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## **Immigration Criminalization and the Rise of Sanctuary: The Case of Santa Ana, California**

*Jennie Cottle*

Sanctuary cities in the U.S. today encompass a range of different policies and political statements, from symbolic formal declarations of municipal leaders' support for their undocumented residents to more concrete policy ordinances such as the refusal to utilize local resources in federal enforcement efforts. The current restrictive environment for immigrants, set forth by the Trump administration, but also based on decades of increased criminalization of immigrants, has caused a pushback by local movements, particularly in regards to local policing and the movement of the border beyond its physical presence. These local actors can, at times, take advantage of a "niche-opening"<sup>1</sup> for public support and an "interstitial"<sup>2</sup> policy gap that allows them to mobilize and push for reforms at the city level.

Santa Ana, California became one of the newest and more progressive sanctuary cities, when it passed its sanctuary ordinance that included broad commitments to prevent "biased-based policing" and to promote "social justice and inclusion" for all residents, in addition to more concrete actions limiting the use of city resources to cooperate with ICE and federal enforcement. Facing a hostile national policy and discourse, coupled with the presence of a large immigrant population, youth activists and DREAMers were able to set the stage for a new local sanctuary movement and the passing of a city ordinance. Furthermore, young people representing various nonprofit groups in Santa Ana explained that the goals of their current movement are intersectional and seek to transcend the traditional discourse of "deserving" or "undeserving" immigrants, of deportations based on the presence of a criminal record or misdemeanors, and to align themselves more closely with the larger national movements against police brutality, the privatization of the prison system, and discriminatory policing against minority groups.

This article will present how the increasing criminalization of immigrants based on decades of restrictive immigration policies by the federal government has contributed to the pushback led by local movements demanding immigration reform and protection. As these movements gain traction, they have been able to work with their local governments to pass policies protecting immigrants in their neighborhoods to the extent they are able to. Although the sanctuary movement today has broadened to include universities, private businesses, and state governments, among others, they share a common objective of dissenting against a system that they believe does not function for millions of undocumented residents in the United States. By taking part in the movement towards "sanctuary", these actors strive to improve the daily lives of undocumented residents, by increasing their access to employment, education and other services, and by recognizing their contribution to the country's development overall. While many cities have taken actions that fall under the umbrella of sanctuary policies, this article will focus on how the case of Santa Ana has responded to the increasing

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<sup>1</sup> W. J. Nicholls, "From Political Opportunities to Niche-openings: The Dilemmas of Mobilizing for Immigrant Rights in Inhospitable Environments", *Theory and Society*, Vol. 43, n° 1, 2014, pp. 23-49.

<sup>2</sup> J. Bulman-Pozen et H. Gerken, "Uncooperative Federalism", *The Yale Law Journal*, Vol. 118, n° 7, 2009, pp. 1256-1310.

criminalization of immigrants, and illustrate how the history of a city, and its demographics, contributed to the local government's declaration of sanctuary. While Santa Ana is a more extreme case due to its particular circumstances, it illustrates how the timing of the presidential election and larger political tendencies across the U.S. are key factors in creating local resistance and reinforcing the grassroots mobilization for sanctuary observed today.

### **Criminalization Policies and the Rise of Sanctuary**

Although the term "sanctuary" has its roots in the earlier movement to protect Salvadoran and Guatemalan refugees during the civil wars of the 1980s, the current sanctuary movement can be viewed as a response to increased enforcement and policing of immigrants that has occurred over the past several decades. The use of such "cimmigration mechanisms" has also progressively relied upon local enforcement agents, and state and local governments to work together to employ these mechanisms.<sup>3</sup> These measures employ different tactics to affect the daily lives of undocumented immigrants in particular, whether by encouraging local police to target certain individuals, denying access to employment, health services or education, or creating a general feeling of fear for immigrants to report crimes. Furthermore, the underlying rhetoric of such policies and practices serves to solidify the image, for much of the American public, that to be an immigrant is equivalent to being a criminal, and even more specifically, to being an undocumented Latino immigrant<sup>4</sup>.

From the 1980s onwards, three major periods of policy changes have helped to form the foundation of the current Trump administration's immigration enforcement decisions. These include: the implementation of the Immigration Reform and Control Act in 1986; a major immigration policy overhaul in the mid-1990s, encompassing several new legislative actions; and the homeland security initiatives instituted as part of the War on Terror.<sup>5</sup> Although the Trump presidential campaign and administration has greatly intensified the anti-immigrant public discourse and exceeded past enforcement and criminalization actions, the administration has been able to rely upon decades of policy decisions that provide the legal and societal support for the hostile situation faced by many immigrants in the U.S. today.

The Immigration Reform and Control Act, or IRCA, was first instituted in 1986 under the Reagan administration and "represented an intensified focus on enforcement, dramatically increasing resources for the INS."<sup>6</sup> The original legislation focused on the "policing and surveillance of the undocumented," as well as encouraging local police to act as immigration

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<sup>3</sup> C. Rodriguez, "Enforcement, Integration, and the Future of Immigration Federalism", *Journal on Migration and Human Security*, Vol. 5 n° 2, 2017, pp. 509-540.

<sup>4</sup> L. Abrego, M. Coleman, D. E. Martinez, C. Menjivar, J. Slack, "Making Immigrants into Criminals: Legal Processes of Criminalization in the Post-IIRIRA Era", *Journal on Migration and Human Security*, Vol. 5, n° 3, 2017, pp. 694-715.

<sup>5</sup> *Ibid.*

<sup>6</sup> J. Ridgley, "Cities of Refuge: Immigration Enforcement Police and the Insurgent Genealogies of Citizenship in U.S. Sanctuary Cities", *Urban Geography*, Vol. 29, n° 1, 2008, p. 59. INS stands for the Immigration and Naturalization Service; today this agency has been replaced by ICE: Immigration and Customs Enforcement.

officers.<sup>7</sup> In 1996, Congress passed additional reforms to IRCA which enacted even stricter enforcement provisions by restricting access to a range of public services and employment opportunities.<sup>8</sup> As Ridgley explains, “IRCA did represent a new focus on expanding immigration enforcement beyond the country’s borderlands to sites and scales not previously associated with border security.”<sup>9</sup> On top of this, by increasing the criminal provisions and by mixing criminal and civil legislation, the administration succeeded in achieving the “criminalization of immigration law” and setting a new precedent for immigration enforcement.<sup>10</sup>

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) represents another key policy of the immigration reforms of the 1990s, by expanding the limitations for immigrants to access many social assistance programs, as well as by allowing immigrants to be deported for committing a felony or misdemeanor. Two important provisions of the IIRIRA, the 287(g) program and Section 1373, have greatly broadened local law enforcement’s interaction with the federal government. Provision 287(g) does so by deputizing state and local authorities to allow them to enforce immigration law, officially giving the police the ability to question one’s immigration status during “routine policing” activities.<sup>11</sup> Section 1373 states that local laws that prohibit information sharing between state and local agencies with the federal government would now be voided.<sup>12</sup> However, in response, some states and local governments countered that while they are obliged to provide information when requested by the federal government, the law does not require them to collect information on the immigration status of the individuals with whom they come into contact. As such, if an agent of a city’s government does not know the immigration status of one of its residents, or, for example, if there is a city policy that inhibits inquiry of a person’s immigration status, then the agent would have no information to share. It also does not explicitly require cities to store information on immigration status to be accessed at a later time.

The Secure Communities Act, first launched under the Obama administration in March 2008, represented another way to support the measures set out by the IIRIRA and the 287(g) program.<sup>13</sup> The goal of Secure Communities was to prioritize the deportation of immigrants with criminal backgrounds. To do so, the program allowed federal immigration enforcement access to background information on arrested individuals’ immigration records by screening their fingerprints. However, to carry out this policy, federal officials required the support of local enforcement agencies to share information and backgrounds of those arrested. A central tool utilized by ICE to implement this policy is the use of detainer requests. These detainer requests ask the jail to hold an undocumented individual past his or her release date so that

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<sup>7</sup> L. Abrego, M. Coleman, D .E. Martinez, C. Menjivar, J. Slack, “Making Immigrants into Criminals...”, *op. cit.*

<sup>8</sup> J. Ridgley, “Cities of Refuge: Immigration Enforcement Police and the Insurgent Genealogies of Citizenship in U.S. Sanctuary Cities”, *op. cit.*

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> Immigrant Legal Resource Center. Searching for Sanctuary: An Analysis of America’s Counties and their Voluntary Assistance with Deportations. December 2016

<sup>12</sup> U.S. Code: Title 8, chapter 12, subchapter II, Part IX, Section 1373, 1996.

<sup>13</sup> According to the National Immigration Law Center: “S-Comm had nationwide coverage as of January 22, 2013. Dept. of Homeland Security (DHS). The program was ended on November 20, 2014 and replaced by the Priority Enforcement Program (PEP) in 2015.”

ICE can investigate and potentially transfer the individual to an immigration detention center. Although the program's stated intent was to target undocumented residents with a criminal background, evidence was gathered by various immigration rights groups to show that the detainer requests were not issued only for those individuals with a criminal conviction.<sup>14</sup> This suggested that "ICE was using LEA [local enforcement agencies] as part of its general immigration enforcement effort," instead of fulfilling its mandate to focus only on those with criminal convictions. Data collected by TRAC Immigration also revealed that from U.S. fiscal year 2008 to 2012, only about one-third of the persons with detainers issued by ICE had any criminal violations, and only 8.6% had been involved in a "serious crime".<sup>15</sup>

Other legal aid organizations and judicial decisions have also called into question the legality of the detainers to hold a person in jail without a court-issued warrant or probable cause.<sup>16</sup> Eventually, a growing movement led by advocacy groups revealed the program's implementation issues and a general "skepticism of the trustworthiness of the federal government's motives."<sup>17</sup> This translated into political action by states and counties to express their dissatisfaction with the program and to seek greater legal clarification of their obligation to comply with the detainer requests. When the program first began, the detainer requests included a clause stating that local enforcement agencies were "required to obey federal requests."<sup>18</sup> However, after these policies were challenged in court, ICE officials were forced to backtrack on this, stating that the program was "voluntary" and local agencies could choose whether or not to "opt-in."<sup>19</sup> The ensuing judicial decisions clarified that cooperation with the requests was indeed voluntary, which led to even more counties "seeking to opt-out."

Placing this cooperation continuum within the U.S. federal system, it is possible to see how sanctuary cities seek to delineate their role within the realm of immigration enforcement. In Bulmen-Pozen and Gerken's "uncooperative federalism" model, they argue that "dissent" "can actually promote the federalist system." Rather than being viewed as a source of friction or a threat to the system, they believe it should be seen as built into the system in order for

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<sup>14</sup> H. Gladstein, A. Lai, J. Wagner, M. Wishnie, *Blurring the Lines: A Profile of State and Local Police Enforcement of Immigration Law Using the National Crime Information Center Database, 2002-2004*, rapport du Migration Policy Institute, december 2005.

<sup>15</sup> TRAC Immigration Reports 2008-2012

<sup>16</sup> Washington Defender Organization and National Immigration Law Center. Cases include (but are not limited to): *Steinle v. City and County of San Francisco, et. al*, No. 3:16-cv-02859 (N.D. Cal. filed Jan. 6, 2017) ("[N]o plausible reading of [the statute] encompasses the release date of an undocumented inmate."); *City of New York v. United States*, 971 F. Supp 789 (S.D.N.Y 1997), *aff'd*, 179 F.3d 29 (2d Cir. 1999) (observing that 8 USC § 1373 and 1644 might not survive a constitutional challenge in the context of general confidentiality policies necessary to municipal functions); *Miranda-Olivares v. Clackamas County*, No. 3:12-cv-02317-ST, 2014 WL 1414305 (D.Or. April 11, 2014); *Jimenez-Moreno v. Napolitano*, No. 1:11-cv-05452, Docket Entry 230 at 16-17 (N.D. Ill. Sept. 30, 2016); *Morales v. Chadbourne*, 996 F. Supp. 2d 19 (D.R.I. 2014) *aff'd in part, dismissed in part*, 793 F.3d 208, 215-216 (1st Cir. 2015); *Mercado et al. v. Dallas County*, No. 3:15-CV-3481 (N.D.Tex filed Jan. 17, 2017).

<sup>17</sup> G. Boushey, A. Luedtke, "Immigrants Across the U.S. Federal Laboratory: Explaining State Level Innovation in Immigration Policy", *State Politics and Policy Quarterly*, Vol .11, n° 4, 2011, pp. 390-414.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.* Department of Homeland Security: Request for Voluntary Notification (Form I-247N). *Buquer v. City of Indianapolis*, 797 F.Supp.2d 905, 911 (S.D. Ind. 2011) ("A detainer is not a criminal warrant, but rather a voluntary request").

it to function successfully.<sup>20</sup> Taking this model of “uncooperative federalism,” “dissent” typically occurs in the “interstices of federal mandates”, via either a deliberate space created by Congress to give the states leeway in implementing a policy or via a “regulatory gap” that was not foreseen by the federal government. Placing sanctuary policies within this model reveals how they express their dissent in the federal system by finding spaces where compliance is voluntary or not regulated (for example, refusal to collect sensitive information, or allowing police officers to stop and ask for papers).

While the local ordinances and resolutions vary from symbolic declarations to more concrete legal actions, the ordinances typically include a clause which explicitly recognizes the authority of federal immigration policies and programs. By doing so, they have taken advantage of the interstice awarded to them in the federal policy to find a space where they can express their dissent. This dissent claims that the gap in the Section 1373, which demands that information sharing not be prohibited between federal, state and local entities does not expressly require state and local entities to collect, update and store this information. Therefore, some sanctuary city policies simply refuse to collect and maintain information, or state that they will not use city resources to assist in federal immigration enforcement. As a result, their actions deliberately avoid breaking the law and instead fall within the realm of “interstitial dissent.”

Rather than a uniform response among local agencies, activists and governments, both enforcement practices and noncooperation measures can take on many different forms. The type of sanctuary policy, and even the decision of whether or not to use the word sanctuary in a city policy, versus “welcoming policies” or “non-cooperation” policies result from a myriad of different factors that can be placed within the specific context of that city, county and state. In the case of Santa Ana, California, presented in the next section, it is important to take into account the history, demographics and location of the city to understand how the city passed what was deemed one of the most ambitious sanctuary cities in the country. The timing of Santa Ana’s sanctuary ordinance can be seen as part of the larger landscape of responses to the incendiary discourse from the Trump campaign and Trump administration. While the first sanctuary movement occurred during the political environment of the Cold War, Trump’s inauguration, following one of the most contentious and politically volatile campaigns in U.S. history, has contributed to another type of intensely divisive and partisan atmosphere within which non-cooperation policies manifest themselves today.

### **The Case of Santa Ana, California**

In January 2017, Santa Ana became one of the most recent cities to pass a sanctuary city resolution and legal ordinance. The city has a long history with immigration, and today hosts a population that is 78% Latino. Because of this, local community members have felt a direct effect of discrimination from migration policies and local policing which have directly targeted Latino immigrant populations. On the other hand, its location in Orange County, California, a primarily Republican district, distinguishes it from progressive enclaves found in areas like

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<sup>20</sup> J. Bulman-Pozen, H. K. Gerken, “Uncooperative Federalism”, *op. cit.*, p. 1261.



San Francisco. This makes it an interesting case to understand how the changing political climate has pushed the city and its residents to fight for sanctuary city policies. Community members and activists reported a sense of urgency due to the 2016 presidential elections that had not been present in the past, and explained that this helped them to achieve concrete objectives that had not previously been attainable.<sup>21</sup>

While the timing of Santa Ana's sanctuary policy was an important factor in passing the local ordinance, the city's demographic and political composition also help to explain the grassroots mobilization that has occurred there. Santa Ana is located in southern California and is the second largest city in Orange County, and eleventh largest in California. It is home to a population of 342,930 people, with a majority of its residents identifying as "Hispanic", at 78.2%, followed by 10.4% identifying as "Asian", and 9.2% as "White".<sup>22</sup> In addition, about half of the city's residents are foreign born. Currently, the mayor and all six members of the city council are Latino. However, the council is made up of both Republicans and Democrats, and despite having a majority Hispanic population for several decades, the city's first Sanctuary City Resolution was passed only in December of 2016. The city's Sanctuary Resolution reveals the culmination of a long and slow struggle for political representation and protection of Latino immigrants.

To develop a deeper understanding of how Santa Ana passed its sanctuary ordinance, it is necessary to understand the history of both Orange County, and Santa Ana's specific role within the county. Orange County was formed in 1889 after the California Senate voted to create a new municipal area from the southern section of Los Angeles County. Voters in the area followed this Senate vote by approving the creation of Orange County two months later.<sup>23</sup> The original tracts of land in this area were primarily new farmlands whose growth provided an incentive for the Southern Pacific Railroad to extend its reach to connect the city of Santa Ana with Los Angeles County.<sup>24</sup> When Orange County separated from Los Angeles County, its population was described as "fiercely independent ranchers, sheepherders, beekeepers, citrus growers and crop farmers who had bristled under the control of a rich city 30 miles up the rail line."<sup>25</sup> These ranchers had taken over land that was left behind when the "Californios", ranchers and landowners of Spanish origin, left the area after a long drought period. Following its independence from Los Angeles County and the construction of the railroad connection, Santa Ana became the center of several Orange County institutions that it still houses today, including the County Courthouse, all of Orange County's major departments, as well as Orange County's local newspaper, the OC Register, originally called the Santa Ana Register.<sup>26</sup>

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<sup>21</sup> Interviews conducted in Santa Ana, California, March 2017.

<sup>22</sup> California State Department of Finance, Demographic Research Unit. January 1, 2016. Note: the U.S. Census methodology for this data collection uses the following categories for demographic origins: "White alone,;" Black or African American alone; American Indian and Alaska Native alone; Asian alone, Native Hawaiian and Other Pacific Islander alone; Two or More Races; Hispanic or Latino; White alone, not Hispanic or Latino".

<sup>23</sup> R. Kling, S. Olin, M. Poster (eds), *Postsuburban California: The Transformation of Orange County Since World War II*, Berkeley, University of California Press, 1991.

<sup>24</sup> D. Marsh, R. Richardson, *Santa Ana, an Illustrated History*, Encinitas, Heritage Publishing Company, 1994.

<sup>25</sup> J. Mazingo, "In Orange County, land of reinvention, even its conservative politics is changing", *Los Angeles Times*, 5 novembre 2018.

<sup>26</sup> R. Richardson, *Santa Ana, an Illustrated History*, *op. cit.*

By the early 20th century, several families purchased large plots of farmland in Orange County, which they would later develop into the extensive suburban center that it is today.<sup>27</sup> However, in order to function, these farmlands also required the presence of low-wage workers in the area, a majority of whom were from Southern California and were of Mexican descent. Many lived in “segregated barrios” in cities including Santa Ana, Westminster, Anaheim and Garden Grove.<sup>28</sup> In the 1940s, Santa Ana’s Hispanic population was reported to be about 15%, and an article from the LA Times explained that at that time “they were forced to attend ‘Mexican’ schools, not allowed to eat in certain restaurants, and segregated into five barrios.”<sup>29</sup> Since then, Santa Ana’s Latino population grew rapidly in the post-war period, mirroring Orange County’s overall population growth as well. From 1950-1960, the city’s population doubled from 45,333 residents to 100,350, increasing to 156,601 in 1970.<sup>30</sup> By the 1990s, Santa Ana’s ethnic composition had already become very diverse from different periods of immigration. The city was host to residents coming from El Salvador, Guatemala, Mexico, Cambodia, Laos, and the Philippines,<sup>31</sup> in addition to a large Vietnamese population that settled in Santa Ana as well as in Garden Grove and Westminster as part of a refugee resettlement program by the U.S. government. This contributed to the 1990s census results which revealed that 50% of Santa Ana’s population was foreign born, the majority of whom had arrived during the 1980s.<sup>32</sup>

While Santa Ana’s ethnically diverse population continued to grow, Orange County grew to become the center of conservatism in California. During World War II, the construction of the Santa Ana Army Base, among other military bases, attracted thousands to the southern California area. Many major aircraft manufacturing firms based out of Los Angeles also moved further south to Orange County where land was cheaper, further cementing the drive for those to either stay in the area after the war, or continue flocking to Orange County for job opportunities.<sup>33</sup> The rise in the number of huge defense companies like Boeing, Hughes Aircraft, Ford Aeronutronic, and others attracted conservative populations from the Midwest to work at these rising industries.<sup>34</sup> Eventually, the owners of the farms started focusing on turning their tracts of land into housing or retail developments, or selling off their farms for large profits. As the LA Times reported, “At its core, Orange County held a tension between Midwestern traditionalism and California’s drive for reinvention.”<sup>35</sup> This created an overall tendency toward libertarianism, calling for low taxes and regulations for land development, and conservative religious views focused on “family values.”

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<sup>27</sup> R. Kling, S. Olin, M. Poster (eds), *Postsuburban California...*, *op. cit.*

<sup>28</sup> “City’s Latinos on the Grow: Majority: Santa Ana’s Hispanics make up 65% of the population and have recorded solid gains, but some still say they are ignored by City Hall”, *Los Angeles Times*, 26 février 1991.

<sup>29</sup> *Ibid.*

<sup>30</sup> R. Kling, S. Olin, M. Poster (eds), *Postsuburban California...*, *op. cit.*

<sup>31</sup> R. Richardson, *Santa Ana, an Illustrated History*, *op. cit.*

<sup>32</sup> *Ibid.*

<sup>33</sup> R. Kling, S. Olin, M. Poster (eds), *Postsuburban California...*, *op. cit.*

<sup>34</sup> J. Mazingo, “In Orange County, land of reinvention, even its conservative politics is changing”, *op. cit.*

<sup>35</sup> *Ibid.*



The construction of the county's first megachurch in 1980, one of the first in the country, corresponded closely to this conservative and religious trend.<sup>36</sup> This megachurch, followed by several others led by conservative preachers, continue to reach millions of residents in the county today. Throughout the 1980s time period, further development in Orange County also led to the construction of the country's first theme park, Knott's Berry Farm, followed by Disneyland,<sup>37</sup> which quickly became a global attraction. The construction of South Coast Plaza, an expansive shopping mall, became another international destination, at times attracting larger crowds than Disneyland. Cities like Irvine, owned by the Irvine family, one of the original landowning families in the county, transformed into such a huge development project that it became the largest planned city in the U.S., all designed around the founding of a large public university, the University of California Irvine.<sup>38</sup>

The defense industry in Orange County also continued to grow in the Cold War period throughout the 1960s, and consistently attracted conservative populations with strong anti-communist sentiments. Due to the success of the industrial development, Orange County's overall postwar population increased from 200,000 in 1950 to 2 million by 1987, eventually reaching over 3 million today.<sup>39</sup> Particularly in newer cities built along the southern coast of Orange County, many areas became predominantly white and politically homogeneous, with little organized labor and diverse interests to push for more left leaning policies. It also made Orange County a center of support for the Reagan gubernatorial campaign, and later the Reagan and Nixon presidential campaigns. Newer cities in the southern part of Orange County also attracted white and wealthy Republicans from the older northern cities in the county. As Fred Smoller explains, the Orange County brand of conservatism and anti-minority views in certain areas helped boost the political careers of congressmen with extreme right views.<sup>40</sup>

Bolstered by higher concentrations of white, wealthy residents, "planned communities," built by commercial and development companies in cities like Irvine, Laguna Niguel and Mission Viejo, continued to grow as well, offering a "utopian promise" to their affluent residents.<sup>41</sup> The increase in development in these areas mirrored the earlier growth in agriculture in the county by once again utilizing a primarily low-wage Latino workforce to construct new, more expensive cities. These housing developments also contributed to the "gated community" phenomenon of planned neighborhoods, allowing wealthy conservative residents to further increase the divide between lower income areas by constructing physical, demographic and financial barriers to block outsiders' access. However, unlike most conventional suburbs, by the mid-1970s to 1980s Orange County encompassed "a complex and decentralized mixture of urban, suburban and rural spaces" that also included "large poor neighborhoods", such as those located in cities like Santa Ana, mixed in with

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<sup>36</sup> *Ibid.*

<sup>37</sup> R. Kling, S. Olin, M. Poster (eds), *Postsuburban California...*, *op. cit.*

<sup>38</sup> W. B. Piggot, "Globalization from the Bottom Up: Irvine, California, and the Birth of Suburban Cosmopolitanism," *Pacific Historical Review*, Vol. 81, n° 1, 2012, pp. 60-91.

<sup>39</sup> R. Kling, S. Olin, M. Poster (eds), *Postsuburban California...*, *op. cit.*

<sup>40</sup> J. Mazingo, "In Orange County, land of reinvention, even its conservative politics is changing," *op. cit.*

<sup>41</sup> R. Kling, S. Olin, M. Poster (eds), *Postsuburban California...*, *op. cit.*

wealthier districts.<sup>42</sup> Orange County's development can be summarized as moving from "an almost indistinguishable part of Los Angeles's suburban fringe" in the 1950s and 60s into a "a self-sustaining, complex economy and cultural life, which is sufficiently interesting and significant to make Orange County a distinct object of study."<sup>43</sup>

As the historical center of the county, Santa Ana has not had the same trajectory of inward-looking gated communities that characterizes many areas in other parts of Orange County. Instead, it has been able to maintain closer neighborhood and family ties built around a strong Latino community base. The longer history of the city and close-knit feeling among the neighborhoods in Santa Ana have allowed it to develop a different response to new housing development projects, based on grassroots mobilization that is rarely seen in other parts of Orange County. In "Grass-Roots Protest and the Politics of Planning: Santa Ana, 1976-1988", Lisbeth Haas details an example: the neighborhood mobilization that took place against the urban development plans to tear down older houses and apartment complexes in the city. Haas explains how undocumented immigrants led the protest against the city council's plans to knock down their houses and replace them with higher income development projects. This mobilization was possible in part because of the "acute racial and class tensions that characterize politics in this older city" when compared to other parts of Orange County.<sup>44</sup>

Santa Ana's role in Orange County also corresponds to demographic changes in the city. In 1950, over one third of the county's population resided in Santa Ana, but as the county grew, residents migrated to newer city developments. This internal migration into newer cities in Orange County also had the effect of pushing Latinos into lower rent areas like Santa Ana, which saw its Latino population double from 40,000 to 90,000 in the 1970s. In the decades that followed, the city's Latino population continued to grow so that by 1980, 41% of all of the Latino immigrants in Orange County were living in Santa Ana.<sup>45</sup>

As Haas explains, "contrary to the intent of planners and city politicians, by the 1980s, Santa Ana had become the Latino center of the county." Latino immigrants tended to choose Santa Ana partially because of the network of the established Latino neighborhoods, coupled with relatively lower housing rents than other parts of the county.

The Latino workforce in the area has also historically formed a major segment of certain low wage, industries, such as agriculture, construction and other blue-collar sectors, and were often further separated by the urban divide and the type of opportunities that were available. This resulted in a "consistently low level of income for Latino families" which by the late 1970s and early 1980s had become so entrenched that "88% of Orange County's Latino population earned below the median income." This wage gap also contributed to Santa Ana being home to "eight out of the county's ten poorest census tracts in 1980s."<sup>46</sup> It is thus important to understand how the historical particularity and ethnic division between Santa Ana and many other parts of the

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<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> R. Kling, S. Olin, M. Poster (eds), *Postsuburban California...*, *op. cit.*

<sup>45</sup> L. Haas, "Grass-Roots Protest and the Politics of Planning: Santa Ana, 1976-1988", in R. Kling, S. Olin, M. Poster (eds), *Postsuburban California...*, *op. cit.*

<sup>46</sup> *Ibid.*

county resulted in the city's profile as a lower-income and primarily Latino district. However, the differences in the demographic makeup and use of urban space have also encouraged greater community alliances and grassroots mobilization ultimately contributing to the immigrant youth-led mobilization for sanctuary. These differences then help to explain how a Democratic enclave, with lower income neighborhoods and a large, historically Latino population, continued to grow as the center of the county, surrounded by majority Republican districts. As Haas underlines, "history of this ethnic segmentation helps to explain the social basis of the urban movement."<sup>47</sup> Although she is referring to the urban movement against the housing demolitions of the 1980s, we can apply this to the current status of Santa Ana today as well.

The city of Santa Ana has continued to grow and solidify its image as the Latino stronghold of Orange County today. In October 2016, Santa Ana was featured in a New York Times article, described as being the "Face of a New California."<sup>48</sup> As the article explains, "These days, Santa Ana stands as the face of a new California, a state where Latinos have more influence in everyday life—electorally, culturally and demographically—than almost anywhere else in the country." By 2016, the city council had been made up of all Latino members for 10 years, and small transformations such as the passing of a law to provide simultaneous translation into Spanish at all city council meetings reflected a cultural shift to provide greater access to Latino residents. More generally, the law represents an effort to show how the city values its Latino identity, which has been a long struggle for its residents. As former Santa Ana City Councilwoman Michele Martinez, quoted in the New York Times, explained, "A lot of my friends, my colleagues, they grew up here in a time when they weren't allowed to speak Spanish..."<sup>49</sup> Thus, by integrating Spanish into the city council meetings, the local government not only attempted to rectify the previous denial of the city's Latino heritage, but showed the city's symbolic recognition of its cultural pride.

These shifts in political and cultural representation made since the 1990s were mirrored in other government departments in California as well. The overall state population is 40% Latino, a number which is expected to continue rising.<sup>50</sup> As the Latino voting base in California has grown, so did their political representation at local and state levels. The leaders of the California State Legislature and the current and previous mayor of Los Angeles, the state's most populous city, are all Latino. According to the Pew Research Center, 25% of all Latino voters in the U.S. reside in California.<sup>51</sup> However, although the Latino community has seen gains in political representation, Latinos in California still face higher unemployment rates than the state average, lower numbers enrolled in higher education, and higher poverty rates (23% compared to the state average of 16%).<sup>52</sup> These numbers correlate closely to the situation in Santa Ana as well, with 22% of its residents reported to be living in poverty.<sup>53</sup>

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<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

<sup>50</sup> U.S. Census Bureau as of July 2015.

<sup>51</sup> Pew Research Center

<sup>52</sup> California Demographic Labor Force: Summary tables: February 2017.

<sup>53</sup> *Ibid.*

Despite having an all-Latino city council since 2006, Santa Ana did not pass a sanctuary city Resolution until December 2016. Carlos Perea, the Policy and Programs Director of the immigrant rights group Resilience OC, which led the effort behind Santa Ana's Sanctuary Resolution, explained in an interview that the push for the city to become a sanctuary city had been going on for many years. When asked what had changed, he responded, "It's not something that came out of their good hearts; we've been asking the same things when Obama was running the deportation machine. So I think what has changed is that it is not politically viable for them to align with the President's policies."<sup>54</sup> This view was repeated by representatives from other immigrant rights groups as well. Ana Garcia, then Policy Advocate from CARACEN, the Central American Resource Center, stated that in the post-2016 election climate there is a feeling that there will be no more forced compromises with Republicans in the fight for immigration reform. During a series of interviews, representatives from these groups asserted that under the Obama administration, Democrats had to compromise to try to pass watered-down versions of immigration reform and minimal immigration protection.<sup>55</sup> In their views, this brought the struggle and responsibility to push for immigration reform at the local city and state levels.

### **Santa Ana's Sanctuary City Resolution and Ordinance**

"I don't think that any other city, in the nation to be honest, has had the amount of wins that we had gotten here in Santa Ana, and not only symbolic but actually meaningful ones. The thing is that we're the light of hope, of how things can get done." Carlos Perea, Resilience OC<sup>56</sup>

The national and local media coverage of Santa Ana following the passage of its Sanctuary City Ordinance both lauded and criticized the city for having passed one of the most ambitious and far-reaching sanctuary ordinances in the country. While many articles praised the city for its resolution, the struggle to implement the ordinance remains ongoing. The ordinance called for broad commitments to "implement policies to prevent biased-based policing", to promote "social justice and inclusion" for all residents, including its immigrants, and to establish a commission or task force to carry out these policies. The initial Sanctuary Resolution issued a series of ambitious, but mostly symbolic statements.<sup>57</sup> However, on January 17, 2017, the city approved an ordinance which turned the resolution into law. This also meant that the more concrete provisions established in the resolution were now part of a contractually enforceable city ordinance. The ordinance laid out the following central provisions for the city to implement<sup>58</sup>:

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<sup>54</sup> Interview conducted in Santa Ana, California, March 1, 2017.

<sup>55</sup> Interviews conducted in Santa Ana, California, March 2017.

<sup>56</sup> *Ibid.*

<sup>57</sup> Resolution to Declare the City of Santa Ana a Sanctuary For All Its Residents Regardless of Their Immigration Status (Strategic Plan No. 5, 6F), December 6, 2016.

<sup>58</sup> Santa Ana City Ordinance No. NS-2908: Relating to the City's Procedures Concerning Sensitive Information and the Enforcement of Federal Immigration Law Following the Declaration of the City of Santa Ana as a Sanctuary For All Its Residents, January 17, 2017.

The city of Santa Ana:

- Will not comply with immigration detainer requests
- Will not assist the federal immigration enforcement (ICE) with any joint operations
- Will not notify ICE of release dates
- Will not arrest a person based only on violation of immigration law
- Will not dedicate any city resources to enforce immigration law
- Will not maintain or request sensitive information<sup>59</sup>
- Will not enforce any program on registration of individuals based on ethnic, national or religious backgrounds

In addition to these provisions, the ordinance includes a section which states that it will “not conflict with any Federal law.” The ordinance therefore does not create its own immigration policy, but rather emphasizes that it is not within the city’s jurisdiction to implement federal immigration enforcement or use city resources to do so. Acting within its role in the federal system, the city is primarily exercising its power not to cooperate with a voluntary federal program to which it opposes. The ordinance states that its intent is to “clarify the communication and enforcement relationship between the City and the federal government” and its purpose is “to establish the City’s procedures concerning immigration status and enforcement of federal civil immigration laws.”<sup>60</sup> This differs from other types of immigrant rights advocacy strategies, which focus more on changing the federal immigration policies themselves. Representatives from national immigrant rights groups like CARACEN and CHIRLA (Coalition for Humane Immigrant Rights Los Angeles), for example, explained during interviews that the main fight for immigrant rights should be to push for “CIR”, or Comprehensive Immigration Reform, at the federal level and should include a pathway to citizenship.<sup>61</sup> In contrast, interviews conducted with local non-profit associations in Santa Ana focused more on the immediate protection of their community members through the city’s interactions with ICE and the role of local police enforcement.

However, following the 2016 presidential election, both national and local immigrant rights groups’ goals shifted since the hope for passing Comprehensive Immigration Reform no longer seemed feasible. Instead, the atmosphere at the center was geared towards crisis management: conducting “know your rights” workshops, trying to respond to the large number of requests for legal aid, and working to respond to people’s fear to come to events. Georgina Maldonado, Executive Director of the Orange County Community Health Initiative, also explained that one of the organization’s current biggest struggles is addressing community members’ fear of immigration raids. Responding to these political changes and increased atmosphere of fear, Santa Ana’s Sanctuary Resolution begins with a summary of the current political situation and

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<sup>59</sup> In this ordinance sensitive information includes: “any information that may be considered sensitive or personal by nature, including a person’s status as a victim of domestic abuse or sexual assault; status as a victim or witness to a crime generally, citizenship or immigration status; status as a recipient of public assistance; sexual orientation; biological sex or gender identity; or disability.

<sup>60</sup> Santa Ana City Ordinance No. NS-2908, Section 2.

<sup>61</sup> Interviews conducted in Santa Ana and Los Angeles, California from February-March 2017.



the trend of sanctuary cities. It references Donald Trump's opposition to other sanctuary cities, but also calls attention to those cities which have reaffirmed their status since the 2016 election, despite threats from the administration to cut federal funding. The resolution states that Santa Ana joins these other cities by committing to "social justice" and that it "will provide a sanctuary to all residents who are fearful by assuring them that the City will not expend any funds, nor use its resources, including staff, to administer federal immigration law which is the exclusive authority of the federal government." The resolution also specifically states that it recognizes the jurisdiction of federal laws and policies, including U.S.C. 1373 on information sharing of immigration status.

The introduction addresses straightaway the main issues discussed thus far. First, its immediate aim is to clarify the relationship between the federal government and local city employees in terms of immigration enforcement. There is a deliberate recognition to act within the boundaries established by the federal government. The resolution therefore does not challenge the authority of the federal government, but specifies how the city will cooperate with voluntary federal programs. The focus lies in the city's reluctance to be involved in federal enforcement policies and represents an attempt to define the relationship between local police and federal agents. Because of this, one can observe a moral opposition and legal reaction to increased policing and surveillance of their communities. Moral, in terms of the city's commitment to "social justice," which establishes their belief that cooperation with federal enforcement would not promote social justice in the city; and legal, by highlighting the specific legal authority of their own city staff and allotted resources versus the jurisdiction of the federal government.

In addition to moral and legal concerns, the city's actions can also be understood in terms of financial costs. In the case of ICE detainer requests, for example, a series of lawsuits questioning the legal legitimacy of the policy has resulted in financial costs to cities. Court decisions in these cases have resulted in the city owing damages to individuals held beyond the established legal time frame without probable cause.<sup>62</sup> As Professor Jennifer Chacón stated in an interview, "There were actual genuine cost issues involved in compliance on a request basis... so that sort of led to this whole movement a couple of years ago now of counties saying, 'we're just not going to hold if you don't have probable cause, we're not going to hold just on your request, because we will get sued.'"<sup>63</sup> Furthermore, there is also a cost to community relations with city officials. As Chacón reiterated, "It's hard to get community members to come forward, file complaints and serve as witnesses if they're afraid they're going to be deported." She explained that in addition to safety costs to the community, this also has a negative effect on public health and education, for example, when families are afraid to have their children vaccinated or attend school for fear of deportation of themselves or a family member.

Passing the resolution and ordinance also required the presence of and collaboration among a range of different actors, including grassroots organizing groups, legal aid societies and law

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<sup>62</sup> See: *Miranda-Olivares v. Clackamas County*, No. 3:12-cv-02317-ST, 2014 WL 1414305 (D.Or. April 11, 2014); *Jimenez-Moreno v. Napolitano*, No. 1:11-cv-05452, Docket Entry 230 at 16-17 (N.D. Ill. Sept. 30, 2016); *Morales v. Chadbourne*, 996 F. Supp. 2d 19 (D.R.I. 2014) *aff'd* in part, dismissed in part, 793 F.3d 208, 215-216 (1st Cir. 2015); *Mercado et al. v. Dallas County*, No. 3:15-CV-3481 (N.D.Tex filed Jan. 17, 2017).

<sup>63</sup> Interview with Jennifer Chacón, UC Irvine Law School, California. March 6, 2017.



schools, community members, and the city council. These links between public officials and the community were essential in pushing the city to develop its own policy of noncooperation. Furthermore, the connections among different networks have continued to grow beyond the Santa Ana city limits, with new ties forming between the primarily Latino activist groups in Santa Ana, and Asian-American associations, like the Korean Resource Center in Fullerton, Orange County. Interviews with Carlos Perea of Resilience OC and Ruben Barreto from Santa Ana Building Healthy Communities revealed that their organizations are ready to continue pushing for change at home and in neighboring cities. Carlos Perea explained that they plan to continue their work by helping to pass a sanctuary city resolution in cities like Westminster, Garden Grove and Anaheim, all neighboring cities in Orange County. Perea also reiterated that Santa Ana and Orange County should serve as a model for grassroots change and as a blueprint for demanding concrete actions from local city councils.

Conversations with local actors confirmed the importance of building trust and a belief in the legitimacy of their local government, as well as the importance of the role of local citizenship and urban belonging. During city council meetings, community members who had been detained by ICE in the city jail spoke out against the contract and shared their own personal experiences within the detention system. Whether or not the member of the community was documented or undocumented was not the central issue. Instead, these individuals spoke directly to their local community leaders, expressing their views and concerns, and hoping to influence local policy decisions. Furthermore, debate within the city council did not address whether these community members had a right to speak, but rather focused on the costs and benefits to the city, and of those who had been held in the local detention center. In this context, one could see that expressing themselves as residents of the city was an unquestioned right, and one that had little to do with their federal immigration status or passport.

In this way, it was possible to observe that “it is the everyday experience of inhabiting the city that entitles one to a right to the city, rather than one’s nation-state citizenship”.<sup>64</sup> Undocumented individuals’ presence at the city council meetings and their participation in local protests alongside documented family members and other community members, created a new form of solidarity that erases the lines of legal citizenship, albeit temporarily. As Bauder argues, one’s physical presence in a space, such as the city, provides the individual with a set of rights based on the daily interactions with institutions, businesses and other individuals. This presence, in turn, serves as a more tangible connection to a concrete space than the abstract notion of belonging to a nation.<sup>65</sup> As a result, one can observe that there is a “solidarity based on participation through presence.”<sup>66</sup> Local members of the city have a clear stake in the way that policies are carried out, particularly when they themselves, a family member, or friend could be directly affected. Local participation in politics, therefore, is not always based on one’s legal citizenship, but on the physical presence within a city, and overall time spent

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<sup>64</sup> M. Purcell, “Possible Worlds: Henri Lefebvre and the Right to the City”, *Journal of Urban Affairs*, Vol. 36, n° 1, p. 142.

<sup>65</sup> H. Bauder, “Possibilities of Urban Belonging,” *Antipode*, Vol. 48, n° 2, 2016, p. 264.

<sup>66</sup> V. Squire, “From Community Cohesion to Mobile Solidarities: The City of Sanctuary Network and the Strangers into Citizens Campaign,” *Political Studies*, Vol. 59, n° 2, 2010, p. 290.

living in the country. As Bauder explains, “When the illegalized migrants share a political sphere with citizens and ‘emerge on the street, acting like citizens, they make a mimetic claim to citizenship’.”<sup>67</sup> In the same way, when an individual stood up at the Santa Ana city council meeting to say that “the term ‘citizen’ includes all residents”, one can see how the physical presence in the city manifests itself in a political presence. This very presence allows local actors, with or without papers, “to enact themselves as political subjects in their own right.”<sup>68</sup>

It is simple to assume that the increased criminalization of immigrants, hostile environments based on increased risk, surveillance and policing “would dissuade undocumented immigrants from engaging in contentious mobilizations and to make rights claims”.<sup>69</sup> Instead, as this article and the case of Santa Ana have shown, undocumented immigrants do organize for citizenship rights in different contexts, and do so through “niche-openings” that allow them to put forward their own discourse and demands. Walter Nicholls explains that, contrary to prior studies, a restrictive national environment, coupled with the spread and enforcement of the border inward beyond its physical location, spurs local resistance. This local resistance rises from a normative basis in which local actors view the increasingly restrictive environment as morally unacceptable. Eventually, this local resistance can create a growing mobilization and the potential to scale out and up.<sup>70</sup>

Taking both the legal and sociological aspects into account, one can observe that the current restrictive environment, set forth by the Trump administration, but also based on prior policies of the Obama administration, has caused a pushback by local movements, particularly in regards to local policing and the movement of border beyond its physical presence. These local movements can, at times, take advantage of a “niche-opening” for public support and an “interstitial” policy gap that allows them to lead a sanctuary movement and ensuing sanctuary ordinance at the city council level. At the same time, looking specifically at the case of Santa Ana shows that local grassroots mobilization for a sanctuary city may be more likely to occur when there is a more favorable political environment at the local level, supported by a dynamic youth immigration movement which is directly affected by the increasingly restrictive national environment. In this way, just as sanctuary activists responded to what they believed was an unjust policy in the late 1980s toward Central American refugees, local advocacy groups and associations were again essential in creating the push for a new sanctuary movement in the 2010s. The shift from grassroots activism to policy reveals how collaboration between community members, legal organizations and law schools, non-profit organizations and city councils can produce tangible policy outcomes. While their tactics can take the form of protests, city-approved working groups and information sessions, these local actors all work within the realm of the federal system to enact change in their own communities.

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<sup>67</sup> H. Bauder, *Possibilities of Urban Belonging*, *op. cit.*, p. 264.

<sup>68</sup> V. Squire, J. Bagelman, “Taking not Waiting in Citizenship, Migrant Activism and the Politics of Movement”, in P. Nyers et K. Rygiel (eds.), *Migration and Citizenship: Migrant Activism and the Politics of Movement*, Abingdon, Routledge, 2012, p. 162.

<sup>69</sup> W. J. Nicholls, “From Political Opportunities to Niche-openings...”, *op. cit.*, p. 24.

<sup>70</sup> *Ibid.*