



FEDERALISM ISSUE: IMMIGRATION POLICY

BY TARA MEHRA '23

MARCH 4, 2020

Photo Credit: Wikimedia Commons

Immigration is a cornerstone issue in the federalism debate, and a key issue in the 2020 presidential race. According to the Bipartisan Policy Center, four out of five registered voters report a candidate's immigration plan is influential in their decision of who to vote for in the 2020 election.¹ The US Constitution grants the federal government the power to set immigration policy, and the Supreme Court has limited the scope of state power for immigration through court cases over time. At its core, the federalism conflict lies between both state and federal governments and state and city governments. Specifically, the conflict involves the extent to which city governments and state governments enforce state and federal policies, respectively.

A prominent topic in the immigration federalism debate is the implementation of the sanctuary jurisdiction. Sanctuary jurisdictions limit the enforcement of federal or state immigration policies in that particular area. For example, when the Trump administration implemented restrictive ICE policies regarding undocumented immigrants, many cities became sanctuary jurisdictions by barring their agencies from cooperating with ICE regulations and agents. As a consequence, both federal and state governments

threatened to withhold money from these sanctuary jurisdictions. Cities within states can also reject state policies, becoming anti-sanctuary cities. Thus, the position of presidential candidates on sanctuary jurisdictions and the role of ICE are relevant to the federalism debate. The candidate's position communicates the extent to which they believe a state or city can reject a federal policy.

The Trump Administration heavily restricted asylum eligibility and entry for asylum seekers from the southern border. Allegations of border patrol agents physically blocking asylum seekers at ports of entry, the only places that asylum seekers can enter, and turning asylum seekers away surfaced.² Questions arise on the cooperation of border states, and specifically, state patrol officers, with these restrictive policies. Many Democratic presidential nominees want to expand asylum and accept more refugees into the United States, for which they can expect resistances from states with Republican governors. When Obama accepted 10,000 Syrian immigrants in his final term, many Republican state governors asserted that they would not accept these immigrants into their state, and their respective counties did not provide support to the immigrants.³

¹ <https://bipartisanpolicy.org/wp-content/uploads/2019/09/BPC-Immigration-memo.pdf>

² <https://academic.oup.com/publius/article/49/3/379/5530676>

³ <https://academic.oup.com/publius/article/48/3/372/5004795>



Similarly, President Trump declared a “national emergency” to transfer funds for building the southern border wall, after a government shutdown failed to produce congressional agreement for the funding.⁴ Candidates’ opinions on the building of the wall will influence the role of states along the southern border in the coming years.⁵ Many Democratic presidential candidates also promise to use their executive power for immigration issues if the legislature does not cooperate to make immediate change. But this, too, will probably result in a decentralized state approach to immigration policy, as it has in the past. When executive action was taken to implement DACA and DAPA under the Obama Administration, a slew of more, and more varied, state law came in response.⁶

Presidential candidates’ comments on these and other immigration issues will communicate both their perspective on restrictive immigration policies and their opinion on the state and city right to defy orders from federal and state governments, respectively.

THE CANDIDATES

Here are the top three Democratic presidential candidates’ visions on immigration:

In 2007, Vice President Joe Biden did an interview where he voiced opposition towards sanctuary jurisdictions. Although he condemned the Trump Administration’s policy, including the administration’s reaction to sanctuary cities, Biden’s position on using

enforcement to ensure cooperation between federal, state, and local governments is unclear.⁷ Biden promises to reinstate “sensible” enforcement policies and ensure that employers do not take advantage of immigrant workers. But those states that have a Republican leaning may disagree with what is “sensible,” and refuse to adhere to such enforcement policies. If Biden does not tolerate non-adherence and forces states to enforce his policies, it will work towards centralizing the immigration policy that has become increasingly decentralized in the last ten years. However, in response Biden can expect litigation similar to that which came from sanctuary jurisdictions during the Trump Administration like in *Philadelphia v. Attorney General of the United States*. This case questions the ability of the Attorney General to withhold grants from jurisdictions that do not cooperate with ICE by sharing the immigration status of those arrested.⁸ Biden also plans on using federal dollars to help integrate immigrants into their communities, and working to undo harsh, anti-immigrant state laws.⁹ This action would also centralize immigration policy by Biden’s effort to ensure state laws align with federal priorities.

If elected, Senator Bernie Sanders promises to use his executive power to take prompt action regarding immigration. He plans to re-implement and expand DACA, developing a family-based immigration system. Precedent from the Obama Administration shows that the use of executive power to enact sweeping immigration policy incites a response of varying state law. Sanders voted yes in 2008 to continue funding to sanctuary jurisdictions, and in 2019, again asserted that sanctuary cities should receive federal funding.¹⁰ He will also ensure that the Department of

⁴ <https://academic.oup.com/publius/article/49/3/379/5530676>

⁵ <https://academic.oup.com/publius/article/49/3/379/5530676>

⁶ <https://academic.oup.com/publius/article/48/3/372/5004795>

⁷ <https://thehill.com/homenews/campaign/456638-biden-once-called-for-a-ban-on-sanctuary-cities-where-does-he-stand-now>

⁸ https://ij.org/sc_case_entry/city-of-philadelphia-v-attorney-general-of-the-united-states/

⁹ <https://joebiden.com/immigration/>

¹⁰ <https://www.nytimes.com/2019/11/07/us/politics/bernie-sanders-immigration.html> ; https://www.ontheissues.org/2020/Bernie-Sanders_Immigration.htm



Justice drops litigation that would defund sanctuary jurisdictions.¹¹ Sanders' precious support for a state's right to not enforce federal policy raises the question of whether he will respect a state's right to not enforce his policies. If so, this will further de-centralize immigration policy in the U.S., especially because Sanders' policies are widely seen as leaning far to the left. Sanders condemns the family separation that occurred under the Trump administration, and says he will work to reunite separated families. Further, Sanders wants to broaden asylum, and envisions a demilitarized border.¹² Precedent shows that certain states and cities refuse to accept refugees, and thus this policy will potentially incite a federalism conflict.

Overall, Sanders' policies are more left-leaning than Biden's, but Sanders also previously supported a state's right to not enforce federal policy, unlike Biden. Thus, while immigration policy would become more centralized under Biden, there would likely be more polarization and may be more state resistance in immigration policy under Sanders.

Senator Elizabeth Warren believes that the immigration policies of the Trump Administration are racist and demonize immigrants. As president,

Warren indicates she will separate law and immigration enforcement so that undocumented immigrants are not dissuaded from reporting crime. This reform addresses the issue that propelled cities to become sanctuary jurisdictions. In 2017, condemned Trump's attempt to withhold federal funds from sanctuary jurisdictions, calling them "unconstitutional."¹³ Thus, Warren has communicated that she supports a state's right to resist enforcement of federal policy. Warren plans to increase the number of refugees that will be accepted and promote asylum.¹⁴ Like the other candidates, this promise will bring contention with states that do not want to accept immigrants or oppose the federal policies.

While both Sanders and Warren have supported sanctuary jurisdictions and a state's right to resist enforcing federal policy, and their immigration policies are the two farthest left-leaning. Precedent from the Obama era shows that executive action regarding immigration incites intrastate immigration law. Thus, it will be interesting to see if Sanders and Warren stick to their state's right mindset when the left-leaning policy that they push is at stake. One can see the scope of the Democratic debate by examining positions held by candidates who recently departed the race.

¹¹ <https://berniesanders.com/issues/welcoming-and-safe-america-all/>

¹² <https://berniesanders.com/issues/welcoming-and-safe-america-all/>

¹³ https://www.newburyportnews.com/news/sen-warren-blasts-white-house-policies-sanctuary-city-threats/article_f8df982d-cc24-5dfb-8a5b-db6a27ff7196.html

¹⁴ <https://elizabethwarren.com/plans/immigration>