

Why 'sanctuary' campuses are fooling themselves: Guest commentary



Students march Nov. 14 at Long Beach State University to protest the election of Donald Trump as president. (Photo by Stephen Car/Southern California News Group Staff)

By James Moore

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Universities nationwide are being called on by their students and faculty members to provide sanctuary to the undocumented students whom President-elect Donald Trump has pledged to deport. The American Association of University Professors has approved a resolution supporting the campus sanctuary movement, calling on institutions to offer as much support and practical protection as possible to the members of these communities who are in the United States illegally.

The definition of a "sanctuary campus" is vague, but colleges and universities can expect to be called upon to refuse compliance with immigration authorities regarding deportations or raids.

Current institutional practices make it clear that no university is going to accept this level of risk, no matter how deep the convictions of the organization's rank and file, or even of its leadership. University responses to the broad social intervention launched in 2011 by the U.S. Department of Education provide a reliable forecast of what to expect from institutions in these new circumstances.

The DOE's interpretation of Title IX of the Civil Rights Act of 1964, and the agency's subsequent guidance for universities nationwide, gutted procedural fairness for students accused of sexual misconduct. Courts ascribe guilt in criminal cases only if evidence of guilt is, at a minimum, clear and convincing. As result, criminal courts free many of the guilty but convict few of the innocent.

The DOE rejects this convention with respect to Title IX. Its mandate to universities is to adjudicate accusations of student criminal sexual misconduct on the basis of the civil law's more-likely-than-not standard rather than the criminal standard, or risk ineligibility to compete for federal funds.

A growing number of colleges and universities, about 250, have found themselves the subject of DOE investigations for their possible past missteps with respect to Title IX. Research universities face economic ruin if suddenly cut off from the opportunity to compete for federal research funds, and an adverse finding by the DOE carries the threat, however distant, of an institutional death sentence.

Even under the best circumstances, a nontrivial share of these preponderance-of-the-evidence adjudications on the part of universities will be factually incorrect in the long run. Thus the Obama administration's Department of Education took the unique and morally objectionable position that universities must punish more of their guilty students by more frequently punishing innocents. Universities surrendered to the DOE's demands with impressively little resistance. They rolled over *en masse*, and they will again.

The DOE Office of Civil Rights emulates the Equal Employment Opportunity Commission's strategy of avoiding the notice and comment procedures associated with promulgating rules, and has instead issued only guidances, which are difficult to challenge in court. This guidance is coupled with a relentless willingness to launch expensive-to-respond-to institutional investigations.

Trump had nothing of note to say during his campaign about these DOE practices, but the conventional wisdom is that he will at some point act to reign in the DOE Office of Civil Rights.

Regardless of whether the Trump administration acts to terminate DOE's social experiment, the genie is out of the bottle. President Obama's Department of Education has handed the Trump administration the perfect tactical blueprint for keeping universities in line with respect to federal rules, regardless of how unfair or counterproductive these rules might be.

Universities nationwide can now count on U.S. Immigration and Customs Enforcement to follow the path blazed by the U.S. Department of Education. All ICE has to do is make it clear to colleges and universities that failure to cooperate with ICE guidance with respect to enforcement and removal operations will result in an investigation that may lead to loss of the institution's eligibility to receive federal research funds, and that Trump's ICE means this just as much as Obama's DOE did.

No individual institution has demonstrated a willingness to resist these tactics thus far, and the Association of American Universities has shown no collective stomach to fight back against such agency overreach. Anyone hoping universities will demonstrate a principled resistance to President-elect Trump's deportation agenda is going to be disappointed.

Colleges and universities will fall over themselves lining up to cooperate and comply with immigration authorities, just as they did for the DOE.

James E. Moore II is a professor of public policy and management, and vice dean of the Viterbi School of Engineering, at USC.

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University campuses will not become sanctuaries for the undocumented

By [JAMES E. MOORE II](#)

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Current institutional practices make it clear that no university is going to accept this level of risk, no matter how deep the convictions of the organization's rank-and-file, or even of its leadership. University responses to the broad social intervention launched in 2011 by the U.S. Department of Education provide a reliable forecast of what to expect from institutions in these new circumstances.

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