

DENNIS J. HERRERA, State Bar #139669
 City Attorney
 JESSE C. SMITH, State Bar #122517
 Chief Assistant City Attorney
 RONALD P. FLYNN, State Bar #184186
 Chief Deputy City Attorney
 YVONNE R. MERÉ, State Bar #173594
 Chief of Complex and Affirmative Litigation
 CHRISTINE VAN AKEN, State Bar #241755
 TARA M. STEELEY, State Bar #231775
 MOLLIE M. LEE, State Bar #251404
 SARA J. EISENBERG, State Bar #269303
 MATTHEW S. LEE, State Bar #295247
 NEHA GUPTA, State Bar #308864
 Deputy City Attorneys
 City Hall, Room 234
 1 Dr. Carlton B. Goodlett Place
 San Francisco, California 94102-4602
 Telephone: (415) 554-4748
 Facsimile: (415) 554-4715
 E-Mail: brittany.feitelberg@sfgov.org

Attorneys for Plaintiff
 CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

CITY AND COUNTY OF SAN
 FRANCISCO,

Plaintiff,

vs.

DONALD J. TRUMP, President of the United
 States, UNITED STATES OF AMERICA,
 JOHN F. KELLY, Secretary of United States
 Department of Homeland Security,
 JEFFERSON B. SESSIONS, Attorney General
 of the United States, DOES 1-100,

Defendants.

Case No. 3:17-cv-00485-WHO

**REQUEST FOR JUDICIAL NOTICE IN
 SUPPORT OF CITY AND COUNTY OF SAN
 FRANCISCO'S MOTION FOR
 PRELIMINARY INJUNCTION**

Date: April 12, 2017
 Time: 2:00 p.m.
 Judge: Honorable William H. Orrick
 Dept: Courtroom 2

Date Filed: January 31, 2017

Trial Date: Not set

1 Plaintiff City and County of San Francisco hereby respectfully requests, pursuant to Federal
2 Rule of Evidence 201, that this Court take judicial notice of the following documents.

3 1. Attached hereto as **Exhibit A** is a true and correct copy of a memorandum from
4 Michael E. Horowitz, Inspector General, U.S. Department of Justice, to Karol V. Mason, Assistant
5 Attorney General for the Office of Justice Programs, U.S. Department of Justice, entitled “Department
6 of Justice Referral of Allegations of Potential Violations of 8 U.S.C. § 1373 by Grant Recipients,”
7 dated May 31, 2016. This memorandum is posted on the Office of the Inspector General’s official
8 government website, at <https://oig.justice.gov/reports/2016/1607.pdf>.

9 2. Attached hereto as **Exhibit B** is a true and correct copy of a letter from Senators
10 Elizabeth Warren and Edward Markey to Tom Price, Secretary of the U.S. Department of Health and
11 Human Services, dated February 27, 2017. The letter is posted on Senator Warren’s official
12 government website alongside sixteen similar letters addressed to the confirmed or nominated heads of
13 other federal agencies, at [https://www.warren.senate.gov/files/documents/2017-2-](https://www.warren.senate.gov/files/documents/2017-2-27_Letters_to_Federal_Agencies_re_Trump_Sanctuary_City_EO.pdf)
14 [27_Letters_to_Federal_Agencies_re_Trump_Sanctuary_City_EO.pdf](https://www.warren.senate.gov/files/documents/2017-2-27_Letters_to_Federal_Agencies_re_Trump_Sanctuary_City_EO.pdf).

15 3. Attached hereto as **Exhibit C** is a true and correct copy of a memorandum from Carlos
16 A. Giménez, Mayor of Miami-Dade County, to Daniel Junior, Interim Director, Miami-Dade County
17 Corrections and Rehabilitation Department, entitled “Executive Order: Enhancing Public Safety in the
18 United States,” dated January 26, 2017.

19 4. Attached hereto as **Exhibit D** is a true and correct copy of Information Bulletin No.
20 2012-DLE-01 issued by Kamala D. Harris, Attorney General of California, entitled “Responsibilities of
21 Local Law Enforcement Agencies under Secure Communities,” dated December 4, 2012.

22 5. Attached hereto as **Exhibit E** is a true and correct excerpt of the San Francisco Board
23 of Supervisors Board File No. 170092, as of March 6, 2017, for the proposed ordinance to amend the
24 San Francisco Administrative Code, “Non-Cooperation with Identity-Based Registry.”

25 Each of these exhibits is a matter of public record and is therefore subject to judicial notice.
26 Fed. R. Evid. 201(b); *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) (a court may
27 judicially notice matters of public record unless the matter is a fact subject to reasonable dispute).

28 **Exhibits A, B, C, and D** are judicially noticeable because government memoranda, bulletins,

1 letters, and opinions are matters of public record appropriate for judicial notice. *See Brown v. Valoff*,
 2 422 F.3d 926, 933 n.9 (9th Cir. 2005) (judicially noticing an administrative bulletin); *Mack v. S. Bay*
 3 *Beer Distribs., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986) (court may take judicial notice of records and
 4 reports of state administrative bodies), *overruled on other grounds by Astoria Fed. Sav. & Loan Ass'n*
 5 *v. Solimino*, 501 U.S. 104, 111 (1991); *Interstate Nat. Gas. Co. v. S. Cal. Gas. Co.*, 209 F.2d 380, 385
 6 (9th Cir. 1953) (judicially noticing government agency records and reports).

7 **Exhibits A and B** are also judicially noticeable because they are posted to official government
 8 websites. *See Daniels–Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998–99 (9th Cir. 2010) (judicially
 9 noticing information contained on a government website); *Paralyzed Veterans of America v.*
 10 *McPherson*, No. C 06–4670 SBA, 2008 WL 4183981, at *5 (N.D. Cal. Sept. 9, 2008) (finding that
 11 courts commonly take judicial notice of information and documents on government websites, and
 12 citing cases from various jurisdictions).

13 **Exhibit E** is judicially noticeable because it is an excerpt of the legislative history of a
 14 proposed San Francisco ordinance. *See Chaker v. Crogan*, 428 F.3d 1215, 1223 n.8 (9th Cir. 2005)
 15 (judicially noticing a state statute’s legislative history); *Rabkin v. Dean*, 856 F. Supp. 543, 546 (N.D.
 16 Cal. 1994) (“The Court may take judicial notice of city charters, city ordinances and resolutions, and
 17 the contents and legislative history of a proposed city ordinance or resolution.”).

18 Dated: March 8, 2017

19 DENNIS J. HERRERA
 20 City Attorney
 21 RONALD FLYNN
 22 JESSE C. SMITH
 23 YVONNE R. MERÉ
 24 CHRISTINE VAN AKEN
 25 TARA M. STEELEY
 26 MOLLIE M. LEE
 27 SARA J. EISENBERG
 28 MATTHEW S. LEE
 NEHA GUPTA

By: /s/ Sara J. Eisenberg
 SARA J. EISENBERG
 Deputy City Attorney

Attorneys for Plaintiff
 CITY AND COUNTY OF SAN FRANCISCO

EXHIBIT A



U.S. Department of Justice

Office of the Inspector General

The "Law Enforcement Sensitive" markings on this document were removed as a result of a sensitivity review and determination by the U.S. Department of Homeland Security, Immigration and Customs Enforcement.

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May 31, 2016 [Re-posted to oig.justice.gov on September 23, 2016, due to a corrected entry in the Appendix, see page 12.]

MEMORANDUM FOR KAROL V. MASON

ASSISTANT ATTORNEY GENERAL

FOR THE OFFICE OF JUSTICE PROGRAMS

FROM:

MICHAEL E. HOROWITZ
INSPECTOR GENERAL

SUBJECT:

Department of Justice Referral of Allegations of Potential
Violations of 8 U.S.C. § 1373 by Grant Recipients

This is in response to your e-mail dated April 8, 2016, wherein you advised the Office of the Inspector General (OIG) that the Office of Justice Programs (OJP) had "received information that indicates that several jurisdictions [receiving OJP and Office of Violence Against Woman (OVW) grant funds] may be in violation of 8 U.S.C. § 1373." With the e-mail, you provided the OIG a spreadsheet detailing Department grants received by over 140 state and local jurisdictions and requested that the OIG "investigate the allegations that the jurisdictions reflected in the attached spreadsheet, who are recipients of funding from the Department of Justice, are in violation of 8 U.S.C. Section 1373." In addition to the spreadsheet, you provided the OIG with a letter, dated February 26, 2016, to Attorney General Loretta E. Lynch from Congressman John Culberson, Chairman of the House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies, regarding whether Department grant recipients were complying with federal law, particularly 8 U.S.C. § 1373 (Section 1373). Attached to Chairman Culberson's letter to the Attorney General was a study conducted by the Center for Immigration Studies (CIS) in January 2016, which concluded that there are over 300 "sanctuary" jurisdictions that refuse to comply with U.S. Immigration and Customs Enforcement (ICE) detainers or otherwise impede information sharing with federal immigration officials.¹

¹ Your e-mail also referenced and attached the OIG's January 2007 report, *Cooperation of SCAAP [State Criminal Alien Assistance Program] Recipients in the Removal of Criminal Aliens from the United States*. In that Congressionally-mandated report, the OIG was asked, among other things, to assess whether entities receiving SCAAP funds were "fully cooperating" with the Department of Homeland Security's efforts to remove undocumented criminal aliens from the United States, and whether SCAAP recipients had in effect policies that violated Section

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The purpose of this memorandum is to update you on the steps we have undertaken to address your question and to provide you with the information we have developed regarding your request. Given our understanding that the Department's grant process is ongoing, we are available to discuss with you what, if any, further information you and the Department's leadership believe would be useful in addressing the concerns reflected in your e-mail.

OIG Methodology

At the outset, we determined it would be impractical for the OIG to promptly assess compliance with Section 1373 by the more than 140 jurisdictions that were listed on the spreadsheet accompanying your referral. Accordingly, we judgmentally selected a sample of state and local jurisdictions from the information you provided for further review. We started by comparing the specific jurisdictions cited in the CIS report you provided to us with the jurisdictions identified by ICE in its draft *Declined Detainer Outcome Report*, dated December 2, 2014.² Additionally, we compared these lists with a draft report prepared by ICE that identified 155 jurisdictions and stated that "all jurisdictions on this list contain policies that limit or restrict cooperation with ICE and, as of Q3 FY 2015, have declined detainers."³ From this narrowed list of jurisdictions, we determined, using the spreadsheet provided with your e-mail, which jurisdictions had active OJP and OVW awards as of March 17, 2016, the date through which you provided award information, and received fiscal year (FY) 2015 State Criminal Alien Assistance Program (SCAAP) payments. Lastly, we considered, based on the spreadsheet, the total dollars awarded and the number of active grants and payments made as of March 17,

1373. As we describe later in this memorandum, the information we have learned to date during our recent work about the present matter differs significantly from what OIG personnel found nearly 10 years ago during the earlier audit. Specifically, during the 2007 audit, ICE officials commented favorably to the OIG with respect to cooperation and information flow they received from the seven selected jurisdictions, except for the City and County of San Francisco. As noted in this memorandum, we heard a very different report from ICE officials about the cooperation it is currently receiving. Additionally, our 2007 report found that the SCAAP recipients we reviewed were notifying ICE in a timely manner of aliens in custody, accepting detainers from ICE, and promptly notifying ICE of impending releases from local custody. By contrast, as described in this memorandum, all of the jurisdictions we reviewed had ordinances or policies that placed limits on cooperation with ICE in connection with at least one of the three areas assessed in 2007.

² At the time of our sample selection we only had a draft version of this report. We later obtained an updated copy which was provided to Congress on April 16, 2016. Although it was provided to Congress, this report was also marked "Draft." The updated draft version of the report did not require us to alter our sample selection.

³ This version of the declined detainer report covered declined detainers from January 1, 2014 through June 30, 2015.

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2016, and sought to ensure that our list contained a mix of state and local jurisdictions.

Using this process, we judgmentally selected 10 state and local jurisdictions for further review: the States of Connecticut and California; City of Chicago, Illinois; Clark County, Nevada; Cook County, Illinois; Miami-Dade County, Florida; Milwaukee County, Wisconsin; Orleans Parish, Louisiana; New York, New York; and Philadelphia, Pennsylvania. These 10 jurisdictions represent 63 percent of the total value of the active OJP and OVW awards listed on the spreadsheet as of March 17, 2016, and FY 2015 SCAAP payments made by the Department.

Section 1373 states in relevant part:

- (a) **In General.** 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, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.
- (b) **Additional authority of government entities.** Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:
 - (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.
 - (2) Maintaining such information.
 - (3) Exchanging such information with any other Federal, State, or local government entity.

According to the legislative history contained in the House of Representatives Report, Section 1373 was intended “to give State and local officials the authority to communicate with the Immigration and Naturalization Service (INS) regarding the presence, whereabouts, and activities of illegal aliens. This section is designed to prevent any State or local law, ordinance, executive order, policy, constitutional provision, or decision of any Federal or State court that prohibits or in any way restricts any communication between State and local officials and the INS.”⁴

⁴ House of Representatives Report, *Immigration in the National Interest Act of 1995*, (H.R. 2202), 1996, H. Rept. 104-469, <https://www.congress.gov/104/crpt/hrpt469/CRPT->

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For the 10 selected jurisdictions, we researched the local laws and policies that govern their interactions with ICE – particularly those governing the ability of the jurisdictions’ officers to receive or share information with federal immigration officials. We then compared these local laws and policies to Section 1373 in order to try to determine whether they were in compliance with the federal statute. We also spoke with ICE officials in Washington, D.C., to gain their perspective on ICE’s relationship with the selected jurisdictions and their views on whether the application of these laws and policies was inconsistent with Section 1373 or any other federal immigration laws.

The sections that follow include our analysis of the selected state and local laws and policies.

State and Local Cooperation with ICE

A primary and frequently cited indicator of limitations placed on cooperation by state and local jurisdictions with ICE is how the particular state or local jurisdiction handles immigration detainer requests issued by ICE, although Section 1373 does not specifically address restrictions by state or local entities on cooperation with ICE regarding detainers.⁵ A legal determination has been made by the Department of Homeland Security (DHS) that civil immigration detainers are voluntary requests.⁶ The ICE officials with whom we spoke stated that since the detainers are considered to be voluntary, they are not enforceable against jurisdictions which do not comply, and these ICE officials stated further that state and local jurisdictions throughout the United States vary significantly on how they handle such requests.

In our selected sample of state and local jurisdictions, as detailed in the Appendix, each of the 10 jurisdictions had laws or policies directly related to how those jurisdictions could respond to ICE detainers, and each limited in some way the authority of the jurisdiction to take action with regard to ICE detainers. We found that while some honor a civil immigration detainer request when the subject meets certain conditions, such as prior felony

104hrpt469-pt1.pdf (accessed May 24, 2016).

⁵ A civil immigration detainer request serves to advise a law enforcement agency that ICE seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. 8 C.F.R. § 287.7(a)

⁶ Several courts have reached a similar conclusion about the voluntary nature of ICE detainers. See *Galarza v. Szalczyk et al*, 745 F.3d 634 (3rd Cir. 2014) (noting that all Courts of Appeals to have considered the character of ICE detainers refer to them as “requests,” and citing numerous such decisions); and *Miranda-Olivares v. Clackamas County*, 2014 1414305 (D. Or. 2014).

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convictions, gang membership, or presence on a terrorist watch list, others will not honor a civil immigration detainer request, standing alone, under any circumstances. ICE officials told us that because the requests are voluntary, local officials may also consider budgetary and other considerations that would otherwise be moot if cooperation was required under federal law.

We also found that the laws and policies in several of the 10 jurisdictions go beyond regulating responses to ICE detainers and also address, in some way, the sharing of information with federal immigration authorities. For example, a local ordinance for the City of Chicago, which is entitled “Disclosing Information Prohibited,” states as follows:

Except as otherwise provided under applicable federal law, no agent or agency shall disclose information regarding the citizenship or immigration status of any person unless required to do so by legal process or such disclosure has been authorized in writing by the individual to whom such information pertains, or if such individual is a minor or is otherwise not legally competent, by such individual’s parent or guardian. *Chicago Code, Disclosing Information Prohibited § 2-173-030.*

The ordinance’s prohibition on a city employee providing immigration status information “unless required to do so by legal process” is inconsistent with the plain language of Section 1373 prohibiting a local government from restricting a local official from sending immigration status information to ICE. The “except as otherwise provided under applicable federal law” provision, often referred to as a “savings clause,” creates a potential ambiguity as to the proper construction of the Chicago ordinance and others like it because to be effective, this “savings clause” would render the ordinance null and void whenever ICE officials requested immigration status information from city employees. Given that the very purpose of the Chicago ordinance, based on our review of its history, was to restrict and largely prohibit the cooperation of city employees with ICE, we have significant questions regarding any actual effect of this “savings clause” and whether city officials consider the ordinance to be null and void in that circumstance.⁷

⁷ The New Orleans Police Department’s (NOPD) policy dated February 28, 2016, and entitled “Immigration Status” also seemingly has a “savings clause” provision, but its language likewise presents concerns. In your April 8 e-mail to me, you attached questions sent to the Attorney General by Sen. Vitter regarding whether the NOPD’s recent immigration policy was in compliance with Section 1373. Paragraph 12 of the NOPD policy is labeled “Disclosing Immigration Information” and provides that “Members shall not disclose information regarding the citizenship or immigration status of any person unless:

- (a) Required to do so by federal or state law; or
- (b) Such disclosure has been authorized in writing by the person who is the subject of the request for information; or

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In addition, whatever the technical implication of the clause generally referencing federal law, we have concerns that unless city employees were made explicitly aware that the local ordinance did not limit their legal authority to respond to such ICE requests, employees likely would be unaware of their legal authority to act inconsistently with the local ordinance. We noted that in connection with the introduction of this local ordinance the Mayor of Chicago stated, “[w]e’re not going to turn people over to ICE and we’re not going to check their immigration status, we’ll check for criminal background, but not for immigration status.”⁸ We believe this stated reason for the ordinance, and its message to city employees, has the potential to affect the understanding of

(c) The person is a minor or otherwise not legally competent, and disclosure is authorized in writing by the person's parent or guardian.

Sub-section (a) applies only when an NOPD employee has an affirmative obligation, i.e., is “required” by federal law, to disclose information regarding citizenship or immigration status. Section 1373, however, does not “require” the disclosure of immigration status information; rather, it provides that state and local entities shall not prohibit or restrict the sharing of immigration status information with ICE. Accordingly, in our view, sub-section (a) of the NOPD policy would not serve as a “savings clause” in addressing Section 1373. Thus, unless the understanding of NOPD’s employees is that they are not prohibited or restricted from sharing immigration status information with ICE, the policy would be inconsistent with Section 1373. We did not consider selecting the City of New Orleans to evaluate in this memorandum because it was not listed as a grant recipient on the spreadsheet you provided.

Similarly, the City and County of San Francisco, CA administrative code, Section 12H.2, is entitled “Immigration Status” and provides, “No department, agency, commission, officer or employee of the City and County of San Francisco shall use any City funds or resources to assist in the enforcement of federal immigration law or to gather or disseminate information regarding the immigration status of individuals in the City and County of San Francisco unless such assistance is required by federal or State statute, regulation or court decision.” As with the NOPD policy, a “savings clause” that only applies when a city employee is “required” by federal law to take some action would not seem to be effective in precluding the law from running afoul of Section 1373, which “requires” nothing, but instead mandates that state and local entities not prohibit, or in any way restrict, the sharing of immigration status information with ICE. Thus, as with the NOPD policy, unless the understanding of San Francisco employees is that they are permitted to share immigration status information with ICE, the policy would be inconsistent with Section 1373. According to news reports, last week the San Francisco Board of Supervisors reaffirmed its policy restricting local law enforcement’s authority to assist ICE, except in limited circumstances. Curtis Skinner, “San Francisco Lawmakers Vote to Uphold Sanctuary City Policy,” *Reuters*, May 24, 2016, <http://www.reuters.com/article/us-sanfrancisco-immigration-idUSKCN0YG065> (accessed May 26, 2016). We did not consider selecting the City and County of San Francisco to evaluate in this memorandum because it was not listed as a grant recipient on the spreadsheet you provided.

⁸ Kristen Mack, “Emanuel Proposes Putting Nondetainer Policy On Books,” *Chicago Tribune*, July 11, 2012, <http://articles.chicagotribune.com/2012-07-11/news/ct-met-rahm-emanuel-immigrants-0711-2012> (accessed May 24, 2017).

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local officials regarding the performance of their duties, including the applicability of any restrictions on their interactions and cooperation with ICE.

Similarly, we have concerns that other local laws and policies, that by their terms apply to the handling of ICE detainer requests, may have a broader practical impact on the level of cooperation afforded to ICE by these jurisdictions and may, therefore, be inconsistent with at least the intent of Section 1373.⁹ Specifically, local policies and ordinances that purport to be focused on civil immigration detainer requests, yet do not explicitly restrict the sharing of immigration status information with ICE, may nevertheless be affecting ICE's interactions with the local officials regarding ICE immigration status requests. We identified several jurisdictions with policies and ordinances that raised such concerns, including Cook County, Orleans Parish, Philadelphia, and New York City.

For example, the Cook County, Illinois, detainer policy states, "unless ICE agents have a criminal warrant, or County officials have a legitimate law enforcement purpose that is not related to the enforcement of immigration laws, ICE agents shall not be given access to individuals or allowed to use County facilities for investigative interviews or other purposes, and County personnel shall not expend their time responding to ICE inquiries or communicating with ICE regarding individuals' incarceration status or release dates while on duty." Although this policy falls under the heading "Section 46-37 – Policy for responding to ICE Detainers" and does not explicitly proscribe sharing immigration status information with ICE, the portion of the prohibition relating to personnel expending their time responding to ICE inquiries could easily be read by Cook County officials and officers as more broadly prohibiting them from expending time responding to ICE requests relating to immigration status. This possibility was corroborated by ICE officials who told us that Cook County officials "won't even talk to us [ICE]."

In Orleans Parish, Louisiana, Orleans Parish Sheriff's Office (OPSO) policy on "ICE Procedures" states that, "OPSO officials shall not initiate any immigration status investigation into individuals in their custody or affirmatively provide information on an inmate's release date or address to ICE." While the latter limitation applies by its terms to information related to release date or address, taken in conjunction with the prior ban on initiating immigration status investigations, the policy raises a similar concern as to the

⁹ A reasonable reading of Section 1373, based on its "in any way restrict" language, would be that it applies not only to the situation where a local law or policy specifically prohibits or restricts an employee from providing citizenship or immigration status information to ICE, but also where the actions of local officials result in prohibitions or restrictions on employees providing such information to ICE.

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limits it places on the authority of OPSO officials to share information on that topic with ICE.

In Philadelphia, Pennsylvania, the Mayor, on January 4, 2016, issued an executive order that states, in part, that notice of the pending release of the subject of an ICE immigration detainer shall not be provided to ICE “unless such person is being released after conviction for a first or second degree felony involving violence and the detainer is supported by a judicial warrant.” According to news reports, the purpose of the order was to bar almost all cooperation between city law enforcement and ICE.¹⁰

In New York City (NYC), a law enacted in November 2014 restricts NYC Department of Corrections personnel from communicating with ICE regarding an inmate’s release date, incarceration status, or upcoming court dates unless the inmate is the subject of a detainer request supported by a judicial warrant, in which case personnel may honor the request. The law resulted in ICE closing its office on Riker’s Island and ceasing operations on any other NYC Department of Corrections property.

Although the Cook County, Orleans Parish, Philadelphia, and New York City local policies and ordinances purport to be focused on civil immigration detainer requests, and none explicitly restricts the sharing of immigration status with ICE, based on our discussions with ICE officials about the impact these laws and policies were having on their ability to interact with local officials, as well as the information we have reviewed to date, we believe these policies and others like them may be causing local officials to believe and apply the policies in a manner that prohibits or restricts cooperation with ICE in all respects.¹¹ That, of course, would be inconsistent with and prohibited by Section 1373.¹²

¹⁰ Michael Matza, “Kenney restores ‘sanctuary city’ status,” *Philadelphia Inquirer*, January 6, 2016, http://articles.philly.com/2016-01-06/news/69541175_1_south-philadelphia-secure-communities-ice (accessed May 24, 2016) and “Kenney rejects U.S. request to reverse ‘sanctuary city’ status,” *Philadelphia Inquirer*, May 4, 2016, http://www.philly.com/philly/news/20160504_Kenney_rejects_Homeland_Security_s_request_to_reverse_Philadelphia_s_sanctuary_city_status.html (accessed May 24, 2016)

¹¹ For example, the Newark, NJ police department issued a “Detainer Policy” instructing all police personnel that “There shall be no expenditure of any departmental resources or effort by on-duty personnel to comply with an ICE detainer request.” More generally, Taos County, NM detention center policy states: “There being no legal authority upon which the United States may compel expenditure of country resources to cooperate and enforce its immigration laws, there shall be no expenditure of any county resources or effort by on-duty staff for this purpose except as expressly provided herein.”

¹² The ICE officials we spoke with noted that no one at DHS or ICE has made a formal legal determination whether certain state and local laws or policies violate Section 1373, and we are unaware of any Department of Justice decision in that regard. These ICE officials were

~~LAW ENFORCEMENT SENSITIVE~~**Effect on Department of Justice 2016 Grant Funding**

We note that, in March 2016, OJP notified SCAAP and JAG applicants about the requirement to comply with Section 1373, and advised them that if OJP receives information that an applicant may be in violation of Section 1373 (or any other applicable federal law) that applicant may be referred to the OIG for investigation. The notification went on to state that if the applicant is found to be in violation of an applicable federal law by the OIG, the applicant may be subject to criminal and civil penalties, in addition to relevant OJP programmatic penalties, including cancellation of payments, return of funds, participation in the program during the period of ineligibility, or suspension and debarment.

In light of the Department's notification to grant applicants, and the information we are providing in this memorandum, to the extent the Department's focus is on ensuring that grant applicants comply with Section 1373, based on our work to date we believe there are several steps that the Department can consider taking:

- Provide clear guidance to grant recipients regarding whether Section 1373 is an "applicable federal law" that recipients would be expected to comply with in order to satisfy relevant grant rules and regulations;¹³
- Require grant applicants to provide certifications specifying the applicants' compliance with Section 1373, along with documentation sufficient to support the certification.
- Consult with the Department's law enforcement counterparts at ICE and other agencies, prior to a grant award, to determine whether, in their view, the applicants are prohibiting or restricting employees from sharing with ICE information regarding the citizenship or immigration status of individuals, and are therefore not in compliance with Section 1373.
- Ensure that grant recipients clearly communicate to their personnel the provisions of Section 1373, including those

also unaware of any legal action taken by the federal government against a state or local jurisdiction to require cooperation.

¹³ We note that AAG Kadzik's letter to Chairman Culberson dated March 18, 2016, states that Section 1373 "could" be an applicable federal law that with which grant recipients must comply in order to receive grant funds, not that it is, in fact, an applicable federal law.

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employees cannot be prohibited or restricted from sending citizenship or immigration status information to ICE.

These steps would not only provide the Department with assurances regarding compliance with Section 1373 prior to a grant award, but also would be helpful to the OIG if the Department were to later refer to the OIG for investigation a potential Section 1373 violation (as the Department recently warned grant applicants it might do in the future).

We would be pleased to meet with you and Department's leadership to discuss any additional audit or investigative efforts by the OIG that would further assist the Department with regard to its concerns regarding Section 1373 compliance by state and local jurisdictions. Such a meeting would allow us to better understand what information the Department's management would find useful so that the OIG could assess any request and consult with our counterparts at the Department of Homeland Security Office of the Inspector General, which would necessarily need to be involved in any efforts to evaluate the specific effect of local policies and ordinances on ICE's interactions with those jurisdictions and their compliance with Section 1373.

Thank you for referring this matter to the OIG. We look forward to hearing from you regarding a possible meeting.

LAW ENFORCEMENT SENSITIVE**APPENDIX****OIG Approach**

At the outset, we determined it would be impractical for the OIG to promptly assess compliance with Section 1373 by the more than 140 jurisdictions that were listed on the spreadsheet accompanying your referral. Accordingly, we judgmentally selected a sample of state and local jurisdictions from the information you provided for further review. We started by comparing the specific jurisdictions cited in the CIS report you provided to us with the jurisdictions identified by ICE in its draft *Declined Detainer Outcome Report*, dated December 2, 2014.¹⁴ Additionally, we compared these lists with a draft report prepared by ICE that identified 155 jurisdictions and stated that “all jurisdictions on this list contain policies that limit or restrict cooperation with ICE and, as of Q3 FY 2015, have declined detainers.”¹⁵ From this narrowed list of jurisdictions, we determined, using the spreadsheet that you provided with your e-mail, which jurisdictions had active OJP and OVW awards as of March 17, 2016, the date through which you provided award information, and received fiscal year (FY) 2015 State Criminal Alien Assistance Program (SCAAP) payments. Lastly, we considered, based on the spreadsheet, the total dollars awarded and the number of active grants and payments made as of March 17, 2016, and sought to ensure that our list contained a mix of state and local jurisdictions. Using this process we selected the 10 jurisdictions listed in the following table for further review. The dollar figure represents 63 percent of the active OJP awards as of March 17, 2016, and FY 2015 SCAAP payments made by the Department.

Jurisdiction	Total Award Amounts Reported by OJP
State of Connecticut	\$69,305,444
State of California	\$132,409,635
Orleans Parish, Louisiana	\$4,737,964
New York, New York	\$60,091,942
Philadelphia, Pennsylvania	\$16,505,312
Cook County, Illinois	\$6,018,544
City of Chicago, Illinois	\$28,523,222
Miami-Dade County, Florida	\$10,778,815
Milwaukee, Wisconsin	\$7,539,572
Clark County, Nevada	\$6,257,951
TOTAL	\$342,168,401

Source: OJP

¹⁴ At the time of our sample selection we only had a draft version of this report. We later obtained an updated copy which was provided to Congress on April 16, 2016. Although it was provided to Congress, this report was also marked “Draft.” The updated draft version of the report did not require us to alter our sample selection.

¹⁵ This version of the declined detainer report covered declined detainers from January 1, 2014 through June 30, 2015.

~~LAW ENFORCEMENT SENSITIVE~~

The following table lists each of the jurisdictions selected for review by the OIG and the key provisions of its laws or policies related to ICE civil immigration detainer requests and the sharing of certain information with ICE, if applicable.

Jurisdiction	Provisions of Key Local Laws or Policies Related to Civil Immigration Detainer Requests or Information Sharing with ICE ¹⁶
State of Connecticut The statement of Connecticut law has been corrected from a prior version of this memorandum. This correction does not affect the analysis or conclusions of this memorandum. We regret the error, and have notified those to whom we sent the memorandum of the correction.	<i>Public Act No. 13-155, An Act Concerning Civil Immigration Detainers ...</i> (b) No law enforcement officer who receives a civil immigration detainer with respect to an individual who is in the custody of the law enforcement officer shall detain such individual pursuant to such civil immigration detainer unless the law enforcement official determines that the individual: (1) Has been convicted of a felony; (2) Is subject to pending criminal charges in this state where bond has not been posted; (3) Has an outstanding arrest warrant in this state; (4) Is identified as a known gang member in the database of the National Crime Information Center or any similar database or is designated as a Security Risk Group member or a Security Risk Group Safety Threat member by the Department of Correction; (5) Is identified as a possible match in the federal Terrorist Screening Database or similar database; (6) Is subject to a final order of deportation or removal issued by a federal immigration authority; or (7) Presents an unacceptable risk to public safety, as determined by the law enforcement officer. (c) Upon determination by the law enforcement officer that such individual is to be detained or released, the law enforcement officer shall immediately notify United States Immigration and Customs Enforcement. If the individual is to be detained, the law enforcement officer shall inform United States Immigration and Customs Enforcement that the individual will be held for a maximum of forty-eight hours, excluding Saturdays, Sundays and federal holidays. If United States Immigration and Customs Enforcement fails to take custody of the individual within such forty-eight-hour period, the law enforcement officer shall release the individual. In no event shall an individual be detained for longer than such forty-eight-hour period solely on the basis of a civil immigration detainer. Approved June 25, 2013

¹⁶ Several specific citations to various state and local laws and policies were removed for brevity.

~~LAW ENFORCEMENT SENSITIVE~~

Jurisdiction	Provisions of Key Local Laws or Policies Related to Civil Immigration Detainer Requests or Information Sharing with ICE ¹⁶
State of California	<i>An act to add Chapter 17.1 (commencing with Section 7282) to Division 7 of Title I of the Government Code, relating to state government....</i> 7282.5. (a) A law enforcement official shall have discretion to cooperate with federal immigration officials by detaining an individual on the basis of an immigration hold after that individual becomes eligible for release from custody only if the continued detention of the individual on the basis of the immigration hold would not violate any federal, state, or local law, or any local policy, and only under any of the following circumstances ... Effective Date: October 5, 2013.
Orleans Parish, Louisiana	The Orleans Parish Sheriff's Office (OPSO) shall decline all voluntary ICE detainer requests unless the individual's charge is for one or more of the following offenses: First Degree Murder; Second Degree Murder; Aggravated Rape; Aggravated Kidnapping; Treason; or Armed Robbery with Use of a Firearm. If a court later dismisses or reduces the individual's charge such that the individual is no longer charged with one of the above offenses or the court recommends declining the ICE hold request, OPSO will decline the ICE hold request on that individual. Orleans Parish Sheriff's Office Index No. 501.15, Updated June 21, 2013.
New York, New York	<u>Title:</u> <i>A Local Law to amend the administrative code of the city of New York, in relation to persons not to be detained by the department of correction.</i> <u>Bill Summary:</u> ... The DOC would only be permitted to honor an immigration detainer if it was accompanied by a warrant from a federal judge, and also only if that person had not been convicted of a "violent or serious" crime during the last five years or was listed on a terrorist database. Further, the bill would prohibit DOC from allowing ICE to maintain an office on Rikers Island or any other DOC property and would restrict DOC personnel from communicating with ICE regarding an inmate's release date, incarceration status, or court dates, unless the inmate is the subject of a detainer request that DOC may honor pursuant to the law. Enacted Date: November 14, 2014, Law No. 2014/058.

~~LAW ENFORCEMENT SENSITIVE~~

Jurisdiction	Provisions of Key Local Laws or Policies Related to Civil Immigration Detainer Requests or Information Sharing with ICE ¹⁶
Philadelphia, Pennsylvania	<i>Executive Order No. 5-16 - Policy Regarding U.S. Immigration and Customs Enforcement Agency Detainer Requests...</i> NOW, THEREFORE, I, JAMES F. KENNEY, Mayor of the City of Philadelphia, by the powers vested in me by the Philadelphia Home Rule Charter, do hereby order as follows: SECTION 1. No person in the custody of the City who otherwise would be released from custody shall be detained pursuant to an ICE civil immigration detainer request pursuant to 8 C.F.R. § 287.7, nor shall notice of his or her pending release be provided, unless such person is being released after conviction for a first or second degree felony involving violence and the detainer is supported by a judicial warrant. Signed by Philadelphia Mayor, January 4, 2016.
Cook County, Illinois	<i>Sec. 46-37- Policy for responding to ICE detainees ...</i> (b) Unless ICE agents have a criminal warrant, or County officials have a legitimate law enforcement purpose that is not related to the enforcement of immigration laws, ICE agents shall not be given access to individuals or allowed to use County facilities for investigative interviews or other purposes, and County personnel shall not expend their time responding to ICE inquiries or communicating with ICE regarding individuals' incarceration status or release dates while on duty. Approved and adopted by the President of the Cook County Board of Commissioners on September 7, 2011.
City of Chicago, Illinois	<i>Civil Immigration Enforcement Actions – Federal Responsibility §2-173-042 ...</i> (b)(1) Unless an agent or agency is acting pursuant to a legitimate law enforcement purpose that is unrelated to the enforcement of a civil immigration law, no agency or agent shall: (A) permit ICE agents access to a person being detained by, or in the custody of, the agency or agent; (B) permit ICE agents use of agency facilities for investigative interviews or other investigative purpose; or (C) while on duty , expend their time responding to

~~LAW ENFORCEMENT SENSITIVE~~

Jurisdiction	Provisions of Key Local Laws or Policies Related to Civil Immigration Detainer Requests or Information Sharing with ICE ¹⁶
	ICE inquiries or communicating with ICE regarding a person's custody status or release date ... <i>Disclosing Information Prohibited § 2-173-030</i> Except as otherwise provided under applicable federal law, no agent or agency shall disclose information regarding the citizenship or immigration status of any person unless required to do so by legal process or such disclosure has been authorized in writing by the individual to whom such information pertains, or if such individual is a minor or is otherwise not legally competent, by such individual's parent or guardian. Updated November 8, 2012.
Miami-Dade County, Florida	<i>Resolution No. R-1008-13: Resolution directing the mayor or mayor's designee to implement policy on responding to detainer requests from the United States Department of Homeland Security Immigration and Customs Enforcement</i> NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that the Mayor or Mayor's designee is directed to implement a policy whereby Miami-Dade Corrections and Rehabilitations Department may, in its discretion, honor detainer requests issued by United States Immigration and Customs Enforcement only if the federal government agrees in writing to reimburse Miami-Dade County for any and all costs relating to compliance with such detainer requests and the inmate that is the subject of such a request has a previous conviction for a Forcible Felony, as defined in Florida Statute section 776.08, or the inmate that is the subject of such a request has, at the time the Miami-Dade Corrections and Rehabilitations Department receives the detainer request, a pending charge of a non-bondable offense, as provided by Article I, Section 14 of the Florida Constitution, regardless of whether bond is eventually granted. Resolution passed and adopted by Miami-Dade Mayor, December 3, 2013.
Milwaukee County, Wisconsin	Amended Resolution - File No. 12-135 BE IT RESOLVED, that the Milwaukee County Board of Supervisors hereby adopts the following policy with regard to detainer requests from the U.S. Department of

~~LAW ENFORCEMENT SENSITIVE~~

Jurisdiction	Provisions of Key Local Laws or Policies Related to Civil Immigration Detainer Requests or Information Sharing with ICE ¹⁶
	Homeland Security - Immigrations and Customs Enforcement: 1. Immigration detainer requests from Immigrations and Customs Enforcement shall be honored only if the subject of the request: a) Has been convicted of at least one felony or two non-traffic misdemeanor offenses b) Has been convicted or charged with any domestic violence offense or any violation of a protective order c) Has been convicted or charged with intoxicated use of a vehicle d) Is a defendant in a pending criminal case, has an outstanding criminal warrant, or is an identified gang member e) Is a possible match on the US terrorist watch list Enacted: June 4, 2012
Clark County, Nevada	“Recent court decisions have raised Constitutional concerns regarding detention by local law enforcement agencies based solely on an immigration detainer request from the Immigration and Customs Enforcement (ICE). Until this areas of the law is further clarified by the courts, effective immediately the Las Vegas Metropolitan Police Department will no longer honor immigration detainer requests unless one of the following conditions are met: 1. Judicial determination of Probable Cause for that detainer; or 2. Warrant from a judicial officer. ... The Las Vegas Metropolitan Police Department continues to work with our federal law enforcement partners and will continue to provide professional services to the Las Vegas community regardless of their immigration status in United States. Via Press Release on: July 14, 2014.

EXHIBIT B

United States Senate
WASHINGTON, DC 20510

February 27, 2017

The Honorable Tom Price
Secretary
Department of Health and Human Services
200 Independence Ave., SW
Washington, D.C. 20201

Dear Secretary Price:

On January 25, 2017, President Trump issued an Executive Order directing Administration officials to identify “sanctuary jurisdictions” and cut off all federal grants to those jurisdictions.¹ Despite lawsuits challenging the legality of the Order, the Trump Administration appears to be accelerating its efforts to put the Order into effect. Last week, Department of Homeland Security (DHS) Secretary John Kelly issued a memorandum instructing his agency on how to implement the Order,² and the White House Press Secretary said that the Administration would “do everything we can to respect taxpayers and ensure that your states follow the law.”³ Because the Order is unconstitutional and the Administration is not pausing to give the courts time to weigh in, we write to better understand your views and your intentions regarding immediate enforcement against Massachusetts.

Massachusetts is a huge contributor to the federal treasury. We are among the nation’s top three states in terms of per capita federal taxes paid, and Massachusetts is also one of only eleven states whose residents actually subsidize the federal government by paying more in federal taxes than we get back.⁴ Federal funding that actually returns to Massachusetts is vitally important. For example, federal support accounts for nearly \$11 billion of our state’s annual budget.⁵ These funds go to support health insurance for children, affordable housing for

¹ “Executive Order: Enhancing Public Safety in the Interior of the United States” (Jan. 25, 2017), at <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>.

² Memorandum from DHS Secretary John Kelly on Enforcement of the Immigration Laws to Serve the National Interest (Feb. 20, 2017), at https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf.

³ White House Press Briefing, Feb. 23, 2017.

⁴ Dave Gilson, *Unlike Trump, California Pays Its Taxes*, Mother Jones (Feb. 6, 2017), at <http://www.motherjones.com/politics/2017/02/california-federal-taxes-spending-trump>

⁵ Massachusetts Budget & Policy Center, *Partnership in Peril: Federal Funding at Risk for State Programs Relied Upon by Massachusetts Residents* (Feb. 16, 2017), at http://www.massbudget.org/report_window.php?loc=Partnership-in-Peril-Federal-Funding-at-Risk.html.

families, nursing care for veterans, and countless other critical programs.⁶ By its terms, the President's Executive Order threatens that vital support.

Section 9(a) of the Order directs the Attorney General and DHS Secretary to exercise "discretion" to "ensure that jurisdictions that willfully refuse to comply with 8 U.S.C. [§] 1373 (sanctuary jurisdictions) are not eligible to receive federal grants, except as deemed necessary for enforcement purposes by the Attorney General or the Secretary."⁷ In turn, 8 U.S.C. § 1373 states that "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." The Order also gives the DHS Secretary "the authority to designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction."⁸ That sweeping provision gives the DHS Secretary unilateral authority to arbitrarily jeopardize federal grants to numerous jurisdictions, despite the clear unconstitutionality of such an action.

In recent days, states and localities have begun to grapple with how they will respond to this directive. Some have already begun changing their own laws to avoid risking the loss of vital funding.⁹ Despite these threats, however, local leaders in Massachusetts have indicated that they do not intend to be browbeaten into changing their own laws to suit the whims of the President on matters over which he has no legal authority or control.¹⁰ Several jurisdictions, including the Massachusetts cities of Chelsea and Lawrence,¹¹ have sued the Administration to prevent the implementation of this unconstitutional directive.

Evidently, the purpose of this Order is to punish local jurisdictions that make local law enforcement decisions that the President disagrees with. The President himself has described the Order as a "weapon" against certain cities,¹² while the White House Press Secretary said that the Order "directs the [DHS] secretary to look at . . . funding streams that are going to these cities . . . and figure out how we can defund those streams."¹³

The President has no constitutional authority to direct your agency to withhold grants on these arbitrary terms. First, as the Supreme Court reiterated in its seminal case on the Affordable Care Act in 2012, it is unconstitutional to use the threat of cutting off significant, pre-existing

⁶ Id.

⁷ "Executive Order: Enhancing Public Safety in the Interior of the United States" (Jan. 25, 2017), § 9(a), at <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>.

⁸ Id. § 9(a).

⁹ Alan Gomez, *First 'Sanctuary City' caves to Trump demands*, USA Today (Jan. 26, 2017), at <http://www.usatoday.com/story/news/2017/01/26/first-sanctuary-city-caves-donald-trump-demands/97111048/>.

¹⁰ See, e.g., Meghan E. Irons & Cristela Guerra, *Walsh rails against Trump, calls immigration actions 'direct attack'*, Boston Globe (Jan. 25, 2017), at <https://www.bostonglobe.com/metro/2017/01/25/walsh-says-boston-will-use-city-hall-itself-last-resort/UtZrLHENkQvEC1fTjgs7bP/story.html>.

¹¹ *City of Chelsea & City of Lawrence v. Trump* (D. Mass. 2017), at <http://lawyerscom.org/wp-content/uploads/2017/02/Sanctuary-Cities-Complaint-FINAL-FILED.pdf>.

¹² Fox News, O'Reilly Factor (Feb. 5, 2017).

¹³ Daily Press Briefing (Jan. 25, 2017).

funding to “coerce” a state into adopting a federal policy directive.¹⁴ Where a President openly brags of his desire to use the loss of unrelated funding as a “weapon” against states and localities, the intent to exert such unconstitutional coercion is obvious.

Second, the Supreme Court has long established that conditions on federal grants must be related “to the federal interest in particular national projects or programs” funded by the grants.¹⁵ The Order contains no such limitation, instead referring explicitly to “all Federal grant money that currently is received by any sanctuary jurisdiction.”¹⁶ The Order is unconstitutional because it would condition federal grants on compliance with certain federal immigration laws even when those grants are completely unrelated to those areas.

Third, the Supreme Court has also long established that “if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously. By insisting that Congress speak with a clear voice, we enable the States to exercise their choice knowingly, cognizant of the consequences of their participation.”¹⁷ Under this precedent, the Order cannot constitutionally be applied to any grant programs at your agency unless Congress – not the President – has expressly and unambiguously conditioned grants under those programs on compliance in the immigration-related areas discussed in the Order.¹⁸ To the best of our knowledge, few, if any, such conditional grants exist.

Finally, the Order is unconstitutional because it ties federal funds to compliance with 8 U.S.C. § 1373 – which is itself an unconstitutional provision. The Supreme Court has ruled that the federal government cannot “commandeer” state officials by directing them to enforce federal law.¹⁹ Consistent with the federalism principles that animate our system of government and our Constitution, this anti-commandeering principle aims to maintain the “[p]reservation of the States as independent and autonomous political entities.”²⁰ Section 1373 prohibits states and localities from telling their own government employees how to do their jobs – one of the most basic aspects of state and local sovereignty – and is therefore unconstitutional.²¹

¹⁴ *National Federation of Independent Businesses v. Sebelius*, 567 U.S. __ (2012).

¹⁵ *South Dakota v. Dole*, 483 U.S. 203, 212 (1987) (internal quotations omitted).

¹⁶ “Executive Order: Enhancing Public Safety in the Interior of the United States” (Jan. 25, 2017), § 9(c), at <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>.

¹⁷ *Pennhurst State Sc. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981) (internal citations omitted).

¹⁸ See, e.g., Erwin Chemerinsky, Annie Lai, and Seth Davis, *Trump Can’t Force “Sanctuary Cities” to Enforce His Deportation Plans*, Washington Post (Dec. 22, 2016), at https://www.washingtonpost.com/opinions/trump-cant-force-sanctuary-cities-to-enforce-his-deportation-plans/2016/12/22/421174d4-c7a4-11e6-85b5-76616a33048d_story.html?utm_term=.91e9fbb7a0ca; Ilya Somin, *Why Trump’s Executive Order on Sanctuary Cities is Unconstitutional*, Washington Post (Jan. 26, 2017), at https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/01/26/constitutional-problems-with-trumps-executive-order-on-sanctuary-cities/?utm_term=.b2d635bbe605.

¹⁹ *Printz v. United States*, 521 U.S. 898 (1997).

²⁰ *Id.* at 919.

²¹ See, e.g., Ilya Somin, *Why Trump’s Executive Order on Sanctuary Cities is Unconstitutional*, Washington Post (Jan. 26, 2017), at https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/01/26/constitutional-problems-with-trumps-executive-order-on-sanctuary-cities/?utm_term=.b2d635bbe605 (“The anti-commandeering issue raised by Section 1373 has not yet been directly addressed by the Supreme Court (though the law was upheld in a badly flawed lower court decision back in 1999). We cannot be certain what will happen when and if the

If the Administration continues to press ahead with this blatantly unconstitutional order, it will lose in court. In the meantime, however, chaos and confusion will reign, as funding for countless vital programs in Massachusetts and other jurisdictions that refuse to be bullied is thrown into question. Every agency head takes an oath to “support and defend the Constitution of the United States against all enemies, foreign and domestic” and “bear true faith and allegiance to the same.”²² It is your responsibility to act in accordance with that oath.

You and your counsel are no doubt familiar with each of these Constitutional precepts. It is our responsibility to do what we can to make certain that the Constitutional protections of the people in our home state are protected. Therefore, we ask that you answer the following questions:

1. Do you plan to support the President’s January 25, 2017 Executive Order?
2. Section 9(a) of the Order authorizes the Attorney General and/or the DHS Secretary to cut off any federal grants disbursed by your agency to a jurisdiction if that jurisdiction is found to be a “sanctuary jurisdiction” under the Order. Please indicate which grants administered by your agency you believe are covered by this order, and your basis for determining that Section 9(a) applies to those grants.
3. Do any of the laws that direct your agency to provide federal grants to state and local jurisdictions explicitly condition those grants on compliance with 8 U.S.C. § 1373? If so, please indicate which grants and provide the relevant corroborating statutory citations. If not, please provide the constitutional rationale for denying such grants disbursed by your agency to any jurisdiction not in compliance with 8 U.S.C. § 1373.
4. Do any of the laws that direct your agency to provide federal grants to state and local jurisdictions expressly condition those grants on whether or not such jurisdictions have been designated as a “sanctuary jurisdiction” under the Order? If so, please indicate which grants and provide the relevant corroborating statutory citations. If not, please provide the constitutional rationale for denying such grants disbursed by your agency to any jurisdiction designated as a “sanctuary jurisdiction” under the Order.
5. If you plan to deny access to pre-existing grants and grant programs disbursed by your agency under the Order, please explain how such action is not unconstitutionally coercive by the standards established in *National Federation of Independent Businesses v. Sebelius*, 567 U.S. ___ (2012), particularly in light of the President’s explicit direction that the Order is intended to be used as a “weapon” against local jurisdictions that do not affirmatively enforce his federal policy preferences.

justices take up this issue. But the principles underlying the Court’s anti-commandeering cases should lead it to strike down this law.”).

²² 5 U.S.C. § 3331.

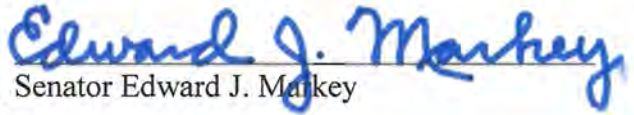
6. If the Attorney General and/or the DHS Secretary determine under Section 9(a) of the Executive Order that certain “sanctuary jurisdictions” are ineligible to receive federal grants, will you cut off or otherwise approve cutting off of grants to those jurisdictions? If not, please indicate what actions you intend to take to ensure that those jurisdictions still receive those grants.

Given the importance of these issues, we respectfully request that you respond to these questions as soon as possible.

Sincerely,



Senator Elizabeth Warren



Senator Edward J. Markey

EXHIBIT C

Memorandum

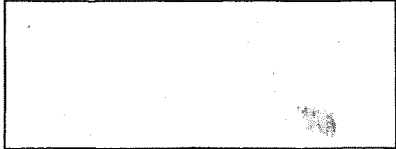


Date: January 26, 2017

To: Daniel Junior, Interim Director
Corrections and Rehabilitation Department

From: Carlos A. Gimenez
Mayor 

Subject: Executive Order: Enhancing Public Safety in the Interior of the United States



Yesterday, January 25, 2017, President Donald J. Trump issued Executive Order: Enhancing Public Safety in the Interior of the United States.

In light of the provisions of the Executive Order, I direct you and your staff to honor all immigration detainer requests received from the Department of Homeland Security.

Miami-Dade County complies with federal law and intends to fully cooperate with the federal government. I will partner with the Board of County Commissioners to address any issues necessary to achieve this end.

c: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners
Honorable Harvey Ruvin, Clerk of the Court
Abigail Price-Williams, County Attorney
Geri Bonzon-Keenan, First Assistant County Attorney
Office of the Mayor Senior Staff
Christopher Agrippa, Clerk of the Board

EXHIBIT D

Kamala D. Harris, Attorney General

California Department of Justice CALIFORNIA JUSTICE INFORMATION SERVICES DIVISION Larry Wallace, Director, Division of Law Enforcement		INFORMATION BULLETIN	
<i>Subject:</i> Responsibilities of Local Law Enforcement Agencies under Secure Communities	No. 2012-DLE-01	<i>Contact for information:</i>	
	<i>Date:</i> 12-4-12	Larry Wallace, Director, Division of Law Enforcement 916-319-8200	

TO: Executives of State and Local Law Enforcement Agencies

The California Department of Justice (CalDOJ) and the Office of the Attorney General have received inquiries about state and local law enforcement responsibilities under Secure Communities, a federal program administered by the Immigration and Customs Enforcement agency (ICE) of the United States Department of Homeland Security (DHS). These inquiries have included whether local law enforcement must fulfill a federal detainer request even if that agency determines that fulfilling the request would not be consistent with public-safety priorities or the best use of limited local law enforcement resources; and whether a local law enforcement agency may adopt guidelines for fulfilling federal detainer requests. To provide needed clarity on these matters, this bulletin:

- Provides information on the purpose and operation of the Secure Communities program;
- Outlines the responsibilities of state and local law enforcement agencies regarding custody of unlawfully present immigrants subject to federal detainer requests;
- Clarifies that individual federal detainers are requests, not commands, to local law enforcement agencies, who make their own determination of whether to use their resources to hold suspected unlawfully present immigrants; and
- Determines that the Secure Communities program does not prohibit local law enforcement agencies from adopting a protocol governing the circumstances under which they will fulfill federal detainer requests.

What is Secure Communities?

DHS implemented the Secure Communities program as a way to identify, detain, and remove from the United States unlawfully present immigrants who have been convicted of a crime and those who pose a threat to public safety. The program does not require California law enforcement agencies to determine an individual's immigration status or to enforce federal immigration laws.

Secure Communities works when fingerprints taken by state and local law enforcement agencies are sent to CalDOJ to positively identify the arrestee and to check his or her criminal history. In addition to checking its own records, CalDOJ forwards the fingerprints to the FBI's Criminal Justice Information Services division to search for federal and out-of-state arrest, warrant, and conviction history—an action that is essential both for officer safety and to identify and detain fugitives who may have fled other jurisdictions. Under the Secure Communities program, the FBI forwards the fingerprints to DHS to be checked against immigration and other databases. DHS then sends the immigration response, if any, to the FBI, which sends it, along with any criminal history information, to CalDOJ, which generally delivers all the information to the requesting law enforcement agency.

If fingerprints match an immigration record, ICE evaluates whether to take action. In deciding how to respond, ICE has purported to use a risk-based approach that classifies arrestees into levels, beginning with those who have serious prior convictions and those who present the greatest threat to public safety, which it has described as a “worst first” approach. If ICE chooses to assume custody of a detainee, it sends an “Immigration Detainer – Notice of Action” (DHS Form I-247) to the jailor asking that the jailor hold the individual for up to 48 hours after he or she would otherwise be released to give ICE time to complete its evaluation or to take the person into immigration custody. Unlike arrest warrants and criminal detainers, however, immigration detainers may be issued by border patrol agents, including aircraft pilots, special agents, deportation officers, immigration inspectors, and other employees of ICE, without the review of a judicial officer and without meeting traditional evidentiary standards.

What Responsibilities Do State and Local Law Enforcement Agencies Have under Secure Communities?

As explained above, the Secure Communities program does not require state or local law enforcement officers to determine an individual’s immigration status or to enforce federal immigration laws. Under the Secure Communities program, anyone who is arrested is automatically screened for immigration violations when his or her fingerprints are sent to the FBI to check for federal and out-of-state criminal history. And while the results of the immigration search generally are returned to the arresting law enforcement agency along with any criminal history, ICE alone evaluates whether to take immigration enforcement action based upon the facts of each case.

Are Local Law Enforcement Agencies Required to Fulfill Individual ICE Immigration Detainers?

No. Local law enforcement agencies in California can make their own decisions about whether to fulfill an individual ICE immigration detainer. After analyzing the public-safety risks presented by the individual, including a review of his or her arrest offense and criminal history, as well as the resources of the agency, an agency may decide for itself whether to devote resources to holding suspected unlawfully present immigrants on behalf of the federal government.

Several local law enforcement agencies appear to treat immigration detainers, sometimes called “ICE holds,” as mandatory orders. But immigration detainers are not compulsory. Instead, they are merely requests enforceable *at the discretion of the agency* holding the individual arrestee. (See ICE Website, *available at* http://www.ice.gov/secure_communities [“Secure Communities imposes no new or additional requirements on state and local law enforcement”].) We reach this conclusion both because the I-247 form is couched in non-mandatory language and because the Tenth Amendment to the U.S. Constitution reserves power to the states to conduct their affairs without specific mandates from the federal government. Under the Secure Communities program, the federal government neither indemnifies nor reimburses local law enforcement agencies for complying with immigration detainers. (See 8 C.F.R. § 287.7(e).) Under principles of federalism, neither Congress nor the federal executive branch can require state officials to carry out federal programs at their own expense. If such detainers were mandatory, forced compliance would constitute the type of commandeering of state resources forbidden by the Tenth Amendment. (*Printz v. United States* (1997) 521 U.S. 898, 925 [“The Federal Government . . . may not compel the States to implement, by legislation or executive action, federal regulatory programs”]; *New York v. United States* (1992) 505 U.S. 144, 161 [“the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress’s instructions”].)

In a time of shrinking financial resources, a growing range of critical public-safety priorities, limited space for housing prisoners, and layoffs of police officers and sheriffs deputies, it is appropriate that California law enforcement agencies that receive immigration detainer requests consider them carefully and determine what

course of action best protects public safety in light of the facts of each case. All efforts must be made to identify, detain, and remove from the United States unlawfully present immigrants who may be dangerous, pose a public-safety risk, or have been convicted of offenses of a serious or violent nature. Any action to the contrary could pose a great risk to public safety.

Does the Secure Communities Program Prohibit a Local Law Enforcement Agency from Adopting a Protocol Governing Its Response to ICE Immigration Detainers?

No. Immigration detainer requests are not mandatory, and each agency may make its own decision about whether or not to honor an individual request. Accordingly, local law enforcement agencies may establish a protocol to assist them in determining how to respond to a federal request to hold, at the local agency's own expense, suspected unlawfully present immigrants with minor or no criminal history, so long as any such protocol gives primary consideration to protecting public safety in determining whether to honor a detainer request.

Local agencies are best positioned to determine the highest use of local resources, and if the local law enforcement agency determines that releasing certain individuals does not present a risk to public safety, a federal detainer request cannot, by itself, reverse that determination.

###

EXHIBIT E



City and County of San Francisco
Office of the Clerk of
BOARD OF SUPERVISORS

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Your attention is hereby directed to the following:

I, Angela Calvillo, Clerk of the Board of the City and County of San Francisco, California do hereby certify that the annexed, File No. 170092, is a full, true and correct copy of the original thereof on file in this office.

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of the City and County of San Francisco, California this 6th day of March, 2017

3/6/2017

Date

A handwritten signature in cursive script, appearing to read "Angela Calvillo".

for Angela Calvillo
Clerk of the Board

Master Report Continued (170092)

Sommers (Asian Americans Advancing Justice Asian Law Caucus); Yalla Kari; Hassi Dukalam; Harir Waini; Female Speaker; Male Speaker; Male Speaker; spoke in support of the hearing matter. Dante Cano; spoke in opposition of the hearing matter.

Supervisor Fewer requested to be added as a co-sponsor.

- | | | | |
|---|---|--|--------|
| 2 | Public Safety and
Neighborhood Services
Committee | 02/08/2017 AMENDED | Passed |
| 2 | Public Safety and
Neighborhood Services
Committee | 02/08/2017 CONTINUED AS
AMENDED | Passed |
| 3 | Public Safety and
Neighborhood Services
Committee | 02/22/2017 AMENDED | Passed |
| <p><i>Heard in Committee. Speakers: Jehan Hakim (Asian Law Caucus); Adele Carrera; Anirvan Chatterjee (Alliance of South Asians Taking Action); Christine Cordero (Arab Mothers ESL Program); Kitab; Jerry Garber; Female Speaker; Mudow Alowhoudi; Ria Hakim; Female Speaker; Asu Pau; Sandra Aurou; Elica Vafaie (Asian Americans Advancing Justice Asian Law Caucus); Omar; Musha; Male Speaker; spoke in support of the hearing matter.</i></p> | | | |
| 4 | Public Safety and
Neighborhood Services
Committee | 02/22/2017 RECOMMENDED AS
AMENDED | Passed |
| 4 | Board of Supervisors | 02/28/2017 AMENDED, AN
AMENDMENT OF THE
WHOLE BEARING NEW
TITLE | Passed |
| <p><i>Supervisors Yee and Breed requested to be added as co-sponsors.</i></p> | | | |
| 5 | Board of Supervisors | 02/28/2017 PASSED ON FIRST
READING AS
AMENDED | Passed |



City and County of San Francisco

Master Report

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 170092	File Type: Ordinance	Status: Unfinished Business-Final Passage
Enacted:	Effective:	
Version: 5	In Control: Public Safety and Neighborhood Services Committee	
File Name: Administrative Code - Non-Cooperation with Identity-Based Registry	Date Introduced: 01/24/2017	
Requester:	Cost:	Final Action:
Comment:	Title: Ordinance amending the Administrative Code to prohibit the City from using resources to create, implement, provide investigation or information for, enforce, or otherwise assist or support any government program requiring the registration of individuals on the basis of religion, national origin, or ethnicity, or creating a database of individuals on the basis of religion, national origin, or ethnicity.	
Sponsors: Mayor; Cohen, Safai, Farrell, Kim, Ronen, Sheehy, Fewer, Tang, Yee and Breed		

History of Legislative File 170092

Ver	Acting Body	Date	Action	Sent To	Due Date	Result
1	President	01/24/2017	ASSIGNED	Public Safety and Neighborhood Services Committee		
1	Clerk of the Board	01/30/2017	REFERRED TO DEPARTMENT			
	<i>Referred to the Human Rights Commission, Department of Human Resources, Department of Public Health, Police Department, Police Commission, Sheriff's Department, Office of the City Attorney, and the Office of the District Attorney for informational purposes.</i>					
1	Public Safety and Neighborhood Services Committee	02/08/2017	AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE			Passed
	<i>Heard in Committee. Speakers: Mawuli Tugbenyoh (Mayor's Office); Brittini Chicuata (Office of Supervisor Malia Cohen); Barbara Lopez (Office of Supervisor Jane Kim); Jon Givner (Office of the City Attorney); presented information and answered questions raised throughout the discussion. Jehan Hakim (Asian Law Caucus); Kesali Keswali (Arab Resource and Organizing Center); Anirvan Chatterjee (Alliance of South Asians Taking Action); Hashem Awnallah (Yemeni-American Muslim Community Pure Hands, Inc.); Amina; Dave Fullah; Rabbi Jason Rodich (Congregation Emanu-El); Sallah Holodi; Joe Goldman (Jewish Community Relations Council); Rabbi Jessica Kirschner (Religion Action Center of Reform Judaism); Christine Cordero (Arab Mothers ESL Program); Rachel Antelabin; Bushra Tanarka Alabsi (Cross Cultural Family Center); Clementine Intikolo; Sohab Du; Elica Vafaie and Christina Sinha (Asian Americans Advancing Justice Asian Law Caucus); Britney Rose (Council on American-Islamic Relations, San Francisco Bay Area Chapter); David Cross (Faith in Action); Joyce Shee, Mohsin Mirza, and Miya</i>					

FILE NO. 170092

AMENDED IN BOARD
2/28/2017

ORDINANCE NO.

1 [Administrative Code - Non-Cooperation with Religion~~Identity-Based~~ Registry]

2

3 Ordinance amending the Administrative Code to prohibit the City from using resources

4 to create, implement, provide investigation or information for, enforce, or otherwise

5 assist or support any government program requiring the registration of individuals on

6 the basis of religion, national origin, or ethnicity; or creating a database of individuals

7 on the basis of religion, national origin, or ethnicity.

8 NOTE: Unchanged Code text and uncodified text are in plain Arial font.

9 Additions to Codes are in *single-underline italics Times New Roman font*.

10 Deletions to Codes are in ~~strikethrough italics Times New Roman font~~.

11 Board amendment additions are in double-underlined Arial font.

12 Board amendment deletions are in ~~strikethrough Arial font~~.

13 Asterisks (* * * *) indicate the omission of unchanged Code

14 subsections or parts of tables.

15 Be it ordained by the People of the City and County of San Francisco:

16 Section 1. The Administrative Code is hereby amended by adding Chapter 103 to

17 consist of Sections 103.1, 103.2, 103.3, 103.4, 103.5, 103.6, and 103.7, to read as follows:

18 **CHAPTER 103: RELIGION REGISTRY ~~NON-COOPERATION WITH IDENTITY-BASED~~**

19 **REGISTRY ORDINANCE**

20 **SEC. 103.1. TITLE.**

21 *This Chapter 103 shall be known as the Religion Registry Non-Cooperation With Identity-*

22 *Based Registry Ordinance.*

23

24

25

1 **SEC. 103.2. FINDINGS AND PURPOSE.**

2 (a) From its earliest beginnings, the United States and its citizens have cherished religious
 3 freedom. Many of the early settlers from Europe came to America to escape religious
 4 persecution, and subsequent waves of immigrants included many refugees from religious
 5 oppression. Enshrined in the First Amendment to the Constitution is the admonition that "Congress
 6 shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."
 7 Even predating the First Amendment, Article VI of the Constitution prohibited, and continues to
 8 prohibit, a religious test for any federal office. The California Constitution is in line with its federal
 9 counterpart, guaranteeing, in Article I, Section 4, the "[f]ree exercise and enjoyment of religion
 10 without discrimination or preference" and prohibiting any law "respecting an establishment of
 11 religion."

12 (b) These constitutional pronouncements have been matched in recent decades by legislation
 13 recognizing that discrimination based on religion is intolerable in a free society. As prime examples,
 14 the Civil Rights Act of 1964 outlaws discrimination on the basis of religion in employment and access
 15 to public accommodations, the Fair Housing Act of 1968 outlaws discrimination on the basis of
 16 religion in housing, and the Religious Freedom Restoration Act of 1993 offers considerable protection
 17 against laws which, though neutral in form, place burdens on the free exercise of religion. In
 18 California, the Unruh Act protects against religious discrimination in public accommodations, and the
 19 Fair Employment and Housing Act protects against religious discrimination in those areas.

20 (c) San Francisco's laws champion the same commitment to religious freedom, tolerance, and
 21 diversity that federal and state law recognize. These principles are articulated, for example, in the
 22 findings and policy declaration forming the basis for the Human Rights Commission (Administrative
 23 Code, Sections 12A.1, 12A.2). It is the official policy of the City to eliminate discrimination within the
 24 City based on religion. (Police Code, Section 3301.) Following through on that policy, City laws
 25

1 proscribe religious discrimination in many areas, including public accommodations, employment, and
 2 housing. (Police Code, Article 33.)

3 (d) Against this backdrop of federal, state, and local laws insisting that people not be treated
 4 differently because of religion – demanding that people be free to enjoy their religious beliefs,
 5 associations, practices, backgrounds, and identities – any proposal to base a governmental registry on
 6 religion or for a governmental entity to compile a database of individuals based on religion is
 7 anathema to this country, this state, and this city. For government to label people by religion would
 8 repudiate our most cherished values.

9 (e) And such a registry or database would be very dangerous. It would demean those in our
 10 community included in the registry or database, and would foster the very prejudice and discrimination
 11 that federal, state, and local laws are designed to combat. It would teach people that hate, fear, and
 12 suspicion of religious minorities is permissible. Misguided individuals could see the registry or
 13 database as sanctioning the commission of hate crimes against religious minorities in general, and
 14 especially against those individuals whose religion – or perceived religion – is targeted as the basis for
 15 inclusion in the registry or database. At the same time, those individuals the government seeks to label
 16 by religion would naturally be reluctant to interact with government beyond what is absolutely
 17 necessary. Cooperation with local law enforcement investigations would likely decline; use of the
 18 City's public health facilities, and the provision of personal information related to public health, would
 19 likely decline; participation in programs designed to uplift the disadvantaged would likely decline. In
 20 these and like circumstances, the entire community – not just the targeted individuals – would suffer.

21 (f) Further, once the government starts classifying people by religion, no one can say where or
 22 when the practice will end; which groups will be the subject of classification, and which not; how the
 23 information will be used by the authorities; and what additional measures, if any, will be taken by
 24 government toward or against people based on religion. In this regard, history's examples are not
 25 comforting. Gross violations of human rights can begin with smaller violations. The first step down

1 that road can lead to second, third, and fourth steps that at the beginning would seem have seemed
 2 unimaginable.

3 (g) Notwithstanding this country's fidelity to the principle of religious freedom, there have been
 4 instances in which we have sometimes fallen short in practicing religious tolerance. Catholics, Jews,
 5 Muslims, Sikhs, Jehovah's Witnesses, and some other Protestant sects, among many other faith
 6 communities, have at times felt the sting of religious bigotry and discrimination. Members of certain
 7 faith communities have been the victims of hate crimes, including in recent years most particularly
 8 Jews and Muslims. There has been an upsurge in anti-Muslim sentiment in recent years, as measured
 9 by hate crimes statistics and other social science data. In the modern era, if not always in the more
 10 distant past, government has acted as a positive force to curb religious bigotry and discrimination. For
 11 government to start to classify people by religion through a registry or other database would put
 12 government on a different, more ominous course and would profoundly injure the City's relationship
 13 with its residents.

14 (h) A registry of individuals identified by national origin or ethnicity, or a database
 15 including that information, could be used by the government as a proxy for determining
 16 religion, as many countries and ethnic groups are made up of individuals of predominantly
 17 one religion. A registry or database keyed to national origin or ethnicity that is created for
 18 purposes of determining the likely religion of the people in the registry or database would be
 19 just as offensive to our values, just as damaging to the affected individuals, and just as
 20 harmful to our community, as a registry or database based directly on religion. And even if it
 21 could not be determined that such a registry or database was created for the purpose of
 22 indirectly classifying people by religion, it could, in fact, be used for that purpose, or have that
 23 effect.

24 (i) Independent of its possible use to indirectly identify individuals by religion, a registry
 25 or database classifying individuals by national origin or ethnicity would – like a classification

1 system based on religion – tread on the most fundamental values of our country, our state,
 2 and our community. Constitutional guarantees of equal protection of the laws cannot be
 3 squared with the maintenance of such a registry or database. Nor can state and City laws
 4 prohibiting discrimination based on national origin or ethnicity. Notwithstanding the
 5 persistence of ethnic prejudice in some quarters, and its exacerbation in a time of terrorism,
 6 eradication of such prejudice is among the highest priorities of all levels of government in the
 7 United States. To maintain a registry or database identifying people by national origin or
 8 ethnicity would grossly distort our priorities, and for the worse. And it would ignore the
 9 tragedies of history rooted in ethnic prejudice – such as the tragedy experienced during
 10 wartime, not so long ago, by persons of Japanese descent, including American citizens, in
 11 California and elsewhere. Rather than soft-pedal the dangers that would abound in a registry
 12 or database identifying individuals by national origin or ethnicity, this City should be ever-
 13 vigilant to call out those dangers and, within the limits of the law, should not cooperate in the
 14 creation, maintenance, or use of such a registry or database.

15 (j) It is the City's intent that this Chapter prevent the use of City resources to assist in
 16 any way with a government registry based on religion, national origin, or ethnicity, and to
 17 prevent the City from disclosing personal information regarding any individual that could be
 18 used to create such a registry. Nonetheless, and out of abundance of caution, due solely to
 19 the existence of Section 1373(a) of Title 8 of the United States Code, this Chapter exempts
 20 from its scope the sending to or receiving from a Federal agency charged with enforcement of
 21 Federal immigration law information regarding an individual's citizenship or immigration
 22 status. It is the City's position that Section 1373(a) is unconstitutional, and the City has filed a
 23 federal lawsuit seeking a judgment declaring it as such. See *City and County of San*
 24 *Francisco v. Trump, et al.*, Case No. 3:17-cv-00485 (N.D. Cal.). Until the City obtains court
 25 relief from Section 1373(a), it will continue to comply with Section 1373(a).

1 **SEC. 103.3. DEFINITIONS.**

2 *For purposes of this Chapter 103, the following terms have the following meanings:*

3 *"List, Database, or Registry" means any public, private, or joint public-private collection of*
 4 *information stored in any form.*

5 *"Personal Information" means any information that can, on its own or in combination with*
 6 *other information, be used to contact, track, locate, identify, or reasonably infer the identity of, a*
 7 *specific individual.*

8
 9 **SEC. 103.4. ASSISTANCE WITH GOVERNMENT REGISTRY OR DATABASE.**

10 *(a) No officer, employee, department, board, commission, or other entity of the City shall use*
 11 *City moneys, facilities, property, equipment, or personnel to create, implement, provide investigation*
 12 *for, enforce, or assist in the creation, implementation, provision of investigation for, or enforcement of,*
 13 *or provide support in any manner for, any government program that (1) creates or compiles a List,*
 14 *Database, or Registry of individuals on the basis of religious affiliation, kinship, belief, or practice;*
 15 *national origin; or ethnicity or (2) requires registration of individuals in a List, Database, Registry, or*
 16 *otherwise, on the basis of religious affiliation, kinship, belief, or practice; national origin; or*
 17 *ethnicity.*

18 *(b) Notwithstanding any other law, no officer, employee, department, board, commission, or*
 19 *other entity of the City shall provide or disclose to any government authority Personal Information*
 20 *regarding any individual that is requested for the purpose of (1) creating or compiling a List,*
 21 *Database, or Registry of individuals based on religious affiliation, kinship, belief, or practice; national*
 22 *origin; or ethnicity, or (2) requiring registration of individuals in a List, Database, registry, or*
 23 *otherwise, on the basis of religious affiliation, kinship, belief, or practice; national origin; or*
 24 *ethnicity. In addition, regardless of the purpose of the request, no such information shall be*
 25 *provided or disclosed to any government authority if it could potentially become part of such a*

1 List, Database or Registry. This includes a prohibition on making available Personal
 2 Information from any City database for the purposes mentioned in the foregoing sentence,
 3 including any City database maintained by a private vendor under contract with the City.

4 (c) This Section 103.4 shall apply to all individuals, regardless of citizenship or immigration
 5 status, race, age, or any other factor.

6 (d) Nothing in this Chapter 103 prohibits any officer, employee, department, board,
 7 commission, or other entity of the City from sending to, or receiving from, any local, state, or
 8 federal agency, aggregate information about religious affiliation, kinship, belief, or practice;
 9 national origin; or ethnicity within a geographic area, institution, category, or group, where
 10 such information is not associated with Personal Information, including but not limited to,
 11 names, addresses, and telephone numbers, and cannot be used to identify individuals on the
 12 basis of religious affiliation, kinship, belief, or practice; national origin; or ethnicity.

13 (e) Nothing in this Chapter 103 prohibits any officer, employee, department, board,
 14 commission, or other entity of the City from sending to, or receiving from, a Federal agency
 15 charged with enforcement of Federal immigration law information regarding an individual's
 16 citizenship or immigration status, lawful or unlawful. "Information regarding an individual's
 17 citizenship or immigration status, lawful or unlawful" for purposes of this Chapter 103, shall be
 18 interpreted consistent with Section 1373 of Title 8 of the United States Code. This subsection
 19 (e) shall expire by operation of law if a court of competent jurisdiction enters a judgment ruling
 20 8 U.S.C. § 1373(a) facially unconstitutional or unconstitutional as applied to the City.

21 (f) Nothing in this Chapter 103 prohibits the City from creating or maintaining a List,
 22 Database, or Registry that contains ethnicity or national origin information where such
 23 information is collected for purposes of complying with anti-discrimination laws or laws
 24 regarding the administration of public benefits, or for purposes of ensuring City programs
 25

1 adequately serve the City's diverse communities, or where the City collects this information to
 2 ensure equal access to City programs, services, benefits, and contracts.

3
 4 **SEC. 103.5. ENFORCEMENT AND REPORTING.**

5 (a) The Director of the Human Rights Commission, or his or her designee ("the Director")
 6 shall review compliance with this Chapter 103. The Director may initiate and receive complaints
 7 regarding violations of this Chapter. After conducting an investigation, the Director may issue findings
 8 regarding any alleged violation. If the Director finds that a violation occurred, the Director shall,
 9 within 30 days of such finding, send a report of such finding to the Board of Supervisors, the Mayor,
 10 and the head of any department involved in the violation or in which the violation occurred. All
 11 officers, employees, departments, boards, commissions, and other entities of the City shall cooperate
 12 with the Director in any investigation of a violation of this Chapter.

13 (b) By February 1 of each year, each City department shall submit to the Board of
 14 Supervisors a written, public report regarding the Department's compliance with this Chapter
 15 103 over the previous calendar year. This report, at minimum, must: (1) detail with specificity
 16 the steps the department has taken to ensure compliance with this Chapter; (2) disclose any
 17 issues with compliance, including any violations or potential violations of this Chapter; and (3)
 18 detail actions taken to cure any deficiencies with compliance.

19
 20 **SEC. 103.6. UNDERTAKING FOR THE GENERAL WELFARE CIVIL ACTION.**

21 (a) Cause of Action. The City shall be liable in a civil action for a violation of Section
 22 103.4(b) filed by either (1) an individual whose Personal Information has been disclosed in
 23 violation of Section 103.4(b) of this Chapter or (2) a non-profit organization exempt from
 24 taxation pursuant to Title 26, Section 501 of the United States Code, that has the defense of
 25

1 immigrants' and ethnic minorities' rights as a stated purpose in its articles of incorporation or
 2 bylaws.

3 (b) Damages and Civil Penalties. If the City is found liable in a cause of action brought
 4 by an individual under section (a)(1) of this Section 103.6, the City shall be liable for (1) the
 5 damages suffered by the plaintiff, if any, as determined by the court, and (2) a civil penalty no
 6 greater than \$5,000 per violation, as determined by the court. If the City is found liable in a
 7 cause of action brought by an organization under section (a)(2) of this Section 103.6, the City
 8 shall be liable for a civil penalty no greater than \$5,000 per violation, as determined by the
 9 court; provided that an organization may not recover a civil penalty if a court has already
 10 awarded a penalty to an individual or another organization arising out of the same violation.
 11 In determining the amount of the civil penalty in any action filed under subsection 103.6(a),
 12 the court shall consider: whether the violation was intentional or negligent, and any prior
 13 violations of Section 103.4(b) by the City department that committed the violation. For the
 14 purpose of this subsection 103.6(b), each disclosure of each individual's Personal Information
 15 shall be a separate violation.

16 (c) Attorney's Fees and Costs. A court may award a plaintiff who prevails on a cause
 17 of action under subsection (a) of this Section 103.6 reasonable attorney's fees and costs.

18 (d) Limitations on Actions. Any person or entity bringing an action under this Section
 19 103.6 must first file a claim with the City under Government Code Section 905 or any
 20 successor statute within three years of the alleged violation.

21 (e) Exception. Any disclosure of Personal Information required by a legally
 22 enforceable subpoena, judicial warrant, or court order shall not give rise to a cause of action
 23 under this Section 103.6.

24 In enacting and implementing this Chapter 103, the City is assuming an undertaking
 25 only to promote the general welfare. It is not assuming, nor is it imposing on its officers and

1 employees, an obligation for breach of which it is liable in money damages to any person who
 2 claims that such breach proximately caused injury.

3
 4 **SEC. 103.7. SEVERABILITY.**

5 If any section, subsection, sentence, clause, phrase, or word of this Chapter 103, or any
 6 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
 7 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining
 8 portions or applications of this Chapter. The Board of Supervisors hereby declares that it would have
 9 passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not
 10 declared invalid or unconstitutional without regard to whether any other portion of this Chapter or
 11 application thereof would be subsequently declared invalid or unconstitutional.

12
 13 Section 2. Effective Date. This ordinance shall become effective 30 days after
 14 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
 15 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
 16 of Supervisors overrides the Mayor's veto of the ordinance.

17
 18 APPROVED AS TO FORM:
 19 DENNIS J. HERRERA, City Attorney

20 By: 
 21 BRADLEY A. RUSSI
 Deputy City Attorney

22 n:\egana\as2017\1700395\01174495.docx

FILE NO. 170092

REVISED LEGISLATIVE DIGEST

(2/28/2017, Amended in Board)

[Administrative Code - Non-Cooperation with Identity-Based Registry]

Ordinance amending the Administrative Code to prohibit the City from using resources to create, implement, provide investigation or information for, enforce, or otherwise assist or support any government program requiring the registration of individuals on the basis of religion, national origin, or ethnicity; or creating a database of individuals on the basis of religion, national origin, or ethnicity.

Existing Law

Current law does not regulate whether the City may provide information to other government entities regarding the religious affiliation, national origin, or ethnicity of any individual or assist other government entities in creating or enforcing a database or registry of individuals based on religious affiliation, national origin, or ethnicity. Current law prohibits the City from discriminating against any individual on the basis of religious affiliation, national origin, and ethnicity.

Amendments to Current Law

The proposed ordinance would prohibit any City entity, employee, or officer from, (1) using City resources to assist in any way with a government program that creates a list, database, or registry of individuals on the basis of religious affiliation, national origin, or ethnicity, or requires registration of individuals on the basis of religious affiliation, national origin, or ethnicity; and (2) disclosing to any government entity personal information regarding any individual for the purposes of creating a list, database, or registry of individuals on the basis of religious affiliation, national origin, or ethnicity. This would include prohibiting the City from making any City databases, including City databases maintained by private contractors, available for purposes of creating a registry based on religious affiliation, national origin, or ethnicity. The ordinance would also prohibit the City from creating a registry of individuals based on their religious affiliation, national origin, or ethnicity. The ordinance would not prohibit the City from collecting and storing information regarding national origin or ethnicity for purposes of compliance with anti-discrimination laws and the administration of public benefits programs, many of which require the collection of this information to ensure non-discrimination.

The Human Rights Commission is delegated authority to receive and investigate complaints of violations of the ordinance and to issue findings regarding any substantiated violation. Departments must report to the Board of Supervisors annually regarding compliance with the ordinance.

FILE NO. 170092

The proposed ordinance creates a private right of action against the City for an individual whose personal information has been disclosed in violation of the ordinance. A non-profit organization that has as its purpose the defense of immigrants' and ethnic minorities' rights also has standing to sue the City on behalf of aggrieved individuals. An individual plaintiff who prevails in a suit against the City may recover damages resulting from the violation as well as a \$5,000 civil penalty per violation. A non-profit plaintiff can recover a \$5,000 civil penalty per violation. But an individual and a non-profit cannot recover a penalty regarding the same violation. A prevailing plaintiff in a case against the City is entitled to recover reasonable attorney's fees and costs.

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