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### Sanctuary Networks as Integrative Enforcement

Ming Hsu Chen

*UC Hastings College of the Law*, [chenminghsu@uchastings.edu](mailto:chenminghsu@uchastings.edu)

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#### Recommended Citation

Ming Hsu Chen, *Sanctuary Networks as Integrative Enforcement*, 75 *Wash. & Lee L. Rev.* 1361 (2018).  
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# Sanctuary Networks and Integrative Enforcement

Ming Hsu Chen\*

## *Abstract*

*My intended focus is on the widespread response—in cities, churches, campuses, and corporations that together comprise “sanctuary networks”<sup>1</sup>—to the Trump Administration’s Executive Order 13768 Enhancing Public Safety in the Interior of the United States<sup>2</sup> as an instance of the changing relationship between federal, local, and private organizations in the regulation of immigration. After briefly covering the legal background of the Trump Interior E.O., the focus of the Article shifts to the institutional dynamics arising in communities. These institutional dynamics exemplify the beginnings of a reimagined immigration enforcement policy with a more integrative flavor.*

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\* Associate Professor, University of Colorado Law and Political Science and Faculty-Director, Immigration Law and Policy Program. Special thanks to David Baluarte and the W&L Editors, plus Symposium panelists Jason Cade, Cesar Garcia Hernandez, and Stephen Lee. Huyen Pham, Shannon Gleeson, Rose Villazor, Deep Gulasekaram, and U.C. Davis’ Advanced Immigration Seminar provided valuable insights, and the U.C. Berkeley Center for the Study of Law and Society provided a welcoming environment while I worked on this Article as a visiting scholar. Further discussion of integrative enforcement can be found in *Constructing Citizenship for Noncitizens*, Stanford University Press (forthcoming 2020).

1. This phrase comes from Rose C. Villazor & Pratheepan Gulasekaram, *Sanctuary Networks*, 102 MINN. L. REV. (forthcoming 2018) (manuscript at 32), <https://www.immigrationresearch-info.org/system/files/SSRN-id3038943.pdf>.

2. See Exec. Order No. 13768, 82 Fed. Reg. 8799 (Jan. 25, 2017) [hereinafter Trump Interior E.O.] (defining “sanctuary jurisdictions” as those that “willfully refuse to comply with 8 U.S.C. 1373”). The term “sanctuary” or “sanctuary city” is not defined by statute.

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*I. Introduction*

Despite the overwhelmingly exclusionary overtones in federal immigration policy, integrative enforcement is emerging as a response to President Trump’s Executive Order 13768 Enhancing Public Safety in the Interior of the United States (Trump Interior E.O.).<sup>3</sup> Taking seriously that laws operate in society and not merely on-the-books, this Article enlarges the scope of consideration to the interaction of the Interior E.O. with state, local, and private resistance. It identifies an inclusionary undercurrent in this web of resistance. This Article examines the

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3. *Id.*

integrative nature of these networked policies and their implications for national immigration policy.

Understanding the inclusionary thrust of emerging state, local, and private policies towards immigrants requires understanding the shifting terrain of immigration enforcement. Immigration enforcement has been expanding and intensifying for a while. The Trump Interior E.O. continues this trend by seeking to further expand the targets of interior enforcement and to further intensify punishment of sanctuary jurisdictions for noncooperation with federal enforcement. As enforcement has expanded, community resistance has also expanded to more sites and broader purposes. Particularly prominent are courtroom challenges to the Interior E.O. sanctuary provisions on the basis of immigration federalism.<sup>4</sup> States and localities have been winning these lawsuits on the basis of constitutional issues such as the spending clause, state sovereignty, and due process. These states and localities claim to function as partners in immigration policymaking, whether in a cooperative or uncooperative posture.<sup>5</sup> Easier to miss is the contestation over immigration policy occurring outside the courts. Campuses, churches, and corporations are stepping into the void, seeking to resist the federal government and to be welcoming communities for immigrants rather than sites of exclusion and intimidation. In a manner not compelled by law, they voluntarily adopt value statements and spend (or raise) money for optional resources to improve the lives of immigrants in their communities.

After briefly tracing the historical and legal background of the Interior E.O.'s expanded priorities and sanctuary provisions, this Article examines the emergence of "sanctuary networks" as an

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4. See generally PRATHEEPAN GULASEKARAM & S. KARTHICK RAMAKRISHNAN, *THE NEW IMMIGRATION FEDERALISM* (2015); see, e.g., Stella Burch Elias, *The New Immigration Federalism*, 74 OHIO ST. L.J. 703, 704–22 (2013) (“[A]lienage laws, which are laws that determine the rights, privileges, and obligations of noncitizens present in the United States, can . . . be enacted by either the federal government or the states.”).

5. Jessica Bulman-Pozen & Heather K. Gerken, *Uncooperative Federalism*, 118 YALE L.J. 1256, 1281–84 (2009) (discussing states’ role in enforcing federal immigration law by stating that “some states have gone further than federal law requires . . . while others have taken the opposite stance and passed noncooperation laws that reject federal efforts”).

instance of what I will call “integrative enforcement” in immigration policymaking.

## *II. Background on Interior E.O. and Sanctuary Networks*

President Trump issued three immigration executive orders within his first month in office that together reveal a federal policy of vigorous enforcement against an expanding group of immigrants. The Trump Interior E.O. and its accompanying Department of Homeland Security (DHS) regulations consist of a package of policies concerning enforcement against immigrants residing inside the borders, some of whom lack lawful immigration status and some of whom have engaged in criminal activity. Section 4 directs federal agencies to employ “all lawful means” to execute U.S. immigration laws against “all removable aliens.”<sup>6</sup> As part of this effort, Sections 8 and 9 seek to expand the local ability to assist in enforcing immigration laws and to sanction “sanctuary jurisdictions” that “prohibit or . . . restrict any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”<sup>7</sup> Though the moniker of sanctuary jurisdiction encompasses a range of practices in a range of places, DHS-identified sanctuary jurisdictions resist the enlarging enforcement-related goals of the federal government. For example, sanctuaries resist the expansion of priorities from “criminal aliens” to include undocumented immigrants who possess little more than status violations and who would have been considered low priorities for removal in the past.<sup>8</sup> Sanctuary resistance might include: (1) barring investigation of

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6. Trump Interior E.O., *supra* note 2, at 8799.

7. *Id.*; see *City of Philadelphia v. Sessions*, No. 17-3894, 2018 WL 2725503, at \*33 (E.D. Pa. June 6, 2018) (“Because Section 1373 violates the Tenth Amendment of the Constitution, the City is entitled to a declaratory judgment on Count VI of its Amended Complaint.”). The term “sanctuary” or “sanctuary city” is not defined in the Executive Order.

8. Christopher N. Lasch et al., *Understanding “Sanctuary Cities”*, 59 B.C. L. REV. 1703, 1761 n.4 (2018). Advocates generally define sanctuary jurisdictions more broadly than the Interior E.O., emphasizing the concept of providing safe harbor to undocumented immigrants in the form of a protective shield or a welcoming, inclusive environment.

civil and criminal immigration violations by local law enforcement; (2) limiting compliance with immigration detainers and administrative immigration warrants; (3) refusing Immigration and Customs Enforcement (ICE) access to local jails; (4) limiting local law enforcement's disclosure of sensitive information; and (5) precluding local participation in joint operations with federal immigration enforcement.<sup>9</sup>

Attorney General Jeff Sessions followed up on the Interior E.O. with letters of warning to sanctuary jurisdictions<sup>10</sup> and with public speeches decrying the public safety risks introduced by noncooperation.<sup>11</sup> In direct response, cities and states began to challenge the Department of Justice (DOJ) letters in court. These lawsuits principally claim that the Interior E.O. and DOJ attempt to withhold federal funding and condition federal grants on compliance with Section 1373, breach constitutional limits on the federal government's powers under the Spending Clause and anti-commandeering doctrine.<sup>12</sup> A few cities and states have

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9. As of April 1, 2018, there have been seventy sanctuary issuances since Trump issued his Interior E.O. with the majority calling for stronger policies to protect immigrants. Analysis based on *id.* at 1736–52; *Understanding “Sanctuary Cities”—Online Appendix*, WESTMINSTER L. LIBR., <http://libguides.law.du.edu/c.php?g=705342&p=5009807> (last updated June 6, 2018) (last visited Sept. 26, 2018) (compiling the sanctuary policies consulted in writing *Understanding “Sanctuary Cities”*) (on file with the Washington and Lee Law Review).

10. See Press Release, Office of Pub. Affairs, Dep't of Justice, Justice Department Sends Letters to 29 Jurisdictions Regarding Their Compliance with 8 U.S.C. 1373 (Nov. 15, 2017) (noting the jurisdictions that “have primarily been found to have laws, policies, or practices that may violate 8 U.S.C. 1373”) (on file with the Washington and Lee Law Review).

11. See Jeff Sessions, Attorney Gen., Remarks About Carrying Out the President's Immigration Priorities (Oct. 20, 2017) (stating that sanctuary policies “undermine the moral authority of law and undermine the safety of the jurisdictions that adopt them”); Press Release, Office of Pub. Affairs, Dep't of Justice, Attorney General Sessions Announces Immigration Compliance Requirements for Edward Byrne Memorial Justice Assistance Grant Programs (Jul. 25, 2017) (“So called ‘sanctuary’ policies make all of us less safe because they intentionally undermine our laws and protect illegal aliens who have committed crimes.”); Jeff Sessions, Attorney Gen., Remarks on Sanctuary Jurisdictions (Mar. 27, 2017) (describing sanctuary policies as “mak[ing] our nation less safe by putting dangerous criminals back on our streets”).

12. See, e.g., *Cty. of Santa Clara v. Trump*, 250 F. Supp. 3d 497, 530–33 (N.D. Cal. 2017) (addressing separation of powers and Spending Clause issues); *City of Chicago v. Sessions*, 264 F. Supp. 3d 933, 946–49 (N.D. Ill. 2017) (addressing Spending Clause issues).

introduced legislation challenging the Interior E.O. Most prominently, the California Values Act<sup>13</sup> declines to tell federal immigration officials when incarcerated noncitizens will be released from local jails (as required under the Secure Communities program reinstated by the Interior E.O.); refuses to detain immigrants for transfer to immigration enforcement; establishes safe zones near courthouses, public schools, and health facilities; and provides increased oversight and accountability of cooperation between local law enforcement and ICE.<sup>14</sup> Litigation over these provisions is proceeding in court.<sup>15</sup>

Implementation of the broad directive to execute U.S. immigration laws against “all removable aliens”<sup>16</sup> has been more diffuse. As ICE Director Thomas Homan said: “There’s no population off the table . . . . If you’re in this country illegally, we’re looking for you and we’re going to apprehend you.”<sup>17</sup> In a fulfillment of this promise, ICE conducted raids in neighborhoods across the country, sweeping into its dragnet immigrants conducting everyday affairs such as going to school and work and those complying with routine check-ins for stays of removal. The breadth of enforcement left noncitizens constantly worrying and wondering if they could be next. Boasts from the government that ICE is targeting noncooperating communities and immigrants’ rights activists intimidate and chill efforts to protect immigrants. Wavering policies toward DREAMers<sup>18</sup> incite fear that the

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13. California Values Act, CAL. GOV’T CODE §§ 7284–7284.12. (West 2017) (effective Jan. 1, 2018).

14. *See id.* § 7284.6 (refusing California law enforcement agency cooperation with federal immigration enforcement on several matters).

15. *See generally, e.g.*, United States v. California, 314 F. Supp. 3d 1077 (E.D. Ca. 2018) (evaluating the validity of three state laws meant to aid undocumented immigrants).

16. Trump Interior E.O., *supra* note 2, at 8799.

17. Haley Sweetland Edwards, *No One is Safe.’ How Trump’s Immigration Policy is Splitting Families Apart*, TIME (Mar. 8, 2018), <http://time.com/longform/donald-trump-immigration-policy-splitting-families/> (last visited Sept. 26, 2018) (on file with the Washington and Lee Law Review).

18. *See* Joanna Walters, *What Is DACA and Who Are the Dreamers?*, GUARDIAN (Sept. 14, 2017, 11:30 AM), <https://www.theguardian.com/us-news/2017/sep/04/donald-trump-what-is-daca-dreamers> (last visited Sept. 26, 2018) (explaining that DACA recipients are known as DREAMers because DACA “was a compromise . . . after Congress failed to pass the so-called Development, Relief and Education for Alien Minors (Dream Act)” (on file with the Washington

enforcement dragnet could sweep so broadly as to include those who were until recently designated low priorities or nontargets for enforcement. In short, the nonpriority enforcement agenda makes everyone a potential priority for removal and the randomness of its implementation amplifies its reach.

Colleges, churches, and corporations have resisted the sanctuary provision by creating their own inclusive environments to protect noncitizens in their communities. Campuses are creating undocumented resource centers, issuing statements of solidarity for Deferred Action for Childhood Arrivals (DACA) program students and international students, and fundraising for DACA renewal fees and legal counsel.<sup>19</sup> Churches are offering food and shelter to undocumented immigrants.<sup>20</sup> Corporations are protecting their employees from enforcement actions. These protective actions seek to do more than resist federal ICE raids. As with the sanctuary movements that preceded them, they appeal to nonlegal sources of morality, such as human dignity, in their effort to support noncitizens and seek to provide social support, economic opportunities, and a political voice for noncitizens in the community.

As immigration scholars Pratheepan Gulasekaram and Rose Cuisson Villazor explain in their insightful article *Sanctuary Networks*, these emerging sites of resistance can be understood to operate as a “network” of challengers rather than isolated instances of jurisdictional pushback.<sup>21</sup> The networked institutions resist several facets of federal enforcement, and their power resides in their collective efforts to blunt federal enforcement and welcome immigrants. As extralegal actors appealing to extralegal norms, these sites are constrained in several respects. They rely on

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and Lee Law Review).

19. See, e.g., *Undocumented Student Program*, U. CAL. BERKELEY, <https://undocu.berkeley.edu/home/our-history/> (last visited Sept. 26, 2018) (detailing the undocumented student program available at the University of California at Berkeley) (on file with the Washington and Lee Law Review).

20. See Jason Hanna, *Can Churches Provide Legal Sanctuary to Undocumented Immigrants?*, CNN, <https://www.cnn.com/2017/02/17/us/immigrants-sanctuary-churches-legality-trnd/index.html> (last updated Feb. 27, 2017) (last visited Sept. 26, 2018) (“[S]ince Trump was elected in November, the number of churches in the United States expressing willingness to offer sanctuary has doubled to 800.”) (on file with the Washington and Lee Law Review).

21. Villazor & Gulasekaram, *supra* note 1, at 33.

the soft power of media, purchasing power, and political influence on legal decisionmakers to make their claims. These claims may not be directed at the courtroom, nor will they necessarily prevail in a legal challenge. Gulasekaram and Villazor say “each type of sanctuary has an independent, normative value and legal justification, but the ability of each to protect undocumented immigrants is limited” when viewed in isolation.<sup>22</sup> “Examined together, however, these public and private groups are forming a system that collaborates, formally in some contexts and informally in others, to collectively challenge the federal government’s claimed monopoly on setting immigration policy.”<sup>23</sup> Social scientists might refer to this type of exertion of influence through a decentralized and decentered network as governance. Broadly speaking, “[g]overnance may be defined as organized efforts to manage the course of events in a social system.”<sup>24</sup> These organized efforts may utilize the means of soft power in the form of information, ideas, and financial and moral capital to influence immigration policy.<sup>25</sup> The specific ends of resistance may vary: they may be disavowal of disagreeable immigration policy, support for a vulnerable community, the pursuit of a particular decision making process or policy, or the expression of an alternative vision for immigration policy.<sup>26</sup> I seek to define that alternative vision for

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22. *Id.* at 6.

23. *Id.* at 7.

24. Scott Burris et al., *Changes in Governance: A Cross-Disciplinary Review of Current Scholarship*, 41 AKRON L. REV. 1, 6 (2008) [hereinafter *Changes in Governance*]; see also Scott Burris et al., *Nodal Governance*, 30 AUSTL. J. LEGAL PHIL. 30, 30 (2005) [hereinafter *Nodal Governance*] (“Governance . . . is proving a useful rubric for thinkers and researchers in a number of fields who are interested in democracy, honest and efficient government, political stability and the rule of law.”); R.A.W. Rhodes, *Policy Networks: A British Perspective*, 2 J. THEORETICAL POL. 293, 297 (1990) (describing “sub-government” as a policy-making process in which the “distinction between government and non-government becomes blurred”). For general history of governance, see generally Orly Lobel, *New Governance as Regulatory Governance*, in OXFORD HANDBOOK OF GOVERNANCE (David Levi-Four, ed. 2012).

25. See KURT A. STRASSER, MYTHS AND REALITIES OF BUSINESS ENVIRONMENTALISM: GOOD WORKS, GOOD BUSINESS OR GREENWASH? 78 (2011) (“‘Soft law’ methods depend upon the power of social and institutional norms, information, and transparency to mobilize voluntary compliance.”).

26. See generally *Nodal Governance*, *supra* note 24. Of course, not all states and localities share the purpose of resisting Trump policies, let alone shared means. See MARGIE MCHUGH, MIGRATION POLICY INST., IN THE AGE OF TRUMP:

national immigration policy—distinct from state or local immigration policy—in the next section by elaborating on the concept of “integrative enforcement.”

### *III. Integrative Enforcement*

Building on the resistance function of sanctuary networks, this section elaborates on the norm-creation function of sanctuary networks by specifying their substantive content and end goal. Integrative enforcement is premised on regulation of community membership according to terms that extend beyond federal immigration laws. Breaking outside of the terms of the federal immigration statute and Interior E.O. leads to localized and decentralized policymaking that emphasizes integrative goals and recognizes the multiple facets of noncitizen belonging in a community. These premises constitute what I call “integrative enforcement.”

Integrative enforcement, expanded on in my in-progress book *Constructing Citizenship for Noncitizens*, reflects an emerging vision of integrative enforcement that presents an alternative to the federal government’s focus on exclusion and enforcement on the basis of one’s formal status as a noncitizen.<sup>27</sup> Sanctuary networks engaged in articulating the norm of integrative enforcement seek to define who belongs in a community,<sup>28</sup> and what forms of relief should be available to those who do not belong.<sup>29</sup> On the question of who belongs, integrative enforcement

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POPULIST BACKLASH AND PROGRESSIVE RESISTANCE CREATE DIVERGENT STATE IMMIGRANT INTEGRATION CONTEXTS 2–9 (2018) (detailing the “numerous fronts” of immigration policy being contested such as refugee resettlement, education, and health and social services).

27. See generally MING H. CHEN, *CONSTRUCTING CITIZENSHIP FOR NONCITIZENS* (forthcoming Stanford University Press 2020).

28. See Juliet Stumpf, *The Cimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 AM. U. L. REV. 367, 397–400 (2006) (discussing “membership theory” as it relates to immigration law: “immigration law embod[ies] choices about who should be members of society: individuals whose characteristics or actions make them worthy of inclusion in the national community”).

29. See generally Jason Cade, *Sanctuaries as Equitable Delegation in an Era of Mass Immigration Enforcement*, 113 NW. U. L. REV. (forthcoming 2018), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3053609](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3053609); see Amanda Frost, *Cooperative Enforcement in Immigration Law*, 103 IOWA L. REV. 1, 29–38 (2017)

in a sanctuary infuses the federal immigration enforcement version of belonging with elements of broader membership regulation, e.g. those who reside in a community possess social, economic, and to some extent political ties to the U.S.<sup>30</sup> As to the question of claims to relief, noncitizens are entitled to institutional protection and provision that goes beyond what is mandatory under federal law.<sup>31</sup> They are entitled to similar claims of membership and as citizens residing in their communities.<sup>32</sup>

#### *IV. Trump's Interior E.O. and Sanctuary Jurisdictions*

The primary example of sanctuary networks is the sanctuary city movement. In the lawsuits brought by sanctuary jurisdictions, the San Francisco City Attorney who filed the *City and County of San Francisco v. Trump*<sup>33</sup> lawsuit, Dennis Herrera, said in a press release:

I'm grateful that we've been able to protect billions of dollars that help some of the most vulnerable Americans. We're talking about low-income families, seniors, foster children and people with disabilities. This is money that helps provide food, health care and a roof over their heads . . . . Let me be clear. San Francisco follows federal immigration law . . . . But our teachers, doctors and police officers cannot be conscripted into becoming immigration agents . . . .<sup>34</sup>

This quote reveals that San Francisco's reason for noncooperation is due to a distinctive notion of community membership and not merely disagreement over the legality of the Interior E.O. As he explained during a U.C. Berkeley Federalism Now panel:

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(discussing different forms of relief such as "cancellation of removal" and "U visas").

30. See generally CHEN, *supra* note 27.

31. *Id.*

32. See Frost, *supra* note 29, at 29–32 (describing options for cancellation of removal).

33. *Cty. of Santa Clara v. Trump*, 250 F. Supp. 3d 497, 530–33 (N.D. Cal. 2017).

34. *Court Rules Trump's Sanctuary Executive Order Is Unconstitutional*, CITY ATT'Y S.F. (Nov. 20, 2017), <https://www.sfcityattorney.org/2017/11/20/court-rules-trumps-sanctuary-executive-order-unconstitutional/> (last visited Sept. 26, 2018) (on file with the Washington and Lee Law Review).

It is not just about throwing down the gun of coercive federalism in order to say, “hey, don’t make me disobey the Constitution.” It’s about taking a stand and saying “this federal policy is inconsistent with our local values.” It is about the California versus Trump mindset on immigration.<sup>35</sup>

Similarly, Chicago mayor Rahm Emanuel defends his city’s challenge to the Interior E.O. and DOJ sanctions for noncooperation with federal enforcement policy in broad terms:

We want you to come to Chicago if you believe in the American dream . . . . By forcing us, or the police department, to choose between the values of the city and the philosophy of the police department, in community policing, I think it's a false choice and it undermines our actual safety agenda.<sup>36</sup>

As previously described, the California Values Act steps up the fight to protect immigrants with criminal histories who are subject to enforcement actions by declining to notify federal immigration officials when noncitizens will be released from local jails and affirmatively providing safe zones.<sup>37</sup> It seeks to advance improved governance over immigration enforcement through increased oversight and accountability of local-federal cooperation on enforcement.<sup>38</sup> Beyond legal argument, the justification for these bold actions is that the California “[l]egislature finds and declares . . . [that] [i]mmigrants are valuable and essential members of the California community. Almost one in three Californians is foreign born and one in two children in California has at least one immigrant parent.”<sup>39</sup>

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35. Dennis J. Herrera, S.F. City Attorney, Speech at the U.C. Berkeley Conference: Federalism Now (Nov. 3, 2017).

36. Daniella Diaz & Laura Jarrett, *Chicago Mayor Defends Lawsuit Against DOJ Over Sanctuary City Status*, CNN, <http://www.cnn.com/2017/08/07/politics/rahm-emanuel-doj-sanctuary-city-cnntv/index.html> (last updated Aug. 7, 2017) (last visited Sept. 26, 2018) (on file with the Washington and Lee Law Review).

37. CAL. GOV’T CODE § 7284.6 (West 2018) (“California law enforcement agencies shall not . . . for immigration enforcement purposes . . . [p]rovid[e] information regarding a person’s release date . . .”).

38. *Id.*

39. *Id.*; Tim Henderson, *As Sanctuary State, California Takes Deportation Fight to New Level*, PEW TR.: STATELINE REP. (Oct 23, 2017), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/10/23/as-sanctuary-state-california-takes-deportation-fight-to-new-level> (last visited Sept. 26, 2018) (on file with the Washington and Lee Law Review). Some conservative communities have opted out of the California Values Act. *See* Roxana Kopetman,

### A. Opposition to DACA Rescission and Enforcement on Campuses

Campuses seek to provide a safe place for a broad range of noncitizens vulnerable to aggressive enforcement under the Interior E.O.'s zero tolerance enforcement strategy.<sup>40</sup> Campuses providing a safe space for undocumented students are part of a broader movement in universities to protect vulnerable students.<sup>41</sup> This movement is broad and has a range of goals that include noncooperation with law enforcement.<sup>42</sup> However, they are not

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*Los Alamitos Votes to Opt Out of California Sanctuary Law*, ORANGE COUNTY REG., <https://www.ocregister.com/2018/03/19/los-alamitos-immigration-debate-sparks-singing-shouting/> (last updated Mar. 21, 2018) (last visited Sept. 26, 2018) (discussing an example of one community rejecting the sanctuary law) (on file with the Washington and Lee Law Review).

40. See Geoffrey A. Hoffman, *The Non-Priority Priorities*, IMMIGR. PROF. BLOG, (Feb. 14, 2017), <http://lawprofessors.typepad.com/immigration/2017/02/the-non-priorities-priorities-by-geoffrey-a-hoffman.html> (last visited Sept. 26, 2018) (“[T]he [enforcement] ‘priorities’ do not protect most and perhaps not any undocumented person, since asylum seekers, crime victims, children and others with valid claims for relief are left wholly unprotected.”) (on file with the Washington and Lee Law Review).

41. The American Association of University Professors played a key role in organizing and publicizing the movement, stating:

Of special importance is the status of those among our students who are undocumented, many of whom have been in this country since early childhood. Concern for the welfare of these students has already prompted a rash of petitions calling on colleges and universities to become “sanctuary campuses.” We support the movement for sanctuary campuses.

*The Atmosphere on Campus in the Wake of the Election*, AM. ASS’N U. PROFESSORS, <https://www.aaup.org/news/atmosphere-campus-wake-elections#.W4g6EtJKiUk> (last visited Oct. 2, 2018) (on file with the Washington and Lee Law Review; see also *Sanctuary Campus Movement*, AM. ASS’N U. PROFESSORS, <https://www.aaup.org/issues/sanctuary-campus-movement> (last visited Sept. 26, 2018) (“The sanctuary campus movement calls on campuses to provide a safe space for undocumented students.”) (on file with the Washington and Lee Law Review). In comparison, other campuses have deflected the sanctuary label. For example, Emory University said in a public statement, “Emory is not seeking to establish itself as a sanctuary campus, for which there is no legal definition.” Julia Preston, *Campuses Wary of Offering ‘Sanctuary’ to Undocumented Students*, N.Y. TIMES (Jan. 26, 2017), <https://www.nytimes.com/2017/01/26/education/edlife/sanctuary-for-undocumented-students.html> (last visited Sept. 26, 2018) (on file with the Washington and Lee Law Review).

42. See Colleen Flaherty, *Values for the Trump Era*, INSIDE HIGHER ED, <https://www.insidehighered.com/news/2016/11/30/philosopher-proposes-code-conduct-academics-mit-professors-affirm-commitment-shared> (last updated November 30, 2016) (last visited Sept. 26, 2018) (listing the 10-point

limited to that goal. They also include generalized sensitivity toward undocumented students and the generation of monetary, academic, psychological, and potentially legal support for their pursuit of education. The range and extent of the programs varies on each campus, with public universities more constrained than private universities in many cases—for example, Columbia and Wesleyan have taken bolder stances and been more forceful in refusing access to their campuses than public universities who are state employees bound by 8 U.S.C. § 1373.<sup>43</sup> Even though both private and public campuses benefit from traditions of judicial deference to educational institutions on First Amendment grounds, federal statutes such as FERPA<sup>44</sup> require campuses to protect student privacy, and there is no federal obligation to collect information about undocumented students.

Campus commitments to integrative enforcement are vivid on campuses opposing the rescission of the DACA. Initiated in 2012 by President Obama, DACA was designed to ameliorate harshness in the immigration enforcement regime and provide a measure of protection and security to long-time permanent residents who migrated without status as children.<sup>45</sup> DACA improved the lives of undocumented immigrants as much as it irked opponents.<sup>46</sup> It

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“Anti-Authoritarian Academic Code of Conduct” proposed by a University of Toronto professor).

43. See *Undocumented Students and DACA*, COLUM. UNDERGRADUATE ADMISSIONS, <https://undergrad.admissions.columbia.edu/apply/first-year/undocumented-students> (last visited Sept. 26, 2018) (detailing how Columbia assists undocumented individuals to apply and be eligible for financial aid) (on file with the Washington and Lee Law Review); *Admission & Financial Aid Information for Undocumented Students*, WESLEYAN U., <http://www.wesleyan.edu/admission/apply/undocdaca.html> (last visited Sept. 26, 2018) (noting that students with or without DACA can apply to Wesleyan) (on file with the Washington and Lee Law Review).

44. Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (2012).

45. See Jerry Markon & Sandhya Somashekhar, *Obama’s 2012 DACA Move Offers a Window into Pros and Cons of Executive Action*, WASH. POST (Nov. 30, 2014), [https://www.washingtonpost.com/politics/obamas-2012-daca-move-offers-a-window-into-pros-and-cons-of-executive-action/2014/11/30/88be7a36-7188-11e4-893f-86bd390a3340\\_story.html?utm\\_term=.d98fd0ee9ef3](https://www.washingtonpost.com/politics/obamas-2012-daca-move-offers-a-window-into-pros-and-cons-of-executive-action/2014/11/30/88be7a36-7188-11e4-893f-86bd390a3340_story.html?utm_term=.d98fd0ee9ef3) (last visited Sept. 26, 2018) (“The 2012 initiative has given temporary protection to slightly more than 700,000 people brought to the United States illegally as children.”) (on file with the Washington and Lee Law Review).

46. See *id.* (stating that many undocumented children praise DACA for helping “them emerge from the shadows, making possible a work permit, a Social

became a lightning rod for Obama's immigration policies such that conservative state governors and attorney generals challenged the program's close companion, Deferred Action for Parental Accountability, in *Texas v. United States*<sup>47</sup> in 2014 and threatened to challenge DACA if President Trump did not withdraw it in Fall 2017.<sup>48</sup> On September 5, 2017, President Trump withdrew the program.<sup>49</sup> Multiple lawsuits in California, New York, Washington, D.C., Maryland, and Virginia challenged the DACA rescission on an expanded conception of the constitutional and administrative due process owed to noncitizens.<sup>50</sup> Simultaneously, ongoing effort is being directed at lobbying Congress to pass legislation that would provide a pathway to citizenship for DREAMers.<sup>51</sup> On the ground, immigration advocates are seeking

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Security number and enhanced self-respect”).

47. 136 S. Ct. 2271 (2016).

48. See James Barragán, *Paxton Threatens to Sue Over Immigration Program if Trump Does Not Rescind It*, DALL. NEWS, (June 29, 2017), <https://www.dallasnews.com/news/immigration/2017/06/29/paxton-threatens-sue-daca-trump-rescind-program> (last visited Sept. 26, 2018) (“Texas Attorney General Ken Paxton and a 10-state coalition have threatened to sue the federal government over an Obama-era program that protects unauthorized immigrants if it is not rescinded by September.”) (on file with the Washington and Lee Law Review).

49. *DHS Memorandum on Rescission of Deferred Action for Childhood Arrivals*, DEP'T HOMELAND SECURITY (Sept. 5, 2018), <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca> (last visited Sept. 26, 2018) (on file with the Washington and Lee Law Review).

50. See generally *Regents of the Univ. of Cal. v. Dep't of Homeland Sec.*, 279 F. Supp. 3d 1011 (N.D. Cal. 2018); *Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401 (E.D.N.Y. 2018); *Casa de Maryland v. Dep't of Homeland Sec.*, 284 F. Supp. 3d 758 (D. Md. 2018); *NAACP v. Trump*, 298 F. Supp. 3d 209 (D.D.C. 2018); *Complaint, Trustees of Princeton v. United States*, No. 1:17-CV-02325 (D.D.C. 2017); *Complaint, Park v. Sessions*, No. 1:17-CV-01332 (E.D. Va. 2017). On January 9, 2018, the first federal court enjoined the DACA rescission. The Trump Administration has appealed, and the litigation remains in progress. See *Order Denying FRCP 12(b)(1) Dismissal and Granting Provisional Relief, Regents of the Univ. of Cal. v. Dep't of Homeland Sec.*, No. 3:17-CV-05211 (N.D. Cal. Sept. 8, 2017), <https://assets.documentcloud.org/documents/4345906/1-9-18-DACA-Opinion.pdf>.

51. Tal Kopan, *DACA Alive, Barely, a Year After Trump Ended It*, CNN, <https://www.cnn.com/2018/09/05/politics/daca-one-year-end-anniversary-future/index.html> (last updated Sept. 5, 2018) (last visited Sept. 26, 2018) (“Both the House and Senate [have] tried and failed in the past year to pass legislation that would have preserved DACA . . . .”) (on file with the Washington and Lee Law Review).

to stabilize the legal status of DREAMers through a variety of affirmative means: fundraising for legal assistance with DACA renewals, pursuit of alternative relief, filing adjustment of status petitions, rallies in solidarity with undocumented students, and political pressure on Congress.<sup>52</sup>

From the start, immigration law has included equitable exceptions for categories of immigrants such as DREAMers.<sup>53</sup> DACA was an integrative program lodged within a federal enforcement program. Its goals were to temper federal excess around deportation and the erosion of equities. The campus and community resistance to DACA's rescission has focused on both elements as well. Campuses and communities rally around DREAMers who will be vulnerable to nonprioritized immigration enforcement once their protection ends, and they fundraise for pro bono legal assistance and pop-up clinics to renew DACA applications or screen for alternative forms of relief. Simultaneously, urgent and bipartisan appeals are being made for Congress to redouble their efforts for a judicial and legislative remedy for DREAMers.<sup>54</sup> For example, Janet Napolitano, the President of the University of California system and former DHS Secretary issued this statement: "The University and the state of California stand together in our belief that students should be admitted to U.C. and other institutions of higher education based on their records of achievement and without regard to their

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52. See, e.g., Letter from Peter McPherson, President, Ass'n of Pub. & Land-grant Univs., to Paul Ryan, Speaker of the U.S. House of Representatives, Mitch McConnell, U.S. Senate Majority Leader, Nancy Pelosi, U.S. House of Representatives Minority Leader, Charles Schumer, U.S. Senate Minority Leader (Sept. 5 2018) (urging Republican and Democratic leaders in Congress to pass DACA legislation) (on file with the Washington and Lee Law Review).

53. Hiroshi Motomura, *Immigration Outside the Law*, 108 COLUM. L. REV. 2037, 2087–89 (2008) (discussing prosecutorial discretion as a form of "discretionary relief," among other equitable measures, such as stay of removal).

54. See Brian Bennet & Lisa Mascaro, *Bipartisan Senate Effort to Protect Dreamers Collapses After Trump Threatens Veto*, L.A. TIMES (Feb. 15, 2018), <http://www.latimes.com/politics/la-na-pol-immigration-trump-20180215-story.html> (last visited Sept. 26, 2018) (noting that both parties have pushed for pro-DREAMer legislation, but they have been thwarted by Trump's threats) (on file with the Washington and Lee Law Review). Congress has tried to pass a DREAM Act for the last ten years. Several proposals were under consideration, but none passed prior to the scheduled expiration of the DACA program on March 5, 2018, or passage of the budget.

immigration status.”<sup>55</sup> After outlining several measures her university will take to support undocumented students, including in-state tuition, a DREAMer financial aid program, legal services, campus-based student service centers, and directing campus police not to contact, detain, question or arrest individuals based on suspected undocumented status or enter agreements to undertake joint efforts to make arrests for federal immigration law violations, she explains that the U.C. system will explore additional options in their “fight to keep the program alive.”<sup>56</sup> This fight extended to a lawsuit that temporarily enjoined the DACA rescission.<sup>57</sup> Following the Northern District of California injunction,<sup>58</sup> U.C. President Napolitano said:

[E]ven with this decision, fear and uncertainty persist for DACA recipients across California and the nation who want to continue to live, work, learn and contribute to the country they know as home. It does not negate, nor lessen, the urgent need for permanent protection through a legislative solution. UC’s DACA students represent the very best of our country and are a key part of California and our nation’s future. They are studying to be doctors, teachers and engineers and working to solve the greatest scientific and technological challenges of our time.<sup>59</sup>

Federal courts in New York, Maryland, and Washington, D.C. have since issued similar injunctions of the DACA rescission, while a

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55. *UC President Napolitano Denounces Decision to End DACA Program, Calls on Congress to Make Protections Permanent*, U. CAL. (Sept. 5, 2017), <https://www.universityofcalifornia.edu/press-room/uc-president-napolitano-statement-decision-end-daca-program> (last visited Sept. 26, 2018) (on file with the Washington and Lee Law Review).

56. *Id.*

57. *See Regents of the Univ. of Cal. v. U.S. Dep’t of Homeland Sec.*, No. C 17-05211 WHA, 2017 WL 4642324, at \*55 (N.D. Cal. Oct. 17, 2017) (order granting motion to complete administrative record) (granting relief from DACA rescission to allow the Department of Homeland Security to “complete the administrative record” because it “excluded highly relevant materials”).

58. *See Regents of the Univ. of Cal. v. U.S. Dep’t of Homeland Sec.*, 279 F. Supp. 3d 1011, 1048 (N.D. Cal. 2018) (enjoining the defendant to maintain the DACA program on a nationwide basis).

59. *UC Statement on Federal Court’s DACA Ruling*, U. CAL. DAVIS (Jan. 9, 2018), <https://www.ucdavis.edu/news/uc-statement-federal-court%E2%80%99s-daca-ruling/> (last visited Sept. 26, 2018) (on file with the Washington and Lee Law Review).

federal court in Texas is seeking to reinstate it.<sup>60</sup> Congressional reform remains possible, but it is losing steam.<sup>61</sup> The fate of the DACA program and DREAMers will require resolution of these split legal challenges in courts and Congress,<sup>62</sup> and the broader battle to reshape acceptance of the need to protect DACA recipients will continue in the network of campuses and communities.

### *B. Opposition to Expanding Enforcement in Churches*

For churches providing sanctuary to undocumented immigrants, who are often members of mixed status families that would be divided with deportation, protecting immigrants means providing a literal safe haven from enforcement. While church buildings are not exempt from immigration laws, they traditionally have fallen into the category of sensitive areas and avoided target enforcement.<sup>63</sup> In Denver, five immigrants sought

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60. See *Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401, 436 (E.D.N.Y. 2018) (calling defendant's decision to rescind DACA an "arbitrary and capricious action" because defendants "erroneously concluded that the program was unconstitutional and unlawful"); *Casa de Md. v. Trump*, 284 F. Supp. 3d 758 (D. Md. 2018); *NAACP v. Trump*, 298 F. Supp. 3d 209 (D.D.C. 2018); cf. *Texas v. United States*, No. 1:18-cv-00068, 2018 WL 4178970 (S.D. Tex. Aug. 31, 2018) (evaluating state challenges to DACA reinstatement).

61. Hopes began to fade once Congress failed to pass legislation in time for the March 5, 2018 deadline for DACA rescission. See Ali Rogan & Mariam Khan, *Dreamers Deferred as Congress Lets DACA Deadline Pass*, ABCNEWS (Mar. 5, 2018, 5:48 AM), <https://abcnews.go.com/Politics/dreamers-deferred-congress-lets-daca-deadline-pass/story?id=53464924> (last visited Sept. 26, 2018) ("Senate Majority Leader Mitch McConnell also made it clear after the failed Senate votes that he would only be willing to bring to the floor DACA solutions that can pass both the House and the Senate . . .") (on file with the Washington and Lee Law Review).

62. The Supreme Court declined to review the cases ahead of Ninth Circuit and Second Circuit appellate review. See *Dep't of Homeland Sec. v. Regents of the Univ. of Ca.*, 138 S. Ct. 1182 (2018) (mem.) (denying certiorari); *Order List: 583 U.S.*, SUP. CT. U.S., (Feb. 26, 2018) [https://www.supremecourt.gov/orders/courtorders/022618zor\\_j426.pdf](https://www.supremecourt.gov/orders/courtorders/022618zor_j426.pdf) (denying certiorari and assuming "that the Court of Appeals will proceed expeditiously to decide this case").

63. See U.S. DEP'T OF HOMELAND SEC., U.S. IMMIGRATION AND CUSTOMS ENF'T, ENFORCEMENT ACTIONS AT OR FOCUSED ON SENSITIVE LOCATIONS 1 (2011) ("[The] Immigration and Customs Enforcement (ICE) policy regarding certain enforcement actions by ICE officers and agents . . . is designed to ensure that these enforcement actions do not occur at nor are focused on sensitive locations such as schools and churches . . .").

church-based sanctuary in the midst of intensifying enforcement that threatened their protective shield.<sup>64</sup> Unlike sanctuary jurisdictions, campuses and churches are nongovernmental institutions whose actions rely on soft power and creative provisions to refashion federal immigration policy. They seek to exert their influence subtly and indirectly. They claim that their sought-after ends are normatively desirable, even if not legally mandatory. They rely on societal norms and appeals to morality, rather than legal argument and courthouses. A sanctuary coalition of churches abides by a pledge that draws on both civic and moral grounds for supporting immigrants and opposing immigration policies.

As people of faith and people of conscience, we pledge to resist the newly elected administration's policy proposals to target and deport millions of undocumented immigrants and discriminate against marginalized communities. We will open up our congregations and communities as sanctuary spaces for those targeted by hate, and work alongside our friends, families, and neighbors to ensure the dignity and human rights of all people . . . . As people of faith and people of conscience, *we will take civil initiative out of our moral obligation to embody principles of human rights and dignity and resist any harmful and unjust policy proposals that further undermine due process and lead to racial profiling and discrimination . . . we are ready to open the doors of our sacred spaces and accompany those facing deportation and discrimination . . . we support those answering the call to provide sanctuary at schools, hospitals, college campuses, and family homes.*<sup>65</sup>

The high profile resistance of First Baptist Church in Denver, the church providing sanctuary to Jeannette Vizguerra that led to

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64. See Jenn Fields, *Colorado Has More People Living in Church Sanctuary than Any Other State*, DENVER POST (Oct. 25, 2017), <http://www.denverpost.com/2017/10/25/colorado-undocumented-immigrants-in-church-sanctuary/> (last visited Sept. 26, 2018) (“No other state has as many people living in a church or temple to avoid deportation. One in every six people in sanctuary in the United States is in Colorado.”) (on file with the Washington and Lee Law Review). The most famous is Jeanette Vizguerra, a mother of four children who received a stay of deportation after eighty-six days residing in a church.

65. *We Pledge to Resist Deportation and Discrimination Through Sanctuary*, GROUNDSWELL, <https://action.groundswell-mvmt.org/petitions/we-pledge-to-resist-deportation-and-discrimination-through-sanctuary> (last visited Sept. 26, 2018) (emphasis added) (on file with the Washington and Lee Law Review).

her obtaining a two-year stay of removal, was marked by Vizguerra and volunteers wearing t-shirts at her release saying “Keep Families Together.”<sup>66</sup> Her church shares with other churches in pro-immigrant and anti-immigrant jurisdictions the common purpose of acting on a moral calling to engage in civic action that imagines a more humane, integrative immigration enforcement policy. Hers is potentially more willing to adopt a civic stance that directly confronts the government given that Denver is pro-immigrant and has adopted sanctuary city policies. Nationwide, the bolder churches publicly declare their sanctuary stance in defiance of anti-harboring provisions in the INA, on the theory that the publicity creates a shield against liability since they are not acting in secret, or avail themselves of religious freedom guarantees such as Religious Freedom Restoration Act and the First Amendment.<sup>67</sup> In jurisdictions that are less sympathetic to immigrants, churches buffer their moral impetus with less direct civic engagement—for example, by insisting on search warrants before letting ICE enter their sanctuaries or keeping quiet their offers of sanctuary to immigrants fearing deportation—to reduce friction in their communities.<sup>68</sup> So far

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66. See Noelle Phillips, *Jeanette Vizguerra Leaves Sanctuary After 86 Days Avoiding Immigration Authorities*, DENVER POST (May 12, 2017), <https://www.denverpost.com/2017/05/12/jeanette-vizguerra-arturo-hernandez-garcia-stay-deportation/> (last updated May 12, 2017) (last visited Sept. 26, 2018) (“Vizguerra left First Baptist Church in Denver Friday morning with about two dozen supporters singing a song in Spanish . . . . Vizguerra’s story has generated international headlines and prompted TIME magazine last month to name her one of the magazine’s 100 most influential people in the world.”) (on file with the Washington and Lee Law Review).

67. See U.S. CONST. amend. I (“Congress shall make no law . . . prohibiting the free exercise [of religion] . . . .”); Jason Hanna, *Can Churches Provide Legal Sanctuary to Undocumented Immigrants?*, CNN, <https://www.cnn.com/2017/02/17/us/immigrants-sanctuary-churches-legality-trnd/index.html> (last updated Feb. 17, 2017) (last visited Sept. 26, 2018) (discussing “the Immigration and Nationality Act prohibit[ing] anyone from knowingly harboring an undocumented immigrant” but finding that “[i]n general, prosecutors probably won’t go after a pastor” for fear of bad publicity) (on file with the Washington and Lee Law Review).

68. See Hanna, *supra* note 67 (“Offering sanctuary at a church can involve providing food and shelter for an immigrant, as well as staffing volunteers to stay with that person around the clock.”).

under the Trump Administration, no sanctuary churches have confronted a legal challenge.<sup>69</sup>

*C. Corporations Resisting Worksite Enforcement, DACA, and Travel Ban*

Just as powerful, if less visible, was the outcry from Google, Apple, Facebook, Uber, Lyft, and other technology companies against restrictive immigration policies.<sup>70</sup> These technology companies opposed the first travel ban almost immediately and were joined by more than 150 companies who issued public statements, social media pressure, and eventually an amicus brief in the lawsuit proceeding against the travel bans.<sup>71</sup> Facebook C.E.O. Mark Zuckerberg posted at the time, “[m]y great grandparents came from Germany, Austria and Poland. [My wife] Priscilla's parents were refugees from China and Vietnam. The United States is a nation of immigrants, and we should be proud of that.”<sup>72</sup> Apple reminded consumers that founder Steve Jobs’

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69. Nonenforcement in churches is in keeping with ICE’s policy to treat churches as sensitive locations, though the policy is nonbinding on ICE. *See FAQ on Sensitive Locations and Courthouse Arrests*, U.S. IMMIGR. & CUSTOMS ENFORCEMENT, <https://www.ice.gov/ero/enforcement/sensitive-loc> (last updated Jan. 31, 2018) (last visited Sept. 26, 2018) (discussing ICE policy related to immigration enforcement in “sensitive locations” such as schools and churches) (on file with the Washington and Lee Law Review); U.S. IMMIGRATION & CUSTOMS ENFT, ICE DIRECTOR MEMORANDUM ON ENFORCEMENT ACTIONS AT OR FOCUSED ON SENSITIVE LOCATIONS (2011), <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf> (same).

70. *See* Don Reisinger, *Major Tech Companies Line Up Against Travel Ban*, FORTUNE MAG. (April 20, 2017), <http://fortune.com/2017/04/20/tech-company-travel-ban/> (last visited Sept. 26, 2018) (discussing technology companies’ brief opposing “Trump’s latest travel ban”) (on file with the Washington and Lee Law Review). More travel ban responses: Uber boycott/CEO resignation, Lyft \$1 million to ACLU, Starbucks hiring 10,000 refugees.

71. *See* Brief of Technology Companies as Amici Curiae Supporting Appellees, *Int’l Refugee Assistance Project v. Trump*, 857 F.3d 554 (4th Cir. 2017) (No. 17-1351) (arguing that Trump’s Executive Order is unlawful and noting that “[i]mmigrants or their children founded more than 200 of the companies on the Fortune 500 list, including Apple”).

72. Mark Zuckerberg, FACEBOOK (Jan. 27, 2017), <https://www.facebook.com/zuck/posts/10103460278231481?pnref=story> (last visited Sept. 26, 2018) (on file with the Washington and Lee Law Review).

father immigrated from Syria.<sup>73</sup> The same companies have adopted in-house policies for hiring DACA recipients with work permits and have made public statements opposing the DACA rescission.<sup>74</sup> Technology companies have long been protective of foreign workers who are vital to their businesses. Thus, it is no surprise they have supported H1-B visas and resisted restrictive employment laws that dampen foreign competition such as the Hire America, Buy America Executive Order.<sup>75</sup> Start-up executive (Y Combinator) said:

Silicon Valley is stepping up. The companies are working on three fronts: They are vociferously objecting to the Trump policies they think are bad, they are trying to engage with him to influence his behavior, and they are developing new technology to work against policies and political discourse they don't support.<sup>76</sup>

Less formally, tech companies facilitate the use of texting and social media to warn immigrants of imminent raids and software

73. See Simon Jary, *Who Is Steve Jobs' Syrian Immigrant Father*, MACWORLD (Feb. 2, 2017), <https://www.macworld.co.uk/feature/apple/who-is-steve-jobs-syrian-immigrant-father-abdul-fattah-jandali-3624958/> (last visited Sept. 26, 2018) (“While some people are horrified at the numbers fleeing Syria, . . . many have pointed out that previous Syrian migrants have boosted the West’s culture, business and technology—most notably the biological father of Steve Jobs—Abdul Fattah Jandali . . . .”) (on file with the Washington and Lee Law Review).

74. See *Microsoft President to Trump: To Deport a DREAMer, You’ll Have to Go Through Us*, NPR (Sept. 5, 2017, 4:21 PM), <https://www.npr.org/sections/thetwo-way/2017/09/05/548686695/250-apple-employees-among-thousands-at-risk-from-daca-cancellation> (last visited Sept. 26, 2018) (“Dozens of CEOs including Jeff Bezos of Amazon, Reed Hastings from Netflix, Randall Stephenson from AT&T and Tim Sloan of Wells Fargo wrote a letter addressed to the president asking him to preserve [DACA]”) (on file with the Washington and Lee Law Review).

75. See *An Open Letter From Technology Sector Leaders on Donald Trump’s Candidacy for Presidency*, NEWCO SHIFT (July 14, 2016), <https://shift.newco.co/an-open-letter-from-technology-sector-leaders-on-donald-trumps-candidacy-for-president-5bf734c159e4> (last visited Sept. 26, 2018) (“We are inventors, entrepreneurs, engineers, investors, researchers, and business leaders working in the technology sector . . . . We believe in an inclusive country that fosters opportunity, creativity and a level playing field. Donald Trump does not.”) (on file with the Washington and Lee Law Review).

76. David Streitfeld, *Tech Opposition to Trump Propelled by Employees, Not Executives*, N.Y. TIMES (Feb. 6, 2017), [https://www.nytimes.com/2017/02/06/business/trump-travel-ban-apple-google-face-book.html?\\_r=0](https://www.nytimes.com/2017/02/06/business/trump-travel-ban-apple-google-face-book.html?_r=0) (last visited Sept. 26, 2018) (on file with the Washington and Lee Law Review).

apps to circumvent cell phone surveillance at borders.<sup>77</sup> The Chamber of Commerce has set forward the Visit the U.S. Coalition to encourage international travelers to visit the U.S. and counter a Trump slump in tourism.<sup>78</sup>

Corporate resistance extends beyond technology firms that rely on foreign workers for comparative advantage. Larger corporations, which tend to be more politically conservative, have expressed support for employees with DACA as part of their support for diversity in their corporate missions.<sup>79</sup> Chobani and a cadre of independent coffee shops utilize targeted hiring and job training for refugees.<sup>80</sup> Small companies and restaurants with immigrant workers are preparing to balance their obligations to comply with worksite laws and protecting workers who may become the target of worksite raids, e.g., union organizing and 7-Eleven raids,<sup>81</sup> through indirect opposition that enables workers

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77. See Issie Lapowsky, *A Portable Panic Button for Immigrants Swept Up in Raids*, WIRED (March 10, 2017), <https://www.wired.com/2017/03/portable-panic-button-immigrants-swept-raids/> (last visited Sept. 26, 2018) (noting that an app has been created to “select contacts they would want to notify in case of emergency and pre-load personalized messages to each recipient”) (on file with the Washington and Lee Law Review).

78. See *Who We Are*, VISIT U.S. COALITION, <https://www.visituscoalition.com/> (last visited Sept. 26, 2018) (explaining the Visit U.S. Coalition’s goals and policies) (on file with the Washington and Lee Law Review).

79. Goldman Sachs, Nike, Coca Cola, and Ford Motor Company adopted diversity statements. For example, Ford’s Executive Chairman Bill Ford said: “Respect for all people is a core value of Ford Motor Company, and we are proud of the rich diversity of our company here at home and around the world. That is why we do not support this policy or any other that goes against our values as a company.” See *Diversity and Inclusion*, FORD, <https://corporate.ford.com/company/diversity.html> (last visited Sept. 26, 2018) (stating that diversity has always been a key to Ford’s success) (on file with the Washington and Lee Law Review).

80. See *Chobani Founder Stands By Hiring Refugees*, 60 MINUTES (Apr. 6, 2017), <https://www.cbsnews.com/news/chobani-founder-stands-by-hiring-refugees/> (last visited Sept. 26, 2018) (providing jobs, transportation, and translators at Chobani plants for refugees) (on file with the Washington and Lee Law Review).

81. See *Former Head of ICE Discusses Raids on 7-Eleven Stores*, NPR (Jan. 11, 2018), <https://www.npr.org/2018/01/11/577453468/former-head-of-ice-discusses-raids-on-7-eleven-stores> (discussing ICE raids at 7-Eleven stores resulting in twenty-one arrests of illegal immigrants) (last visited Sept. 26, 2018) (on file with the Washington and Lee Law Review). California Legislation AB 450 and community organizations outline some employer resistance strategies that stay within the bounds of federal enforcement and protect immigrants, for example, by insisting on search warrants in private workspaces and providing legal assistance to workers.

to continue working as independent contractors or relying on franchise and other flexible corporate forms, hiring legal counsel and providing know your rights workshops in anticipation of worksite raids, invoking their private property rights to bar or monitor ICE access. Some of these protective measures are captured in California's AB 450, which limits employer cooperation with ICE worksite enforcement, while most are adopted without mandatory state requirements.<sup>82</sup>

### *V. Constructing Citizenship Through Integrative Enforcement*

To recap my argument, sanctuary networks exemplify the integrative enforcement ideal of shared governance over immigration policy. Sanctuary jurisdictions signify the value of immigrants as members of the community by recognizing the full range of contributions of immigrants. They do this instead of fixating on immigration status. More ambitiously, they express their recognition of their societal obligation to integrate citizens rather than viewing integration as a one-way process with the onus on immigrant individuals to conform to societal norms. They expect themselves to enact policies and practices consistent with these obligations, and they make demands on the federal government to participate in a shared project of integrative enforcement.

For many, the norms and principles they seek to advance go beyond policy reforms and enforceable legal mandates: they state that noncitizens deserve protections of dignity and due process such as access to hospital emergency care, protection of courts, protection from splitting mixed-status families, the ability to

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82. See CAL. GOV'T CODE §§ 7285–7285.3 (West 2017) (“[T]he bill would prohibit an employer . . . from providing voluntary consent to an immigration enforcement agent to enter nonpublic areas of a place of labor . . .”). Some businesses oppose Section 7285 of the California Government Code. For example, Motel 6 is accused of voluntarily providing guests' personal information to ICE in six hotel locations. See Richard Gonzalez, *Motel 6 Sued, Again, for Identifying Latino Guests to ICE*, NPR (Jan. 23, 2018), <https://www.npr.org/sections/thetwo-way/2018/01/23/580149434/motel-6-sued-for-identifying-latino-guests-for-immigration-agents> (last visited Sept. 26, 2018) (alleging that providing ICE with personal information violated “federal and state laws barring discrimination based on national origin, and protecting against unreasonable searches”) (on file with the Washington and Lee Law Review).

express opinions and petition the government through protest, media, and appeals to elected officials. Noncitizens with criminal histories deserve to be considered part of the public safety equation who are seen as community members who might be victimized by crime and empowered to report it, rather than the source of public safety risks. Noncitizen students deserve educational access unencumbered by immigration enforcement in sensitive locations such as schools. Noncitizen workers deserve opportunities to work, workplace safety, and protections from discrimination, harassment, and unlawful raids. In other words, noncitizens deserve to be considered American socially and culturally, even if they lack formal legal status. Consistent with the slogan for Define America, a nonprofit dedicated to DREAMers, “We are Americans. Just not legally.”<sup>83</sup>

Importantly, sanctuary networks go beyond articulating norms and policies of inclusion for themselves. They seek to shape the national conversation on immigration. This effort includes policy, but it is not limited to it; norm-setting extends through broad tactics and is directed at an array of normative ends. This is collectively how sanctuary networks advance an alternate vision for immigration that includes integration for the broader category of noncitizen workers, churchgoers, and community members rendered vulnerable under aggressive enforcement.

Practically speaking, how do these principles translate into a national immigration policy of integrative enforcement? This Part distills the underlying principles that lie beneath the governance strategies and policies sought in sanctuary networks.

### *A. Rebalancing the Federal Enforcement-Only Immigration Agenda to Include Integration*

Sanctuary networks are rethinking the federal government’s regulation of membership for noncitizens. The emphasis in federal immigration law for the last decade has been on enforcement of formal immigration status: preventing unlawful entry, barring access to work and public services, detaining those suspected of

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83. *We Are Americans, Just Not Legally*, TIME (June 25, 2017), <http://content.time.com/time/covers/0,16641,20120625,00.html> (last visited Sept. 26, 2018) (on file with the Washington and Lee Law Review).

lacking documentation, and deporting immigrants with minor crime and status violations. Immigration law gives little thought to immigrant integration in the United States Citizenship and Immigration Services (USCIS) monitored pathway to citizenship. It gives even less thought to integration in the strenuous push for deportation that has eliminated many of the remedies for unlawful status that previously permitted adjustment of status and adjudicative discretion that permitted consideration of proportionality in individualized cases.<sup>84</sup>

Challenges to this asymmetric approach to immigration policy would require building a stronger infrastructure for integration. While such efforts are not confined to the federal level, they must include it because the federal government has distinctive capabilities as a gatekeeper to formal citizenship. Preserving integration at the federal level means encouraging the federal government's few integrative spaces to remain committed to integration and discouraging the conflation of enforcement missions into those functions. Within the DHS, for example, the USCIS needs safeguarding of its statutory mission to grant visas, work permits, and other immigration benefits and strengthening of its community outreach functions to affirmatively assist with adjustments to status for newcomers, permanent residents, and U.S. citizens.<sup>85</sup> USCIS should offer education for the next step to citizenship at each phase of naturalization (i.e. LPR applications at entry, naturalization applications at permanent residence). ICE and CBP need to recognize the potential for abuse if they encroach too heavily on USCIS's functions, for example, the institution of

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84. See Frost, *supra* note 29, at 29–36 (listing as examples cancellation of removal, U-visas, Special Immigration Juvenile Status Visas, and waivers and exceptions for unlawful presence); Cade, *supra* note 29, at 8 (discussing the ways in which sanctuary networks erect front-line equitable screens, promote procedural fairness, and act as last-resort circuit breakers in the administration of federal deportation law).

85. In contrast to the suggested approach, the USCIS in March 2018 changed its mission statement to emphasize the efficient administration of immigration law and protection of Americans rather than service to noncitizens: "U.S. Citizenship and Immigration Services administers the nation's lawful immigration system, safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefits while protecting Americans, securing the homeland, and honoring our values." *About Us*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/aboutus> (last updated Mar. 6, 2018) (last visited Sept. 26, 2018) (on file with the Washington and Lee Law Review).

extreme vetting or taking people off the pathway to citizenship for technical problems with their green card or decades-old minor offenses.<sup>86</sup> Outside DHS, civil rights agencies, workplace agencies, and law enforcement agencies can be held to account for adherence to statutory mandates to provide educational opportunity, fair workplaces, and community safety in a manner not conditioned on immigration status. Interagency task forces on language and national origin enable cooperation and sharing of best practices across those agencies and memoranda of agreements guard against harmful complicity such as FEMA denying emergency care to immigrants or the Department of Labor using information about worker immigration status to tip off ICE. A federal immigration office (outside of DHS and DOJ) can connect these efforts to the President's policy priorities.

Challenging the status quo would require networked sites to push for a re-examination of the federal government's expanded notions of criminality, security, and immigration enforcement. Congress needs to alter the priorities for immigration enforcement and forge pathways to citizenship through legislative reform. Executive agencies need to widen opportunities for enforcement discretion and enable adjustment of status for those newly eligible to do so. Courts need to mitigate overly harsh administration of federal immigration laws by safeguarding due process for immigrants facing removal. The overarching idea is to rebalance enforcement-only status quo and to build national norms and policies of integration.<sup>87</sup>

### *B. Connect Sanctuary Networks with National Immigration Policy*

State, local, and nonprofit organizations have led the way on immigrant integration with civics education workshops, cultural

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86. Many policy changes show this encroachment, for example, see Memorandum from Rex Tillerson, Sec'y of State, Elaine Duke, Acting Sec'y, Dep't Homeland Sec., Daniel Coats, Dir., Office of the Dir. of Nat'l Intelligence, to Donald Trump, President of the United States (Oct. 23, 2017) (applying extreme vetting to refugee and military veteran applications for legal permanent residence) (on file with the Washington and Lee Law Review).

87. *See id.* (providing an example of "enforcement-only" policy lacking integration efforts).

exchange, and language support that facilitate social integration and cultivate the development of skills and attitudes that facilitate economic integration.<sup>88</sup> Private entities and individuals such as churches, corporations, and campuses are joining them. A goal of this Article has been to show how these decentralized efforts collectively temper federal enforcement excess and advance a vision for national immigration policy premised on shared responsibility for integration as a societal obligation rather than an optional exercise. This two-part function is the essence of sanctuary networks and integrative enforcement: speaking out for themselves and confronting the federal government.

As the sanctuary network examples demonstrate, integration can proceed in an independent or in an intertwined fashion with federal immigration enforcement. These networks can focus on short-term policy change or articulate norms for long-term vision. While isolated efforts to integrate immigrants within communities, churches, and corporations are valuable for their own sake—often achieving what would be unachievable in another setting—I suggest that there is benefit to a more cohesive linking up of the national conversation on immigration. Community organizations that offer assistance with English language and civics tests and naturalization applications could frequent USCIS naturalization ceremonies and interviews that lead to permanent residence. Civics education and community protest or mobilizing opportunities could be paired with voter registration drives. Legal clinics providing free or low-fee legal assistance for immigrants seeking income security, lawful means for remaining within the country, or other forms of protection from deportation could be broadened to support those making the transition to citizenship, especially given that the pathway is increasingly riddled with tripwires for enforcement. The U.S. Refugee Admissions Program

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88. For examples of scholarship on immigrant integration in the local context, see ELS DE GRAAUW, *MAKING IMMIGRANT RIGHTS REAL: NONPROFITS AND THE POLITICS OF INTEGRATION IN SAN FRANCISCO* (2016) (detailing how non-profits started to aid undocumented immigrants can achieve their goals in the face of inherent limitations); Stella Burch Elias, *The New Immigration Federalism*, 74 OHIO ST. L.J. 703, 743 (2013) (“[S]tate and local immigrant-inclusionary rulemaking has begun to outstrip immigrant-exclusionary regulations.”); Cristina Rodriguez, *Significance of the Local in Immigration Regulation*, 106 MICH. L. REV. 567, 581–609 (2008) (providing several examples of states and localities providing services for immigration integration).

is one of a few models for linking federal and local integration efforts in a manner that goes beyond funding. The federal government handles refugee determinations and local organizations and nonprofits assist with resettlement, often with federal funding.<sup>89</sup> AmeriCorps has a pilot program that places native-born U.S. volunteers in immigrant communities.<sup>90</sup> A counterpart, RefugeeCorps, has been proposed to permit skill development and societal contribution that offsets cost, builds good will, and builds bridges to mainstream communities (similar to the military).<sup>91</sup> Beyond specific policy prescriptions, sanctuary networks can advance a long-term vision for shared governance of immigration that includes multiple actors and not merely a contest of state versus local laws.

*C. Rethink Connection Between Enforcement and Citizenship as Membership in Society*

Taken together, the sanctuary networks highlighted in this Article reveal a culture of valuing immigrants as members of society and not merely bearers of status. This vision extends beyond short-term policy fixes. The overarching vision being set through their norm-setting recognizes the substantive experiences of immigrants—social, economic, cultural, and political—rather than fixating on their legal status in a way that is circumscribed by their lack of formal citizenship. U.S. immigration policy needs

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89. See Memorandum from Rex Tillerson, *supra* note 86 (reviewing the U.S. Refugee Admissions Program and advising how to heighten vetting process).

90. *USCRI Announces New Refugee AmeriCorps Program*, USCRI (July 2016), <http://refugees.org/news/uscri-announces-new-refugee-amicorps-program/> (last visited Sept. 26, 2018) (“[AmeriCorps] volunteers are crucial to providing refugee clients with English instruction, cultural orientation, mentoring, assistance with housing, employment, health care, and education, financial literacy, and many other services.”) (on file with the Washington and Lee Law Review).

91. See *generally* STRENGTHENING COMMUNITIES BY WELCOMING ALL RESIDENTS: A FEDERAL STRATEGIC ACTION PLAN ON IMMIGRATION AND REFUGEE INTEGRATION, WHITE HOUSE TASK FORCE ON NEW AMERICANS (2015), [https://obamawhitehouse.archives.gov/sites/default/files/docs/final\\_tf\\_newamericans\\_report\\_4-14-15\\_clean.pdf](https://obamawhitehouse.archives.gov/sites/default/files/docs/final_tf_newamericans_report_4-14-15_clean.pdf) (discussing contributions of immigrants and presenting the president with a plan to “integrat[e] newcomers into the social, cultural, and economic fabric of our country”).

this type of reorientation to better balance integration and enforcement. While the federal government maintains sovereignty over the regulation of its borders and the composition of its membership, immigrants are part of the national community once they reside in the United States. Seeing immigrants as community members requires that society and government institutions share in the task of integration, particularly during the time when immigrants lack access to the full range of political and legal rights presumed to be preconditions for full belonging for other marginalized groups.<sup>92</sup> For those undocumented immigrants who lack a pathway to legal status, the federal government's assistance is needed to facilitate their transition to full belonging—legal reform to create a pathway, administrative support to access that pathway, and practical assistance to realize the benefits of pursuing it.

Viewing immigrants as threats to extinguish, rather than community members to embrace, prevents the immigrants who are already living in the United States from properly innovating and adapting to a diverse, global society. Integrative enforcement rests on a premise of linked fate among citizens and noncitizens. The U.S. military's ability to cultivate a strong sense of substantive belonging for noncitizens who become eligible to naturalize through their national service models the cultivation of membership across legal status. The refugee program linking the federal government with churches and voluntary initiatives of private corporations to help refugees find jobs exemplify a multifaceted network of federal and local, public and private actors working toward economic integration. While these programs do not currently extend to all types of noncitizens, they build the societal conditions to make possible a political commitment to bettering the economic, political, social, and legal integration of noncitizens.

Enforcement policies that limit migration, block integration, and permanently exclude noncitizens from joining society fuel societal division and ultimately prove self-defeating. Hostility toward immigrants breaks down the social fabric. The lost sense of

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92. See CHEN, *supra* note 27 (describing government interventions to assist the naturalization process). See generally IRENE BLOEMRAAD, *BECOMING A CITIZEN: INCORPORATING IMMIGRANTS AND REFUGEES IN THE UNITED STATES AND CANADA* (2006) (providing an interesting perspective on how the United States and Canada encourage foreigners to achieve citizenship).

fairness for those excluded from basic protections alienates individuals and corrodes government legitimacy. The resulting weakening of citizenship as an institution breeds threats to public safety and national security.<sup>93</sup> Revitalizing the sense that citizenship is a shared exercise and a goal that is worth encouraging—rather than a birthright that is passively granted, denied, or removed at the hands of the federal government—reinvigorates the nation. Integration and enforcement are both needed, and they are not necessarily at odds.

### *VI. Conclusion*

This Article has argued that integration is missing from the national conversation about immigration. Social networks of public and private institutions need to work together to construct new norms for the immigration agenda. The federal government, in particular, has a special responsibility to promote integration alongside the state, local, and non-governmental community groups that have traditionally served as the engines of integration. This is because the federal government is the gatekeeper to citizenship and formal citizenship is the coin of the realm in a political climate fixated on enforcement.

Undoubtedly, the federal government's dual responsibility for immigration enforcement and immigrant integration is vexing. However, the federal government's nearly exclusive focus on status enforcement and courts' and Congress's unwillingness to challenge this expansive enforcement agenda over the past decade is a mistake. Immigration lawyers, scholars, and policymakers concede too much when they give up on the notion of integrative enforcement as an alternative normative foundation for policy. That enforcement remains the preoccupation of federal immigration policy is unlikely to change given the continuing inability of Congress to enact comprehensive immigration reform and the lack of political will to overcome President Trump's immigration policies. Our immigration laws need to recognize

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93. The essays comparing U.S. and European approaches toward managing security note that the United States focuses on the "enemy abroad" while Europe focuses on the "enemy within." SIMON REICH, IMMIGRATION, INTEGRATION, AND SECURITY: AMERICA AND EUROPE IN COMPARATIVE PERSPECTIVE 9 (2008).

immigrants consist of more than their status and that there are different kinds of enforcement goals for differently-situated immigrants. DACA recipients are not social or cultural threats, high tech and guest workers are not stealing jobs, and refugees are not always trying to drain the welfare state. Unlawful presence or lapses in immigration status do not by themselves make one unfit for citizenship. Immigrants from countries in disfavor are not all criminals and national security threats. Enforcement-first policy goals do not have to mean enforcement-only policies. Other norms and values—arising from social norms, local practices, and international law—can and do apply in ways that blunt enforcement excess and extend the capacity for integration.

Disengagement of those who disagree with the federal immigration policy does not help. The Article highlights examples of cities, states, corporations, churches, and campuses infusing enforcement with a more integrative flavor, which models a way to advance a conversation based on a different conceptual foundation for citizenship. In this way, they can fill critical gaps. They can also transform the national conversation. In the long run their efforts to affix the regulation of citizenship status to membership, rather than formal status, clarifies the purpose of regulating membership in a nation-state. The clarified vision develops new policy tools and charts new policy pathways that go beyond the current institutional design that disfavors noncitizens.

In closing, enforcement measures can exist alongside integrative goals in immigration. While this Article adopts the belief that incorporating immigrants serves the nation, it is not a plea for undermining the federal government's ability to protect its borders, allocate its resources, or define its membership. The fate of integration and enforcement are bound up in one another. They are intertwined in networks of shared governance, as opposed to distinct functions that can be rigidly divided among different institutional sectors or levels of government.