

Trump Raises New Threat to Sanctuary Cities: Blocking Transportation Dollars

A new order revives an old battle about how much an administration is allowed to coerce cities and states by withholding money.



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By Emily Badger

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The new U.S. Department of Transportation secretary, Sean Duffy, issued an order this week that threatened to shift federal transportation funding away from local governments that don't cooperate with federal immigration enforcement.

The order revives an unsettled legal fight from the first Trump term over whether the federal government can withhold funds from "sanctuary cities." In early 2017, President Trump tried to block millions of dollars in law enforcement grants to Democratic-led cities and states that had policies declining to aid federal agents in identifying and deporting undocumented immigrants. Lawsuits against the effort never fully resolved by the end of his term.

The money at stake now is potentially far larger than the law enforcement grants: The Department of Transportation sends billions of dollars annually to states and local governments to fund highways, transit systems, airports, bridges, commuter rail and ports, as well as road safety projects.

"This is on a much, much larger scale," said Stephen Vladeck, a law professor at Georgetown.

Legal scholars said that past rulings suggest the greater scale of money at play might make courts even less likely to go along.

The full intent of the transportation memo was unclear, but the practical effect of withholding even some money would probably be to harm transit systems in big cities, given that the largest transit networks in the country tend to be in places that also have sanctuary policies. But were the federal government to try to block funding to entire states with sanctuary policies, like California, it could also affect the roads, highways and transit used by millions of rural Americans.

The transportation department declined to clarify if it intends to block funds to sanctuary cities and states, referring questions about the order back to the text itself. That document — described as covering all grants, loans and contracts — said the agency should “prioritize” projects under a range of conditions, including that they “require” local compliance or cooperation with immigration enforcement.

Mr. Duffy also directed the agency to give preference to communities with marriage and birthrates higher than the national average, a condition that baffled former government officials.

“So if you have a sanctuary policy but you have a high birthrate, how does that work?” said Beth Osborne, the director of the advocacy group Transportation for America and a former official in the Obama transportation department who managed grants. “As someone who has run these programs, I do need so much more information to understand what they are doing.”

It was unclear, too, if the agency was proposing to shift criteria for competitive and discretionary grants it awards, or if it was trying to attach new conditions to the vast transportation funds Congress allocates to states according to a funding formula set by law. A key role of the federal transportation department is simply to pass that money on to states to use as they see fit.

The question of whether the government can punish sanctuary cities by withholding grants was left open at the end of the first Trump term. A consortium of states sued at the time, and lower courts were divided on the move’s legality. The Supreme

Court was expected to take up the question in early 2021, then President Biden took office and changed policies, prompting the cases to be dismissed.

“The two biggest things that distinguish this from that are both really bad for Trump,” Mr. Vladeck said of the comparison between the last, unsettled cases and the ones likely to come now.

In a major 2024 decision, the Supreme Court curbed the power of federal agencies to set policies that go beyond what Congress explicitly instructs — to do, in effect, the very thing Mr. Duffy’s order proposes. The second difference is that transportation funds dwarf the law enforcement grants withheld before, and courts are likely to take note of that in weighing if the federal government is trying to coerce the states into changing policy.

The legal precedents here date to a case with some direct parallels. In the 1980s, the federal government tried to encourage states to uniformly raise their drinking age to 21 by withholding some highway funds from states with lower age limits. South Dakota sued. In 1987, the Supreme Court ruled for the federal government, saying it could attach conditions to grants that were reasonable and not so large as to effectively force states to adopt the federal government’s preferred policy. The law at issue — passed by Congress and notably distinct from an agency memo — withheld only 5 percent of federal highway funds.

“Here, if you don’t cooperate with ICE in apparently the subjective view of the president, you lose 100 percent, as I read the memo,” said Greg Shill, a law professor at the University of Iowa who studies transportation. “That seems much more coercive than losing 5 percent.”

More recently, the Supreme Court in its 2012 case upholding key parts of the Affordable Care Act struck down one element that would have entirely stripped Medicaid funding from states unless they expanded the program to cover more people. (Again, that was a law written by Congress, not an agency memo.)

No one can predict how the Supreme Court might decide a new round of questions arising from grants being withheld from sanctuary cities. But in that 2012 majority opinion, Chief Justice John Roberts “said essentially you can’t put a gun to the head of the states through federal spending,” said Justin Pidot, a law professor at the University of Arizona who was the general counsel at the White House Council on Environmental Quality in the Biden administration. “This sure seems a lot like that. Highway funding — it’s a huge amount of money, it’s very important.

“It seems like the very point is to coerce the states here.”

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