

Making a Statement

Mayor Libby Schaaf and the Sanctuary City of Oakland, CA

GAYLEN MOORE, CHRISTOPHER ROBICHAUD, JORRIT DE JONG, AND ANNA BURGESS

The day after the 2016 presidential election, Oakland Mayor Libby Schaaf ran into a young colleague who was a “Dreamer”—an undocumented United States resident who had arrived in the country as a child.ⁱ The colleague was one of hundreds of thousands of Dreamers who, since 2012, had enjoyed protected status under a policy enacted by President Barack Obama called Deferred Action for Childhood Arrivals (DACA), which allowed them to remain in the country, enroll in college, and obtain work permits. Donald Trump had just won the presidency on a platform that made cracking down on illegal immigration a national priority, and people across the country were grappling with the reality of what this election could mean for DACA recipients and other undocumented people living and working in the US. “This must be really hard on you and your family,” Schaaf recalled saying to the Dreamer about Trump’s election. “You must be so frightened.” But the woman shrugged off the suggestion: “It doesn’t really change anything,” she replied. “We’ve always been frightened.”¹

As of 2016, the Pew Research Center estimated there were roughly 10.7 million undocumented immigrants in the US—a number that had grown dramatically throughout the 1990s and early 2000s but declined slightly following the 2008 financial crisis.ⁱⁱ Eighty percent of undocumented immigrants were employed with over half working in agriculture and most others working in the construction, manufacturing, service, or transportation sectors. More than two-thirds of undocumented immigrants had been living, working, and studying in America for more than a decade.² In California, undocumented workers made up about 9 percent of the labor force.³ The fear of detainment and deportation that Schaaf’s colleague referenced was not limited to undocumented adults whose lives and livelihoods have become rooted in the US; roughly five million American-born children are US citizens with at least one undocumented parent at risk for deportation.⁴

In the City of Oakland, nearly 30 percent of residents are first-generation immigrants, and more than half of these are not naturalized citizens.⁵ “Oakland is a city that has always prided itself on its inclusive diversity,” said Mayor Schaaf. “We adopted sanctuary legislation very early on, decades ago.” She

ⁱ These individuals are known as “Dreamers” thanks to the Dream Act, a bipartisan bill, which was written by Senators Dick Durbin and Orrin Hatch and has been introduced in the Senate numerous times since 2001 but has never passed.

ⁱⁱ About one in ten undocumented immigrants enjoyed limited protections through DACA or Temporary Protected Status, which applies to some immigrants who entered the country seeking refuge from natural disasters or war in particular countries. (Source: <https://www.nytimes.com/2018/11/27/us/illegal-immigrants-population-study.html>)

anticipated, upon Trump's election, that her sanctuary city might find itself on a collision course with federal law enforcement, and that she might have to manage complex operational, legal, and moral dilemmas.

Sanctuary Cities and the Sanctuary Movement in the US

In 1982, Rev. John M. Fife, a Presbyterian minister in Tucson, Arizona, publicly declared his church a sanctuary for Central American refugees.⁶ Along with other faith leaders and humanitarians in the Southwest, Fife had begun sheltering immigrants unable to secure asylum in the US and helping them find work, enroll children in schools, and secure legal aid. "We'd take in people who had torture marks all over their body, and the immigration judge would order them deported the next day," Fife told a reporter for *The New York Times*. "Sometimes, you cannot love both God and the civil authority. Sometimes you have to make a choice."⁷ As others embraced this cause, refugees made their way north into other cities through a network of churches offering sanctuary. Some cities began referring to themselves as "sanctuary cities" and establishing policies that prohibited city police from asking arrestees about their immigration status or notifying the federal government of arrests of undocumented immigrants for nonviolent crimes.⁸

Immigration enforcement began stepping up towards the end of the George W. Bush administration in the late 2000s, and deportations hit record highs a few years later, during the first term of Barack Obama's presidency. For the next eight years, deportation rates remained relatively high despite a shift in policy that required immigration enforcement officials to focus on individuals with "serious" criminal convictions.ⁱⁱⁱ Police in a number of cities noticed that immigrant communities were increasingly reluctant to talk to them, making it difficult for the officers to do their jobs.⁹ By the 2016 election, most major California cities like Oakland had sanctuary city ordinances or de facto sanctuary policies in place—some of them decades old.¹⁰ During his presidential campaign, Trump criticized his political opponents for supporting policies associated with "sanctuary cities" (a term that has no established legal definition).¹¹ He highlighted stories of violent crimes committed by undocumented immigrants to suggest that these policies put the public at risk.¹²

When Trump won the presidency in 2016, there was unrest in Oakland. "People rioted," Schaaf said. "We had broken windows all over the City. There was quite a lot of emotion in the air." Feeling quite a lot of emotion herself, Schaaf published an op-ed in the *East Bay Express* the following week. It opened: "Donald Trump's election has felt like an assault on everything I believe in and everything Oakland stands for." She went on to assert, "We'll proudly stand as a sanctuary city—protecting our residents from what we deem unjust federal immigration laws—fight all forms of bigotry and advance our commitment to equity even more passionately."¹³

On January 25 2017, Trump signed an executive order stating, "the Attorney General and the Secretary. . .shall ensure that. . .(sanctuary jurisdictions) are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes," and promising to publish a list of criminal

ⁱⁱⁱ The policy also targeted individuals classified as national security threats or recent arrivals. See Haberman, "Sanctuary Cities."

actions by “aliens and any jurisdiction that ignored or otherwise failed to honor any detainers with respect to such aliens” in order “to better inform the public regarding the public safety threats associated with sanctuary jurisdictions.”¹⁴ (See Appendix 1.) In response, organizations representing mayors and police chiefs around the country voiced support for cities’ rights to establish or maintain policies that allowed them to engage with immigrant communities without undermining trust.¹⁵ (See Appendix 3.)

An Unpopular Action

In July of 2017, the Oakland City Council voted to rescind a cooperation agreement signed the previous summer with the Immigration and Customs Enforcement agency (ICE) that permitted Oakland police officers to act as customs enforcement officers in criminal investigations carried out by ICE.¹⁶ The very next month, Mayor Schaaf received a call from Oakland’s chief of police saying that Homeland Security Investigations (HSI), the criminal investigation arm of ICE, had an arrest warrant for a suspected human trafficker in West Oakland. HSI requested that city police supply traffic control support for its effort to execute the warrant. “While our policy would prohibit any communication or assistance between our officers and the ICE agents,” Schaaf explained, “this type of limited traffic control support to protect the safety of surrounding residents during this type of criminal enforcement action was consistent with our policies at the time.” Activists from an organization called By Any Means Necessary got news of the action and arrived on the scene, booing the officers, chanting “Shame!” and writing messages on the sidewalk supporting immigrants and criticizing city police.¹⁷ Two undocumented Guatemalan brothers were taken into custody, one of whom was detained and subjected to deportation proceedings. No human trafficking charges were filed.

“There was tremendous public outrage that the Oakland Police Department had assisted or been present in any way that could even give the appearance of condoning the action in West Oakland,” Schaaf said. Making matters worse, the police made several erroneous statements about the raid, first stating that the case involved sex trafficking (which, according to the mayor, was “a huge and pervasive problem in Oakland”) before correcting the record, and later claiming that the raid had resulted in at least one criminal charge.¹⁸ Reporter Bob Gammon from the *East Bay Express* pointed out that an extensive review of public documents showed that HSI had never successfully prosecuted a human trafficking case in Oakland. “If past federal cases are any indication,” he wrote, “the West Oakland case likely involves HSI, ICE, and the DOJ’s expanded meaning of ‘human trafficking,’ in which people who help immigrants get into the country or provide them with a place to work or live are considered ‘human traffickers.’”^{iv}

Around the same time, Schaaf became aware of well-publicized deportation proceedings for Maria Mendoza Sanchez and her husband Eusebio, a couple who had lived in the community for more than twenty years and were pursuing legal status with the Immigration and Naturalization Service. “She got educated, she became a highly skilled nurse in our public hospital working in the cardio and oncology

^{iv} The reporter noted that in one 2009 case, local business owners were convicted of harboring undocumented workers but were not shown to have either smuggled them into the country or forced them to work. (Source: <https://www.eastbayexpress.com/oakland/why-oakland-should-cut-off-ice/Content?oid=11028169>)

ward,” Schaaf said of Sanchez. “She and her husband owned a home. They had three American-born children. I mean, she is someone who played by the rules and never had broken the law.” Nevertheless, ICE moved forward with deportation. The loss of a valued community member and the separation of the couple from their college-aged children further inflamed tensions between the community and ICE.

A City Resolved, and a Rumor

The City’s Privacy Advisory Commission filed a complaint against the police chief with the Community Police Review Board regarding the ICE action in West Oakland. At a city council meeting in late November, the police chief defended the decision to provide the traffic detail, stating, “I specifically made an inquiry as to confirm that this was a criminal investigation, and did not have anything to do with deportation.”¹⁹ After ICE officials produced additional documentation of the criminal investigation, including showing the mayor and chief the sealed arrest warrant, Schaaf issued a statement supporting the chief: “After thorough discussions and review of the documents, I remain convinced that this operation was, and is, an ongoing criminal investigation aimed at preventing human trafficking in our city. . . . I stand with Chief Kirkpatrick and have full confidence in her now, just as I always have.”²⁰

But the report in the *East Bay Express* gave her pause, and her concern about how the community perceived the police’s participation in the HSI action convinced her that a policy change was called for. In the months after the raid, the mayor and her staff had met with a variety of community groups and immigrant rights advocates. Members of the Latino Network, a nonprofit advocacy group, shared stories of ICE agents using false pretenses to gain access to homes and fabricating criminal investigations in order to detain residents on civil immigration violations. Staff at Centro Legal de la Raza, Oakland’s primary deportation defense public interest firm, told the mayor of cases where ICE spread false rumors of raids that made undocumented workers afraid to show up to work and parents afraid to bring their children to school or medical appointments. Some residents had so much distrust and fear of ICE that they felt having Oakland police even provide traffic control, at a distance from ICE agents, conveyed implicit support of ICE actions, compromising their trust in Oakland’s police and government.

Adding to Schaaf’s growing concerns about overreach on the part of ICE under the Trump administration, were concerns about the president’s tendency to conflate undocumented immigrants and criminals.²¹ (Lacking legal status to be in the US is a civil violation, not a federal crime.²²) “I personally researched the question ‘do immigrants including undocumented immigrants commit more crime?’” Schaaf explained. “And I found several studies that documented that they actually commit fewer crimes than American-born citizens.” (See Appendix 1.) She added, “There was data that showed the percentage of deportations of people with no serious criminal conviction. The numbers skyrocketed right after the Trump administration [took office].”²³

Two city councilors called for a resolution barring cooperation with ICE by any city agency, and Schaaf came forward in favor of it. “I did not come to that without great thought,” she said, “because reducing crime is a tremendous priority for me, so it was with great analysis, including the analysis that the local

paper put forth—as well as really hearing the experiences of residents who had been impacted by these types of raids—that really brought me to support this stronger policy position.”

On January 16, 2018, the Oakland City Council unanimously approved the resolution. That same day, rumors had begun to circulate that ICE was planning to sweep through the Bay Area and make mass arrests.²⁴ “We’re very clear what our values are here in Oakland,” Schaaf told the press that day. “We are here to protect all of our residents, regardless of where they came from. We are here to ensure that people feel safe, that mothers can pick up the phone and call their local police department, dial 911 safely. . . .We are here to protect families, not rip them apart.”

The acting director of ICE had recently suggested that the US Justice Department should bring criminal charges against elected officials in sanctuary cities.²⁵ “The level of fear and anxiety in this community are at unconscionable levels,” the mayor stated, reminding members of the press that the City maintained a 24-7 rapid response helpline for immigrants seeking legal aid and timely information about their rights.²⁶ Asked by a reporter if she was willing to go to jail for defending Oakland’s right to be a sanctuary city, she answered with an unequivocal “yes.” Schaaf recalled with amusement, “I will admit that my husband did chastise me a little bit, saying, ‘Honey, I really don’t ask you to check in with me on much, but. . .’”

A Consequential Choice

During Schaaf’s meetings with community groups, members of the Latino Network had explicitly asked her to provide a public notice if she heard anything about impending ICE raids. Whether or not she could do so legally was uncertain. In mid-February, Schaaf received credible information through informal channels that ICE had an action planned. She immediately shared the information with the head of Centro Legal. Several days later, two additional credible tips reached the mayor. “At this point,” she said, “I felt a very high level of certainty that this was going to be a very significant raid with high numbers of people detained, and I felt a high level of certainty that it was in fact going to happen.” When Schaaf reached out to an organizer with a rapid-response network positioned deeply within immigrant communities, she was stunned to find that the organizer had not heard any of the information she had previously shared with the head of legal services. “I felt under a tremendous amount of time pressure to make a decision quickly because I knew that these raids were imminent.” The reports indicated the raid would begin within twenty-four to forty-eight hours. “I was concerned that many people did not know about their rights and the resources that were available in Oakland,” she said.

With the clock ticking, Schaaf got on a conference call with the legal services director as well as the organizer who asked to include two of her community leaders: a Catholic priest with a predominantly immigrant congregation, and another member of the Catholic diocese who was part of the network. The head of legal services advised strongly against the mayor making any kind of public statement, worried that this was a false rumor intended to spread fear or incite panic. “But other people on the call had other perspectives,” said Schaaf. “I certainly remember the priest saying to me, ‘Mayor, if you learned that your warning could have kept a family together, how could you live with yourself?’” She also recalled him telling her, “Every time I ask people if they know about the rapid response and legal

resources, they don't." The mayor was torn. "I did not have a lot of time to get a lot of legal advice," she said, but she knew she had to make a decision quickly.

Appendices

Appendix 1 Sections from Executive Order 13768

January 25, 2017

Enhancing Public Safety in the Interior of the United States

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Immigration and Nationality Act (INA) ([8 U.S.C. 1101](#) *et seq.*), and in order to ensure the public safety of the American people in communities across the United States as well as to ensure that our Nation's immigration laws are faithfully executed, I hereby declare the policy of the executive branch to be, and order, as follows:

Section 1. Purpose. Interior enforcement of our Nation's immigration laws is critically important to the national security and public safety of the United States. Many aliens who illegally enter the United States and those who overstay or otherwise violate the terms of their visas present a significant threat to national security and public safety. This is particularly so for aliens who engage in criminal conduct in the United States.

Sanctuary jurisdictions across the United States willfully violate Federal law in an attempt to shield aliens from removal from the United States. These jurisdictions have caused immeasurable harm to the American people and to the very fabric of our Republic.

Tens of thousands of removable aliens have been released into communities across the country, solely because their home countries refuse to accept their repatriation. Many of these aliens are criminals who have served time in our Federal, State, and local jails. The presence of such individuals in the United States, and the practices of foreign nations that refuse the repatriation of their nationals, are contrary to the national interest.

Although Federal immigration law provides a framework for Federal-State partnerships in enforcing our immigration laws to ensure the removal of aliens who have no right to be in the United States, the Federal Government has failed to discharge this basic sovereign responsibility. We cannot faithfully execute the immigration laws of the United States if we exempt classes or categories of removable aliens from potential enforcement. The purpose of this order is to direct executive departments and agencies (agencies) to employ all lawful means to enforce the immigration laws of the United States.

Sec. 2. Policy. It is the policy of the executive branch to:

- (a) Ensure the faithful execution of the immigration laws of the United States, including the INA, against all removable aliens, consistent with Article II, Section 3 of the United States Constitution and section 3331 of title 5, United States Code;
- (b) Make use of all available systems and resources to ensure the efficient and faithful execution of the immigration laws of the United States;
- (c) Ensure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law;
- (d) Ensure that aliens ordered removed from the United States are promptly removed; and
- (e) Support victims, and the families of victims, of crimes committed by removable aliens.

Sec. 8. *Federal-State Agreements.* It is the policy of the executive branch to empower State and local law enforcement agencies across the country to perform the functions of an immigration officer in the interior of the United States to the maximum extent permitted by law.

(a) In furtherance of this policy, the Secretary shall immediately take appropriate action to engage with the Governors of the States, as well as local officials, for the purpose of preparing to enter into agreements under section 287(g) of the INA ([8 U.S.C. 1357\(g\)](#)).

(b) To the extent permitted by law and with the consent of State or local officials, as appropriate, the Secretary shall take appropriate action, through agreements under section 287(g) of the INA, or otherwise, to authorize State and local law enforcement officials, as the Secretary determines are qualified and appropriate, to perform the functions of immigration officers in relation to the investigation, apprehension, or detention of aliens in the United States under the direction and the supervision of the Secretary. Such authorization shall be in addition to, rather than in place of, Federal performance of these duties.

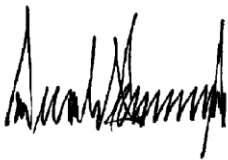
(c) To the extent permitted by law, the Secretary may structure each agreement under section 287(g) of the INA in a manner that provides the most effective model for enforcing Federal immigration laws for that jurisdiction.

Sec. 9. *Sanctuary Jurisdictions.* It is the policy of the executive branch to ensure, to the fullest extent of the law, that a State, or a political subdivision of a State, shall comply with [8 U.S.C. 1373](#).

(a) In furtherance of this policy, the Attorney General and the Secretary, in their discretion and to the extent consistent with law, shall ensure that jurisdictions that willfully refuse to comply with [8 U.S.C. 1373](#) (sanctuary jurisdictions) are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary. The Secretary has the authority to designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction. The Attorney General shall take appropriate enforcement action against any entity that violates [8 U.S.C. 1373](#), or which has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law.

(b) To better inform the public regarding the public safety threats associated with sanctuary jurisdictions, the Secretary shall utilize the Declined Detainer Outcome Report or its equivalent and, on a weekly basis, make public a comprehensive list of criminal actions committed by aliens and any jurisdiction that ignored or otherwise failed to honor any detainers with respect to such aliens.

(c) The Director of the Office of Management and Budget is directed to obtain and provide relevant and responsive information on all Federal grant money that currently is received by any sanctuary jurisdiction.

A handwritten signature in black ink, appearing to be a stylized name with a long horizontal stroke at the end.

Appendix 2 Joint statement by US Conference of Mayors and Major Cities Chiefs Association

January 25, 2017

U.S. MAYORS, POLICE CHIEFS CONCERNED WITH SANCTUARY CITIES EXECUTIVE ORDER

Washington, D.C. – The following joint statement was issued today by U.S. Conference of Mayors CEO & Executive Director Tom Cochran and Major Cities Chiefs Association President and Montgomery County, MD Chief of Police J. Thomas Manger regarding President Trump’s Executive Order, *Enhancing Public Safety in the Interior of the United States*:

“Mayors and police chiefs are committed to ensuring that criminals, regardless of their immigration status, are arrested and properly adjudicated by the criminal justice system. Our police departments regularly work in cooperation with federal authorities in a variety of enforcement activities.

“Both Mayors and Chiefs of Police have taken a solemn oath to uphold the law and defend the Constitution. True to our oath, we have questions and concerns about the measures announced today. For example, the U.S. Supreme Court has held that denying federal funds to cities to coerce compliance with federal policies may be unconstitutional. Federal courts have likewise held that the ICE detainers referenced today do not provide sufficient legal justification for detention, arrest and incarceration by local officers. We call upon the Attorney General to meet with mayors and police chiefs for a constructive legal dialog.

“Cities that aim to build trusting and supportive relations with immigrant communities should not be punished because this is essential to reducing crime and helping victims, both stated goals of the new Administration in Washington. We must be able to continue to protect the safety of all of our residents while ensuring that local law enforcement is focused on community policing.

“The U.S. Conference of Mayors and the Major Cities Chiefs Association have, therefore, come together to register our strong reservations with provisions to withhold federal funds in the Executive Order, *Enhancing Public Safety in the Interior of the United States*, issued today.

“That order does not provide a clear definition of what constitutes a sanctuary jurisdiction. Instead, it gives undefined discretion to the Secretary of Homeland Security to designate sanctuary jurisdictions and the Attorney General to take action against them. We call upon the Secretary of Homeland Security to document and promulgate a lawful definition before further actions are taken, so the cities across the Nation may determine how to proceed.

“While the Executive Order initially defines a sanctuary jurisdiction as one that willfully does not comply with §1373 (a federal law which prohibits local and state governments from enacting laws or policies that limit communication regarding an individual’s immigration status with the Department of Homeland Security), it also describes a sanctuary jurisdiction as one that has in effect a statute, policy or practice that prevents or hinders enforcement of federal law – a definition open to broad interpretation. While the provisions of § 1373 have been enacted by Congress, the latter description has not.

“Local police departments work hard to build and preserve trust with all of the communities they serve, including immigrant communities. Immigrants residing in our cities must be able to trust the police and all of city government.

“We look forward to bringing mayors and police chiefs together with the Secretary of Homeland Security and the Attorney General to discuss these issues and develop an approach to immigration enforcement that does not interfere with strong police-community relations or place inappropriate burdens on local police officers, and upholds our nation’s immigration laws.”

About The United States Conference of Mayors: The U.S. Conference of Mayors is the official nonpartisan organization of cities with populations of 30,000 or more. There are 1,400 such cities in the country today, and each city is represented in the Conference by its chief elected official, the mayor. Like us on Facebook at [facebook.com/usmayors](https://www.facebook.com/usmayors), or follow us on Twitter at twitter.com/usmayors.

About the Major Cities Chiefs Association: The Major Cities Chiefs Association (MCCA) is a professional organization of police executives representing the largest cities in the United States and Canada. The MCCA provides a unique forum for urban police, sheriffs and other law enforcement chief executives to discuss common problems and share information and problem-solving strategies. MCCA articulates the public safety needs of large cities in the formulation of criminal justice policy.

Source: https://www.majorcitieschiefs.com/pdf/news/mcca_mayors_pr_on_eo_12517.pdf

Appendix 3 Evidence on Crime Rates in Immigrant Populations

From “Does Undocumented Immigration Increase Violent Crime?” by Michael T. Light and Ty Miller²⁷

Despite substantial public, political, and scholarly attention to the issue of immigration and crime, we know little about the criminological consequences of undocumented immigration. As a result, fundamental questions about whether undocumented immigration increases violent crime remain unanswered. In an attempt to address this gap, we combine newly developed estimates of the unauthorized population with multiple data sources to capture the criminal, socioeconomic, and demographic context of all 50 states and Washington, DC, from 1990 to 2014 to provide the first longitudinal analysis of the macro-level relationship between undocumented immigration and violence. The results from fixed-effects regression models reveal that undocumented immigration does not increase violence. Rather, the relationship between undocumented immigration and violent crime is generally negative, although not significant in all specifications. Using supplemental models of victimization data and instrumental variable methods, we find little evidence that these results are due to decreased reporting or selective migration to avoid crime. We consider the theoretical and policy implications of these findings against the backdrop of the dramatic increase in immigration enforcement in recent decades.

From “The Trump Hypothesis: Testing Immigrant Populations as a Determinant of Violent and Drug-Related Crime in the United States” by David Green²⁸

Objectives. To test the “Trump Hypothesis”: whether immigrants are responsible for higher levels of violent and drug-related crime in the United States, as asserted by Donald Trump in his 2015 presidential campaign announcement. This is achieved using recent crime and immigration data, thus testing the common public perception linking immigrants to crime, and providing an updated assessment of the immigrant-crime nexus. *Methods.* Rates of violent crime and drug arrests by state are pooled for 2012-2014. These are compared against pooled statistics on foreign-born and Mexican nationals living in the United States, as well as estimates of undocumented foreign and undocumented Mexican population by state. The data are analyzed using correlation and multivariate regressions. *Results.* Data uniformly show no association between immigrant population size and increased violent crime. However, there seems to be a small but significant association between immigrant populations and drug-related arrests. *Conclusions.* Results largely contradict the Trump Hypothesis: No evidence links Mexican or undocumented Mexican immigrants specifically to violent or drug-related crime. Undocumented immigrant association with drug-related crime are minimal but significant. The Trump Hypothesis consequently appears to be biased toward rhetoric rather than evidence.

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Endnotes

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