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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

STATE OF CALIFORNIA, ex rel, XAVIER BECERRA, in his official capacity as Attorney General of the State of California, Plaintiff, **v.** **JEFFERSON B. SESSIONS, in his official capacity as Attorney General of the United States; MATT M. DUMMERMUTH, in his official capacity as Principal Deputy Assistant Attorney General; UNITED STATES DEPARTMENT OF JUSTICE; and DOES 1-100,** Defendants.	Case No. 18-cv-5169 **FIRST AMENDED COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND MANDAMUS RELIEF**

1. Plaintiff State of California, ex rel. Xavier Becerra, California Attorney General ("Plaintiff" or "California"), brings this complaint to protect California from the latest attempt by the Trump Administration to strip law enforcement funding from the State unless the State and local governments in California agree to participate in the Administration's immigration enforcement program. For fiscal year (FY) 2017, this Court held that the immigration-enforcement requirements that Defendants sought to impose on the State's law enforcement grants to be unconstitutional, and permanently enjoined their implementation against California. In FY 2018, not only have Defendants continued to impress the same or similar requirements in disregard of the decisions reached by this and other courts, but they have doubled down by adding more onerous immigration enforcement requirements on law enforcement funding.

2. The Edward Byrne Memorial Justice Assistance Grant ("JAG") program remains the centerpiece of Defendants' efforts to disqualify California law enforcement from receiving federal funding. For FY 2018, Congress appropriated $28.9 million in JAG funding to California and its political subdivisions. The United States Department of Justice ("USDOJ"), led by Attorney General Jefferson B. Sessions III, and the Office of Justice Programs ("OJP"), led by Principal Deputy Assistant Attorney General Matt M. Dummermuth[1] (collectively, with USDOJ and Attorney General Sessions, the "Defendants"), are responsible for administering this program. JAG awards are provided to each state, and certain local jurisdictions within each state, to, among other things, support law enforcement programs, reduce recidivism, conduct crime prevention and education programs for at-risk youth, and support programs for crime victims and witnesses. Every state is entitled by law to a share of these funds.

3. In FY 2017, Defendants added unprecedented immigration enforcement conditions to JAG funding. On October 5, 2018, this Court struck down all of the immigration enforcement conditions added to FY 2017 JAG funding. Order re: Mots. for Summ. Judg., *California, ex rel*

[1] On October 5, 2018, Defendants announced Matt M. Dummermuth as the new head of the Office of Justice Programs. *See* Press Release, U.S. Dep't of Justice, *Department of Justice Announces Matt Dummermuth to Head the Office of Justice Programs* (Oct. 5, 2018), https://www.justice.gov/opa/pr/department-justice-announces-matt-dummermuth-head-office-justice-programs. He automatically substitutes for Laura L. Rogers as a defendant pursuant to Federal Rule of Civil Procedure 25(d).

Becerra v. Sessions ("*Becerra I*"), No. 17-cv-4701 (N.D. Cal. Oct. 5, 2018) ECF No. 137 ("MSJ Order"). Courts across the country have likewise unanimously found those conditions to be unconstitutional. *See Chicago v. Sessions*, 888 F.3d 272 (7th Cir. 2018); Order Granting Pl.'s Appl. for Prelim. Inj., *Los Angeles v. Sessions*, No. 17-cv-7215 (C.D. Cal. Sept. 13, 2018) ECF No. 93, *appeal docketed*, 18-56292 (9th Cir. Oct. 1, 2018); *Chicago v. Sessions*, 321 F. Supp. 3d 855, 874 (N.D. Ill. 2018), *appeal docketed*, 18-2885 (7th Cir. Aug. 28, 2018); *Philadelphia v. Sessions*, 309 F. Supp. 3d 289 (E.D. Pa. 2018), *appeal docketed*, 18-2648 (3d Cir. July 26, 2018).

4. Rather than re-consider the lawfulness of the conditions, for FY 2018 JAG funding,[2] Defendants have maintained a requirement that the chief legal officer of the jurisdiction applying for funding (the Attorney General in the case of the State) must certify compliance with 8 U.S.C. § 1373, which prohibits restrictions on certain exchanges of information regarding a person's immigration or citizenship status. But Defendants cannot require compliance with § 1373 as a condition for federal funding for the simple reason that § 1373 itself is unconstitutional under the Tenth Amendment of the U.S. Constitution. Four federal courts, including this one, have recently called into question the legality of § 1373 or declared it unconstitutional.

5. For JAG, Defendants demand more than compliance with § 1373. In order to receive FY 2018 JAG funding, Defendants also require that jurisdictions certify compliance with 8 U.S.C. § 1644, certify to not "imped[ing] the exercise by federal officers of authority" under or relating to 8 U.S.C. §§ 1226(a) & (c), 1231(a), 1357(a), and 1366(1) & (3). Defendants also seek to broadly prohibit jurisdictions from publicly disclosing information provided, and requests made, by immigration authorities, which Defendants claim relates to 8 U.S.C. § 1324, a federal statute that prohibits persons from concealing, harboring, or shielding "aliens." Plaintiff refers to all of these requirements collectively as the "Immigration Enforcement Requirements." The Immigration Enforcement Requirements, as described in the FY 2018 JAG Awards, effectively

[2] U.S. Dep't of Justice, Edward Byrne Memorial Justice Assistance Grant Program: FY 2018 State Solicitation (2018) ("JAG State Solicitation) (attached as Ex. A); *see also* U.S. Dep't of Justice, Edward Byrne Memorial Justice Assistance Grant Program: FY 2018 Local Solicitation (2018) ("JAG Local Solicitation," collectively with the JAG State Solicitation, "JAG Solicitations") (attached as Ex. B). An example of a FY 2018 JAG award is attached as Exhibit C and referred to as the "FY 2018 JAG Award."

require law enforcement to respond to requests from immigration authorities for a person's release date from custody, to provide immigration authorities with access, without delay, to detention facilities, and to limit transparency about requests made by immigration authorities.

6. Defendants claim that these Immigration Enforcement Requirements reflect "applicable Federal laws." They do not. First, these Immigration Enforcement Requirements are not an accurate reflection of federal immigration law; there is no requirement in federal immigration law for state or local governments to assist in immigration enforcement and, aside from the narrow prohibitions in §§ 1373 and 1644, no broad requirement for state or local governments to allow use of their personnel and resources for immigration enforcement. Second, Defendants are constrained in adding conditions to formula grants, such as JAG, that are not tethered to federal law. Congress has not tied any of these laws, including § 1373, to federal grant-making. Most of these laws have no applicability to state and local governments. In addition, these requirements conflict with Congress's intent to not condition federal funding on immigration enforcement related activities.

7. Since Congress did not attach these requirements to federal funding, Defendants lack authority to interpret "applicable Federal laws" in a manner that would result in commandeering state and local government functions in violation of the Tenth Amendment of the U.S. Constitution. These Immigration Enforcement Requirements intrude on the sovereignty of California and its local jurisdictions by interpreting federal law as requiring state and local governmental participation in federal immigration enforcement and preventing the State from declining participation in federal immigration enforcement.

8. To the extent Defendants have statutory authority to impose the Immigration Enforcement Requirements, Defendants have exceeded constitutional limits under the Spending Clause of the U.S. Constitution. The Immigration Enforcement Requirements are not sufficiently related to the federal purposes that Congress designed for those funding schemes and are too ambiguous to provide clear notice to the State or its political subdivisions as to what is needed to comply. The Immigration Enforcement Requirements also violate the Administrative Procedure

Act ("APA") because of their constitutional infirmities, and because Defendants acted in excess of their statutory authority and in an arbitrary and capricious manner.

9. California complies with all of the requirements identified in the JAG authorizing statute, and that apply to federal grantees under federal law. Nevertheless, while California's laws comply with the Immigration and Nationality Act ("INA"), since the Immigration Enforcement Requirements exceed what may be required under "applicable Federal law," California will most certainly face an enforcement action if it agrees to the Immigration Enforcement Requirements. Defendants have already tried to withhold JAG awards from all state entities and local jurisdictions in California because under their theory, California does not comply with § 1373. The United States sued California in the Eastern District of California, unsuccessfully claiming that Senate Bill 54, which consists of the Amended Transparency and Responsibility Using State Tools Act ("TRUST Act"), Cal. Gov't Code §§ 7282-7282.5, and the California Values Act, Cal. Gov't Code §§ 7284-7284.12, "impedes" federal immigration officials in violation of federal law. However, as that court found, California's laws do not stand as an obstacle to prevent immigration authorities from doing their jobs using their own resources. Instead, California's laws are designed to foster community trust between law enforcement and the communities they serve, and to allocate limited law enforcement resources in a manner that is in the best interest of the State's public safety. Likewise, California's Transparent Review of Unjust Transfers and Holds ("TRUTH") Act, Cal. Gov't Code §§ 7283-7283.2, does not "impede" federal law enforcement merely because California has determined that transparency by state and local law enforcement regarding immigration enforcement is an important method to promote public safety, trust, and community policing. Defendants cannot enforce the "applicable Federal laws" in the manner that they intend because such an erroneous interpretation of these federal laws would allow the federal government to commandeer the State's direction of its law enforcement.

10. Not only are these Immigration Enforcement Requirements unlawful, but agreeing to them will cause California harm by requiring that the State and local jurisdictions terminate their public safety oriented laws and policies. This means that the State and its localities will lose

control of their ability to focus their resources on fighting crime and instead will devote resources to federal immigration enforcement. The trust and cooperation that the State's laws and local ordinances are intended to build between law enforcement and immigrant communities will be eroded. Alternatively, if the State refuses to comply with the Immigration Enforcement Requirements, or if Defendants refuse to provide funding to California on the basis of these unlawful requirements, important public safety programs will likely need to be cut to the detriment of state and local law enforcement agencies and their budgets.

11. For these reasons, and those discussed below, the Court should declare the Immigration Enforcement Requirements are unconstitutional and/or a violation of the APA, enjoin their imposition, and pursuant to 28 U.S.C. § 1361 require that Defendants issue JAG awards and funding to the State and its local jurisdictions that comply with the requirements enumerated by Congress.

JURISDICTION AND VENUE

12. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this case arises under the Constitution and the laws of the United States. The Court also has jurisdiction under 28 U.S.C. § 1346 because this is a civil action against the federal government founded upon the Constitution and an Act of Congress. Jurisdiction is proper under the judicial review provisions of the Administrative Procedure Act, 5 U.S.C. §§ 701-06. The Court has authority to provide relief under the Declaratory Judgment Act, 28 U.S.C. § 2201, and the Mandamus Statute, 28 U.S.C. § 1361.

13. Under 28 U.S.C. § 1391(e)(1), venue is proper in the Northern District of California because the Attorney General and the State of California have offices at 455 Golden Gate Avenue, San Francisco, California and at 1515 Clay Street, Oakland, California, and Defendants have offices at 450 Golden Gate Avenue, San Francisco, California.

INTRADISTRICT ASSIGNMENT

14. Assignment to the San Francisco Division of this District is proper pursuant to Civil Local Rule 3-2(c)-(d) because Plaintiff and Defendants both maintain offices in the District in San Francisco.

PARTIES

15. Plaintiff State of California is a sovereign state in the United States of America.

16. California is aggrieved by the actions of Defendants and has standing to bring this action because of the injury to its sovereignty as a State caused by the challenged federal actions. The inclusion of unconstitutional and unlawful Immigration Enforcement Requirements impairs the State's exercise of its police power in a manner it deems necessary to protect the public safety. The Immigration Enforcement Requirements burden California's exercise of its sovereign power to enforce its laws, and place a regulatory burden on California as a funding recipient, obligating the State to continuously monitor compliance of all subgrantees throughout the State, which will result in increased staff time and expenses.

17. As a result of Defendants' unconstitutional and unlawful actions, the State of California, including its political subdivisions, is in imminent danger of losing $28.9 million for JAG this fiscal year, including $18 million that is owed to the State itself.

18. Plaintiff Attorney General Xavier Becerra is the chief law officer of the State and the head of the California Department of Justice. Cal. Const., art. V, § 13; Cal. Gov't Code § 12510. Attorney General Becerra, on behalf of California, has standing to bring this action because funding for law enforcement throughout the State is at stake. *See Pierce v. Super. Ct.*, 1 Cal.2d 759, 761-62 (1934) (Attorney General "has the power to file any civil action or proceeding directly involving the rights and interests of the state . . . and the protection of public rights and interests."). As the State's Chief Law Officer, the Attorney General is responsible for ensuring that the laws of the State are enforced. Cal. Const., art. V, § 13. The Immigration Enforcement Requirements undermine California statutes. In addition, the Attorney General has standing on the basis of the requirement that he personally agree to the Immigration Enforcement Requirements.

19. Defendant U.S. Department of Justice ("USDOJ") is an executive department of the United States of America pursuant to 5 U.S.C. § 101, and a federal agency within the meaning of 28 U.S.C. § 2671. As such, it engages in agency action within the meaning of 5 U.S.C. § 702,

and is named as a defendant in this action pursuant to 5 U.S.C. § 702. USDOJ is responsible for administering the JAG funds appropriated by Congress.

20. Defendant Jefferson B. Sessions III, is Attorney General of the United States, and oversees USDOJ, including the Office of Justice Programs ("OJP"). He is sued in his official capacity pursuant to 5 U.S.C. § 702.

21. Defendant Matt M. Dummermuth is Principal Deputy Assistant Attorney General in charge of OJP, which administers JAG funding. He is sued in his official capacity pursuant to 5 U.S.C. § 702.

22. Each of the Defendants named in this Complaint are acting in their official capacity for the United States government bearing responsibility, in whole or in part, for the acts enumerated in this Complaint.

23. The true names and capacities of Defendants identified as DOES 1-100 are unknown to Plaintiff, and Plaintiff will amend this Complaint to insert the true names and capacities of those fictitiously named Defendants when they are ascertained.

FACTUAL ALLEGATIONS

I. CALIFORNIA'S LAWS SEEK TO PROTECT THE SAFETY AND WELFARE OF THE STATE'S RESIDENTS BY FOCUSING LAW ENFORCEMENT ON CRIMINAL ACTIVITY AND BUILDING TRUST BETWEEN LAW ENFORCEMENT AND COMMUNITIES

24. California state and local law enforcement agencies ("LEAs"), guided by the duly enacted laws of the State and ordinances of local jurisdictions, are tasked with effectively policing, protecting, and serving all residents, including more than 10 million foreign-born individuals who live in the State. California's laws implicated in this suit are a valid exercise of the State's police power to regulate regarding the health, welfare, and public safety of its residents. These laws strengthen community policing efforts by encouraging undocumented victims to report crimes to local law enforcement so that perpetrators are apprehended before harming others.

25. The purpose of these California laws is to ensure that law enforcement resources are focused on a core public safety mission and to build trust and cooperation between law enforcement and the State's immigrant communities. When local and state LEAs engage in

immigration enforcement, as Defendants contemplate, vulnerable victims and witnesses are less likely to come forward to report crimes.

26. California's laws are not unique. Many jurisdictions across the country, including local jurisdictions in California, have policies that define the circumstances under which local law enforcement personnel may expend time and resources in furtherance of federal immigration enforcement. Those jurisdictions variously impose limits on compliance with Immigration and Customs Enforcement ("ICE") detainer requests, ICE notification requests about release dates, and ICE's access to detainees, or provide additional procedural protections for individuals prior to an interview with immigration authorities.

A. The TRUST Act

27. In 2013, California enacted the TRUST Act, Cal. Gov't Code §§ 7282-7282.5. The TRUST Act defined the circumstances under which local LEAs may detain an individual at the request of federal immigration authorities. The TRUST Act went into effect on January 1, 2014.

28. The TRUST Act was intended to address numerous public safety concerns regarding the federal practice of issuing detainers to local law enforcement. Among the Legislature's concerns were that federal courts have concluded that detainer requests do not provide sufficient probable cause to satisfy the requirements of the Fourth Amendment of the U.S. Constitution, and data showing that detainer requests "have erroneously been placed on United States citizens, as well as immigrants who are not deportable." Assem. Bill No. 4, 1st Reg. Sess. (Cal. 2013) § 1(c).

29. The TRUST Act previously set forth two conditions that local law enforcement must meet to have discretion to detain a person pursuant to an "immigration hold" (also known as a "detainer request" or "detainer hold"), which is when an immigration authority requests that the law enforcement official "maintain custody of the individual for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays." Cal. Gov't Code § 7282(c) (prior to amendments codified on Oct. 5, 2017). First, the detention could not "violate any federal, state, or local law, or any local policy," which includes the Fourth Amendment of the U.S. Constitution. *Id.* § 7282.5(a) (prior to amendments codified on Oct. 5, 2017). Second, law enforcement could only detain someone with certain, specified criminal backgrounds, an individual on the California Sex

and Arson Registry, or a person charged with a serious or violent felony who was the subject of a probable cause determination from a magistrate judge. *Id.* § 7282.5(a)(1)-(6) (prior to amendments codified on Oct. 5, 2017). Only when both of these conditions were met could local law enforcement detain an individual "on the basis of an immigration hold after the individual becomes eligible for release from custody." *Id.* § 7282.5(b).

B. The TRUTH Act

30. In 2016, California enacted the TRUTH Act, Cal. Gov't Code §§ 7283-7283.2, which took effect on January 1, 2017. The purpose of the TRUTH Act is to increase transparency about immigration enforcement and "to promote public safety and preserve limited local resources because entanglement between local law enforcement and ICE undermines community policing strategies and drains local resources." Assem. Bill No. 2792, Reg. Sess. (Cal. 2016) § 2(a)-(c), (g)-(i).

31. Under the TRUTH Act, prior to ICE interviewing someone being held in custody, a law enforcement officer must provide the detained individual with a "written consent form that explains the purpose of the interview, that the interview is voluntary, and that he or she may decline to be interviewed or may choose to be interviewed only with his or her attorney present." Cal. Gov't Code § 7283.1(a). In addition, when a LEA receives a detainer, notification, or transfer request, the LEA must "provide a copy of the request to the [detained] individual and inform him or her whether the law enforcement agency intends to comply with the request." *Id.* § 7283.1(b). If the LEA complies with ICE's request to notify ICE as to when the individual will be released, it must also "promptly provide the same notification in writing to the individual and to his or her attorney or to one additional person who the individual shall be permitted to designate." *Id.*

C. The California Values Act

32. On October 5, 2017, Governor Edmund G. Brown Jr. signed into law the California Values Act, Cal. Gov't Code §§ 7284-7284.12, which took effect on January 4, 2018. In conjunction with this measure, California amended the TRUST Act.

33. The Values Act sets the parameters under which California law enforcement agencies may participate in immigration enforcement. The California Department of Corrections and Rehabilitation ("CDCR") is not considered a "California law enforcement agency" for purposes of the Values Act. Cal. Gov't Code § 7284.4(a).

34. Consistent with the Legislature's purpose in passing the TRUST and TRUTH Acts, in its findings, the Legislature emphasized that "[a] relationship of trust between California's immigrant community and state and local agencies is central to the public safety of the people of California." *Id.* § 7284.2(b). The Legislature recognized "[t]his trust is threatened when state and local agencies are entangled with federal immigration enforcement, with the result that immigrant community members fear approaching police when they are victims of, and witnesses to, crimes, seeking basic health services, or attending school, to the detriment of public safety and the well-being of all Californians." *Id.* § 7284.2(c). The Legislature declared that the focus of the Values Act is "to ensure effective policing, to protect the safety, well-being, and constitutional rights of the people of California, and to direct the state's limited resources to matters of greatest concern to state and local governments." *Id.* § 7284.2(f).

35. The Values Act generally prohibits California law enforcement agencies from using agency money or personnel to ask an individual about his or her immigration status for immigration enforcement purposes. *Id.* § 7284.6(a)(1)(A).

36. The Values Act, expanding upon the limitations contained in the prior iteration of the TRUST Act, prohibits compliance with detainer requests. *See id.* § 7284.6(a)(1)(B). In doing so, the Legislature recognized that federal courts have found state and local law enforcement compliance with detainer holds to be in violation of the Fourth Amendment when the detainer holds are not supported by the requisite probable cause. *See id.* § 7284.2(e). Presently, it is ICE policy to attach an administrative warrant to a detainer hold.[3] However, that administrative warrant is signed by an administrative officer, and not a federal judge. *See id.* The administrative warrant only provides "probable cause . . . that the subject is an alien who is removable from the

[3] U.S. Immigration and Customs Enforcement, Issuance of Immigration Detainers by ICE Immigration Officers, § 2.4 (Mar. 24, 2017), https://www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf.

United States," but does not provide probable cause that the subject of the detainer hold is believed to have violated a criminal offense. *Id.*

37. In conjunction with the passage of the Values Act, the TRUST Act was amended to identify the circumstances when local law enforcement has discretion to respond to notification requests. *Id.* § 7282.5(a). "Notification request[s]" are requests by an immigration authority asking that a law enforcement official inform it "of the release date and time in advance of the public of an individual in its custody." *Id.* §§ 7282(c), 7283(f). Notification requests are made by immigration authorities on the I-247A form that also includes a detainer request.[4]

38. Under the Values Act, LEAs have discretion to comply with notification requests if doing so would not "violate any federal, state, or local law, or local policy." Cal. Gov't Code § 7282.5(a); *see id.* § 7284.6(a)(1)(C). In addition, the Values Act allows LEAs to comply with notification requests under one of two scenarios. First, LEAs may respond to notification requests regarding someone who was previously convicted of one or more of a multitude of felonies or misdemeanors identified in the TRUST Act, a person charged with one or more of an array of felonies who was subject to a probable cause determination from a magistrate judge, or an individual on the California Sex and Arson Registry. *Id.* § 7282.5. Alternatively, LEAs may comply with a notification request if the information requested is already "available to the public." *Id.* § 7284.6(a)(1)(C).

39. The Values Act prohibits LEAs from using agency or department money or personnel to "[p]rovid[e] personal information, as defined in Section 1798.3 of the Civil Code, about an individual" "for immigration enforcement purposes," unless that information is publicly available. *Id.* § 7284.6(a)(1)(D). "Personal information" is defined in the Civil Code as any information "that identifies or describes an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history" and "includes statements made by, or attributed to, the individual." Cal. Civ. Code § 1798.3(a).

[4] Department of Homeland Security, Immigration Detainer - Notice of Action, https://www.ice.gov/sites/default/files/documents/Document/2017/I-247A.pdf.

40. The Values Act also limits when a LEA may transfer an individual to immigration authorities. Cal. Gov't Code § 7284.6(a)(4). Under the Values Act, LEAs may transfer a person to immigration authorities under two scenarios. First, the LEA may transfer a person to immigration authorities if the immigration authority presents a judicial warrant or judicial probable cause determination by a federal judge or a federal magistrate judge for a violation of federal criminal immigration law. *Id.* §§ 7284.4(h) & (i), 7284.6(a)(4). Second, LEAs may respond to transfer requests regarding someone who was previously convicted of one or more of a multitude of felonies or misdemeanors identified in the TRUST Act, or an individual on the California Sex and Arson Registry. *Id.* § 7282.5(a).

41. The Values Act expressly authorizes compliance with all aspects of §§ 1373 and 1644. *Id.* § 7284.6(e).

42. Neither the Values nor TRUTH Acts prohibit a jurisdiction from allowing ICE to access its jails to interview inmates. The Values Act explicitly reaffirms the absence of any such restriction, and requires only that state and local law enforcement, including CDCR, comply with the TRUTH Act when providing such access to immigration authorities. *Id.* §§ 7284.6(b)(5), 7284.10(a).

II. CONGRESS DID NOT INTEND JAG TO BE CONDITIONED ON STATE AND LOCAL LAW ENFORCEMENT ASSISTING IN FEDERAL IMMIGRATION ENFORCEMENT

43. JAG is administered by OJP within USDOJ. JAG funding is authorized by Congress under 34 U.S.C. §§ 10151-10158. The authorizing statute has been amended numerous times since its inception in 1988, evolving into the JAG program as it exists today.

44. The Anti-Drug Abuse Act of 1988 amended the Omnibus Crime Control and Safe Streets Act of 1968 to create the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs grants ("Byrne Grants") "to assist States and units of local government in carrying out specific programs which offer a high probability of improving the functioning of the criminal justice system." Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, tit. VI, § 6091(a), 102 Stat. 4181, 4328 (1988) (repealed 2006). Congress placed a "special emphasis" on programs that support national drug control priorities across states and jurisdictions. *Id.* Congress

identified 21 "purpose areas" for which Byrne Grants could be used. Many of the purpose areas relate to the investigation, enforcement, and prosecution of drug offenses. *See id.* Immigration enforcement was never specified in any of the grant purpose areas.

45. In amendments between 1994 and 2000, Congress identified eight more purpose areas for which Byrne funding could be used, bringing the total to 29. 42 U.S.C. § 3751(b) (as it existed on Dec. 21, 2000) (repealed 2006). Immigration enforcement was not specified in any of these eight additional purpose areas.

46. For FY 1996, Congress separately authorized Local Law Enforcement Block Grants ("LLEBG") that directed payment to units of local government for the purpose of hiring more police officers or "reducing crime and improving public safety." Local Government Law Enforcement Block Grants Act of 1995, H.R. 728, 104th Cong. (1995). Congress identified nine "purpose areas" for LLEBG, none of which were immigration enforcement. *Id.*

47. The Byrne Grant and LLEBG programs were then merged to eliminate duplication, improve their administration, and to provide state and local governments "more flexibility to spend money for programs that work for them rather than to impose a 'one size fits all' solution" to local law enforcement. H.R. Rep. No. 109-233, at 89 (2005); *see also* Pub. L. No. 108-447, 118 Stat. 2809, 2863 (2004); 34 U.S.C. § 10151(a), (b)(1).

48. Currently, the JAG authorizing statute enumerates eight purpose areas for: (A) law enforcement programs; (B) prosecution and court programs; (C) prevention and education programs; (D) corrections and community corrections programs; (E) drug treatments and enforcement programs; (F) planning, evaluation, and technology improvement programs; (G) crime victim and witness programs; and (H) mental health programs related to law enforcement and corrections. 34 U.S.C. § 10152(a)(1).

49. The purpose areas for these grants are to support criminal justice programs. Immigration enforcement and removal procedures, however, are generally civil in nature. *See Arizona v. U.S.*, 567 U.S. 387, 396 (2012). Immigration enforcement was never specified in the purpose areas for any of these grants throughout this entire legislative history.

50. In 2006, Congress repealed the only immigration enforcement related requirement that had ever existed for JAG funding, a requirement that the chief executive officer of the state receiving JAG funding provide certified records of criminal convictions of "aliens." *See* Immigration Act of 1990, Pub. L. No. 101-649, tit. V, § 507(a), 104 Stat. 4978, 5050-51 (1990); Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. No. 102-232, tit. III, § 306(a)(6), 105 Stat. 1733, 1751 (1991) (repealed 2006). This is consistent with the statutory scheme that does not include a purpose area connected to immigration enforcement The repeal of this provision also evidences Congress' intent *not* to condition JAG funding on immigration enforcement related activities.

51. In addition, more recently, Congress has considered but repeatedly declined to adopt legislation that would penalize cities for setting their own law enforcement priorities and attempt to impose conditions similar to those here.[5]

III. JAG'S STRUCTURE REQUIRES THAT STATE AND LOCAL JURISDICTIONS RECEIVE FORMULA GRANTS

A. The JAG Formula Structure and Conditions

52. When creating the merged JAG funding structure in 2006, Congress set a formula to apportion JAG funds to state and local jurisdictions. 34 U.S.C. § 10156. Population and violent crime rates are used to calculate each state's allocation. *Id.* § 10156(a)(1). Congress guarantees to each state a minimum allocation of JAG funds. *Id.* § 10156(a)(2).

53. In addition to determining the amount of money received by grantees within each state, Congress set forth how that money is to be shared between state and local jurisdictions. Under the statutory formula, 60 percent of the total allocation to a state must be given directly to the state. *Id.* § 10156(b)(1).

[5] *See* Securing America's Future Act of 2018, H.R. 4760, 115th Cong. (2018) (voted down by the House by a vote of 231-193); *see also, e.g.*, No Sanctuary for Criminals Act, H.R. 3003, 115th Cong. (2017); Ending Sanctuary Cities Act of 2016, H.R. 6252, 114th Cong. (2016); Stop Dangerous Sanctuary Cities Act, S. 3100, 114th Cong. (2016); Stop Sanctuary Policies and Protect Americans Act, S. 2146, 114th Cong. (2015); Sanctuary City All Funding Elimination Act of 2015, H.R. 3073, 114th Cong. (2015).

54. The statutory formula also provides that 40 percent of the total allocation to a state must be given to local governments within the state. *Id.* § 10156(d)(1). Each unit of local government receives funds based on its crime rate. *Id.* § 10156(d)(2)(A).

55. According to Congress' JAG funding scheme, states and local governments that apply for JAG funds are required to make limited certifications and assurances. Beyond ministerial requirements identified in the authorizing statute, the chief executive officer of each applicant must certify that: (A) the law enforcement programs to be funded meet all requirements of the JAG authorizing statute; (B) all information in the application is correct; (C) there was coordination with affected agencies; and (D) the applicant will comply with all provisions of the JAG authorizing statute and all other applicable Federal laws. *Id.* § 10153(a)(5). The requirement for applicants to comply with "all other applicable Federal laws" has existed in federal statute since Byrne-JAG was created in 1988. Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, tit. VI, § 6091(a), 102 Stat. 4181, 4332-33 (1988).

B. California's Allocation and Use of the JAG Award

56. Based on the formula prescribed by statute, California is expected to receive approximately $28.9 million in JAG funding in FY 2018, with $18 million going to the Board of State and Community Corrections ("BSCC"), the entity that receives the formula grant funds that are allocated to the State.

57. The BSCC has disbursed JAG funding using subgrants predominately to local jurisdictions throughout California to fund programs that meet the purpose areas identified in the JAG authorizing statute. Between Fiscal Years 2015-17, the BSCC funded 32 local jurisdictions and the California Department of Justice.

58. In the past, the BSCC prioritized subgrants to those jurisdictions that focus on education and crime prevention programs, law enforcement programs, and court programs, including indigent defense. Some examples of California jurisdictions' purpose-driven use of JAG funds include: (a) implementing programs to improve educational outcomes, increase graduation rates, and curb truancy; (b) providing youth and adult gang members with multi-disciplinary education, employment, treatment, and other support services to prevent gang

involvement, reduce substance abuse, and curtail delinquency and recidivism; (c) implementing school-wide prevention and intervention initiatives for high-risk students; (d) providing comprehensive post-dispositional advocacy and reentry services to improve outcomes and reduce recidivism for juvenile probationers; (e) providing a continuum of detention alternatives to juvenile offenders who do not require secure detention, which includes assessment, referral, case advocacy, home detention, reporting centers, intensive case management, and wraparound family support services; and (f) funding diversion and re-entry programs for both minors and young adult offenders.

IV. DEFENDANTS' ESCALATING ADDITION OF IMMIGRATION ENFORCEMENT REQUIREMENTS TO JAG

A. The Addition of the § 1373 Requirements and Subsequent Actions to Withhold Funding from the State

59. In FY 2016, OJP first announced that 8 U.S.C. § 1373 was an "applicable Federal law" under JAG, the compliance of which would be a required condition for grantees receiving JAG funds. Section 1373(a) provides:

60. Notwithstanding any other provision of Federal, State, or local law, 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 [federal immigration enforcement authorities] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

61. Section 1373(b) prohibits any "person or agency" from restricting federal, state, or local government entities from "requesting" information regarding a person's immigration status, "maintaining" such information, or "exchanging" such information with federal, state, or local government entities.

62. For FY 2016, OJP required that the BSCC submit a legal opinion validating its compliance with § 1373. On April 21, 2017, OJP sent a letter to the BSCC, as well as eight other jurisdictions nationwide, demanding that it submit that legal opinion.[6] On June 29, 2017, the

[6] Press Release, U.S. Dep't of Justice, *Department of Justice Sends Letter to Nine Jurisdictions Requiring Proof of Compliance with 8 U.S.C. § 1373* (Apr. 21, 2017), https://www.justice.gov/opa/pr/department-justice-sends-letter-nine-jurisdictions-requiring-proof-compliance-8-usc-1373.

BSCC submitted the requested legal opinion explaining that the State's laws, including the TRUST and TRUTH Acts, do not violate § 1373.

63. On July 25, 2017, OJP announced the FY 2017 State JAG Solicitation, and on August 3, 2017, OJP announced the FY 2017 JAG Local Solicitation. For the first time, the Solicitations required that state and local jurisdictions make the following certifications with respect to § 1373 in order to receive a grant or subgrant:

- The chief legal officer of the jurisdiction, including the California Attorney General in the case of California, must sign an affidavit certifying compliance with § 1373 on behalf of the State and "any entity, agency, or official" of the State as applicable to the "program or activity" to be funded.
- The chief executive officer of the jurisdiction, including the Governor of the State of California, must sign an affidavit making a number of assurances, including that the chief executive adopts the chief legal officer's certification of compliance with § 1373.
- The subrecipients must certify compliance with § 1373, as applicable to the program and award to be funded, and assure that they will comply with all award conditions.

64. On August 25, 2017, the BSCC submitted the State's application for JAG. In that application, the BSCC stated that it "withholds any commitment at this time concerning new grant conditions, pending receipt of the award documents."

65. On November 1, 2017, after the enactment of the Values Act, OJP sent the State a preliminary compliance assessment letter asserting that three provisions of the Values Act may "violate 8 U.S.C. § 1373, depending on how [the State] interprets and applies them." Those are the provisions regulating: (i) inquiries into an individual's immigration status (Cal. Gov't Code § 7284.6(a)(1)(A)); (ii) responses to notification requests (*id.* § 7284.6(a)(1)(C)); and (iii) the sharing of "personal information" (*id.* § 7284.6(a)(1)(D)). As to the first provision, OJP said that to comply with § 1373, the State must certify that it interprets that provision as "not restrict[ing] California officers and employees from requesting information regarding immigration status from federal immigration officers." For the notification request and personal information provisions to comply with § 1373, OJP said the State must certify that "it interprets and applies these

provisions to not restrict California officers from sharing information regarding immigration status with federal immigration officers, including information regarding release date[s] and home address[es]." If the State cannot so "certify," then "[USDOJ] has determined that these provisions violate [Section 1373]." OJP further "reserve[d] [its] right to identify additional bases of potential violation of 8 U.S.C. § 1373."

66. On November 13, 2017, the BSCC responded and certified that the Values Act does not restrict law enforcement from inquiring about an individual's immigration status with other governmental entities. The BSCC could not provide the requested certification as to the other two provisions, and informed OJP that the Values Act regulates the sharing of release date information and home addresses because that information is not covered by § 1373.

67. On January 24, 2018, OJP responded that it still has concerns about the State's compliance with § 1373, and asked the BSCC, and simultaneously, eight other local jurisdictions in California, to produce by February 23, under threat of subpoena, "orders, directives instructions, or guidance to your law enforcement employees" about communicating with USDOJ, the Department of Homeland Security ("DHS"), and ICE.[7] The BSCC responded to that letter asserting that it is not a law enforcement agency, so has limited requested documents, but produced the documents that were responsive. In the meantime, the State filed a lawsuit challenging, among other things, the FY 2017 § 1373 Requirement as unconstitutional and unlawful, and seeking a declaration that the State's laws comply with § 1373. Am. Compl. for Decl. and Inj. Relief, *Becerra I* (Oct. 13, 2017), ECF No. 11.

68. On March 6, 2018, the United States filed a lawsuit against the State of California in the Eastern District of California alleging that the provisions of SB 54 [the Values Act] that regulate compliance with notification requests, restrict the sharing of personal information for immigration enforcement purposes, and limit transfers of individuals to immigration authorities are preempted under federal immigration law, and that the notification request and personal

[7] Press Release, U.S. Dep't of Justice, *Justice Department Demands Documents and Threatens to Subpoena 23 Jurisdictions As Part of 8 U.S.C. § 1373 Compliance Review* (Jan. 24, 2018), https://www.justice.gov/opa/pr/justice-department-demands-documents-and-threatens-subpoena-23-jurisdictions-part-8-usc-1373.

information provisions also violate § 1373. *See* Compl., *United States v. California*, No. 18-cv-490, ECF No. 1, ¶ 65 (E.D. Cal. Mar. 6, 2018). In its motion to preliminarily enjoin SB 54, the United States argued that these provisions "impede[]" the United States' enforcement of the immigration laws. Pl.'s Mot. for Prelim. Inj. and Mem. of Law in Supp., *United States v. California*, No. 18-cv-490, ECF No. 2-1 at 4, 27, 29, 32, 35, 37 (E.D. Cal. Mar. 6, 2018).

69. The Eastern District court disagreed. In denying the federal government's motion to enjoin the Values Act, Judge Mendez concluded that § 1373 does not encompass addresses and release dates, "Section 1373 and the information sharing provisions of SB 54 do not directly conflict," and SB 54 was not an obstacle to the federal government's goals because "[s]tanding aside does not equate to standing in the way." *United States v. California*, 314 F. Supp. 3d 1077, 1104-05 (E.D. Cal. 2018), *appeal docketed*, No. 18-16496 (9th Cir. Aug. 9, 2018). The court found the constitutionality of § 1373 "highly suspect," *id.* at 1101, and "that a Congressional mandate prohibiting states from restricting their law enforcement agencies' involvement in immigration enforcement activities—apart from, perhaps a narrowly drawn information sharing provision—would likely violate the Tenth Amendment . . . . If Congress lacks the authority to direct state action in this manner, then preemption cannot and should not be used to achieve the same result." *Id.* at 1109. The court further dismissed the United States' claim against the Values Act without leave to amend. Order re: State of California's Mot. to Dismiss, *United States v. California*, No. 18-cv-490, ECF No. 197 at 5, 7 (E.D. Cal. July 9, 2018).

70. Two other federal courts, when considering challenges to the FY 2017 § 1373 JAG Requirement, declared § 1373 unconstitutional on its face, holding that the statute therefore cannot be an "applicable Federal law" for JAG funding. *Chicago*, 321 F. Supp. 3d at 868-73; *Philadelphia*, 309 F. Supp. 3d at 329-31. Recently, this Court likewise determined that § 1373 is unconstitutional on its face, and ordered Defendants to issue FY 2017 JAG awards to the BSCC and all California political subdivisions that applied for JAG. MSJ Order, *Becerra I*, ECF No. 137, slip op. at 23-30. This court also found the § 1373 Requirement to violate the separation of powers, *id.* at 30-32, the Spending Clause for being insufficiently related to the purpose of JAG and ambiguous in light of Defendants' "evolving interpretations of the [§ 1373] condition," *id.* at

32-41, and arbitrary and capricious in violation of the Administrative and Procedure Act. *Id.* at 41-48.

B. The Addition of the Access and Notification Requirements to JAG Funding

71. In addition to the requirement that jurisdictions certify compliance with § 1373, for the first time in FY 2017, OJP announced two substantive "special conditions" related to federal immigration enforcement. To receive a JAG award, Defendants sought to require jurisdictions to:

- permit personnel of DHS to access any correctional or detention facility in order to meet with an "alien" (or an individual believed to be an "alien") and inquire as to his or her right to be or remain in the United States (the "Access Condition"); and
- provide at least 48 hours' advance notice to DHS regarding the scheduled release date and time of an "alien" in the jurisdiction's custody when DHS requests such notice in order to take custody of the individual pursuant to the INA (the "Notification Condition").

Defendants later identified what the final award conditions would consist of in court filings, which confirmed the imposition of the Access and Notification Conditions for FY 2017 JAG funding. *See, e.g.*, *Becerra I*, ECF No. 125-2, ¶ 55(1) (July 31, 2018).

72. Paragraph 56 of the represented final conditions sough to impose similar obligations on local government recipients and subrecipients. According to the condition, recipients that disburse funding to subrecipients must "monitor[] subrecipient compliance with the requirements of this condition." *Id.* ¶ 55(2).

73. This Court concluded that the Access and Notifications Conditions, as well as the FY 2017 § 1373 Requirement, violate the separation of powers, the Spending Clause, and the Administrative Procedure Act. MSJ Order, *Becerra I*, ECF No. 137, slip op. at 17-23, 30-48. Three other federal district courts have determined that the Access and Notification Conditions are unconstitutional because USDOJ exceeded its statutory authority in imposing them. Order Granting Pl.'s Appl. for Prelim. Inj., *Los Angeles* (Sept. 13, 2018) ECF No. 93, slip op. at 2-4; *Chicago*, 321 F. Supp. 3d at 874; *Philadelphia*, 309 F. Supp. 3d at 321. The Seventh Circuit affirmed the district court's decision to preliminarily enjoin the Access and Notification Conditions. *Chicago*, 888 F.3d. at 293 (7th Cir. 2018).

C. FY 2018 JAG State and Local Solicitations

74. On July 20, 2018, Defendants released the FY 2018 JAG Solicitations. The chief legal officer of the jurisdiction must execute two certifications in order for that jurisdiction to receive JAG funding. The first certification is entitled "FY 2018 Certification of Compliance with 8 U.S.C. §§ 1373 & 1644." As with FY 2017, the first certification requires each grant recipient's chief legal officer to sign a standard affidavit, affirming compliance with § 1373 on behalf of the State and "any entity, agency, or official" of the State as applicable to the "program or activity to be funded." Ex. A, Appx. B; Ex. B, Appx. B. Unlike last year, applicants must also submit an answer to the following questions surrounding the jurisdiction's "Communication with the Department of Homeland Security (DHS) and/or Immigration and Customs Enforcement (ICE)":

- Does your jurisdiction have any laws, policies, or practices related to whether, when, or how employees may communicate with DHS or ICE?
- Is your jurisdiction subject to any laws from a superior political entity (e.g., a state law that binds a city) that meets the description in question 1?
- If yes to either:
    - Please provide a copy of each law or policy.
    - Please describe each practice.
    - Please explain how the law, policy, or practice complies with section 1373.

Ex. A at 27-28; Ex. B at 27-28. A jurisdiction will "not receive award funds (and its award will include a condition that withholds funds) until it submits these responses." Ex. A at 28; Ex. B at 28.[8]

75. In this certification, for the first time this year, the chief legal officer must certify compliance with 8 U.S.C. § 1644. Ex. A, Appx. B; Ex. B, Appx. B. Section 1644 exists in a chapter within the INA for "Restricting Welfare and Public Benefits for Aliens." Like § 1373, §

[8] For purposes of this action, these required responses are part of the Immigration Enforcement Requirements that California is challenging.

1644 prohibits state and local governments from restricting the "sending to or receiving" from immigration authorities "information regarding the immigration status" of "an alien."

76. Also, for the first time this year, Defendants require that the chief legal officer separately execute a second certification entitled relating to 8 U.S.C. §§ 1226(a) & (c), 1231(a)(4), 1324(a), 1357(a), & 1366(1) & (3). Ex. A, Appx. C; Ex. B, Appx. C. As of October 25, 2018, Defendants revised this certification from the one identified in the JAG Solicitations, and is now entitled "State or Local Government: FY 2018 Certification Relating to 8 U.S.C. §§ 1226(a) & (c), 1231(a), 1324(a), 1357(a), & 1366(1) & (3)."[9]

77. In this second certification, Defendants replace the Access Condition that has been struck down by the courts with a requirement that the chief legal officer certify that the jurisdiction does not have in effect or is bound to any law, rule, policy, or practice, applicable to the "program or activity" to be funded, which "impede the exercise by federal officers of authority under 8 U.S.C. § 1357(a)." Ex. A, Appx. C; Ex. B, Appx. C; Ex. D ¶ 6. The certification describes § 1357(a) as providing authority to immigration officers to "interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States." Ex. A, Appx. C; Ex. B, Appx. C; Ex. D ¶ 2(d). The JAG Solicitations describe the certification as "requiring . . . recipients to permit DHS agents to have access to any correctional facility in order to meet with an alien (or an individual believed to be an alien) and inquire as to his right to be or remain in the United States." Ex. A at 37; Ex. B at 37.

78. In addition, in this second certification, Defendants replace the Notification Condition that has been struck down by the courts with a requirement that the chief legal officer certify that the jurisdiction does not have in effect or is bound to any law, rule, policy, or practice, applicable to the "program or activity" to be funded, which "impede[s] the exercise by federal officers of authority relating to 8 U.S.C. § 1226(a) & (c)." Ex. A, Appx. C; Ex. B, Appx. C; Ex. D ¶ 6. Section 1226 directs the U.S. Attorney General to take custody of inadmissible and deportable

[9] U.S. Dep't of Justice, OJP, State or Local Government: FY 2018 Certification Relating to 8 U.S.C. §§ 1226(a) & (c), 1231(a), 1324(a), 1357(a), & 1366(1) & (3), https://ojp.gov/funding/Explore/pdf/FY18JAG_STATE_VARIOUS_Rev1025.pdf (attached as Ex. D).

persons after they have committed certain offenses or have been sentenced to a term of imprisonment. The certification also identifies 8 U.S.C. § 1231(a)(4), which the certification represents as limiting the federal government from "remov[ing] an alien who is sentenced to imprisonment until the alien is released from imprisonment." Ex. A, Appx. C; Ex. B, Appx. C; Ex. D ¶ 2(b). The JAG Solicitations describe the certification as "requiring . . . recipients to provide (where feasible) at least 48 hours' advance notice to DHS regarding the scheduled release date and time of an alien in the recipient's custody when DHS requests such notice in order to take custody of the alien pursuant to the Immigration and Nationality Act." Ex. A at 37; Ex. B at 36-37.[10]

79. That second certification requires that the chief legal officer certify for the first time that the jurisdiction does not have in effect or is bound to any law, rule, policy, or practice, applicable to the "program or activity" to be funded," which "impede[s] the exercise by federal officers of authority relating to 8 U.S.C. § 1366(1) & (3)." Ex. A, Appx. C; Ex. B, Appx. C; Ex. D ¶ 6. The 8 U.S.C. § 1366 certification requirement is not described anywhere else in the JAG Solicitations, and Defendants do not explain why they are adding this statute as an "applicable law." The Certification describes § 1366 as "requiring the Attorney General annually to submit to Congress 'a report detailing . . . (1) the number of illegal aliens incarcerated in Federal and State prisons for having committed felonies, stating the number incarcerated for each type of offense, [and] (3) programs and plans underway in the Department of Justice to ensure the prompt removal from the United States of criminal aliens subject to removal.'" Ex. A, Appx. C; Ex. B, Appx. C; Ex. D ¶ 2(e).

80. That second certification further requires that the chief legal officer certify that he understands that the JAG award requires recipient states and local governments, with respect to any "program or activity" funded, "not to publicly disclose federal law enforcement information in an attempt to conceal, harbor, or shield certain individuals from detection, whether or not in violation of 8 U.S.C. § 1324(a) or other laws." Ex. D ¶ 3. The certification describes § 1324(a)

[10] The JAG Solicitations identify "8 U.S.C. § 1266(a) & (c)" on this page, but since that law does not exist, and does not appear anywhere else in the Solicitations, California presumes that Defendants meant to cite to 8 U.S.C. § 1226 here instead.

as "forbidding the concealing, harboring, or shielding from detection of aliens illegally in the United States." *Id.* ¶ 2(c).

81. Section 1324(a) does not apply to states. The INA defines "person" as an "individual" or an "organization." 8 U.S.C. § 1101(b)(3). A "State" is defined separately in 8 U.S.C. § 1101(a)(36), and the term "State" is not in any way part of 8 U.S.C. § 1324(a).

82. The chief executive of the applicant government, identified as the governor for states, must execute a separate certification acknowledging that the chief executive examined the Certification of Compliance with 8 U.S.C. §§ 1373 & 1644 and the State or Local Government: FY 2018 Certification Relating to 8 U.S.C. §§ 1226(a) & (c), 1231(a), 1324(a), 1357(a), & 1366(1) & (3), and "adopt th[e] certification[s] as my own on behalf of that government." Ex. A, Appx. A; Ex. B, Appx. A.

83. The JAG State Solicitation provides that "in order to validly accept a fiscal year (FY) 2018 JAG award, the chief legal officer of the applicant state must properly execute, and the state must submit, the specific certifications regarding compliance with certain federal laws attached to this solicitation as Appendix B and Appendix C." Ex. A at 1, 18, 27, 35-36. The same applies to local governments. Ex. B at 1, 18, 27, 35. State recipients are required to collect these certifications from all subrecipients. Ex. A at 24.

84. Underneath the FY 2018 JAG Solicitations on the OJP website, there is a link to Frequently Asked Questions with respect to the § 1373 Certification.[11] These represent that the certification "must be signed by the jurisdiction's chief legal officer, who may not delegate, assign, or designate the task to another."[12] The document states that the "State 'Attorney General' typically will be the title of the chief legal officer." *Id.* No. 8.

85. Defendants have provided no explanation as to how the new Immigration Enforcement Requirements are consistent with Congress's intent in adopting and authorizing funds for JAG.

[11] *See* Office of Justice Programs, BJA Edward Byrne Memorial Justice Assistance Grant Program, https://www.bja.gov/jag/.

[12] Bureau of Justice Assistance, Questions & Answers on Specific Requirements related to Criminal Alien Law Enforcement for Fiscal Years 2017 and 2018 OJP Grant Programs, Nos. 8 & 10, https://www.bja.gov/publications/8U.S.C.1373QuestionsandAnswers.pdf.

86. On August 21, 2018, the BSCC submitted a FY 2018 JAG application. As part of that application, the BSCC was required to certify compliance that "the Applicant will comply with . . . all federal statutes and regulations applicable to the award" and that it will "require all subrecipients to comply with all applicable award requirements and all applicable federal statutes and regulations." OJP informed the BSCC that it had to make that certification at the time of application. In a supplemental document submitted with its application, the BSCC stated that it would so certify as to any laws that were lawfully identified as applicable laws. But the BSCC disavowed the inclusion of the new Immigration Enforcement Requirements, and asserted that it was not making any "certifications or assurances about any federal statutes that have been selected by the Office of Justice Programs (OJP) as 'applicable' to the JAG program and imposed unlawfully." The BSCC continued that it "does not agree to comply with any other unlawfully imposed award conditions or requirements."

D. Defendants' Issuance of FY 2018 JAG Awards to Most Jurisdictions in the United States, but not California

87. On or about October 1, 2018 Defendants released FY 2018 JAG awards to state and local jurisdictions throughout the United States. Defendants issued JAG awards to 46 states and the District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands. Defendants also issued 752 JAG awards to local jurisdictions throughout the country. However, Plaintiff is not aware of any California state or local jurisdiction that has received a FY 2018 JAG Award as of the date of this filing.

88. The FY 2018 JAG Awards formalize the requirements described in the JAG Solicitations. Paragraphs 41-43 describe the §§ 1373 and 1644 Requirements. In addition to completing the §§ 1373 and 1644 certifications, the grant recipient for the state must obtain a certification of compliance with §§ 1373 and 1644 from any subgrantees before issuing an award. Ex. C ¶ 42(2). The grant recipient must also monitor each JAG subgrantee's compliance with the §§ 1373 and 1644 Requirements. *Id.* ¶ 43(1)(D). These requirements are similar to the FY 2017 JAG § 1373 Requirement that this Court, and other courts throughout the country, found to be unconstitutional and unlawful. *Compare id.* ¶¶ 41-43 *with Becerra I*, ECF No. 125-2, ¶¶ 52-54

(July 31, 2018). And all governmental grant recipients and subrecipients must submit responses to the "Information regarding Communications with the Department of Homeland Security (DHS) and/or Immigration and Customs Enforcement (ICE)" questions identified in the JAG Solicitations. Ex. C ¶ 47.

89. Paragraph 44 of the FY 2018 JAG award describes the § 1324 Requirement, which provides:

> Consistent with the purposes and objectives of federal law enforcement statutes and federal criminal law (including 8 U.S.C. 1324 and 18 U.S.C. chs. 1, 49, 227), no public disclosure may be made of any federal law enforcement information in a direct or indirect attempt to conceal, harbor, or shield from detection any fugitive from justice under 18 U.S.C. ch. 49, or any alien who has come to, entered, or remains in the United States in violation of 8 U.S.C. ch. 12 – without regard to whether such disclosure would constitute (or could form a predicate for) a violation of 18 U.S.C. 1071 or 1072 or of 8 U.S.C. 1324(a).

Id. ¶ 44(1).

90. Grantees and subgrantees must comply with the § 1324 Requirement with respect to the program or activity to be funded. *Id.* Defendants broadly define "federal law enforcement information" within the Requirement to include "records or information complied for any law enforcement purpose" from the federal government to a State or local government submitted through any means including: "(1) through any database; (2) in connection with any law enforcement partnership or task-force; (3) in connection with any request for law enforcement assistance or –cooperation; or (4) through any deconfliction (or courtesy) notice of planned, imminent, commencing, continuing, or impending federal law enforcement activity." *Id.* ¶ 44(4)(A)(2). The "public disclosure" prohibited by the Requirement includes any communication to a recipient or subrecipient that is not a government agency. *Id.* ¶ 44(4)(A)(4).

The § 1324 Requirement does not describe what constitutes "a direct or indirect attempt to conceal, harbor, or shield from detection" a non-citizen, making it unclear what conduct the Requirement prohibits.

91. Paragraph 45 describes the FY 2018 Access Requirement, which Defendants claim is consistent with 8 U.S.C. § 1357(a) and 8 C.F.R. § 287.5(a). That requirement prohibits any recipient or subrecipient State or local governmental entity, agency, or official, with respect to the

"program or activity" to be funded, from "interfer[ing]" with immigration authorities "by impeding access to any State or local government (or government-contracted correctional facility by such agents for the purposes [of] 'interrogat[ing] any alien or person believed to be an alien as to his [or her] right to be or to remain in the United States.'" Ex. C ¶ 45(1). This requirement is similar to the FY 2017 JAG Access Condition that this Court, and other courts throughout the country, found to be unconstitutional and unlawful. *Compare id.* ¶ 45 *with Becerra I*, ECF No. 125-2, ¶¶ 55-56 (July 31, 2018). This year, Defendants define "impeding" as preventing any state or local government from "taking or continuing any action, or implementing or maintaining any law, policy, rule, or practice, that- (a) is designed to prevent or to significantly delay or complicate, or (b) has the effect of preventing or of significantly delaying or complicating" immigration authorities' access to detention facilities. *Id.* ¶ 45(4)(A)(3). Although the TRUTH Act does not deny immigration authorities' access to detention facilities, it requires LEAs to provide a consent form to an inmate to sign prior to an interview with immigration authorities. *See* Cal. Gov't Code § 7283.1(a). It is unclear whether Defendants interpret the FY 2018 Access Requirement as prohibiting jurisdictions from informing inmates of their rights prior to an ICE interview, as required under the TRUTH Act.

92. Paragraph 46 describes the FY 2018 Notification Requirement, which Defendants claim is consistent with 8 U.S.C. §§ 1226, 1231, and 1366. That requirement prohibits any recipient or subrecipient State or local governmental entity, agency, or official, with respect to the "program or activity" to be funded, from "interfere[ing]" with immigration authorities "by failing to provide – as early as practicable (see para. 4.C. below) – advance notice to DHS of the scheduled release date and time for a particular alien, if a State or local government (or government-contracted) correctional facility receives from DHS a formal written request pursuant to the INA that seeks such advance notice." Ex. C ¶ 46(1). This requirement is similar to the FY 2017 JAG Notification Condition that this Court, and other courts throughout the country, found to be unconstitutional and unlawful. *Compare id.* ¶ 46 *with Becerra I*, ECF No. 125-2, ¶¶ 55-56 (July 31, 2018). The Values Act provides LEA discretion to comply with immigration authorities' notification requests under enumerated circumstances, but does not require the

provision of release dates, as Defendants ostensibly seek through this requirement. *See* Cal. Gov't Code § 7284.6(a)(1)(C).

93. Defendants have updated the certifications to mirror the FY 2018 JAG Award requirements. The chief legal officer of the grant recipient's jurisdiction now must certify the following after conducing a "diligent inquiry":

> As of the date of this certification, neither the jurisdiction nor any entity, agency, or official of the jurisdiction has in effect, purports to have in effect, or is subject to or bound by, any law, rule, policy, or practice that would apply to the "program or activity" to be funded in whole or in part under the FY 2018 OJP Program . . . and that would or does – (a) impede the exercise by federal officers of authority under 8 U.S.C. § 1357(a); or (b) impede the exercise by federal officers of authority relating to 8 U.S.C. § 1226(a) or (c), 8 U.S.C. § 1231(a), or 8 U.S.C. § 1366(1) or (3).

Ex. D ¶ 6.

94. The FY 2018 JAG Award admonishes recipients that:

> Any materially false, fictitious, or fraudulent statement to the federal government related to the award (or concealment or omission of a material fact) may be the subject of criminal prosecution (including under 18 U.S.C. 1001 and/or 1621, and/or 34 U.S.C. 10271-10273), and also may lead to imposition of civil penalties and administrative remedies for false claims or otherwise (including those under 31 U.S.C. 3729-3730 and 3801-3812).

Ex. C ¶ 1.

V. THE IMMIGRATION ENFORCEMENT REQUIREMENTS ARE UNCONSTITUTIONAL AND UNLAWFUL

95. JAG's authorizing statute provides no authority for OJP to impose the Immigration Enforcement Requirements. Interpreting OJP's authority to permit it to impose these substantive conditions with respect to formula grants, like JAG, beyond what is allowed under federal law conflicts with congressional intent in establishing a prescribed formula grant structure. Congress designed JAG so that "*each State*" receives an allocation according to a precise statutory formula. 34 U.S.C. § 10156(a) (emphasis added). Likewise, Congress's formula provides allocation to "*each* unit of local government." *Id.* § 10156(d)(2) (emphasis added). As such, if USDOJ makes grants from funds that Congress appropriated to JAG, OJP must disburse the funds according to

the statutory formula enacted by Congress so long as the jurisdiction complies with the conditions that exist in federal law.

96. The Immigration Enforcement Requirements are also contrary to congressional intent as immigration enforcement has never been a purpose area for JAG funding, and Congress has repeatedly rejected numerous attempts to attach immigration enforcement requirements to receipt of JAG funding.

97. Defendants claim that all of the statutes identified in the certification are "applicable Federal laws" that applicants must comply with under 34 U.S.C. § 10153(a)(5) in the JAG authorizing statute. *See* Ex. A at 10; Ex. B. at 10. The JAG authorizing statute does not permit Defendants to add these statutes as "applicable Federal laws."

98. 8 U.S.C. §§ 1373 and 1644 cannot be "applicable Federal laws" because they are unconstitutional under the Tenth Amendment's anti-commandeering doctrine, and thus, Defendants lack the statutory authority to identify those statutes as "applicable laws."

99. 8 U.S.C. §§ 1226, 1231, 1357, and 1366 are not "applicable Federal laws" as they are not laws that are applicable to applicant state and local jurisdictions. These laws only impose obligations on the federal government. In addition, 8 U.S.C. § 1324 only applies to individuals and organizations, not to state and local jurisdictions.

100. None of the federal laws identified in the certifications are "applicable" because the term "other applicable Federal laws" is best understood as referring to laws that are expressly connected to federal grant-making. Prior to 2016, the only laws that USDOJ identified as "applicable" were those that specifically address the administration of federal funding in the text of the statute. There is no provision in the INA, or any federal law, that requires jurisdictions to assist with otherwise voluntary immigration enforcement related activities in order to receive these federal funds.

101. Defendants exceed their statutory authority by adding Immigration Enforcement Requirements as purported "applicable Federal laws" that cannot be constitutionally applied to California's laws under the anti-commandeering doctrine. Defendants exceed their statutory authority by interpreting statutes such as 8 U.S.C. §§ 1226, 1231, and 1357, as requiring state and

local jurisdictions to comply with notification requests or allowing immigration authorities access to detention facilities, although those statutes impose no requirements on state and local jurisdictions.

102. Defendants also cannot rely on OJP's authority to add "special conditions on all grants," 34 U.S.C. § 10102(a)(6), as a basis for adding the Immigration Enforcement Requirements. In 2006, when this provision was amended to create its current language, the term "special conditions" had a precise meaning. According to a USDOJ regulation in place at the time, the agency could impose "special grant or subgrant conditions" on "high-risk grantees" if the grant applicant: (a) had a history of poor performance; (b) was not financially stable; (c) had a management system that did not meet certain federal standards; (d) had not conformed to the terms and conditions of a previous grant award; or (e) was not otherwise responsible. 28 C.F.R. § 66.12 (removed December 25, 2014).

103. These Immigration Enforcement Requirements are further undercut by 34 U.S.C. § 10228(a), which is codified in the same chapter as the JAG authorizing statute, and prohibits the use of federal law enforcement grants to exercise "any direction, supervision, or control over any police force or any other criminal justice agency of any State or any political subdivision thereof."

VI. THE IMPOSITION OF THE IMMIGRATION ENFORCEMENT REQUIREMENTS CREATES IRREPARABLE HARM TO THE STATE AND ITS LOCAL JURISDICTIONS

104. The Immigration Enforcement Requirements mean that the State and its local jurisdictions will have to decide whether they can or should accept federal funds for their law enforcement agencies that are subject to unlawful and unconstitutional requirements. If the State and its local jurisdictions cannot accept the awards, or if Defendants withhold funding from the State on the basis of these requirements, the State will lose $28.9 million in critical funds that would otherwise go toward programs throughout the State that reduce recidivism for at-risk youth, counter the distribution of illegal drugs, advance community policing, and improve educational outcomes.

105. It is likely that in order for the State and many of its localities to accept the funding, they will have to change their public safety oriented laws and policies in order to ensure they are viewed as complying with the Immigration Enforcement Requirements and Defendants' erroneous view of § 1373. Abandoning these policies that law enforcement has found to be effective in their communities would divert resources away from fighting crime and erode trust between the State and local governments and their immigrant communities that the TRUST, TRUTH, and Values Acts, as well as local ordinances, are intended to build.

106. California and its local jurisdictions must make their decision about whether to accept these law enforcement funds under the shadow of the federal government's actions that they have already taken and threats they have made against California on the basis of the State's laws. In addition to suing the State for adopting laws that the United States alleges "impede" immigration authorities, after the Values Act went into effect, then-ICE Acting Director Thomas Homan called for USDOJ to "charge" elected officials for jurisdictions with policies like California for violating 8 U.S.C. § 1324(a) if they do not meet the Administration's immigration enforcement demands.[13] The DHS Secretary Kirstjen Nielsen later confirmed in congressional testimony that USDOJ was "reviewing" ways to charge state and local official as Acting Director Homan suggested. By trying to make § 1324(a) an "applicable Federal law" through the Immigration Enforcement Requirements, and imposing the § 1324 Requirement as a condition for funding, Defendants are unlawfully attempting to force elected officials to make representations, under the threat of criminal prosecutions, about that federal statute.

107. The State should not be faced with this Hobson's Choice of agreeing to these unconstitutional Immigration Enforcement Requirements and facing a certain enforcement action, or not agreeing to these Requirements and losing critical public safety dollars to the detriment of the State's communities. Defendants' scheme undermines public safety, is unconstitutional, and should be halted.

[13] Fox News Interview with Thomas Homan, *Acting ICE director: California made a foolish decision* (Jan. 2, 2018), http://www.foxnews.com/transcript/2018/01/02/acting-ice-director-california-made-foolish-decision.html.

FIRST CLAIM FOR RELIEF

VIOLATION OF CONSTITUTIONAL SEPARATION OF POWERS

108. Plaintiff incorporates the allegations of the preceding paragraphs by reference.

109. Article I, Section I of the United States Constitution enumerates that "[a]ll legislative Powers herein granted shall be vested in [the] Congress."

110. Article I, Section VIII of the United States Constitution vests exclusively in Congress the spending power to "provide for . . . the General Welfare of the United States."

111. Defendants have exceeded congressional authority by adding substantive Immigration Enforcement Requirements that are not conferred by the JAG authorizing statute or any other federal law. *See* 34 U.S.C. §§ 10151-58. The Immigration Enforcement Requirements therefore unlawfully exceed the Executive Branch's powers and intrude upon the powers of Congress.

112. For the reasons stated herein, the Immigration Enforcement Requirements are unlawful, unconstitutional, and should be set aside under 28 U.S.C. § 2201. Additionally, Plaintiff is entitled to a writ of mandamus under 28 U.S.C. § 1361 to compel Defendants to issue California's FY 2018 JAG award without the Immigration Enforcement Requirements, and disbursal of California's FY 2018 JAG funds, in accordance with the formula in the JAG authorizing statute.

SECOND CLAIM FOR RELIEF

ULTRA VIRES

113. Plaintiff incorporates the allegations of the preceding paragraphs by reference.

114. An agency acts ultra vires when it exceeds its statutory authority conferred by Congress.

115. None of the identified laws in the Immigration Enforcement Requirements are "applicable Federal laws" within the meaning of the JAG authorizing statute because they do not govern by their express terms the administration of federal funding.

116. Additionally, 8 U.S.C. §§ 1226, 1231, 1324, 1357, and 1366 cannot be applicable laws for applicants to JAG funding because these laws impose no obligations on state and local jurisdictions.

117. Alternatively, even if these statutes were deemed to be "applicable Federal laws," Defendants exceed their authority under the JAG authorizing statute by imposing requirements on state and local governments that are not found in these federal statutes. For example, Defendants seek to "require[] . . . recipients to provide (where feasible) at least 48 hours' notice to DHS regarding the scheduled release date and time of an alien in the recipient's custody when DHS requests such notice in order to take custody of the alien pursuant to the Immigration and Nationality Act," although there is no such requirement in federal law. Similarly, Defendants "requir[e] . . . recipients to permit DHS agents to have access to any correctional facility in order to meet with an alien (or an individual believed to be an alien) and inquire as to his right to be or remain in the United States," which again is not a requirement that exists in federal law.

118. Furthermore, Defendants have identified no separate statutory authority that would justify imposing the Immigration Enforcement Requirements.

119. For the reasons stated herein, the Immigration Enforcement Requirements are ultra vires, and should be set aside under 28 U.S.C. § 2201. Additionally, Plaintiff is entitled to a writ of mandamus under 28 U.S.C. § 1361 to compel Defendants to issue California's FY 2018 JAG award without the Immigration Enforcement Requirements, and disbursal of California's FY 2018 JAG funds, in accordance with the formula in the JAG authorizing statute.

THIRD CLAIM FOR RELIEF

ULTRA VIRES/ANTI-COMMANDEERING

(The §§ 1226, 1231, 1357, 1366, 1373, and 1644 Immigration Enforcement Requirements Cannot be Constitutionally Applied to California's Laws under the Tenth Amendment of the U.S. Constitution)

120. Plaintiff incorporates the allegations of the preceding paragraphs by reference.

121. Defendants' basis for adding the Immigration Enforcement Requirements are that they are premised on being "applicable Federal laws." If the laws identified in the Immigration Enforcement Requirements are "applicable Federal laws," then the breadth of what Congress permitted Defendants to condition funding on is confined to what the "applicable laws" require or prohibit, as limited by the Tenth Amendment, and nothing more.

122. The Tenth Amendment prohibits the federal government from requiring states and localities "to govern according to Congress's instructions," *New York v. United States*, 505 U.S. 144, 162 (1992), or "command[ing] the State's officers . . . to administer or enforce a federal regulatory program." *Printz v. United States*, 521 U.S. 898, 935 (1997). Specifically, where the "whole object" of a provision of a federal statute is to "direct the functioning" of state and local governments, that provision is unconstitutional. *Id.* at 932.

123. The Tenth Amendment guarantees that states have a "legitimate choice" to "decline to administer the federal program." *New York*, 505 U.S. at 177, 185. Prohibitions that "unequivocally dictate[] what a state legislature may and may not do" violate the anti-commandeering doctrine as much as affirmative commands. *Murphy v. NCAA*, 138 S. Ct. 1461, 1478 (2018).

124. Two of the laws that are part of the Immigration Enforcement Requirements, 8 U.S.C. §§ 1373 and 1644, violate the Tenth Amendment on their face or as applied under Defendants' interpretation of them. Therefore, those laws are invalid and cannot be identified as "applicable Federal laws." *See Chicago*, 2018 WL 3608564, at 7-11; *Philadelphia*, 309 F. Supp. 3d at 329-31.

125. In *United States v. California*, the United States has already made clear its view that the Values and TRUST Acts "impede" immigration authorities, which would run afoul of the Immigration Enforcement Requirements. As was found in that case, an interpretation of federal law that "prohibit[s] states from restricting their law enforcement agencies' involvement in immigration activities—apart from, perhaps, a narrowly drawn information sharing provision—would likely violate the Tenth Amendment." *California*, 314 F. Supp. 3d at 1109.

126. Pursuant to 28 U.S.C. § 2201, Plaintiff is entitled to a declaration that Defendants do not possess the statutory authority to apply the §§ 1226, 1231, 1357, 1366, 1373, and 1644 Immigration Enforcement Requirements as to the TRUST, TRUTH, and Values Acts, as to do so, Defendants would be applying federal law in a manner that violates the Tenth Amendment of the Constitution. Defendants' statutory authority to use funding conditions to commandeer the State is also limited by 34 U.S.C. § 10228(a), which prohibits the use of federal law enforcement grants

to exercise "any direction, supervision, or control over any police force or any other criminal justice agency."

127. For the reasons stated herein, the §§ 1226, 1231, 1357, 1366, 1373, and 1644 Immigration Enforcement Requirements in the JAG Solicitations are ultra vires, and should be set aside, or alternatively, should be set aside as to California and its local jurisdictions. Additionally, Plaintiff is entitled to a writ of mandamus under 28 U.S.C. § 1361 to compel Defendants to issue California's FY 2018 JAG award without the Immigration Enforcement Requirements, and disbursal of California's FY 2018 JAG funds, in accordance with the formula in the JAG authorizing statute.

FOURTH CLAIM FOR RELIEF

SPENDING CLAUSE

128. Plaintiff incorporates the allegations of the preceding paragraphs by reference.

129. Congress' spending power is not unlimited. When "Congress desires to condition the States' receipt of federal funds," it must do so (a) "unambiguously . . ., enabl[ing] the States to exercise their choice knowingly, cognizant of the consequences of their participation;" and (b) by placing conditions that are related "to the federal interest in particular national projects or programs." *South Dakota v. Dole*, 483 U.S. 203, 207 (1987) (citation omitted).

130. To the extent that Congress delegated its authority to impose conditions on JAG funding (which Plaintiff does not concede), the Immigration Enforcement Requirements violate the Spending Clause of the U.S. Constitution. The Immigration Enforcement Requirements are unrelated to the "federal interest in particular national projects or programs" for which Congress intended JAG funding to be used.

131. The Immigration Enforcement Requirements also violate the Spending Clause because they are ambiguous and do not provide the State and local jurisdictions with notice to make a "choice knowingly" of whether to comply.

132. For the reasons stated herein, the Immigration Enforcement Requirements are unlawful, and should be set aside under 28 U.S.C. § 2201. Additionally, Plaintiff is entitled to a writ of mandamus under 28 U.S.C. § 1361 to compel Defendants to issue California's FY 2018

JAG award without the Immigration Enforcement Requirements, and disbursal of California's FY 2018 JAG funds, in accordance with the formula in the JAG authorizing statute.

FIFTH CLAIM FOR RELIEF

VIOLATION OF ADMINISTRATIVE PROCEDURE ACT
(Constitutional Violations and Excess of Statutory Authority)

133. Plaintiff incorporates the allegations of the preceding paragraphs by reference.

134. Defendant USDOJ is an "agency" under the APA, 5 U.S.C. § 551(1), and the imposition of the Immigration Enforcement Requirements is an "agency action" under the APA, *id.* § 551(13).

135. The imposition of the Immigration Enforcement Requirements constitutes an "[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court." *Id.* § 704.

136. The APA requires that a court "hold unlawful and set aside agency action, findings, and conclusions found to be . . . contrary to constitutional right, power, privilege, or immunity," or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." *Id.* § 706(2)(B)-(C).

137. Defendants' imposition of the Immigration Enforcement Requirements is unconstitutional because Defendants overstepped their powers by exercising lawmaking authority that is solely reserved to Congress under Article I, Section I of the U.S. Constitution. Also, Defendants' imposition of the Immigration Enforcement Requirements was ultra vires in excess of their statutory authority. Furthermore, the Immigration Enforcement Requirements violate the Spending Clause because they are unrelated to the federal purpose of the grant and/or are ambiguous.

138. Because Defendants acted unconstitutionally and in excess of their statutory authority in the imposition of the Immigration Enforcement Requirements, these actions are unlawful and should be set aside under 5 U.S.C. § 706. Additionally, Plaintiff is entitled to a writ of mandamus under 28 U.S.C. § 1361 to compel Defendants to issue California's FY 2018 JAG award without

the Immigration Enforcement Requirements, and disbursal of California's FY 2018 JAG funds, in accordance with the formula in the JAG authorizing statute.

SIXTH CLAIM FOR RELIEF

VIOLATION OF ADMINISTRATIVE PROCEDURE ACT
(Arbitrary and Capricious)

139. Plaintiff incorporates the allegations of the preceding paragraphs by reference.

140. Defendant USDOJ is an "agency" under the APA, 5 U.S.C. § 551(1), and the imposition of the Immigration Enforcement Requirements is an "agency action" under the APA, *id.* § 551(13).

141. The imposition of the Immigration Enforcement Requirements constitutes an "[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court." *Id.* § 704.

142. The APA requires that a court "hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Id.* § 706(2)(A).

143. The imposition of the Immigration Enforcement Requirements is arbitrary and capricious and an abuse of discretion because Defendants have relied on factors that Congress did not intend, failed to consider an important aspect of the program the agency is addressing, and has offered no explanation for adding the Immigration Enforcement Requirements that is consistent with the evidence that is before the agency. *See Motor Vehicle Mfrs. Ass'n of the U.S. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983).

144. For the reasons discussed herein, the Immigration Enforcement Requirements are unlawful and should be set aside under 5 U.S.C. § 706 for being arbitrary and capricious and an abuse of discretion. Additionally, Plaintiff is entitled to a writ of mandamus under 28 U.S.C. § 1361 to compel Defendants to issue California's FY 2018 JAG award without the Immigration Enforcement Requirements, and disbursal of California's FY 2018 JAG funds, in accordance with the formula in the JAG authorizing statute.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the State of California, respectfully requests that this Court enter judgment in its favor, and grant the following relief:

1. Issue a declaration that the Immigration Enforcement Requirements are unconstitutional and/or unlawful because: (a) they violate the separation of powers; (b) they exceed congressional authority conferred to the Executive Branch and are ultra vires on their face and as applied to the TRUST, TRUTH, and Values Acts; (c) to the extent there is congressional authority, they exceed Congress's spending powers under Article I of the Constitution; and/or (d) they violate the Administrative Procedure Act;

2. Permanently enjoin Defendants from using the Immigration Enforcement Requirements;

3. Permanently enjoin Defendants from withholding and terminating JAG funding, or disbarring and making any state entity or local jurisdiction ineligible for JAG funding on account of the TRUST, TRUTH, and Values Acts;

4. Issue a writ of mandamus compelling Defendants to issue California and its political subdivisions' FY 2018 JAG awards without the Immigration Enforcement Requirements, and disbursal of California and its political subdivisions' FY 2018 JAG funds;

5. Award attorney's fees and costs as appropriate; and

6. Grant such other relief as the Court may deem just and proper.

Dated: November 1, 2018

Respectfully Submitted,

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