



Written by [R. Cort Kirkwood](#) on December 1, 2018

Obama Judge Rediscovered 10th Amendment ... on Sanctuary Cities

Finally, a federal judge has rediscovered the  10th Amendment to the U.S. Constitution, which reserves for the states any powers the Constitution does not give to the federal government. But how do the particulars of the judge's ruling square with the 10th Amendment and with other rulings on immigration?

On Friday, Edgardo Ramos of the U.S. District Court for the Southern District of New York, an Obama appointee, [conscripted the 10th](#) to serve a pressing interest for the radical left and its Deep State enablers: sanctuary cities. Ramos blocked the Trump administration from withholding federal funds from cities and states that refuse to cooperate with federal immigration authorities in tracking down illegal aliens. And he struck down as unconstitutional the federal law that blocks the states from prohibiting state and local law enforcement from providing information about illegal aliens to Immigration and Customs Enforcement.

Sanctuary cities, of course, are helping the Democratic Party and the radical left further cement political power by creating a permanent bloc of Democratic voters. So, all of a sudden, the Left supports federalism, meaning states' rights. The federal government, the Left says, has no power to force a state to help find and deport illegal aliens.

The Case and the 10th

Several states and New York City had sued the Trump administration because it refused to release a law enforcement grant unless they agreed to help fight illegal immigration. Mainly, they forbid local police from cooperating with federal immigration authorities.

The administration imposed three conditions to receive the money. The recipients must let federal immigration authorities know when state or local correctional facilities will release an illegal; they must permit federal agents access to aliens in state or local correctional facilities to determine an alien's immigration status; and they must certify compliance with a federal law that requires cooperation with federal immigration enforcement efforts.

The executive branch of the federal government can't make such rules, the judge wrote, because the separation of powers forbids it, and the power asserted in the conditions is *ultra vires*; i.e. beyond its authority. As well, the 10th Amendment's "anti-commandeering" doctrine prohibits Congress from ordering the states to address problems.

The separation of powers applies, the [judge wrote](#), because Congress set the rules for the grant in question and the president does not have the "power of the purse." So the administration cannot attach new conditions. "The separation of powers acts as a check on tyranny and the concentration of power," the judge wrote. He cited another case: "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, all without the authorization or even acquiescence of elected legislators, that check against tyranny is



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forsaken.”

Last, in the judge’s view, the 10th Amendment prohibits withholding the grant money. The 10th’s anticommandeering principle forbids requiring state and local officials to administer a federal program or dictate what a state legislature or locality might or *might not* do.

The administration relied on a codicil of federal immigration policies to deny the funds: A “Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”

That section of the law, the judge wrote, trespasses the 10th because it “unequivocally dictates what a state legislature may and may not do.” Yet even though the states do possess all powers not delegated to the federal government by the Constitution, this does not mean that the states should expect the feds to subsidize what a state legislature decides to do in the exercise of state powers. In fact, such federal subsidies are unconstitutional, since they fall outside the federal government’s few and defined powers. Not surprisingly, the judge did not address this important issue.

Obama v. Arizona

[This ruling isn’t the first](#) pro-sanctuary ruling. The question is how it squares with past decisions resulting from the relentless legal war the Obama administration waged against states that tried to pass immigration statutes.

In 2010, Arizona passed a law that forbid illegal aliens from working in the state and permitted police to arrest suspected illegal aliens without a warrant. The law also permitted police to check the immigration status of anyone with whom they had lawful contact.

Obama [opened fire on the state](#). [The U.S. Supreme Court struck down](#) much of Arizona’s statute. Arizona “may not pursue policies that undermine federal law,” wrote liberal Justice Anthony Kennedy for the majority. Justices Antonin Scalia, Clarence Thomas and Samuel Alito, meanwhile, wrote that Arizona most certainly had “the power to exclude from [its] territory people who have no right to be there.”

So which is it? Under the Constitution, do the states regulate immigration? Or does the federal government?

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