subject to a final order of removal, but who have not complied with their legal obligations to depart the United States; or
- (g) In the judgment of an immigration officer, otherwise pose a risk to public safety and national security."¹¹

Subsection (a) is problematic because many minor offenses are included in this category. Subsections (b) – (e) present due process issues as there is no requirement that the persons

targeted have been adjudicated of the listed characteristics making them removable. Subsection (f) is problematic because persons in this category have a right to certain defenses that include extreme hardship to U.S. family members, and asylum claims. Subsection (g) is problematic because of the wide discretion given to individual immigration officers to decide who “pose[s] a risk to public safety and national security.”¹² In addition, radically increased number of ICE officers and detention facilities, along with increased use of “expedited removal” and the cancellation of “catch and release,” means that undocumented people (and persons with legal status who committed a “chargeable offense,” “abused any program related to receipt of public benefits” or are allegedly a risk to public safety) will be detained and removed quickly under the new system.¹³ These are not empty threats. Among numerous credible reports, on February 16, the Washington Post summarized that:

The U.S. government said the series of ICE raids last week netted at least 683 “criminal aliens,” the first major immigration enforcement wave under President Trump. But a growing chorus of activists, lawyers and lawmakers have pointed to a sharp discrepancy between what ICE says it is doing and what immigrant families are seeing and reporting in cities across the nation.

In Chicago, a student called her high school teacher to tell him that ICE had raided her home the night before, arresting her father, an undocumented immigrant whose criminal record included only traffic violations, the teacher said. In Centreville, Va., a woman told officials at London Towne Elementary School that a student’s father had been arrested after dropping their son off at school that morning. *And in the Baltimore parking lot of a Walgreens, ICE agents arrested a barber and a local business owner who advocates said also had no criminal records.*¹⁴

Given these conditions, there is little doubt that most ICE detainer requests— or any new system used by the DHS to ask state and local institutions to identify and/or detain persons— is less likely to be based on probable cause of a criminal violation than before.

Furthermore, the consequences of cooperation with federal immigration enforcement are severe and detrimental to local public safety and well-being. Maryland families and communities will be ripped apart, unless proper legal guidance based on our nation’s constitution and other laws is issued so that state and local institutions can protect residents from the new administration’s draconian immigration enforcement policies.

In 2015, U.S. Census data showed that there were 911,582 foreign-born residents in Maryland, who comprise over 15% of the state’s population.¹⁵ Over 31% are Latino, 23% are black, 28%

are white, and 29% are Asian.¹⁶ Overall, Maryland's foreign-born residents are not only more racially diverse, they are also younger than the state's US-born population,¹⁷ so they represent an important part of the shared fate in the state's future. It goes without saying that immigrants are an integral part of Maryland's communities. The extremely fearful conditions they are now living under not only impact individuals who are immigrants, but also hundreds of thousands of Maryland family members, communities, schools, businesses and public institutions. Without protections from the state, their fear of state and local police being immigration enforcers is likely to have significant negative impacts on public safety.

III. Protections Against Racial Profiling:

The Trust Act is also needed to protect against the high risks of racial profiling when local law enforcement attempts to enforce federal civil immigration law. LatinoJustice PRLDEF's litigation against Frederick County, Maryland demonstrates that the risk of liability due to racial profiling runs high when local police cooperate with federal immigration enforcement.¹⁸ Frederick County had decided to enter into a "287(g) agreement" to assist the federal government in immigration enforcement, as provided by the relevant section of the Immigration and Nationality Act.¹⁹ Section 287(g) agreements have led to mistrust between local police and immigrant communities, and even decreased public safety.²⁰ Moreover, as documented in *Sanctuary, Safety and Community*:

The actions of local police in cooperating with immigration enforcement unfortunately mirror a nationwide "consistent pattern of racially disparate removals of noncitizens from the United States," with Latina/o individuals and families, including "mixed-status" families where some members may be U.S. citizens, bearing the brunt of removals.²¹

In Frederick County, Maryland:

In October 2008, Ms. Orellana Santos was sitting in a public area outside her workplace and without any justification whatsoever, except for her appearance as a Latina woman, however that's defined by county law enforcement, two officers began to interrogate her and demand identification.

They concluded that Orellana Santos had an outstanding warrant for removal and that's where her odyssey began. Forty-six days of detention followed her unjustified arrest. Forty-six days that she was unable to see her two-year old son.²²

In subsequent litigation, in *Santos v. Frederick County Board of Commissioners*, the County was enjoined from arresting anyone based on suspicion of civil immigration violations.²³

In a similar case brought by the ACLU, Ernesto Galarza, a United States citizen of Puerto Rican descent, was swept up in drug raids by Allentown, Pennsylvania police and was later found to be innocent of any charges. Because of his race, local police called ICE, which issued a detainer. In May 2014, a federal court of appeals found “that ICE detainers are merely requests, that Lehigh County was free to disregard the ICE detainer, and that it therefore shares in the responsibility for violating Galarza’s Fourth Amendment and due process rights.”²⁴

These cases reveal that the risk of racial profiling is high, and therefore prohibiting local government employees, including police, employment and housing authorities, from asking individuals about their immigration status, and shielding any immigration status information that the jurisdiction has collected, may be legally justifiable ways to protect against liability for racial profiling and other constitutional violations. These cases also show that there are good reasons why local jurisdictions should not enter into agreements with the federal government to assist in enforcing federal immigration law.²⁵

The Trump administration has not indicated that it will refrain from racial profiling in immigration enforcement, and President Trump’s rhetoric has indeed been racially-charged, xenophobic, and supportive of profiling immigrants. His Executive Order banning travel from seven countries that are predominantly Muslim shows that racial, religious, ethnic or national origin profiling is likely.²⁶ Furthermore, the language of the Interior Enforcement Executive Order indicates that local jurisdictions may be approached by the federal authorities in a heavy-handed way, seeking local collusion in immigration enforcement.²⁷ The federal government may also insist on using information from Maryland public institutions and jurisdictions about immigration status that can and should be shielded from federal authorities through the Maryland Trust Act.

Against the troubling backdrop of the Trump’s Administrations actions to date, New York Attorney General Eric Schneiderman released guidance to New York communities interested in enacting sanctuary policies. His guidance discusses the policies needed to protect against Fourth Amendment violations, citing the *Santos* case. It also discusses that local sanctuary policies may be fully compliant with 8 U.C.S. §1373, which prohibits some restrictions on state and local public employees who desire to exchange immigration status information with the federal government, and provides model policies that are quite similar to the Maryland Trust Act.²⁸

Although evidence that local law enforcement involvement in federal immigration enforcement is detrimental to community trust and safety has existed since well before 2014, the stakes are even higher today in light of the heightened hostility that immigrants face under President Trump. For these reasons, we strongly urge you to enact legislation clarifying that local agencies and officials who receive ICE detainer requests or similar documents should simply deny any request for detention or information that is not based upon probable cause of a criminal violation.

IV. Equal Protection and Rights to Freedom from Discrimination in Maryland Schools:

The Trust Act is also needed to protect immigrant families and others impacted by discrimination and hate speech in Maryland schools. The landmark 1982 *Plyer v. Doe* Supreme Court decision,²⁹ and the 2012 *Hispanic Interest Coalition of Alabama v. Alabama* decision by the 11th Circuit,³⁰ which the Supreme Court declined to review, demonstrate that protections are needed to provide for Equal Protection under the law in Maryland schools. If Maryland schoolchildren are subjected to the fear of immigration enforcement or disclosure of the family's immigration status, as they were in Alabama, they will experience legally questionable status-based discrimination in the learning environment. The privacy and safety of immigrant children must be protected in Maryland schools, and similar protections are needed in the college environment.

Since the election, there has been a troubling increase in hate crimes and hate speech, and the Southern Poverty Law Center, which is tracking such incidents, reports that the highest percentage have occurred in K-12 schools. My children are in Montgomery County schools, and like yours and everyone else's, they deserve better. School children and college students also need protections against any cooperation with federal civil immigration enforcement, along with assurances against sharing immigration status information. The educational environment will suffer without the protections of the Maryland Trust Act.

In Alabama, Latino enrollment and attendance plummeted during the time a state law was in force that required investigation of immigration status among public schoolchildren.³¹ After the anti-immigrant law that was eventually found to be unconstitutional was passed:

[A]t one elementary school where enrollment was 20% Latino, teachers "went into crisis management mode ... to help children who were crying and afraid ... A teacher in Birmingham described how she struggled to reassure one little girl, who wanted to go home immediately and check on her parents, despite the fact that her parents are legal permanent residents."³²

As we wrote in *Sanctuary, Safety and Community*:

“Similar stories are already being heard in the wake of the election of a president threatening mass deportations. With current threats, there are especially strong reasons justifying state and local educational policies that protect against disclosure of immigration status, and any form of immigration enforcement, at school.³³

Similar considerations also weigh in favor of policies protecting against immigration enforcement in colleges and universities. Many undocumented students arrived when they were children, through the agency of their parents, and to deprive them of access to higher education that they earned through the competitive admissions process would result in high costs to the students, their families, and the community. If comparable types of law enforcement are generally prohibited on campus, allowing *status-based* civil immigration law enforcement would potentially violate equal protection. State and local governments may thus also provide in-state tuition for undocumented students who otherwise meet in-state tuition residency requirements, a policy consistent with the equal protection principles articulated in *Plyler*.³⁴

Other types of protections for K-12 as well as college students include policies against hate speech and hate crimes, which have become even more necessary for immigrant students since the 2016 presidential election. Counseling and proactive community education are also needed in this environment. Of the 1,094 bias-related incidents reported in the month following the election, the largest number (226) was committed in K-12 schools.³⁵ The second highest number of incidents took place in businesses such as stores and restaurants (203) and the third highest (172) occurred on college and university campuses.³⁶ It is critical to remember that these incidents impact many people; they have been not only anti-Latino, but also anti-immigrant, anti-black, anti-Muslim, anti-women, anti-Semitic, anti-Asian, and anti-LGBTQ, and many included the use of swastikas.³⁷

It is undeniable that hate crimes and hate speech are forms of discrimination that impact and undermine the safety and security of the learning environment. This not only shows the need for policies to protect against hate crimes, but also adds to the reasons that policies prohibiting immigration enforcement at schools are urgently needed.³⁸ Were educational institutions to allow immigration enforcement, fear, harassment, and hate crimes would only increase. Considering that schools are a place of learning, the safety and emotional security of all students must be paramount.³⁹

V. Conclusions & Recommendations:

The U.S. Constitution supports the main provisions of the Maryland Trust Act. Maryland state and local police, benefits institutions, school systems and other institutions do not have to cooperate with abuse of federal power and draconian immigration enforcement measures. They may incur liability for constitutional violations if they do, and the Trust Act would help protect against such liability while also protecting Maryland communities and upholding the most important values in our democracy.

Please feel free to contact me us at Demos.org with any questions.

NOTE: The statements herein constitute testimony based upon our expertise on federal law and public policy, and do not constitute legal advice.

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¹ KATHERINE CULLITON-GONZALEZ & JOANNA E. CUEVAS INGRAM, SANCTUARY, SAFETY AND COMMUNITY – TOOLS FOR WELCOMING AND PROTECTING IMMIGRANTS THROUGH LOCAL DEMOCRACY, DEMOS & LATINO JUSTICE, 14-17 (JAN. 13, 2017), <http://www.demos.org/publication/sanctuary-safety-and-community-tools-welcoming-and-protecting-immigrants-through-local-d>. (citations omitted).

² KATHERINE CULLITON-GONZÁLEZ, TRUMP’S ALTERNATIVE FACTS CONTRADICTING THE RIGHTS OF SANCTUARY CITIES TO PROTECT AND WELCOME IMMIGRANTS 3-4 (Dēmos 2017)(annotations & original text of January 25 Executive Order entitled “Enhancing Public Safety in the Interior of the United States”).

³ See, e.g., *Washington v. Trump*, -- F. 3d. --, 2017 WL 526497 (9th Cir. 2017) (per curium) (holding that the federal government had failed to demonstrate likelihood of success on the merits on its claim that Executive Order No. 13769 issued on January 27, 2017, entitled “Protecting the Nation From Foreign Terrorist Entry Into the United States,” did not violate constitutional rights of immigrants); TRUMP’S ALTERNATIVE FACTS CONTRADICTING THE RIGHTS OF SANCTUARY CITIES TO PROTECT AND WELCOME IMMIGRANTS 3-4 (Dēmos 2017); Dan Levine & Kristina Cooke, *Mexican ‘DREAMer’ nabbed in immigrant crackdown*, REUTERS.COM (Feb. 15, 2017), <http://www.reuters.com/article/us-usa-trump-immigration-arrest-exclusiv-idUSKBN15T307>; Andrew Prokop, *Steve Bannon's longtime suspicion of successful immigrants is the key to this weekend's chaos*, VOX.COM (updated Jan. 29, 2017, 2:20pm), <http://www.vox.com/2017/1/29/14429984/trump-immigration-order-steve-bannon>.

⁴ See, e.g., Arelis R. Hernández, Wesley Lowery and Abigail Haslohner, *Federal Immigration Raids Net Many Without Criminal Records, Sowing Fear*, WASHINGTON POST (Feb. 16, 2017), https://www.washingtonpost.com/national/federal-immigration-raids-net-many-without-criminal-records-sowing-fear/2017/02/16/a37e5e76-f486-11e6-a9b0-ecee7ce475fc_story.html?utm_term=.2926b1ba76b7.

⁵ See S.B. 835 (“Maryland Law Enforcement and Governmental Trust Act”), available at <http://mgaleg.maryland.gov/2017RS/bills/sb/sb0835f.pdf>.

⁶ Migration Policy Institute, *State Immigration Profiles: Maryland*, <http://www.migrationpolicy.org/data/state-profiles/state/demographics/MD>.

⁷ SANCTUARY, SAFETY AND COMMUNITY, *supra* note 1, at 9-11, citing cases and other materials.

⁸ *Id.* at n. 56, citing Ilya Somin, *Federalism, the Constitution, and Sanctuary cities*, WASHINGTON POST (Nov. 26, 2016), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/11/26/federalism-the-constitution-and-sanctuary-cities/?utm_term=.887fb700b0b9.

⁹ Santos v. Frederick County Bd. of Commissioners, 725 F.3d 451 (4th Cir. 2013), *cert denied*, 134 S. Ct. 1541 (2014) (holding Frederick County liable for detentions based only on civil violations of immigration law).

¹⁰ This was confirmed earlier this week by Interim ICE Director Tom Homan, in a very brief meeting with Members of the Congressional Hispanic Caucus. See María Peña, Líderes del Caucus Hispano del Congreso Expulsados de Reunión con ICE, LA OPINIÓN (Feb. 16, 2017), <http://laopinion.com/2017/02/16/lideres-del-caucus-hispano-del-congreso-expulsados-de-reunion-con-ice/#>.

¹¹ See EXECUTIVE ORDER: ENHANCING PUBLIC SAFETY IN THE INTERIOR OF THE UNITED STATES, *supra* note 2 at §5.

¹² *Id.*

¹³ President Donald J. Trump, EXECUTIVE ORDER: BORDER SECURITY AND IMMIGRATION ENFORCEMENT IMPROVEMENTS (Jan. 25, 2017), *available at* <https://www.whitehouse.gov/the-press-office/2017/01/25/executive-order-border-security-and-immigration-enforcement-improvements>.

¹⁴ Arelis R. Hernández, Wesley Lowery & Abigail Haslohner, *Federal Immigration Raids Net Many Without Criminal Records, Sowing Fear*, WASHINGTON POST (Feb. 16, 2017), https://www.washingtonpost.com/national/federal-immigration-raids-net-many-without-criminal-records-sowing-fear/2017/02/16/a37e5e76-f486-11e6-a9b0-ecee7ce475fc_story.html?utm_term=.2926b1ba76b7 (emphasis added).

¹⁵ STATE IMMIGRATION DATA PROFILES: MARYLAND, MIGRATION POLICY INSTITUTE, *available at* <http://www.migrationpolicy.org/data/state-profiles/state/demographics/MD> (last accessed Feb. 18, 2017).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Santos, 725 F.3d at 465 (holding that “absent express direction or authorization by federal statute or federal officials, state and local law enforcement officers may not detain or arrest an individual solely based on known or suspected civil violations of federal immigration law.”).

¹⁹ See 8 U.S.C. § 1357(g)(1).

²⁰ See, e.g., *The 287(g) Program: A Flawed and Obsolete Method of Immigration Enforcement*, AMERICAN IMMIGRATION COUNCIL (Nov. 29, 2012), <https://www.americanimmigrationcouncil.org/research/287g-program-flawed-and-obsolete-method-immigration-enforcement>.

²¹ Kevin Johnson, *Doubling Down on Racial Discrimination: The Racially Disparate Impacts of Crime-Based Removals*, 66 CASE WESTERN RESERVE L. REV. 994, 1000-03, 1017 (2016) (the people most directly affected by the failure of comprehensive immigration reform and increased removals are noncitizens of color). This has an effect not only on a disparate number of undocumented Latinos, but also on Latino U.S. citizens, legal permanent residents and “mixed-status” families (families that include U.S. citizen, legal permanent resident and undocumented members); see Yolanda Vázquez, *Perpetuating the Marginalization of Latinos: A Collateral Consequence of the Incorporation of Immigration Law into the Criminal Justice System*, 54 HOW. L.J. 639, 668 (2011) (“Removal affects not only the individual removed, but also the families they leave behind. It is estimated that nearly 10% of families with children in the United States live in a ‘mixed status’ household ... From 1996 to 2007, it is estimated that 1.6 million families in the United States were separated in some form by removals. Involuntary and unexpected removal of a family member has particularly severe and long-lasting effects on the socioeconomic status and emotional well-being of a family.”) (internal footnotes omitted).

²² Juan Cartagena, *Eating While Brown*, HUFFINGTON POST (Aug. 14, 2013), http://www.huffingtonpost.com/juan-cartagena/eating-while-brown_b_3749943.html.

²³ Santos, 725 F.3d 451.

²⁴ The Third Circuit ultimately ruled that, under 8 C.F.R. § 287.7, “immigration detainers do not and cannot compel a state or local law enforcement agency to detain suspected aliens subject to removal.” Galarza, 745 F.3d at 636.

See also ACLU, *Galarza v. Svalzick* Case Page (updated June 14, 2014), <https://www.aclu.org/cases/immigrants-rights/galarza-v-szalczyk>.

²⁵ SANCTUARY, SAFETY AND COMMUNITY, *supra* note 1, at 15-16.

²⁶ See, e.g., Cecillia Wang, *Trump Banned Refugees on Holocaust Remembrance Day. That Says Everything*, THE GUARDIAN (Jan. 28, 2017), <https://www.theguardian.com/commentisfree/2017/jan/28/donald-trump-ban-refugees-holocaust-remembrance-day>.

²⁷ EXECUTIVE ORDER ON INTERIOR ENFORCEMENT, *supra* note 8, at §§1, 2(c) and 8.

²⁸ NEW YORK STATE ATTORNEY GENERAL ERIK T. SCHNEIDERMAN, GUIDANCE CONCERNING LOCAL AUTHORITY PARTICIPATION IN IMMIGRATION ENFORCEMENT AND MODEL SANCTUARY PROVISIONS (Jan. 19 2017), https://ag.ny.gov/sites/default/files/guidance.concerning.local_authority.participation.in_immigration.enforcement.1.19.17.pdf.

²⁹ *Plyler v. Doe*, 457 U.S. 202, 211-15 (1982).

³⁰ *Hispanic Interest Coalition of Alabama (HICA) v. Governor of Alabama*, 691 F.3d 1236, 1241 (11th Cir. 2012), *cert denied*, 133 S. Ct. 2022 (2013).

³¹ Human Rights Watch reported that, “[a]ccording to the State Department of Education, over 5,000 Hispanic children were absent at a point when normally about 1,000 absences could be expected. This is out of a total Hispanic school population in Alabama of about 31,000 students, including U.S. citizens.” *No Way to Live: Alabama’s Immigrant Law*, HUMAN RIGHTS WATCH, 2011, at 45.

³² *Id.* at 47.

³³ See, e.g., *AFT Pledges to Protect Undocumented Students and Educators*, AFT (Nov. 28, 2016), <http://www.aft.org/news/aft-pledges-protect-undocumented-students-and-educators>.

³⁴ See, e.g., Teresa Watanabe, *UC Won’t Assist Federal Agents in Immigration Actions Against Students*, L.A. TIMES (Nov. 30, 2016), <http://www.latimes.com/local/education/la-me-ln-ucundoc-student-protections-20161130-story.html>. In reviewing Alabama’s law, the Eleventh Circuit Court of Appeals noted that: “As the Supreme Court stated in *Plyler*, ‘Charging tuition to undocumented children constitutes a ludicrously ineffectual attempt to stem the tide of illegal immigration...’ (quotation marks and alteration omitted). *HICA v. Gov. of Alabama*, 691 F.3d at 1236.

³⁵ *Update: 1,064 Bias-Related Incidents in the Month Following the Election*, SOUTHERN POVERTY LAW CENTER (Dec. 16, 2016), <https://www.splcenter.org/hatewatch/2016/12/16/update-1094-bias-relatedincidents-month-following-election> (“Overall, anti-immigrant incidents (315) remain the most reported, followed by anti-black (221), anti-Muslim (112), and anti-LGBT (109). Anti-Trump incidents numbered 26 (6 of which were also anti-white in nature, with 2 non-Trump related anti-white incidents reported).”).

³⁶ *Id.*

³⁷ *Id.* (26 reported hate crimes were anti-Trump).

³⁸ See, e.g., *AFT Pledges to Protect Undocumented Students and Educators*, *supra* note 69.

³⁹ SANCTUARY, SAFETY AND COMMUNITY, *supra* note 1, at 20-21.