



Cities Under Siege

Understanding the Federal Impact on Cities and Other Local Agencies

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**The opinions expressed in this presentation do not represent those of the Seattle City Attorney's Office. This presentation is not legal advice.*

Immigration Considerations

Washington Context

According to a Pew Research Center analysis of Census Bureau data:

1. About 325,000 residents in Washington were undocumented as of 2022, about 4.2% of the state's population and about 26% of its immigrants
2. That percentage is above the national figure of 3.3% of the total US population
3. At 34%, Mexico is the country with the most undocumented immigrants in the state
4. About 200,00 households in WA have at least one undocumented immigrant, which is 6.4% of all households in the state
5. More than one out of ten K-12 students in WA have at least one parent who is undocumented

Executive Orders

Protecting the Meaning and Value of American Citizenship

- Limits birthright citizenship – to acquire U.S. citizenship automatically, children born on or after February 19, 2025, in the U.S. must have at least one parent who is a Legal Permanent Resident (green card holder) or a U.S. citizen
- Potential Impact:
 - If both parents are unlawfully present in the U.S. or are on temporary visas or are in the U.S. under the Visa Waiver Program, their children, born on or after February 19, 2025, would not acquire U.S. citizenship. These children may have to apply for a dependent visa, based on their parents' visas and nonimmigrant status. USCIS will have to provide direction on how to determine the child's nationality and their country of birth/country of chargeability for immigrant visa purposes.
 - Temporary visas include: B-1, B-2, E-2, H-1B, J-1, L-1, O-1, TN, and their corresponding dependent visas.

Executive Orders, cont'd

Executive Order Protecting the American People Against Invasion

- DHS is to set new enforcement policies to address illegal entry, unlawful presence, and removal of those unlawfully present in the U.S. and expand the use of expedited removal
- The Secretary of State, the Attorney General, and DHS are to limit humanitarian parole, designations of Temporary Protected Status (TPS), and employment authorization.
- Undocumented aliens must register their presence. Failure to comply is to be treated as a civil and criminal enforcement priority.
- “Sanctuary” jurisdictions that interfere with federal enforcement operations will be denied access to federal funds.
- DHS may authorize state and local law enforcement officials to investigate, apprehend, and detain aliens.

Executive Orders, cont'd

- Revokes Biden-era EOs, related to [Civil Immigration Enforcement Policies](#), [Migration and Asylum Seekers](#), [Reunification of Families](#), and [Immigration Policies Impeding Legal Immigration](#). All agencies are to revoke guidance or policies that were issued based on the Executive Orders.
- Potential Impact:
 - TPS and Employment Authorization Documents (EADs) based on TPS will likely not be extended. USCIS is not likely to issue policies allowing for automatic extensions of EADs for TPS beneficiaries.
 - If DHS delegates its authority to state and local law enforcement to enforce immigration laws, there is a higher likelihood of foreign nationals being asked about their immigration status. Foreign nationals should have their immigration documents evidencing their lawful status readily available.

Executive Orders, cont'd

Initial Rescissions of Harmful Executive Orders and Actions

This Executive Order rescinded 78 executive orders and presidential memoranda signed by former President Biden, including:

- [Executive Order 13993](#), Revision of Civil Immigration Enforcement Policies and Priorities
- [Executive Order 14010](#), Creating a Comprehensive Regional Framework To Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border
- [Executive Order 14011](#), Establishment of Interagency Task Force on the Reunification of Families
- [Executive Order 14012](#), Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans
- [Executive Order 14013](#), Rebuilding and Enhancing Programs to Resettle Refugees and Planning for the Impact of Climate Change on Migration

8 U.S.C. § 1373 and Local Government

8 U.S.C. § 1373 forbids prohibiting, or in any way restricting, any government entity or official from communicating with the INS about the citizenship or immigration status.

1. **Does not *require* an agency to share information** about anyone's citizenship or immigration status with federal authorities
2. **Does not require an agency *to collect* information** about citizenship or immigration status
3. **Applies only to the sharing of information about citizenship or immigration status.** It does not prohibit agencies from adopting a privacy policy of non-disclosure of *other types of information* to federal immigration authorities.
 - K-12 schools are generally prohibited from releasing student information or records to other entities, including the federal government, without a warrant (FERPA).

“Sensitive Locations” Policy

Under a 2011 Department of Homeland Security memorandum, federal immigration enforcement operations were not supposed to occur at schools or other “sensitive locations.”

- Trump has signed an Executive Order retracting the sensitive locations policy
- Arrests now allowed at sensitive locations such as churches and schools
- Arrest warrants still required

Responding to Federal Immigration Authorities

Important considerations:

- Privacy laws may prohibit local governments from providing information in response to requests from federal immigration authorities.
- Local agencies should be familiar with applicable provisions in the Public Records Act that exempt personal information from disclosure.
- Verify the requester's identity; requiring verification of the requester's role and identity does not violate 8 U.S.C. § 1373.
- Whether you are required to comply with a demand from federal immigration authorities will depend on the circumstances, and you should consult an attorney.

ICE's Right to Enter Premises and Schools

In general, federal immigration authorities can enter the public areas of a business or other building or facility. Immigration and Customs Enforcement (ICE) must have a warrant signed by a judge to enter non-public areas.

- ICE routinely presents Department of Homeland Security Forms I-200 and I-205 entitled “warrant for arrest” or “warrant of removal/deportation”, or ICE detainer form 247A.
 - These do not comply with the warrant requirement for a permissible search of nonpublic areas under the Fourth Amendment.

ICE Warrants vs. Judicial Warrants

U.S. DEPARTMENT OF HOMELAND SECURITY Warrant for Arrest of Alien

File No. _____

Date: _____

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations

I have determined that there is probable cause to believe that _____ is removable from the United States. This determination is based upon:

- ☐ the execution of a charging document to initiate removal proceedings against the subject;
- ☐ the pendency of ongoing removal proceedings against the subject;
- ☐ the failure to establish admissibility subsequent to deferred inspection;
- ☐ biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- ☐ statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

(Signature of Authorized Immigration Officer)

(Printed Name and Title of Authorized Immigration Officer)

Certificate of Service

I hereby certify that the Warrant for Arrest of Alien was served by me at _____ (Location)

on _____ (Name of Alien) on _____ (Date of Service), and the contents of this notice were read to him or her in the _____ (Language) language.

Name and Signature of Officer

Name or Number of Interpreter (if applicable)

Form I-200 (Rev. 09/16)

Source: [ICE.gov](https://ice.dhs.gov)

AO 93 (Rev. 11/13) Search and Seizure Warrant

UNITED STATES DISTRICT COURT

for the _____

In the Matter of the Search of _____)
(Briefly describe the property to be searched)
or identify the person by name and address) Case No. _____)

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the _____ District of _____
(identify the person or describe the property to be searched and give its location):

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property described above, and that such search will reveal (identify the person or describe the property to be seized):

YOU ARE COMMANDED to execute this warrant on or before _____ (not to exceed 14 days)
☐ in the daytime 6:00 a.m. to 10:00 p.m. ☐ at any time in the day or night because good cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to _____
(United States Magistrate Judge)

☐ Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized (check the appropriate box)
☐ for _____ days (not to exceed 30) ☐ until, the facts justifying, the later specific date of _____

Date and time issued: _____ Judge's signature _____

City and state: _____ Printed name and title _____

Source: [USCourts.gov](https://uscourts.gov)

Staff should be trained to identify the difference so they can respond appropriately should immigration officers come to their offices.

Keep Washington Working Act

Passed in 2019, during the first Trump presidency, the Keep Washington Working Act modified several RCWs with the stated purpose of ensuring that the state of Washington “remains a place where the rights and dignity of all residents are maintained and protected in order to keep Washington working.”

- 1. Reinforces that state and local law enforcement do not have the primary purpose of enforcing civil federal immigration law**
- 2. Establishes that a person’s immigration status, presence in the country or employment alone is not a matter of police action**
- 3. Acknowledges the contributions of immigrants in sectors such as agriculture, food processing, construction and healthcare, and that the priority of the state is to maintain the rights and dignity of residents to ensure they can keep working**

Courts

- Washington law prohibits most arrests pursuant to administrative warrants in courthouses.
- RCW 2.28.330 provides that “No person is subject to civil arrest while going to, remaining at, or returning from, a court facility” with certain exceptions:
 - a) Where such arrest is pursuant to a court order authorizing the arrest;
 - b) When necessary to secure the immediate safety of judges, court staff, or the public; or
 - c) Where circumstances otherwise permit warrantless arrest
- The law creates a 1 mile protective zone around courthouses against civil arrests (“‘going to’ and ‘returning from’ includes the area within one mile of the court facility.”)
- It applies to superior courts as well as courts of limited jurisdiction (district and municipal courts).

Jails

- Jails should continue to not honor ICE detainers;
 - Multiple federal courts have ruled that a state or local jurisdiction's compliance with immigration detainers, in the absence of a warrant or an independent basis for detention (probable cause of crime), violates the Fourth Amendment to the U.S. Constitution and could subject the state or local jurisdiction to civil liability for the resulting harm.
- Many jails have courtrooms in them. Individuals in pre-trial custody are there only for the purpose of going to court—the RCW related to individuals going to and coming from court may have implications for ICE officers seeking to enforce detainers in jail.
- To the extent that areas of the jail are open to the public, immigration officers can enter those areas.

Public Entity Offices Open to Public

- Because these offices are open to the public, there is no basis to exclude ICE officers.

Practical Suggestions:

- Public-facing offices should have designated staff to be alerted in the event that ICE is present in the office.
- Offices should also have policies articulating if/when they will consent to ICE entering non-public areas.
- Public entities should maximize the individual's ability to engage with the public entity via remote mechanisms.

Note: the legislation related to courts creates a one-mile buffer; since many public entities are adjacent to courthouses, this may make ICE less likely to attempt arrests in these areas.

Federal Funding

Federal Funding Issues Resulting from Exec. Orders

Administration is using several issues to block existing funding and as a condition for new funding:

1. Sanctuary Jurisdictions
2. Immigration
3. DEI: Compliance with federal anti-discrimination laws
4. Gender/LTGBQ++
5. Transgender Athletics
6. School Curriculum

Issues Raised:

1. Tenth Amendment (Coercion – Anti-commandeering doctrine)
2. Separation of Powers (Spending Clause; impoundment act of 1974)
3. APA (changing standards/terms of contracts without going through the administrative process; arbitrary and capricious actions)
4. First Amendment: punishing local government from policy positions taken/government speech
5. Violation of Federal Statutes: to the extent the grants are awarded pursuant to specific statutory authority

Tenth Amendment

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

Anti-Commandeering Doctrine

10th Amendment's anti-commandeering doctrine

- Federal government cannot coerce state or local government action
- But under spending clause, the federal government can use monetary incentives

Anti-Commandeering Cases

- 1992 decision was the first to label the “anti-commandeering doctrine”
New York v. United States, 505 U.S. 144 (1992)
- 1997 decision holding the Brady Act unconstitutional under the anti-commandeering doctrine
Printz v. U.S., 521 U.S. 898 (1997)

Guardrails on Funding Coercion

Congress can put conditions on funds so long as they are:

- For the general welfare;
- Unambiguous;
- Related to a federal purpose;
- Shared in advance
- Pursuing goals that are not independently unconstitutional; and
- Not coercive.

South Dakota v. Dole, 483 U.S. 203, 207-08, 211 (1987).

Affordable Care Act was example – threatened to remove Medicaid funding from states that did not comply.

- Court concluded this was “a gun to the head” to states and so was unduly coercive.

Nat’l Fed’n of Indep. Bus. v. Sebelius, 567 U.S. 519 (2012)

Separation of Powers

“[U]nder the principle of Separation of Powers and in consideration of the Spending Clause, which vests exclusive power to Congress to impose conditions on federal grants, the Executive Branch may not refuse to disperse the federal grants in question without congressional authorization.”

City and County of San Francisco, 897 F.3d 1225, 1231 (9th Cir. 2018)

Other authority:

Trump v. United States, 603 U.S. 593, 607 (2024)

Youngstown Sheet & Tube Co v. Sawyer, 343 U.S. 579, 585 (1952)

Impoundment Control Act of 1974 2 U.S.C. §§ 601–688

The Impoundment Control Act of 1974 is the main legal mechanism for the President to seek to delay or permanently cancel federal funding once it has been enacted by Congress.

The Impoundment Control Act of 1974 created the procedural means by which the Congress considers and reviews executive branch withholdings of budget authority.

Generally, the Trump Administration has sidestepped the Act. But may be a low bar if pursued.

Summary:

The Executive Branch has no power to “enact, to amend, or to repeal statutes,” *Clinton v. City of New York*, 524 U.S. 417, 438 (1998), “redistribute or withhold properly appropriated funds in order to effectuate its own policy goals,” *City & Cnty. of S.F.*, 897 F.3d at 1235, nor “unilateral authority to refuse to spend the funds” appropriated by Congress,” *In re Aiken Cnty.*, 725 F.3d 255, 259, 261 n.1 (D.C. Cir. 2013) (Kavanaugh, J.)

Administrative Procedure Act

The APA governs the process of federal agency decision-making. Any executive department involved is an “agency” as defined in the APA, 5 U.S.C. § 551(1)

Agency action that is “contrary to constitutional right [and] power,” in violation of the APA. 5 U.S.C. § 706(2)(B).

- Agency action in excess of statutory authority violates the APA. See 5 U.S.C. § 706(2)(C). So, where no law or provision of the Constitution authorizes an agency to indefinitely withhold properly obligated federal funds or to impose extra-statutory conditions not authorized by Congress, the agency is acting in excess of its authority. Similarly, action in violation of the through the Impoundment Control Act, 2 U.S.C. §§ 681–68, is which Congress has strictly delineated the limited circumstances and procedures through which the Administration may request deferral or rescission of appropriated funds from Congress, is in excess of statutory authority.
- Agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” violates the APA. 5 U.S.C. § 706(2)(A). “An agency action qualifies as ‘arbitrary’ or ‘capricious’ if it is not ‘reasonable and reasonably explained.’” *Ohio v. EPA*, 603 U.S. 279, 292 (2024)

Other Potential Causes of Action

Fifth Amendment – Procedural Due Process

The Fifth Amendment protects against federal laws that are so vague they fail to provide fair notice of what is prohibited or so standardless that they permit discriminatory enforcement. *Sessions v. Dimaya*, 584 U.S. 148, 155–56 (2018).

First Amendment – Censorship of Government Speech

National Association of Diversity Officers in Higher Education, et al. v. Trump, et al., No. 1:25-CV-00333-ABA, 2025 WL 573764 (D. Md. Feb. 21, 2025), opinion clarified, 2025 WL 750690 (D. Md. Mar. 10, 2025), appeal filed, No. 25-1189 (4th Cir.) (preliminary injunction stayed pending appeal)

Attorney Contact Information

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Seattle's Experience

Defining “Sanctuary Jurisdiction”

There are examples, but no uniform, federal definition:

1. **United States v. Illinois, Chicago, Cook County, N.D.Ill. 1:25-cv-1285**

- Allegation: Defendants are “sanctuary jurisdictions” because they do not provide information—e.g., release date, custody status—about immigrants already in custody and because they do not transfer custody to federal immigration agencies in response to ICE civil warrants

2. **United States v. State of New York, N.D.N.Y. 1:25-cv-00205**

- Allegation: New York “obstructs” federal immigration laws because of its Green Light Law, which bars providing DMV information (e.g., address, vehicle registration, photo) to federal immigration agencies and requires notifying the driver when ICE requests information

3. **Small Business Administration**

- Administrator Loeffler announced SBA will move regional offices out of six cities that “do not comply with U.S. Immigration and Customs Enforcement”: Atlanta, Boston, Chicago, Denver, New York City, and **Seattle**

What Federal Grants Fund in Seattle



- Investigate and prosecute child exploitation cases
- Prevent and plan for terrorist attacks and natural disasters
- Elder abuse prevention
- Affordable housing

- 277 FTEs, including police and firefighters
- New and repaired roads and bridges
- Bike and pedestrian safety
- Seismic retrofits on infrastructure
- Job training programs
- Nutritious meals for seniors and children
- Building emissions performance standards



Unique Features of Municipal Standing

Unlike the State, a City cannot sue as sovereign or on behalf of its residents. Standing must be based on a “direct” or “proprietary” injury sustained by the City.

Courts have held the following interests sufficient for standing:

- Supporting home prices and decreasing racial segregation
- Stopping neighborhood decline
- Protecting natural resources
- Preventing public health or safety crises

See, *Bank of Am. Corp. v. City of Miami*, 581 U.S. 189 (2017); *City of Sausalito v. O’Neill*, 386 F.3d 1186 (9th Cir. 2004); *Town of Milton v. FAA*, 87 F.4th 91 (1st Cir. 2023).



Questions?

Thank you for your time today!
