

REFUGE IN THE WINDY CITY: THREE DIMENSIONS OF A SANCTUARY CITY



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Abstract

Migration to the United States has been a core aspect of the country's history, identity, and society. In recent years the issue of undocumented immigration has been politicized and the current administration has made restrictive immigration reform one of its focal points. For many undocumented immigrants in the United States, regardless of legal status, the fear of deportation is a daily matter. Sanctuary cities are localities that respond to these concerns of undocumented immigrants in a wide variety of ways. Although much scholarly research has been devoted to sanctuary cities, there is not yet a fixed or legal definition. In this thesis, I identify three dimensions on which scholarly research concerning sanctuary cities has focused. The first dimension is the relation between sanctuary cities and the discrimination and criminalization of immigrants throughout the history of federal immigration law. The second dimension is the relation between sanctuary cities and the ways in which they respond to issues of federalism by constructing safe spaces for undocumented immigrants. The third dimension is the relation between sanctuary cities and the construction of forms of local citizenship. I argue that the relationship between these dimensions is an ongoing shift in authority over immigration law and its enforcement from the national to a subnational level, especially to the city level.

Chicago is one of the many sanctuary cities in the United States. Although this city houses thousands of documented and undocumented immigrants and has declared itself a sanctuary city since 1985, not much scholarship is focused on its sanctuary policies. Because of this gap in research I will utilize Chicago's sanctuary policies as the main example throughout this thesis.

Keywords: Immigration; undocumented immigrants; sanctuary city; deportation; criminalization; discrimination; federalism; citizenship; Chicago

Table of Contents

Abstract.....	2
Acknowledgements.....	4
Introduction.....	5
Previous Research.....	7
Relevance.....	9
Chapter 1 - Sanctuary Laws and the History of Immigration Law	10
1.1 A Brief History of Sanctuary	10
1.2 Sanctuary as a Response to Political Discrimination.....	11
1.2.1 <i>The Sanctuary Movement</i>	11
1.2.2 <i>The First Sanctuary Cities</i>	13
1.3 Sanctuary and the criminalization of undocumented immigrants.....	13
1.3.1 <i>Criminalization of Undocumented Immigrants</i>	13
1.3.2 <i>A History of Discrimination in Immigration Law</i>	15
1.3.3 <i>The New Sanctuary Movement</i>	18
1.3.4 <i>The Response of Sanctuary Cities</i>	19
Chapter 2 – Sanctuary Laws and Immigration Federalism.....	22
2.1 The Constitutional Void: Immigration Federalism.....	23
2.1.1 <i>The Constitutional Roots</i>	23
2.1.2 <i>Ambiguity of Immigration Federalism</i>	24
2.1.3 <i>Immigration Federalism and Chicago’s Sanctuary Ordinance</i>	24
2.2 The Legislative Void.....	27
2.2.1 <i>Immigration Gridlock</i>	27
2.2.2 <i>Incompatible Priorities</i>	28
Chapter 3 – Sanctuary Laws and The Construction of Citizenship	30
3.1 The notion of citizenship	31
3.1.1 <i>Local Citizenship</i>	31
3.2 Local Citizenship and Sanctuary.....	32
3.2.1 <i>Local Citizenship in Chicago</i>	33
3.3 Consequences for the Meaning of Sanctuary.....	36
Conclusion	39
List of abbreviations used	42
Works Cited	43

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Introduction

More than forty-four million immigrants lived in the United States in 2016 of which almost eleven million had no legal documentation (Radford). Undocumented immigrants have settled across the United States, not only around the southern border region but also in major cities in the mainland. In Chicago alone, for example, the immigrant population is 560,000 and the number of undocumented immigrants is nearly two hundred thousand (Tsao 1). Immigration is, therefore, a major challenge that the United States faces both on a national and a local level. Reforming immigration law has been a core issue in American political and public discourse for decades. This discussion is becoming increasingly politicized. At the one end of the political spectrum, the Democratic Party advocates immigration reform that mainly concerns border enforcement that targets immigrants with criminal records but prioritizes sustaining immigrant families (Democratic Party Platform). On the other end, the Republican Party and the Trump administration advocate the restoration of law and order at the United States' border. This administration has concentrated on the construction of a border wall, removal of undocumented entrants, and replacing the current system of chain migration and the visa lottery with an immigration system based on merit (The White House "Immigration").

Despite the fact that several proposals for immigration reform having entered the floor in Congress, no substantial reform bill has been passed by Congress since the September 11, 2001 attacks. A reason for this lack of reform is the logjam in Congress on, for instance, the DREAM Act. This act was introduced for the first time in 2001 and contained provisions that would have protected young undocumented immigrants who often entered the country unauthorized as children ("The Dream Act"). This act and several versions that followed were never passed by Congress, despite bipartisan support. Several scholars have identified that this lack of immigration reform is one of the reasons that several local and state governments and movements have responded with their own exclusionary or inclusionary policies towards undocumented immigrants ("Unenforced Boundaries" 1643; O'Law "The Historical Amnesia 304; Rodriquez 569; Farris and Holman 143; Lewis et al. 2). Localities that have implemented inclusionary policies that create safe spaces for these immigrants are often referred to as sanctuary cities.

Although sanctuary cities have been subject to various academic studies, the term sanctuary city is still one without fixed meaning and legal definition. Sanctuary cities are a relatively new phenomenon and scholars are still determining what they really are. Scholars have used the term

to describe a variety of policies and measures that have been implemented by local and state governments. These practices range from offering online translations of important legal documents to policies of non-cooperation between local law enforcement agencies and federal immigration agencies (see Villazor “What is a sanctuary”).

As scholars have used a wide variety of different definitions of a sanctuary city, they have focused on different aspects of the concept. I identify that scholars have focused on three different but interrelated dimensions. These dimensions are as followed. The first dimension focuses on sanctuary cities and sanctuary movements as a contemporary response to a larger history of discrimination and criminalization of refugees and undocumented immigrants on the basis of politics, race, and class. The second dimension focuses on the ways in which sanctuary cities respond to issues of federalism. The third dimension that I have identified focuses on the ways in which sanctuary cities relate to matters of citizenship and the emergence of local citizenships. As these dimensions complement each other, studies often do focus on more than one dimension (see Villazor “Sanctuary Cities and Local Citizenship”; Paik; Mancina; Rodriguez). Very few, however, engage with all three. Yet, this is necessary to grasp all the aspects and complexities that make for a sanctuary city. Recognizing this could make sanctuary cities a more workable issue to address politically.

The question, therefore, arises what the relationship between these scholarly dimensions of a sanctuary city could be. In this thesis, I argue that this relationship is an ongoing shift of power over the production and enforcement of immigration law from the federal government to local and state authorities. Sanctuary cities are a manifestation of this trend. As this shift occurs over time, I will explain how these power relations developed over the course of history. I will divide this thesis into three chapters. The first chapter touches upon with the dynamic between Chicago as a sanctuary city and the history of immigration law. I will argue that Chicago’s sanctuary policies and the congregational sanctuary movements have responded to a system of structural discrimination and criminalization in immigration law. This system has discriminated against refugees and immigrants, regardless of legal status, on the basis of politics, race, and class since the implementation of the Chinese Exclusion Acts of the 1880s. I will focus on the responses of the sanctuary movement and Chicago’s first sanctuary policies of the 1980s, the New Sanctuary Movement (NSM), and Chicago’s 2012 sanctuary ordinance. Because of the extensive historical background that I will describe, this chapter will be significantly longer than the other two.

The second chapter deals with the dynamic between Chicago's Welcoming City Ordinance and immigration federalism. This discussion touches upon the conflict between Chicago's power not to cooperate with federal immigration agencies, such as the Immigration and Customs Enforcement (ICE). I will use both a historical approach using O'Law's argument that immigration federalism dates back to the Alien and Sedition Acts and important Supreme Court cases and policy analysis of Chicago's Welcoming City Ordinance.

The third chapter deals with the dynamic between Chicago's sanctuary laws, including the measures that are generally not considered sanctuary policies, and the notion of citizenship. By using Linda Bosniak's four frameworks of citizenship, I will investigate how Chicago's policies construct a form of local citizenship. I will focus on local non-cooperation policies and measures like offering scholarships, work permits, and municipal identification cards.

Previous Research

Throughout this thesis, I will utilize and respond to a body of research that has already been conducted by several scholars on sanctuary cities and other closely related issues. There are only a few, however, that I will refer to throughout the whole thesis, either in agreement or in conflict. These contributions deserve a proper introduction.

Rose Cuison Villazor, a professor of law at Rutgers University who focuses on immigration and citizenship, examines a narrow interpretation of sanctuary laws in her 2008 article, which are "[...] laws or policies that limit government employees, particularly local police officers, from inquiring or disseminating information about the immigration status of immigrants whom they encounter" ("What is a sanctuary" 148). She recognizes the complexities of sanctuary laws and identifies a dichotomy of private and public sanctuaries in the United States. Private sanctuaries are, according to Villazor, constructed by the efforts of the congregational sanctuary movement and NSM, while public sanctuaries are constructed by the policies and laws by local and state governments ("What is a sanctuary" 143). Her article on the meaning of sanctuaries in the United States focuses both on the differences between private and public sanctuaries and the interests of the federal government, referring to matters of federalism.

Naomi Paik, a professor in Asian American Studies at University of Illinois at Urbana-Champaign, approaches sanctuary cities in the United States from a historical perspective in her 2017 article and argues that sanctuaries need to adopt an abolitionist stance in order to become more effective (17). Her contribution predominantly focuses on the sanctuary cities – she is one of

the few who also focuses on Chicago – in relation to a history of discrimination and criminalization and citizenship. She argues that “whether through official policies or popular struggle, sanctuary seeks to secure local commitments to all people living in a given community, thereby enacting a notion of citizenship that is not beholden to the sovereignty of the nation-state” (17). Although she acknowledges that sanctuary cities are directly related to the construction of forms of local memberships, she only brings forward Chicago’s policies of non-cooperation between local government agents and the federal government.

I have detected a similar argumentation in Villazor’s 2010 article “Sanctuary Cities and Local Citizenship”. Villazor, building on her article “What is a sanctuary”, focuses on San Francisco as a sanctuary city, and employs the four dimensions of citizenship that Linda Bosniak, a professor of law who has focused on questions of immigration and citizenship, has put forward (“Sanctuary Cities and Local Citizenship” 576). These four dimensions, which will be elaborated on in chapter three, are deployed in Villazor’s article only by using San Francisco’s policies of non-cooperation. Despite my agreement that these kinds of policies contribute to the construction of a form of local citizenship, I argue that more policies that do this can be designated as sanctuary policy.

There are several other scholars who have contributed to the discussion of sanctuary cities but whose research has been either not relevant to this thesis or have approached sanctuary cities too narrowly. Harald Bauder’s article “Sanctuary Cities: Policies and Practices in International Perspective” recognizes both this larger history and the complex nature of urban sanctuary but then only offers a generalized overview of urban sanctuary policies in the United Kingdom, the United States, and Canada. David Kaufmann’s focus on sanctuary cities in relation to citizenship does identify different forms of sanctuary policies but then fails to analyze the examples he mentions.

Other studies do offer insights that are important to the image of sanctuary cities but are not directly relevant to this thesis. For instance, Jennifer Bagelman’s book *Sanctuary City: A Suspended State* contributes to the understanding of sanctuary by recognizing that contemporary sites of sanctuary are part of a larger historical tradition but focuses on European sanctuary cities. Martínez-Schuldt and Martínez respond to claims made by the Trump administration that sanctuary cities are hazards of crime, by arguing that “the limited existing empirical evidence does not support the claim that sanctuary policies systematically foster violence in U.S. cities” (8).

Research has also been done on the attitudes towards sanctuary cities. Oskooii, Dreier, and Collingwood offer new insights in how sanctuary cities themselves are politicized by Democrats and Republicans in their article “Partisan Attitudes toward Sanctuary Cities”. Casselas and Wallace, meanwhile, found that one of the reasons behind the differences in attitude toward sanctuary cities is whether people recognize the racial advantage of Whites (1).

Relevance

This thesis adds several insights into the current academic discourse concerning sanctuary cities. I provide an identification of three dimensions in which scholars have examined sanctuary cities and a potential relationship between them. This leads to new questions and thus new opportunities for further research. I also employ a broad interpretation of a sanctuary city in my examination of Chicago’s policies. In this thesis, I will not only use policies that construct safe urban spaces for undocumented immigrants but also include policies that provide them with a form of local membership to these spaces. Using this broad interpretation of sanctuary laws could provide scholars focusing on sanctuary cities with the insight that the function of a sanctuary city is not only to shield undocumented immigrants from deportation but also to provide them with the means to become a more formal member of the municipality they reside in.

I will utilize Chicago’s sanctuary policies as the main example throughout this thesis because it has been studied far less than other sanctuary cities. While other major sanctuary cities are often located in border regions, such as San Diego and Houston, Chicago is geographically located inland. Still, it houses thousands of undocumented immigrants. Chicago is the third largest city in the United States, houses more than half a million immigrants, and has declared itself a sanctuary city since 1985, and yet its sanctuary policies have received less scholarly attention than other sanctuary cities. My use of Chicago’s sanctuary policies in this thesis, therefore, also offers other scholars a case study that has been underrepresented in current academic discourse.

Chapter 1 - Sanctuary Laws and the History of Immigration Law

In this chapter, I will argue that the sanctuary movement, the NSM, and sanctuary cities in the United States, including Chicago, have responded to a larger history of discrimination and criminalization in immigration law on basis of politics, race, and class. The 1980s sanctuary movement and the first sanctuary cities in the United States responded to the political discrimination of Central American refugees. Currently, sanctuary cities respond to the criminalization of undocumented immigrants, which can be traced back to a larger history in American immigration law of discrimination and criminalization based on class and race. Because of the extensive histories that will be provided, this chapter is significantly longer than the other two. The terms and background information that are included in the historical analysis in this chapter will also be referred to in the subsequent chapters on federalism and citizenship.

1.1 A Brief History of Sanctuary

In order to understand the contemporary sanctuary cities and sanctuary movements in the United States, it is necessary to be conscious of the notion that these practices and grassroots campaigns are part of a larger history of sanctuaries. Initially, sanctuaries were sites of safety in which people were safe from prosecution. Jennifer Bagelman, a lecturer in human geography who focuses on issues of migration, asylum, and sanctuary, states that sanctuaries have existed since ancient civilizations and have been associated with various religions, such as Christianity, Islam, Judaism, Buddhism, Sikhism, and Hinduism (20). The earliest sites of refuge have been identified in Hebrew writings, which refer to “[...] six Cities of Refuge/Sanctuary” (Bagelman 20). Spaces of sanctuary refer to both urban areas, such as in the Hebrew tradition, and religious sites, such as churches. In Christian tradition, for instance, a sanctuary “[...] indicates a site of refuge where the authority of God prevails over the authority of the government” (Paik 6). Christian sanctuaries existed in the Catholic Roman Empire and are referred to in medieval England when both churches and some cities had the right to provide sanctuary (Bagelman 21). While sanctuaries in classical and medieval history were meant to protect people who were fleeing prosecution, sanctuaries in contemporary history have focused on migrants. Harald Bauder, also a scholar in the field of human geography, states that in the second half of the twentieth century, many church congregations across Europe offered sanctuary to illegalized immigrants as a response to increasingly exclusionary immigration and asylum policies (175).

Current sanctuary movements in the United States have referred to this history. The NSM, for instance, states that “in the struggle against injustice, Sanctuary dates back thousands of years and often resurges when most needed (Orozco and Andersen 3). What Orozco and Andersen neglect to mention, however, is that the notion of sanctuary has been apparent in American history as well. Before private and public sanctuaries arose in the 1980s, there were already movements that are associated with the notion of sanctuary. Paik pinpoints that movements like the Underground Railroad and resistance to the Fugitive Slave Acts can also be seen as in which some form of sanctuary policy was offered (6). In the analysis of current American sanctuaries, whether congregational or urban, it is important to keep in mind that these are not just a contemporary phenomenon but are embedded in a larger historical context of safe local spaces.

1.2 Sanctuary as a Response to Political Discrimination

1.2.1 The Sanctuary Movement

The initial American sanctuary movement was congregational and located in the American Southwest, led by the human rights activist and Presbyterian minister John Fife. It was a response to the refusal by the federal government to accept refugees from Honduras, El Salvador, and Guatemala. The movement became increasingly popular during the 1980s, especially when the Immigration and Naturalization Service (INS) started to prosecute the leaders of the movement using section 274 of the 1965 Immigration and Nationality Act (INA), which prohibits harboring an undocumented immigrant from immigration authorities (U.S. Congress 8 U.S. Code § 1324). Although some activists were convicted, the number of sanctuary congregations increased and a new platform emerged on which the activists could openly resist the laws they deemed unjust (Paik 7).

The sanctuary movement of the 1980s was concerned with the fate of thousands of refugees that were displaced as a result of violent conflicts, sustained by the United States. Central American states, such as Guatemala and El Salvador, already suffered from long-term instability and insurgencies when the United States became involved. In El Salvador, for instance, the conflict was mainly between the revolutionary leftist guerrilla organization Farabundo Martí National Liberation Front and the central government, which was supported by right winged paramilitary groups (“El Salvador”). Under President Reagan, the United States became involved with the conflict by aiding the El Salvadorian government with military aid and advisors (“El Salvador”).

The civil war that raged during the 1980s, resulted in numerous human rights violations and approximately 75,000 Salvadorian casualties (“El Salvador”).

Despite the involvement of the United States in various violent and deadly conflicts across Central America, the administration rejected the refugee applications by the people that were displaced by these deadly conflicts. In its efforts to contain the spread of communism and promote capitalism, the United States vigorously supported various right-wing military resistance against leftist, supposedly communist, movements in Central and South American states, which has resulted in tenths and hundreds of thousands of deaths and the displacement of many Guatemalans and El Salvadorians (Bracken; “El Salvador”). Although the involvement of the U.S. in both conflicts, the American authorities “[...] declared nearly all refugees from these countries ‘economic migrants’ fleeing not persecution and death, but ‘mere’ poverty (Piak 7). These rejections of asylum status, something that Piak declares to be violations of human rights, inspired local church congregations to offer these displaced people places of refuge in the United States (6). However, not every Guatemalan or El Salvadorian received sanctuary. Sanctuary activists crossed the U.S. – Mexican border to get in touch with the rejected refugees and decide who would be eligible for sanctuary in the United States (Mancina 34). Paik argues that this kind of subjectivity in deciding which immigrant deserves protection is one of the sanctuary movement’s weak points, in which it expands the inclusiveness instead of challenging the system altogether (16).

This rejective, and politically saturated, attitude of the federal government towards Central American refugees and the displaced in general during the 1980s was not an isolated incident but rather a structural one. American policies towards refugees and political asylum have been different than towards labor and chain migration. Even though since the implementation of the 1965 INA immigration through the chain migration program has expanded significantly, this was not the case for refugees. The 1965 INA dedicated six percent of the annual immigration quota to refugees, which is 17,400. This provision was amended by the 1980 Refugee Act, which delineated a new definition of the term refugee, increased the quota for refugees to 50,000, offered emergency procedures for refugees and dedicated a specific office to coordinate refugee affairs. The ways in which the federal government put the act into practice, however, were disproportionately rejective towards applications from Central and Latin-American countries. Edward Kennedy, the main

sponsor of the act, already mentioned the failure of how the law was used by the Carter administration to deal with the rising number of displaced Cubans in the United States (141).

1.2.2 The First Sanctuary Cities

The sanctuary movement did not remain solely congregational but shifted to an urban scale as well. The first American city to offer some form of sanctuary, although not related to the sanctuary movement, was Berkley in 1971, which offered refuge to soldiers stationed on the USS Coral Sea who resisted to participate in the Vietnam War (Bauder 176; Ridgely 189). The first sanctuary city that was directly linked to the sanctuary movement was San Francisco. During the 1980s, sanctuary activists in San Francisco started to cooperate with the local authorities, which resulted in the city joining the sanctuary movement (Mancina 34). San Francisco was the first city to openly declare itself a safe haven for Guatemalan and El Salvadorian refugees in 1985, and its voters passed the largely symbolical City and County of Refuge Ordinance in 1989. This ordinance stated that employees of the city are not allowed to assist federal authorities in the enforcement of immigration law unless required by law (Office of Civic Engagement “Sanctuary Ordinance”, par. 1).

Chicago’s involvement with providing sanctuary started in the early stage of the movement. Not only was the Wellington Church congregation the second church in the United States that joined the sanctuary movement but in 1985, the city of Chicago also issued its first sanctuary policy. On March 7 of that year the Chicago mayor, Harold Washington, signed executive order 85-1, which also carries the name of Equal Access to City Services, Benefits, and Opportunities (Rumore). This executive order stated that job and license applicants could not be asked to provide citizenship status and that Chicago’s agencies would cut down on cooperation with federal immigration agencies, although there were many exceptions (Rumore). Chicago Mayor Daley, who was in office between 1989 and 2011, confirmed his stance towards Washington’s executive order by reaffirming it shortly after he took office (Rumore).

1.3 Sanctuary and the criminalization of undocumented immigrants.

1.3.1 Criminalization of Undocumented Immigrants

The NSM and the increase in the number of sanctuary cities, which started after 9/11, both respond to the discrimination and increasing criminalization of undocumented immigrants. This criminalization arguably started in with the 1996 Illegal Immigration Reform and Immigrant

Responsibility Act (IIRIRA) and Antiterrorism and Effective Death Penalty Act (AEDPA). These laws, signed by President Bill Clinton, marked a significant change in how the federal government deals with immigrants and specifically with the ones without legal status. Previous legislation attempted to curtail undocumented immigration externally through quotas and visas and internally through labor restrictions, while the IIRIRA and AEDPA used criminalization as a deterrent.

The IIRIRA predominantly focused on the expansion of INS border personnel, new criminal offenses that lead to deportation of immigrants with or without legal status, less due process in cases concerning the removal of an individual, and more cooperation concerning immigration between federal, state, and local authorities (Paik 10). Crucially, the IIRIRA section 287(g) allows the authority on immigration enforcement, later the Department of Homeland Security (DHS), to use local police officers as enforcers of immigration law. This section was not yet used during President Clinton's time in office but has become increasingly important after 9/11. Since these laws were passed, they have been criticized heavily and remained controversial ever since. VOX-writer Dara Lind, for instance, has argued that the IIRIRA is one of the reasons that the immigration system is not functional anymore. Her criticism is that the act did not have the effect of reducing immigration, while it did affect the lives of many undocumented immigrants.

The IIRIRA set the stage for subsequent criminalization and deportation of immigrants, regardless of immigration status, after 9/11. The PATRIOT Act, which was passed by Congress as a direct response to the terrorist attacks, delineated the system of federal immigration agencies used now, in which ICE and the Customs and Border Protection (CBP) were founded and were housed in the newly founded Department of Homeland Security. Paik argues that housing the enforcement of immigration law in DHS "casts immigrants as a threat to national security" (10). This is one of the signs that the federal government under the Bush administration perceived immigration as dangerous. Paik also describes that the policies and strategies of the Bush administration intensified the enforcement of immigration law, such as Operation Streamline in 2005, the Secure Border Act and Operation Return to Sender in 2006, the use of the 287(g) program, and the Secure Communities program between 2008 and 2015 (11). All of these policies and means of enforcement criminalized minor offenses by immigrants with legal status, threatening their future in the United States, while undocumented immigrants were criminalized by their mere presence on American soil.

Both President Obama and Trump not just continued these policies but even further expanded the resources of immigration enforcement. Deportations became especially frequent during the second term of the Obama administration when more than half a million people were deported (Chozick). Although this number has not been matched by the policies of President Trump's administration, ICE still deported 256,085 undocumented immigrants (United States, Immigration and Customs Enforcement). Aside from deportations, the administration also enforced the infamous policy of separating parents from their children in custody (Bever and Paul).

1.3.2 A History of Discrimination in Immigration Law

Although the criminalization of undocumented immigrants became apparent since the IIRIRA and AEDPA, there is a larger system of structural discrimination of race and class in the history of immigration law. The first federal law that explicitly restricted the arrival of newcomers discriminated based on race was the Page Act of 1875. The Page Act focused on convicts in general but specifically targeted East-Asian women accused of prostitution, mostly Chinese and Japanese.

New restrictions were implemented in the Chinese Exclusion Act of 1882 in which Congress further excluded “lunatics, idiots, persons likely to become public charges, and Chinese laborers” from entering the United States (Bischoff 265). Moreover, the law also stated that the Chinese were not applicable for citizenship. While the act excluded Chinese laborers, temporary migrants like merchants, students, and diplomats still had access to the United States (Railton 13). This law was also the first step by the federal government to assert power over immigration, although the enforcement, and thus deportation, was still executed by the states (Bernard 59). The federal government took control over enforcement in 1891 due to the inability of states to enforce the new immigration laws (Bischoff 266). The enforcement of these exclusionary immigration laws only applied to immigration by ship, for instance, people who entered the United States at Ellis Island in New York (Bernard 60).

The Immigration Act of 1924 expanded the exclusion of Chinese laborers to the entire continent. This act, which also called the Johnson-Reed Act or the National Origins Act, superseded previous restrictive laws that started using the quota system, such as the Immigration Act of 1917 and the National Origins Formula of 1921 (Parker 737). The Immigration Act of 1924 set the global maximum of annual immigrants on 150,000 and excluded people from many Asian countries from migrating to the United States, while it also put quotas on the number of people

from the Eastern Hemisphere. The act, moreover, declared Asians ineligible for citizenship and therefore banned their immigration entirely (Bernard 65).

The 1924 act was also significant in the way that it, perhaps unconsciously, coined the term undocumented immigrant, which is still relevant in current debates around immigration. The quotas set in the National Origins Act meant a new perception of the term. According to immigration scholar Ngai, this act was the first that implicitly articulated with the quota system, “legal status now rested on being in the right place in the queue [...] and having the proper documentation” (Ngai 187). This is relevant because the current immigration system could be interpreted in the same way. Although the quota system has been replaced by the chain migration system with the 1965 INA, applicants for legal status still rely on receiving the right documentation and are processed with the notion of first come, first serve.

Although peoples from many Asian countries were prohibited to migrate to the United States, Japanese immigrants were treated differently. The Japanese experienced less exclusion because of the obligation of the United States to honor the Gentleman’s Agreement and Japan’s influence as increasing geopolitical power (Lee 535). The quotas, predominantly on European immigration, were aimed to curtail the “new immigration” from Eastern and Southern European countries and to discourage immigration from the Northern and Western European countries that already had a substantial population in the United States (Parker 737). Bernard argues that the provision stating that all new potential immigrants had to request a visa from an American consulate in their country of origin also added to the idea that “the 1924 act was not only to limit the number of immigrants but also to select those considered best suited to American society” (65).

The system of immigration law that is still largely in place and partly generated the current demography of immigrants in the United States came into being with the implementation of 1965’s Immigration and Nationality Act (INA). The INA, or Hart-Celler Act - named after the two main sponsors of the act -, amended the 1952 INA and abolished the national origins system that had existed since 1924 and replaced with a program that predominantly focused on family reunification. Although family reunification was already one of the major reasons for admittance to the U.S. in the years in which the National Origins Act of 1924 and subsequent acts were dominating immigration policy, this was not yet official policy (Lee 538). INA did set an annual worldwide quota of 290,000 immigrants, of which seventy-four percent was allocated to family reunification, twenty percent to people with demanded skills, and six percent to refugees.

Concerning family reunification, certain preferences based on the kind of family tie a potential immigrant had in the U.S., which could be a U.S. citizen or a permanent resident. Since the implementation of this act, amendments by subsequent immigration acts have been made but the focus of chain-migration has not been abolished. A provision of INA that has affected the sanctuary movement that started in the 1980s was the section that prohibited “bringing in and harboring certain aliens” (U.S. Congress 8 U.S. Code § 1324). The federal immigration enforcement agencies, such as ICE, have often cited this provision to diminish the legality of sanctuary movements, as they would be in direct violation.

The act also marked a shift in the immigrant population in the United States. Since the Hart-Celler Act, not European but Asian and Latin-American countries have been the origin of most of the immigrants in the United States. Statistics collected by Radford and Budiman show that before the act, European and Canadian immigrants accounted for approximately eighty-four percent of all immigrants, while this has decreased to about thirteen percent in 2016 (2). The Mexican, East-Asian, and Latin-American share, however, has increased from maximally six percent in 1960 to about twenty-six percent in 2016 (Radford and Budiman2).

Although the goals of the 1965 INA did not include expanding the number of immigrants, the act did create the basis for a new increase of documented and undocumented immigration. As the historian Hatton argues in his article on the act, “historians have generally taken the view that legislators in 1965 genuinely believed that the increase in immigrant numbers would be moderate and that shifts in the source-country composition would be gradual” (348). Chain migration, or family reunification, became the main catalyzer for U.S. immigration. Statistics from the INS show that between 1965 and 1990, immigration from Europe has decreased, while the number of immigrants from the Americas has increased from 996,944 in total during the 1950s to 3,615,225 in the 1980s (21). Data on the number of undocumented immigrants are scarce and based on approximations, especially before 1980.

The abolition of the bracero program together with the newly initiated chain migration program are two major interrelated factors in the increase of the documented and undocumented population. The bracero program, in which bracero means ‘farmhand’ in this context, was an agreement between American and Mexican authorities between 1942 and 1964 (Calavita *Inside the State* 1). With this program, hundreds of thousands of Mexican laborers, who were called braceros, were contracted to predominantly work in American agriculture (Calavita *Inside the*

State 1). Passel, a long-time demographer of immigration, estimated that in 1980, there were nearly 2,057,000 undocumented immigrants in the United States (33). Warren and Passel argue that the termination of the bracero program has led to an increase of border apprehensions during the late 1960s and early 1970s, which is a signifier of increased undocumented immigration (375). This increase fits into Hatton's argument that after the bracero program it was the strategy of many Mexicans and Latin-Americans to first enter the United States illegally, thus becoming an undocumented immigrant, and then apply for documented immigration status with a labor visa or the family reunification program (355).

A change to the 1965 INA was passed by Congress in 1986, which was the Immigration Reform and Control Act (IRCA). This act opened the door for undocumented immigrants who entered the U.S. before January 1, 1982, to apply for permanent residency, made it illegal for American employers to hire undocumented immigrants, and allowed some undocumented immigrants working in agriculture to also apply for legal status. Although the first provision of the act helped more than three million undocumented immigrants to obtain legal immigration status, the second provision was highly ineffective because it was enforced marginally (Calavita "Gaps and Contradictions" 96). According to Calavita in her chapter in *The Immigration Reader*, the act demonstrated a contradiction in American immigration policy. On the one hand, the government wanted to control undocumented immigration, but on the other hand, it was reluctant to disturb the employers who hired undocumented immigrants (93). It also did not halt unlawful crossings of the U.S. – Mexican border, which is partly due to the policies and priorities of the INS and the economic use of cheap laborers from Mexico (Calavita 95). This attempt by the federal government does represent a change of attitude towards immigration in the United States, which increasingly focused on regaining control over its borders (Calavita 94). This new focus, however, did not change the criteria on which a person is admitted to the United States but started to change the way in which undocumented immigrants were treated inside the U.S.

1.3.3 The New Sanctuary Movement

The NSM is a post 9/11 congregational response to the criminalization of undocumented immigrants. Although the sanctuary movement faded away in the 1990s, the foundation of the NSM in 2007 meant its revival (Orozco and Andersen 4). One of the triggers of this revival happened in 2006, when the Mexican woman Elvira Arellano and her seven-year-old son, who suffers from ADHD, took refuge in the Adalberto United Methodist Church in Humboldt Park in

Chicago for a year (Rumore). Arrelano, a cleaning lady at O’Hare International Airport, had been deported previously in 2002 as a consequence of post 9/11’s security sweeps but reentered the United States illegally and used a fake social security number to get a job (Rumore). Federal immigration officers ordered her to be deported again but Arrelano and her son took refuge in the Chicago church, to the surprise of both the federal authorities and her supporters (Avila). Her move reminded many of the initial sanctuary movement and she became a symbol for the thousands of undocumented immigrants in Illinois (Avila). Arrelano was deported in 2014, returned again to the United States, and is currently in waiting for her application for political asylum (Ortiz).

With the revival of the NSM, more undocumented immigrants took refuge in churches across the United States, including Chicago. In 2017, a fifty-year-old Mexican mother of six children, Francesca Lino, took refuge in the same church as Arrelano did (Moreno). In May 2019, Adilene Marquina Adam, who was scheduled for deportation by ICE, took refuge in the Faith, Life and Hope Mission church in Chicago’s south side (Malagón). What is remarkable about these instances, is that both Lino and Adam have not committed any criminal offense and were, therefore, not a target for deportation before (Malagón). This could show that their mere undocumented presence in the United States has become criminalized.

While church congregations across the United States offer sanctuary to these undocumented immigrants, the protection they have is limited. These congregations do not offer them any form of legal protection, as ICE personnel has the authority to raid churches (Avila). The only protection they have is political, for the reason that raiding a church would mean a loss of face of ICE (Avila). According to Villazor, it is also still not clear whether this movement will be part of the same clash between church and state as the initial sanctuary movement (“What is a Sanctuary” 147).

1.3.4 The Response of Sanctuary Cities

The rise of sanctuary cities in the 2000s meant a response to the increasing criminalization of both documented and undocumented immigrants. While Paik only includes immigration law since the 1980s, I believe sanctuary cities react to the system of racial and class-based discrimination in immigration law. As a response to the increasing criminalization of undocumented immigrants since the implementations of IIRIRA, AEDPA, and PATRIOT Act, many cities, towns, and states have renewed their status as a sanctuary city.

In 2012, the Chicago City Council and the then newly installed mayor Emmanuel renewed their sanctuary policies with the Welcoming City Ordinance. Chicago's Welcoming City Ordinance essentially delineates the role of police departments as criminal law enforcement. The document states that the enforcement of immigration law is a federal responsibility, specifically stating that no local official shall cooperate with ICE "unless an agency or agent is acting pursuant to a legitimate law enforcement purpose that is unrelated to the enforcement of a civil immigration law" (Chicago City Council, sec. 2-173-042b1). The Chicago City Council also states that local law enforcement will not arrest a person "[...] solely on the belief that the person is not present legally in the United States, or that the person has committed a civil immigration violation" (sec. 2-173-042a1), when "the administrative warrant is based solely on a violation of a civil immigration law" (sec. 2-173-042a2), or detain someone "based upon an immigration detainer, when such immigration detainer is based solely on a violation of a civil immigration law" (sec. 2-173-042-a3). Exceptions to these protections are criminal warrants, felony convictions and charges, and gang membership (Chicago City Council, sec. 2-13-042c). Following the divisions that Villazor makes between non-cooperation policies ("What is a Sanctuary" 148), Chicago's sanctuary policies would then be of the "don't ask, do tell" form, similar to New York City.

The Welcoming City Ordinance is a response to the criminalization of undocumented immigrants, and the accompanying deportation terror, for it attempts to counter the distrust between the local government and the neighborhoods that they live in. The Chicago City Council's intent of the Welcoming City Ordinance is to restore trust and cooperation between the city's immigrant communities and the local law enforcement agencies in order to "to achieve the City's goals of protecting life and property, preventing crime and resolving problems" (sec. 2-173-005). The city council does this with the belief "that assistance from a person, whether documented or not, who is a victim of, or a witness to, a crime is important to promoting the safety of all its residents" (sec. 2-173-005). By including the undocumented population of Chicago in issues of solving crime and safety, the Welcoming City Ordinance does not deem the undocumented immigrants a threat, as the post 9/11 administrations do (Paik 10). The inclusion of undocumented immigrants perhaps implies the opposite, which is that the criminalization and consequent distrust and fear is the threat.

Similar to the congregational sanctuary movements, sanctuary cities also carry some limitations. Although ICE is partially dependent on local law enforcement agencies, this institution

can still enforce immigration law and detain undocumented immigrants. Meanwhile, every arrest is still processed in the FBI's database, which can be accessed by agencies under DHS (Paik 14). Paik is, therefore, accurate when she argues that "while existing local sanctuary policies can obstruct ICE, they nevertheless ultimately prove insufficient safeguards for immigrants, given the far-reaching information sharing between agencies and the ever widening definition of 'criminal' behavior" (14).

The major limitations of Chicago's Welcoming City Ordinance are its exceptions and the racially tinged practices of the Chicago Police Department, abbreviated to CPD, that contradict the purpose of the ordinance. One major exception in Chicago's sanctuary ordinance is when an undocumented immigrant "has been identified as a known gang member either in a law enforcement agency's database or by his own admission" (Chicago City Council, sec. 2-173-042c3). Chicago's gang database, however, has been criticized frequently for its ambiguous criteria. The main problem with the database is that one does not need to be a gang member to be included in the database but just affiliated with it. The criteria for affiliation "can be based on factors such as being in the presence of other designated gang members, self-admission, tattoos and other markings, social media posts with perceived gang signs, and tips from informants [...]" (Serrato).

Although the Welcoming City Ordinance focuses on reestablishing trust between law enforcement agencies and immigrant communities, the racially tinged practices of the CPD continue. Chicago mayor Rahm Emmanuel appointed a task force that investigated the structural racism in the CPD in 2016 after the violent incident in which former police officer Jason van Dyke fatally shot the African American seventeen-year-old Laquan McDonald (Davey and Smith). The task force found that structural racism has reigned in the CPD for several decades, with many instances of false arrests, forced confessions and wrongful convictions (Police Accountability Taskforce 7). While the task force made more than a hundred recommendations and CPD officers received training which was meant to improve the police department, these were led by some of the abusers themselves (Southorn and Lazare). Although the CPD's record of institutional racism might have been addressed by the task force, the department is still part of the problem of fear and distrust in the racially diverse neighborhoods in Chicago. Chicago's sanctuary ordinance has the objective to protect and cooperate with all Chicagoans but the CPD's record shows otherwise, which could significantly limit the effectiveness of the sanctuary policy.

Chapter 2 – Sanctuary Laws and Immigration Federalism

Power over immigration legislation has generally shifted from the states to the federal government since the foundation of the United States. I argued in the previous chapter that the federal government has asserted power over American immigration policy and discriminated immigrants on the basis of race, skill, and wealth since the Chinese Exclusion Act of 1882. At roughly the same time when these exclusion acts were implemented, the federal government also took control over the enforcement of these acts, making border enforcement a federal responsibility. Since the implementation of the IRCA, IIRIRA, and AEDPA, the enforcement of immigration law also shifted to the inside by criminalizing hiring undocumented employees and expanding felony offenses for undocumented immigrants, which makes them deportable.

Sanctuary initially was a response to the refusal of the United States to accept refugees from Central America, and since the 2000s mainly to the increasing criminalization of undocumented immigrants and militarization of immigration enforcement. Sanctuary cities, like Chicago, can, therefore, be seen as a form of resistance response to enforcement of federal immigration power. From a federal perspective, however, these localities and states violate the national law.

President Trump, for instance, has argued in an executive order from 2017, which would have barred sanctuary jurisdictions from federal funds, that “sanctuary jurisdictions across the United States willfully violate Federal law in an attempt to shield aliens from removal from the United States” (White House “Executive Order”). A federal judge in San Francisco has halted this decision on the basis that the federal government cannot force states to execute federal law (Foley). This legal battle shows that the federal authority over immigration issues, and thus domination over local and state provisions concerning undocumented immigrants, is disputable. For instance, this became apparent during the 2000s, when many states and local authorities passed their own immigration, often exclusionary, policies out of frustration with the federal government’s lack of border controls (O’Law “Historical Amnesia” 304).

I will argue in this chapter that the ways in which Chicago as a sanctuary city responds to federal enforcement of immigration law, is to fill a constitutional and legislative void that immigration federalism has left. This constitutional void exists because the federal government continues to assert authority over immigration policy, while there has never been a concurrence among historians, legal scholars, and even the Supreme Court that this authority is constitutional.

While the federal government continues to enforce authority over immigration, the legislative and executive branches have left a legislative void by not passing any meaningful immigration reform due to gridlock. The role of Chicago has been to use both the constitutional and legislative void to resist against outdated, incompatible, and discriminatory immigration policies and to fill these with its own integrative immigration policies.

2.1 The Constitutional Void: Immigration Federalism

Over the course of American history, there have been many struggles between the power of individual states and Congress, and the control over immigration policy is one of them. Central to the dispute on the power over immigration policy is that the United States Constitution constructs the idea of federalism by provisioning Congress with certain powers (US Const. § I, sec. 8), while the tenth amendment, put forward in the Bill of Rights, argues that “the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people” (US Const. amend. X). This continuous friction between state and federal authority concerns issues of immigration because the Constitution does not specifically mention issues of immigration, admission, and the removal of non-citizens. Immigration is thus not an enumerated power of Congress.

2.1.1 *The Constitutional Roots*

The distribution of power over immigration policy, that is mainly allocated in Congress, has been based on different clauses in the Constitution. The Supreme Court initially allocated the authority on immigration policy to the federal government based on the Commerce Clause in the Constitution, arguing that it was the duty of the federal government to deal with matters of international affairs and commerce (Weissbrodt and Danielson, par. 2-1.1). The early Supreme Court cases that involved immigration dealt with fees that were levied on people who disembarked at state ports. There are various other clauses that have been cited that have arguably legitimized federal authority over immigration matters. O’Law, however, has argued in her article on immigration federalism that only two clauses in the Constitution could easily legitimize federal control, being the Naturalization Clause in Article I Section 8, and the Migration and Importation Clause in Article I Section 9 (O’Law “The Historical Amnesia” 308). The second clause is particularly infamous because it relates directly to slavery. She continues to argue that other parts of the Constitution, which are the War Powers clause (§ I, sec. 8), the power of Congress over

punishments (§III, sec. 8), which could also include deportation, and the Commerce Clause (§I, sec. 8), are all mentioned in discussions over immigration federalism but require further extrapolation in order to include issues of immigration (308).

2.1.2 Ambiguity of Immigration Federalism

One historical example of the ambiguity of immigration federalism is the discussion on the constitutionality of the Alien and Sedition Acts. One clause in the Constitution that has indirectly located some authority over immigration in the executive branch, as it dedicates the President as the Commander in Chief (§ II, sec. 2). This is relevant in the context of the Alien and Sedition Acts of 1798, an infamous series of four laws that limited civil liberties, that made deportation of enemies easier, and increased the time of naturalization from five to fourteen years. One of the four laws is the Alien Enemies Act, which still allows the President as Commander in Chief to remove alien enemies in times of war (O’Law “The Historical Amnesia” 312). The Federalists, who supported this bill, attempted to also pass the Alien Friends Act, which would have given the President the power to deport foreigners in peacetime (O’Law “The Historical Amnesia” 312). The discussion in Congress on the constitutionality of this act shows that federal authority, in this case of the executive branch, is not fixed (O’Law “The Historical Amnesia” 318).

A more recent example of the ambiguity of immigration federalism is the *Arizona v. United States* court case in 2012. *Arizona v. United States* was a Supreme Court case that dealt with the potential preemption of the Arizona state law SB 1070, called the Support Our Law Enforcement and Safe Neighborhoods Act, by federal immigration law. The Arizona state legislature passed this act and Republican governor Jan Brewer signed it in 2010 (“Arizona v. United States”). The four provisions that were deemed preempted made the presence of an undocumented immigrant in Arizona a state crime, made it illegal for undocumented immigrants to work, required police officers to request the immigration status of a detained person, and allowed undocumented immigrants to be arrested without a warrant (“Arizona v. United States”). A federal district court blocked four provisions of the act before they were implemented, after which the case went to the U.S. Court of Appeals and ultimately to the Supreme Court, which only upheld the third provision.

2.1.3 Immigration Federalism and Chicago’s Sanctuary Ordinance

Although the Supreme Court reinforced federal dominance over immigration law in *Arizona v. United States*, the ruling can have significant meaning for sanctuary cities. The majority of the Supreme Court judged that all but the third provision were preempted by federal immigration law.

Judge Kennedy argued in the Court’s ruling that “Arizona may have understandable frustrations with the problems caused by illegal immigration while that process continues, but the State may not pursue policies that undermine federal law” (United States, Supreme Court 25). What makes this remarkable for sanctuary is that the provision that directs officials to enforce federal immigration law is not preempted by federal law. If the authority of directing state and local officials to enforce federal immigration law is not in the hands of the federal government, this would legitimize the decision of sanctuary jurisdictions to prohibit their officials to cooperate with ICE.

The main power of American sanctuary cities lies in the partial dependency of the federal government to cooperate with local authorities to enforce immigration laws. Even ICE, the largest federal enforcement agency, does not have the resources to be present in most jurisdictions and handle all deportations and therefore depends on cooperation with local enforcement agencies (Paik 8). Localities, such as San Francisco and Chicago, can prohibit local enforcement agencies to cooperate with ICE and thus cripple its impact. Sanctuary policies that have developed since San Francisco’s sanctuary ordinance are broad. Such policies can be simply to deny detainer requests by ICE or to prohibit the police departments from enforcing immigration laws by requesting the immigration status during encounters (Paik 8; Villazor “What is a Sanctuary” 148). For instance, Villazor describes that policies of non-cooperation and “don’t ask, don’t tell” are both associated with sanctuary, although she argues that New York City’s sanctuary policy is more a case of “don’t ask, do tell” (“What is a Sanctuary” 148). Government employees in New York City do not have to request a person’s immigration status but are allowed to pass on this information if they obtain that knowledge, specifically when disclosure is required by the federal government or it concerns crime (Villazor “What is a Sanctuary” 149).

Chicago’s Welcoming City Ordinance only limits the communication between any city official and ICE unless criminality is involved (par. 2-173-042) and prohibits any city official to request immigration status (par. 2-173-020). The ordinance does thus not implement a new policy that affects any federal immigration law but merely lays out the conditions of when a city agent must enforce it. As I described in chapter one, Chicago’s sanctuary policies are a kind of “don’t ask, do tell”. As the decision to enforce immigration law is up to the states, according to *Arizona v. United States*, then Chicago should be free not to.

These examples demonstrate that since a century before Congress asserted power over immigration in the Chinese Exclusion Acts, federal authority over immigration-related issues have been unclear. Although the sources of immigration federalism are malleable, as they refer to various articles in the U.S. Constitution, the unclarity creates a constitutional void. The leeway that local authorities have, in which sanctuary policy cannot be considered unconstitutional or preempted, is a manifestation of that void. It is in this void that sanctuary jurisdictions like Chicago justify their refusal to work with federal immigration agencies. This does not imply the devolution of immigration policy that, for instance, the law scholar Wishnie opposes (567), but allows for state and local jurisdictions to have some control over cooperation with its enforcement. The challenge that follows, however, is that sanctuary ordinances, like Chicago's, must not infringe on the authority of Congress to regulate immigration law, "but rather to legitimately apportion their own personnel and fiscal resources in orthogonal areas of state law" (Elias 50).

The federal government is not allowed to punish state jurisdictions that violate federal law or to force them to comply with the enforcement of federal immigration law, which strengthens this constitutional void. While *Arizona v. United States* shows that federal laws can preempt state law even if there is no direct conflict between the two (Somin), the federal government has no way of commandeering the police departments of states and localities. This is the consequence of the Supreme Court's rulings in *New York v. United States* and *Printz v. United States* that the federal government cannot directly confiscate "the state's power to decide what their officials may do on the job" (Somin; see also Kittrie 1487).

These restrictions on federal power are also related to the federal separation of powers. For instance, the attempt by the Trump administration to withhold law enforcement funds from Chicago because of its sanctuary ordinance has been struck down by the Court of Appeals in *City of Chicago v. Sessions* in 2018. The Court used the separation of powers as main argument in favor of Chicago's non-compliance policies, stating that "if the Executive Branch can determine policy, and then use the power of the purse to mandate compliance with that policy by the state and local governments [...], that check against tyranny is forsaken (the United States, Court of Appeals 3). Congress, according to the Court of Appeals, has not approved of ties to federal funds to states and localities (3), as the Supreme Court has argued that these would be unconstitutional.

2.2 The Legislative Void

As a sanctuary city, Chicago's role can also be explained as a response to a legislative void on the federal level. This legislative void is twofold. On the one hand, sanctuary in Chicago and in other places is a response to the lack of federal immigration reform. Since President Clinton signed the IIRIRA and AEDPA in 1996, almost no major reforms have passed Congress. This lack of new federal legislation has resulted in both exclusionary and integrative responses on the state and local level. Chicago's public response was the Welcoming City Ordinance in 2012. On the other hand, the legislative void is a consequence of the diverging priorities that local and federal authorities have in immigration policy. The federal government has been mainly concerned with both the control over the national borders and the deterrence of undocumented immigration since the 1980s and 1990s. Meanwhile, local authorities in Chicago are concerned with the safety of neighborhoods and reduction of crime, which has resulted in more integrative stance towards undocumented immigrants.

2.2.1 *Immigration Gridlock*

One role of sanctuary in Chicago, and in general, is to respond to the lack (or perhaps unwillingness) of Congress to pass new substantial immigration legislation. Many scholars have appropriated this presumed failure of the federal government to either inclusionary or exclusionary policies on a state and local level ("Unenforced Boundaries" 1643; O'Law "The Historical Amnesia 304; Rodriguez 569; Farris and Holman 143; Lewis et al. 2), although Newton and Adams have argued that this is a myth created by elected officials and popular media (409). Indeed, local inclusionary policies react to immigration-related issues that have existed for years but have not yet been tackled, such as the legal status of the DREAMers. DREAMers are undocumented persons in the United States who have been brought to the country unauthorized as children by their parents.

Currently, there are approximately 3.6 million undocumented immigrants in the United States who entered the country under the age of eighteen (Gomez). Their name originates from the DREAM Act, which is short for Development, Relief, and Education for Alien Minors Act, that failed to pass Congress for the first time in 2001 ("The Dream Act"). New versions, some more restrictive or inclusive, have been proposed in the House of Representatives but even with bipartisan support, none has yet passed ("The Dream Act"). Temporary relieve for approximately 800,000 DREAMers was implemented with the DACA program, which stands for Deferred Action

for Children Arrivals, during the Obama administration. This program was, however, repealed by the Trump administration, with the addition that he would support solutions for DREAMers if these would be part of larger, exclusionary, immigration reform (Shear and Davis). Although many senators and representatives have introduced and supported several bills over the years, none has yet passed. Several immigration-related acts, like the IRCA, IIRIRA, and AEDPA, and PATRIOT Act, have severed the position of undocumented immigrants, and many DREAMers thus remain a target for deportation.

Even though Chicago's Welcoming City Ordinance is meant to shield undocumented immigrants from deportation, this sanctuary ordinance is limited because a city - or the state of Illinois, for that matter - has no authority to regulate immigration law. The Supreme Court's ruling in *Arizona v. United States* shows that immigration legislation is still a federal matter. Although ordinance directly responds to "the City's limited resources; the complexity of immigration laws; the clear need to foster the trust of and cooperation from the public, including members of the immigrant communities" (Chicago City Council, sec. 2-173-005), the city does not have legislative power over immigration. This means that ICE can still enforce immigration law in Chicago, just without much of the cooperation with the CPD.

2.2.2 Incompatible Priorities

Chicago's sanctuary policies, and many others, do not only play into the lack of meaningful immigration reform by Congress but can also be explained as a result of a history of incompatible priorities of the federal government and local authorities. This difference in priority concerning undocumented immigrants between ICE and the Chicago City Council leaves a legislative void in which federal and local statutes are incompatible. Federal immigration legislation until 1965 arguably focused on the question who was eligible or worthy of entering the United States. The Chinese Exclusion Acts considered Chinese laborers as unfit for American society and therefore declared them ineligible for entering the U.S. (Bischoff 265). The nationality acts that Congress passed during the 1920s reinforced these preferences for certain nationalities and curtailed immigration from Asia, and Southern and Eastern Europe. The INA from 1965 changed these preferences to family reunification and offered new opportunities to migrate to the U.S. for Mexicans, Central/Southern Americans, and Asians.

The immigration acts that were implemented during and after the 1980s shifted the focus to what is still the purpose today, namely controlling who crosses the borders. The IRCA was a result

of a changed perception of immigration law, which then started to focus on regaining control over national borders and the life of undocumented immigrants already in the country. Although deportations and apprehensions at the country's border were already prevalent, the IRCA made “deporting “criminal aliens”—that is, noncitizens convicted of a crime—an immigration enforcement priority” (Armenta 23).

The 1996 IIRIRA, AEDPA, and further escalated immigration law enforcement and criminalization of undocumented immigrants, which incorporated counterterrorism as a function since the attacks on September 11, 2001. For instance, the website of ICE clearly articulates preventing terrorism as one of their core tasks by stating that “ICE stands at the forefront of our nation's efforts to strengthen border security and prevent the illegal movement of people, goods, and funds into, within, and out of the United States”, to continue that “the agency's broad investigative authorities are directly related to our country's ongoing efforts to combat terrorism at home and abroad” (“What we do”). ICE thus directly links the national enforcement of immigration law with the prevention of terroristic activity.

Priorities on a local level, however, are rather different. Cities are often less concerned with countering terrorism but more with integration and safe neighborhoods. Chicago's 2012 Welcoming City Ordinance, for instance, clearly states that “the cooperation of all persons, both documented citizens and those without documentation status, is essential to achieve the City's goals of protecting life and property, preventing crime and resolving problems” (Chicago City Council, sec. 2-173-005). By linking the city's objectives with the cooperation of citizens and noncitizens, the Chicago City Council sees this as a higher priority than limiting the movement of undocumented immigrants. The ordinance does recognize the importance of immigration status but does not use it as a sole criterium of an arrest or detainment.

Chapter 3 – Sanctuary Laws and The Construction of Citizenship

There is a relation between immigration federalism and citizenship. In the previous chapter, I argued that one domain in which sanctuary works is immigration federalism. Federalism touches upon various issues in American politics that are still points of discussion, such as health care, gun laws, and immigration law. One aspect of immigration law is setting the criteria on which someone can become a permanent resident or citizen. Because federalism touches upon immigration law, it also deals with the issue of citizenship.

The meaning of citizenship itself has been debated by scholars and philosophers since the Ancient Greek societies and different definitions are currently used by scholars in different disciplines (Bosniak 18). Linda Bosniak provides a usable definition of the term citizenship, which is “a concept that designates some form of community membership, either membership in a political community [...] or membership in a common society [...]” (18). Scholars generally view citizenship as something that is in the hands of national governments. Bosniak, for instance, argues that the notion of citizenship is “[...] presumed, with little question, to be a national enterprise – a set of institutions and practices that necessarily take place within the political community, or the social world, of the nation-state” (Bosniak 23). According to Villazor, citizenship is generally granted by the nation-state and is therefore perceived as formal, or legal, status (“Sanctuary Cities and Local Citizenship” 581). As the federal government assumes power over the production of immigration law, it arguably also has the power to grant citizenship. This, however, has been disputed by scholars who have identified forms of citizenship that are granted by local governments in the United States (see Sassen; Blank).

Assuming that local governments can also grant a form of citizenship to their residents, I argue that there is also a dynamic between Chicago as a sanctuary city and the notion of local citizenship. As I see a sanctuary city as an actor in creating forms of local membership, this has consequences for its meaning. Chicago’s City Council has passed policies that include residents, regardless of immigration status, as formal members. These policies are, for instance, scholarships, work permits, and a local identification card. Another reason to incorporate these policies in the discussion of the relation between Chicago and the construction of local citizenship, next to Welcoming City Ordinance, is that they both suffer from similar limitations. As I argue that Chicago’s sanctuary policies also contribute to the construction of local membership, this could have consequences for the meaning of a sanctuary city. Then sanctuary cities could also be safe

spaces where both the non-cooperation between local and federal authorities takes place and undocumented immigrants are seen as formal members of the community.

3.1 The notion of citizenship

Linda Bosniak has identified four dimensions of citizenship. The first dimension originates from Roman thought and perceives citizenship as a legal status that can be obtained by possessing the proper documentation, which is accompanied by certain rights and rules (Bosniak 19). Citizenship, in this case, is then granted and checked by the nation-state. The second dimension that Bosniak articulates is “citizenship as entitlement to, and enjoyment of, rights” (19). This sociological idea articulates that having certain rights in society means the enjoyment of citizenship (Bosniak 19). The third dimension is the relationship between citizenship and participation in self-government, which means that active public and political engagement is embedded in being a citizen (Bosniak 19). The fourth dimension of understanding citizenship is as a collection of “affective elements of identification and solidarity that people maintain with others in the wider world” (Bosniak 20). This means that the experience of identity and a sense of belonging, as Villazor puts it (“Sanctuary Cities and Local Citizenship” 580), is also a signifier of citizenship. This framework recognizes the complexities and extensiveness of citizenship but describes it in such a way it can be used for analyses of the surrounding constructions.

3.1.1 Local Citizenship

Scholars have focused on citizenship in relation with the nation-state, but despite this general perception of citizenship as a national matter, scholars have also identified the emergence of local citizenships (Blank 415; Sassen 4). The local is often ambiguous in scholarly debates, as these can be cities, municipal areas or regions, provinces, and other sub-national governmental authority (Blank 421). To clarify, when discussing the role of the local in citizenship I will specify either the city of Chicago or the state of Illinois. While local citizenship generally offers the same kind of rights and entitlements as on citizenship the national level, they do “manifest the need to break down the larger national body into subsections with flexible functionality and relative autonomy, thus creating a structure of relatively private spheres within one larger public sphere” (Blank 423). Local citizenship is thus more flexible to meet the needs of a particular locality. The main difference between local and national citizenship is that local citizenship is based on residency, thus a person’s presence in a particular territory, while national citizenship is based on birth and

naturalization (Villazor “Sanctuary Cities and Local Citizenship” 581). If national citizenship in the United States is based on *jus soli*, citizenship by birth, then local citizenship is partly based on some kind of *jus domicile*, citizenship by residency (Blank 424).

Undocumented immigrants enjoy some basic rights even without the interference of state or local legislation. In the 1982 case *Plyler v. Doe*, the Supreme Court argued that a state cannot ban undocumented children from attending public education unless there is a specific interest at stake (“*Plyler v. Doe*”). Apart from the right to public education, emergency health care is also a basic right for any person residing in the United States. The Emergency Medical Treatment and Active Labor Act, or EMTALA, obligates hospitals and physicians to help any individual that needs emergency care (U.S. Congress 42 U.S.C. § 1395dd). Villazor is accurate when she points out that these rights have been cited as sanctuary policies, while anyone in the United States has the benefit of these (“What is a sanctuary” 153). Every child in the United States, with or without immigration status, has the right to public education and may not be barred from this, just as anyone has the right to get proper emergency health care.

3.2 Local Citizenship and Sanctuary

Apart from the basic rights that any person residing in the United States has, sanctuary policies that shield undocumented immigrants from deportation by ICE are also one of the ways in which localities and states contribute to the construction of local citizenship. Villazor points out accurately that providing these basic rights to undocumented immigrants does not constitute a sanctuary, but she misses that localities that offer more than what is required by law could perhaps be seen as a sanctuary. In Villazor’s analysis of the construction of Bosniak’s four dimensions of citizenship in the sanctuary city of San Francisco, she only includes the non-cooperation policies stated in their sanctuary ordinance (583). Her use of the dimensions of citizenship in a sanctuary city is highly useful but limited because it focuses solely on the non-cooperation of local law enforcement with ICE. Buff states that one effect of the threat of deportation, which she calls the deportation terror, is that there is a constant sense of fear among undocumented immigrant groups (543). The last of Bosniak’s four dimensions of citizenship is the experience or sense of belonging. The fear of deportation is a substantial part of the experience of undocumented immigrants and is, therefore, part of their identity. If the current sanctuary is meant to protect undocumented immigrants from deportation by ICE, then it also responds to their construction of identity. The

non-cooperation between local law enforcement, for instance in Chicago's Welcoming City Ordinance, is only one of the ways that sanctuary cities and states respond to this.

3.2.1 Local Citizenship in Chicago

The effects of Chicago's Welcoming City Ordinance can construct a form of citizenship as a legal status. Citizenship as a legal status, according to Bosniak, means "to be a citizen is to possess the legal status" (19). This implies that undocumented immigrants cannot enjoy the rights of citizenship unless they apply for it. Villazor argues, however, that San Francisco's sanctuary laws protect undocumented immigrants in such a way that they "[...] are entitled to rights, privileges, and obligations that are available to all other residents in the city" ("Sanctuary and Local Citizenship" 590). Similar to what Villazor identifies in San Francisco's sanctuary laws, Chicago's sanctuary ordinance also allows undocumented immigrants to interact with any official without their immigration status being requested. Although Chicago does not provide residents with actual citizenship, the idea of citizenship is made irrelevant, which grants them the same status in the city as any citizen. As Villazor puts it in her San Francisco case, "San Francisco's sanctuary law thus makes a person's immigration status immaterial in some public interactions" (591).

Apart from the dematerialization of formal citizenship through what are currently considered sanctuary laws, Chicago also offers a form of local formal citizenship similar to New Haven's ID-program. In 2015, a City Council committee accepted an ordinance that would give Chicago's mayor forty-five days to present a plan to introduce a municipal identification program (Dardick). This identification program would open up city services that were not available for undocumented immigrants, transgenders, ex-convicts, and the homeless (Dardick). In subsequent years, the City Council allocated the necessary funds for the program, and an ordinance was passed that authorized the city clerk to administer the program (City Clerk of Chicago). The identification card, called the Chicago CityKey, was ultimately launched in April 2018.

The Chicago CityKey offers someone, regardless of legal status, local privileges and rights that constitute some kind of formal local citizenship. The only criteria on which a person's application is judged are proof of identity, including expired foreign passports, and residency in Chicago. Next to being a valid local governmental identification, the CityKey can also be used for public transit, libraries, sports games, and includes certain discounts at local businesses (City Clerk of Chicago). Although this kind of local identification does not match the privileges and rights that a state identification card would provide, such as voting rights, it does offer marginalized people

in Chicago ways of living that do constitute a sense of local citizenship. Any person that obtains such a card, becomes a citizen of Chicago and bases this form of membership solely on residency.

Similar to Chicago, there are many other localities across the United States that have implemented measures that respond to matters of citizenship of undocumented immigrants. New Haven, Connecticut, for instance, was the first city in the United States that gave every resident an identification card, regardless of immigration status, in order to integrate the undocumented population into the communities and to have them report crimes more often (Connors). A local report in the *New Haven Independent* argues that although the quantifiable results of the ID-card program have been minimal, it “has helped foster a sense of belonging, a sense of being a New Havener regardless of one’s immigration status” (Macmillan). San Francisco, New York City, and Detroit are other cities where such local identification programs have been launched (City Clerk of Chicago). It is exactly with this new sense of belonging and identity that these local identification programs play into Bosniak’s formal dimension of citizenship and the fourth dimension that involves a sense of identity and belonging.

On a state level, the existing sanctuary laws also affect Chicago citizens and are therefore relevant here. The Illinois TRUST Act, signed by governor Bruce Rauner in 2017, essentially “denies local law enforcement the ability to detain people on behalf of Immigration and Customs Enforcement” (Esparza). This means that throughout Illinois, undocumented immigrants can interact with police departments without the fear of deportation. Although more limited than Chicago’s Welcoming City Ordinance, which denies any local official to request immigration status (sec. 2-173-020) or communicate this information to ICE (sec. 2-173-030), the TRUST Act also immaterializes immigration status when interacting with law enforcement agents.

When using Bosniak’s second dimension of citizenship, which is to see it “[...] as entitlement to, and enjoyment of, rights” (19), Chicago offers undocumented immigrants some form of membership by enabling them to attend higher education and the state of Illinois does so by offering professional licenses. These rights may not be as expansive as the nation-state can provide, but they do constitute and support the construction of local memberships that include undocumented immigrants.

Although education is a right that any person in the United States enjoys, the right for a scholarship is not. Federal financial aid for students, such as the Free Application for Federal Student Aid, is not available for applicants without documented status (Madhani). Many

undocumented students are, therefore, not able to attend higher education. Chicago's City Council and former mayor Rahm Emmanuel offer the Chicago STAR Scholarship since 2014, which supports the winners of this scholarship with tuition and fee waivers ("College Access for Undocumented Students"). This scholarship program for community colleges in Chicago does not discriminate on the basis of immigration status and is, therefore, open to undocumented people living in the city (Madhani). Since the STAR Scholarship program has been active, hundreds of undocumented students have applied and won (Madhani). About one-fifth of the approximately three thousand scholarship winners were ineligible for federal financial aid. The right to apply for a scholarship not only gives undocumented students in Chicago a form of membership to the locality, but it also gives them a form of agency that adds to the already identified forms by Tichenor (296).

With local legislative power being somewhat limited, state legislatures do have some power to implement sanctuary policies, especially when it concerns professional licensing. As immigration law scholar Leticia Saucedo argues, the federal government is more concerned with the availability and numbers of forms of visas, while the states have the authorization to set the requirements for legal employment licenses (486). States, according to Saucedo, can set "the parameters for the licensing of professionals and businesses and for their continued operation" (486). All persons in the United States, undocumented immigrants included, have the right for minimum wage. State power over professional licensing means that state legislatures can offer or reject legal employment licenses, such as working benefits, to undocumented immigrants (Saucedo 488). Illinois law, for instance, does not discriminate on immigration status in awarding worker's compensation benefits in case of a job-related injury (Wachowski and Bellas). State legislatures can have a significant impact on the rights that undocumented immigrants have concerning employment. The right to get working benefits can save an undocumented family's income when the member with the highest salary becomes ill or gets injured on the job. These professional licenses can help undocumented immigrants to get a job in the formal employment sector, which could help them become a formal member of a community.

According to Bosniak, citizenship can also be understood in terms of how well local residents can participate in the political community and have some agency in issues that are important for them (19). This can be measured by examining whether policy decisions are influenced by grassroots organizations, as Villazor did with her San Francisco case study

(“Sanctuary Cities and Local Citizenship” 596). In the years after the implementation of Chicago’s Welcoming City Ordinance, local pro-immigrant organizations called for new reforms. Undocumented immigrants were still threatened with deportation by local law enforcement officers and racially biased raids were carried out (Sanchez).

On July 31, 2013, three Chicago police officers raided a tanning salon on racially biased grounds (Yousef). They assaulted the Chinese-American owner, verbally assaulted her, and threatened her with deportation (Yousef). Although the police officers were suspended, their punishment was minimal. For Torrey Hamilton, the owner’s civil rights attorney, and Andy Kang, the legal director at the Asian Americans Advancing Justice in Chicago, this was insufficient and demanded greater accountability from the CPD. Kang argued that this was an example of a larger system of discrimination and exclusion towards undocumented Asians, stating that in “[...] our society immigrants, women, people who are undocumented are continually devalued as human beings, and I think this slight punishment is unfortunately evidence of that problem” (Yousef). This incident inspired Asian American organizations to support new reforms to Chicago’s sanctuary ordinance.

The discussion around potential amendments to Chicago’s sanctuary ordinance shows that immigrants, regardless of legal status, are actively participating in the local democratic process. The Asian American Advancing Justice is just one of the immigrant organizations that supported the proposals. Other organizations include the Chicago based Organized Communities Against Deportation group, which spokesman argued that the felony conviction and gang-related exemptions in the Welcoming City Ordinance are too broad, and the state-wide organization Illinois Coalition for Immigrant and Refugee Rights (Sanchez). Significant is the Organized Communities Against Deportation organization because its website emphasizes that the group is led by undocumented immigrants (“About.”). Members of this group do not just depend on civil rights advocates and lawyers but assert some agency in issues that matter the most to them. It is precisely this active participation in local democracy and politics that shows that Chicago’s undocumented residents have a form of local membership.

3.3 Consequences for the Meaning of Sanctuary

Notwithstanding that sanctuary is generally understood as local deference of federal immigration law enforcement, I have purposefully incorporated other measures, such as offering scholarships, work permits, and municipal ID-cards regardless of immigration status, into the discussion on

Chicago as a sanctuary city in relation with local citizenship. As I already argued, Chicago's sanctuary laws are meant to shield undocumented immigrants who only violate immigration law from ICE, which essentially makes it a response to what Buff calls the deportation terror. The deportation terror affects undocumented life as a whole and segregates undocumented immigrants from society. Any policy that counters this sense of terror, which could be non-cooperation between law enforcement and ICE but also the opening up opportunities for higher education and jobs, could then be seen as a form of sanctuary.

An additional reason why I include measures that are normally not perceived to be sanctuary-related is that these measures suffer the same limitations that non-cooperation policies do. Paik's main point of criticism towards sanctuary cities is that while it widens the notion of which undocumented immigrant deserves protection in a sanctuary city, it still excludes people who have been convicted of a crime (16). Sanctuary cities, whether religious or institutional, "play into a dichotomy that valorises 'good immigrants' against unspoken 'bad immigrants', who do not deserve protection" (Paik 16). Indeed, Chicago's Welcoming City Ordinance does not apply when an undocumented immigrant is charged with a criminal offense, has been convicted of a felony, or is part of Chicago's gang database (sec. 2-173-042).

The same limitations are applicable to the measures that I have included. Scholarships, work permits, and municipal identification cards also differentiate between different immigrants and could even create them. Scholarships, and the Chicago STAR scholarship specifically, set certain requirements concerning a student's GPA, which differentiates between the 'good' and the 'bad' students. By issuing work permits, a dichotomy is created in which some undocumented immigrants do receive work-related benefits, while some others do not. Municipal identification cards differentiate between people who have some form of identification and proof of residency and people who do not. Similar to non-cooperation policies, these measures widen the criteria on which someone deserves rights, but they do not challenge the national norms.

Although Chicago's sanctuary measures could add to the sense of belonging and identity of undocumented immigrants, they do not eliminate the main threat of deportation. Villazor is accurate when she argues that although this construction of local citizenship based on non-cooperation policies gives undocumented immigrants some rights and privileges, the right not to be deported is still only preserved for national citizens ("Sanctuary Cities and Local Citizenship")

598). Municipal identification cards, although highly useful in the city, do not have validity outside Chicago and no validity when ICE personnel requests a form of identification.

Conclusion

“Chicago’s vitality has been built on the strength of immigrant populations that have come to enjoy new freedoms and access new opportunities. I want to make Chicago the most immigrant-friendly city in the world.” – Former mayor of Chicago, Rahm Emanuel (Office of the Mayor).

This exclamation of ambition showcases the goal of Chicago to establish itself as a sanctuary city. Chicago’s sanctuary policies are, however, far more complex than one might expect. These policies refer not only to the discrimination and criminalization of immigrants and refugees but are also part of ongoing discussions on federalism and citizenship. The question that I asked in this thesis, is what the relationship between these dimensions could be. This relationship is a trend in which the power of the federal government to produce and enforce immigration law has been disputed by local and state governments that have taken measures which undermine this federal authority and, in terms of citizenship, conflict with national interests. Chicago’s sanctuary policies are the manifestation of this dynamic.

In the first chapter, I argued that scholars have focused on sanctuary cities and the sanctuary movements as a response to different histories of discrimination and criminalization of immigrants in the United States. I have traced these histories back to the implementation of the Chinese Exclusion Acts, which established the federal assertion of authority over both the production and enforcement of immigration law.

The second chapter dealt with the relation between sanctuary cities and immigration federalism. Federalism is part of the perpetual power struggle between the federal government and the states, of which immigration is also part. In this chapter, I argued that Chicago’s Welcoming City Ordinance responds to a constitutional and a legislative void. Various Supreme Court cases, such as *Arizona v. United States*, have outlined that the federal immigration law preempts state laws related to immigration but does not control the extent to which local law enforcement uphold federal immigration law. In the case of Chicago’s Welcoming City Ordinance, it uses this constitutional void to prohibit city officials to request immigration status and communicate this to ICE. Meanwhile, Chicago also fills a legislative void, which has been created by both a logjam in Congress and conflicting priorities of local authorities and ICE.

Issues of immigration federalism also extend to issues of citizenship. As the federal government controls the production of immigration law, it also controls the criteria on which a

person is considered a citizen. Although citizenship has generally been described as a matter of the nation-state (see Bosniak; Villazor “Sanctuary cities and local citizenship”), scholars have identified the emergence of forms of local citizenships (see Blank, Sassen). Using Bosniak’s four dimensions of citizenship, I argued that Chicago as a sanctuary city provides its residents, regardless of their legal status, a form of local citizenship. Chicago provides them, for instance, with scholarships and a municipal identification card. I argue that these measures are also sanctuary policies because they contribute to the construction of a membership to the safe spaces that are created by the Welcoming City Ordinance.

Chicago as a sanctuary city can perhaps best be described as a locality that attempts to construct safe spaces for immigrants, regardless of legal status, in which the different dynamics of history, federalism, and citizenship come together. In doing so, Chicago’s sanctuary policies have many limitations in terms of protection and inclusiveness. As academics, such as Paik and Villazor, have already argued, the protections of sanctuary cities are limited to the jurisdiction of local agencies, do not bar the sharing of personal information, and do not obstruct raids and arrests by ICE. The Welcoming City Ordinance, for instance, does not protect people who are affiliated with gangs. In terms of inclusiveness, Chicago expands the norms of who deserves protection and opportunity, but it does not challenge the conventions of what it means to be a good immigrant.

The various limitations of this thesis offer many opportunities for further research. This thesis has only used Chicago as an instance of the federal to local power shift of immigration law, which could be expanded to other sanctuary cities. Many studies have used a narrow interpretation of a sanctuary city (see Villazor; Paik, Bauder; O’Brien, Collingwood, and El-Khatib; Walker and Leitner) but the broad interpretation that I have used could also be deployed in the investigation of Chicago and other sanctuary cities. In the process of developing an understanding of what a sanctuary city encompasses, it is crucial that scholars examine these localities with a keen eye for all the complexities and nuances that are involved.

Another major limitation to this thesis is that it mainly focuses on the goals and intentions of Chicago’s sanctuary policies rather than its effects. More research could be done on the effectiveness of these policies. For instance, the question of whether undocumented immigrants in Chicago are actually being shielded from deportation could be investigated with quantitative research on the number of ICE arrests and deportations in the area. The question of whether sanctuary policies counter fears of deportation could perhaps be approached with qualitative

research that includes interviews with undocumented immigrants in a specific region. This method could then also be applied to questions of local citizenship and belonging.

As a conclusive remark, I would like to stress that any further research on sanctuary cities should lead to a more comprehensive understanding of the phenomenon because this is essential in facilitating a meaningful political debate. A thorough understanding of sanctuary cities could, for instance, lift political debates from referring to sanctuary cities as hazards of crime or absolute safe zones for undocumented immigrants to a discussion which recognizes that spaces of sanctuary are a response to larger issues in American society. One way of addressing these issues is by passing immigration reform in Congress that both serves the interests of the federal government and the concerns of local and state authorities.

List of abbreviations used

AEDPA	Antiterrorism and Effective Death Penalty Act
CBP	U.S. Customs and Border Protection
CPD	Chicago Police Department
EMTALA	Emergency Medical Treatment and Active Labor Act
DHS	U.S. Department of Homeland Security
ICE	U.S. Immigration and Customs Enforcement
IIRIRA	Illegal Immigration Reform and Immigrant Responsibility Act
IRCA	Immigration Reform and Control Act
INA	Immigration and Nationality Act
INS	U.S. Immigration and Naturalization Service
NSM	The New Sanctuary Movement
PATRIOT Act	Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act

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