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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CITY OF RICHMOND, a municipal corporation,

Plaintiff,

vs.

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

Defendants.

Case No. 3:17-cv-01535-WHO

CITY OF RICHMOND'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION

Date: May 10, 2017
Time: 2:00 p.m.
Judge: Hon. William H. Orrick
Dept.: Courtroom 2

Complaint Filed: March 21, 2017
No Trial Date

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NOTICE OF MOTION AND MOTION FOR PRELIMARY INJUNCTION

PLEASE TAKE NOTICE that on May 10, 2017, at 2:00 p.m. or as soon thereafter as the matter may be heard before the Honorable William H. Orrick, in Courtroom 2 of the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California, Plaintiff City of Richmond ("Richmond") will and hereby does move the Court pursuant to Rule 65 of the Federal Rules of Civil Procedure for a preliminary injunction against Defendants Donald J. Trump, President of the United States of America; John F. Kelly, in his official capacity as Secretary of the United States Department of Homeland Security; Jefferson B. Sessions, in his official capacity as Attorney General of the United States; and the United States of America (collectively, "Defendants"); and their officers, agents, servants, employees, and attorneys, and any other persons who are in active concert or participation with them.

Richmond seeks a nationwide preliminary injunction (1) prohibiting Defendants from enforcing Section 9(a) of Executive Order 13768, entitled "Enhancing Public Safety in the Interior of the United States" ("Executive Order"); (2) prohibiting Defendants from taking any action pursuant to the Executive Order that would withhold or "claw-back" federal funds appropriated or allocated by Congress; and (3) prohibiting Defendants from taking any action pursuant to the Executive Order that would declare or render any jurisdiction ineligible for federal funds.

This motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities, the Request for Judicial Notice, the supporting declarations of Tom Butt (Mayor), William Lindsay (City Manager), Gayle McLaughlin (City Council Member), Allwyn Brown (Chief of Police), and Adrian Sheppard (Fire Chief), as well as the papers, evidence and records on file in this action, and any other written or oral evidence or argument as may be presented at or before the time this motion is heard by the Court.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

By this Motion, Plaintiff City of Richmond respectfully asks the Court to enter a preliminary injunction prohibiting implementation and enforcement of Section 9(a) of Executive Order 13768, entitled "Enhancing Public Safety in the Interior of the United States," issued by President Trump on January 25, 2017 (the "Executive Order"). The Executive Order, in violation of the United States Constitution, seeks to force local police departments, such as the Richmond Police Department, to enforce federal immigration law. The Executive Order is in direct violation of the Constitution because it allows the Attorney General and Secretary of Homeland Security, based upon their discretion, to withhold federal funds from public entities that are "sanctuary jurisdictions" who "willfully refuse" to comply with 8 U.S.C. § 1373, a statute which seeks to regulate state and local jurisdictions' response to immigration requests.

On March 27, 2017, Attorney General Jefferson Sessions announced that "the Department of Justice will require jurisdictions seeking or applying for Department grants to certify compliance with [8 U.S.C.] Section 1373 as a condition for receiving these awards," and that the Justice Department will take "all lawful steps to claw-back any funds awarded to a jurisdiction that willfully violates 1373."

Our U.S. Supreme Court has said that this use of an Executive Order to coerce Richmond or any other jurisdiction through a threat of the loss of all federal funds is unconstitutional. *Nat'l Fed'n of Indep. Bus v. Sebelius,* 567 U.S. 519, 132 S. Ct. 2566, 2602-04 (2012). "When, for example, such conditions take the form of threats to terminate other significant independent grants, the conditions are properly viewed as a means of pressuring the states to accept policy changes." 132 S. Ct. at 2604. Section 9(a) of the Executive Order directs the Attorney General to "take appropriate enforcement action against any entity that violates 8 U.S.C. 1373, or which has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law."

The term "sanctuary jurisdiction" is not defined in the Executive Order or in any federal statute or regulation. While many public entities, including Richmond, have been referred to as "Sanctuary Cities" and Richmond is proud to support its immigrants, the policies of the different jurisdictions differ substantially. It is unclear if Richmond will be considered a "sanctuary jurisdiction" subject to the loss of all federal funds. The Executive Order provides no guidance to Richmond on how to make this determination and there is no legal precedent for Richmond to consult to make this determination. Based upon statements made by President Trump and others, Richmond believes it may be swept up as a sanctuary jurisdiction under the Executive Order. The Executive Order violates the Due Process Clause because it is unconstitutionally vague and unenforceable against a city like Richmond, California. *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

Moreover, the Executive Order does not define what actions or inaction can be considered by the Attorney General and Secretary of Homeland Security as a willful refusal to comply with 8 U.S.C. § 1373 and there is no legal precedent defining what constitutes a willful refusal to comply with 8 U.S.C. § 1373. Richmond does comply with 8 U.S.C. § 1373. This is an additional reason that the Executive Order is unconstitutionally vague and unenforceable pursuant to Supreme Court precedent.

Given the vagueness of the Executive Order and the discretion it provides to the Attorney General and Secretary of Homeland Security to withhold federal funds, Richmond faces imminent danger of losing all federal funding because of legislation that it enacted twenty-five years ago to foster trust between its police department and residents. Richmond has already been harmed by the uncertainty caused by the Executive Order. The Defendants intend to immediately begin enforcing the Executive Order, and the Executive Order does not provide any policies or procedures to challenge the findings of the Attorney General or Secretary of Homeland Security. Accordingly, this Court is the only vehicle for Richmond to obtain relief to stop the calamitous effects that the Executive Order will have on Richmond.

Richmond directly receives federal funds each year and also receives State funds, most of which are passed through federal funds. The funds are used to fund vital services, and only a small amount are used for law enforcement or immigration. Most are used for housing and infrastructure improvements, and to provide relief to the City's most vulnerable residents. The loss of these funds will have a direct and substantial effect on Richmond and its citizens. None of the grants of money by the federal government to Richmond were conditioned on Richmond's compliance with any immigration law. The Executive Order seeks to retroactively tie the receipt of federal funds to Richmond's compliance with the Executive Order, and specifically immigration laws, which is unconstitutional on its face.

While Presidents have the ability to issue executive orders, the President's power "must stem either from any act of Congress or from the Constitution itself." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). There is no authority from an act of Congress or from the Constitution for President Trump to have issued the Executive Order.

The Executive Order is an impermissible and illegal order because:

(1) the Executive Order violates the Tenth Amendment of the United States Constitution;

(2) the Executive Order seeks to give two Cabinet members the unfettered discretion to take away all federal funding from Richmond, a power that no branch of the federal government has;

(3) the Executive Order impermissibly usurps the rights of the Legislative branch regarding appropriating and spending monies thus violating the separation of powers clause of the Constitution;

(4) the Executive Order violates the due process clause because it is unconstitutionally vague in its definition of "sanctuary jurisdiction," "willful refusal to comply," and the unfettered enforcement discretion it gives to the Attorney General and Secretary of Homeland Security;

(5) the Executive Order exposes state and local goverrnments to liability under the Fourth Amendment of the Constitution for improperly detaining people; and

(6) the Executive Order imposes additional costs to comply with the Executive Order, which costs the federal government will not reimburse.

Because the Executive Order is unconstitutional and, as set forth further below, Richmond is likely to suffer irreparable harm in the absence of preliminary relief, the City of Richmond respectfully asks the Court to enter the requested preliminary injunction prohibiting implementation and enforcement of Section 9(a) of the Executive Order.

II. STATEMENT OF FACTS

A. THE EXECUTIVE ORDER THREATENS TO WITHHOLD AND CLAW-BACK ALLOCATED FEDERAL FUNDS

On January 25, 2017, President Donald J. Trump issued Executive Order 13768, entitled "Enhancing Public Safety in the Interior of the United States." RJN, Ex. 1 ("Executive Order").[1] The Executive Order declares, "Sanctuary jurisdictions across the United States willfully violate Federal law in an attempt to shield aliens from removal from the United States. These jurisdictions have caused immeasurable harm to the American people and to the very fabric of our Republic." *Id.* § 1. The Executive Order sets forth the policy that "jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law." *Id.* § 2(c). Section 9 of the Executive Order addresses "Sanctuary Jurisdictions" and states: "It is the policy of the executive branch to ensure, to the fullest extent of the law, that a State, or a political subdivision of a State, shall comply with 8 U.S.C. 1373." *Id.* § 9. Section 9(a) establishes a **funding restriction**:

> In furtherance of this policy, the Attorney General and the Secretary [of Homeland Security], in their discretion and to the extent consistent with law, shall 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 law enforcement purposes by the Attorney General or the Secretary. The Secretary has the authority to designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction.

Section 9(a) directs the Attorney General to "take appropriate enforcement action against any entity that violates 8 U.S.C. § 1373, or which has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law." *Id.*

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[1] "RJN" refers to Request for Judicial Notice in Support of Motion for Preliminary Injunction, filed concurrently herewith. "__ Dec" refers to declarations of the following declarants filed concurrently herewith: Tom Butt (Mayor), William Lindsay (City Manager), Gayle McLaughlin (City Council Member), Allwyn Brown (Chief of Police), and Adrian Sheppard (Fire Chief). "Ex._" refers to exhibits attached to a declaration or the RJN.

On March 27, 2017, Attorney General Jefferson Sessions announced that "the Department of Justice will require jurisdictions seeking or applying for Department grants to certify compliance with [8 U.S.C.] Section 1373 as a condition for receiving these awards," and that the Justice Department will take "all lawful steps to claw-back any funds awarded to a jurisdiction that willfully violates 1373." RJN, Ex. 2 (DOJ Press Release).[2]

B. RICHMOND'S POLICIES MAY VIOLATE THE EXECUTIVE ORDER

Richmond is one of the most racially diverse cities in the Bay Area. Butt Dec ¶ 3. Approximately **one-third** of Richmond's more than 100,000 residents are immigrants. *Id.* In particular, in the late 1980s, Richmond experienced an increase of immigrants arriving from Central America. *Id.* Many of these immigrants had been the victims of political persecution. *Id.* Since arriving in Richmond, these individuals and their families have contributed to the City's success. *Id.*

To fulfill its mission of preventing crime, maintaining order and enforcing the law, the Richmond Police Department ("RPD") engages in community policing. Brown Dec ¶ 5; Butt Dec ¶ 4. The community policing model requires active, engaged, and empowered neighborhood residents who freely interact with police without reservations. Brown Dec ¶ 5. It is critical that all residents, no matter their immigration status, are able to report crimes and assist in criminal investigations without fear that their immigration status will also be investigated. *Id.* Over the past decade, the RPD has made significant progress in growing community trust. *Id.* This has resulted in a significant reduction in crime and victimization. Brown Dec ¶ 5 & Ex. 1; McLaughlin Dec ¶ 5.

Richmond City Council Ordinance No. 29-90 enacted in 1990, reaffirmed by Resolution No. 11-07 in 2007, seeks to "foster an atmosphere of trust and cooperation between the Richmond Police Department and all persons, regardless of immigration status, residing in the City of Richmond." Brown Dec ¶ 6; Lindsay Dec, Exs. 1 (Ordinance No. 29-90) and 2

[2] Because the Executive Order does not define "Federal grants," the City does not interpret that phrase as applying solely to funds from the Department of Justice, but to all Federal funds. This interpretation is consistent with Executive Order Section 2(c) which states, in relevant part: "jurisdictions that fail to comply with applicable Federal law do not receive Federal funds. . . ."

(Resolution No. 11-07). Policy 428 of the RPD Policy Manual states it is "department policy, consistent with its obligations under state and federal law, to adhere to the City of Richmond Ordinance 29-90" and that "all individuals, regardless of their immigration status, must feel secure that contacting law enforcement will not make them vulnerable to deportation." Brown Dec ¶ 8 & Ex. 2. RPD Policy Manual Section 428.4 also states: "Nothing in this policy is intended to restrict officers from exchanging legitimate law enforcement information with any other federal, state or local government entity (8 USC § 1373; 8 USC § 1644)." *Id.*

Ordinance No. 29-90 and RPD Policy 428 helped Richmond residents to trust that they can report a crime without fear that their involvement will lead to their deportation. Brown Dec ¶ 8. That trust is being eroded by the Executive order. *Id*. RPD is noticing that residents are reluctant to cooperate out of fear and concern about RPD's relationship with the United States Immigration and Customs Enforcement ("ICE"). *Id*. The Executive Order has increased fear in the immigrant community and made it harder for RPD to fulfill its mission and protect the public. Brown Dec ¶ 9.

Richmond believes its policies are in compliance with all state, federal and constitutional requirements. Butt Dec ¶ 4; Brown Dec ¶ 10. However, the Executive Order suggests that Richmond will be targeted for protecting its residents. Butt Dec ¶ 4. It is uncertain what actions the City must take to comply with the Executive Order. Brown Dec ¶ 10; Butt Dec ¶ 6.

C. RICHMOND RELIES ON FEDERAL FUNDING TO PROVIDE ESSENTIAL SERVICES; WITHDRAWAL OF FEDERAL FUNDS WOULD BE CATASTROPHIC

The City budget provides for Richmond's services, infrastructure, and economic and community development. Lindsay Dec ¶ 3. Federal grants are a critical component of Richmond's budget, including grants from the Department of Commerce, Department of Defense, Department of Health and Human Services, Department of Homeland Security, Department of Housing and Urban Development, Department of Justice, Department of Labor, Department of Transportation, and the Environmental Protection Agency. *Id.* The City currently has active grants that have awarded **$77.2 million** in federal funds to the City. Lindsay Dec ¶ 4. Approximately **$50 million** of these funds have already been used for ongoing programs. *Id.*

For example:

- The Richmond Housing Authority receives approximately **$26 million** in grants from the U.S. Department of Housing and Urban Development (HUD) to provide affordable housing. In addition to more than 550 housing units for low-income, elderly and disabled residents, the Housing Authority provides Section 8 vouchers to more than 2,000 Richmond residents who can use these subsidies to pay rent anywhere in the City. The housing choice voucher program is the federal government's major program for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market. Lindsay Dec ¶ 4.
- Other HUD grants include Community Development Block Grant funds which have in the past been used for a variety of purposes, including to provide assistance to programs for lower income persons, to provide emergency and transitional housing for the homeless, to increase housing opportunities for lower income persons, and, most recently, to provide **$3.1 million** in funding to increase access to City facilities for persons with disabilities. *Id*.
- The Department of Justice has granted over **$2.7 million** in critical funding to support law enforcement in Richmond. For example, Richmond received an award of **$625,000** per year from the Community Oriented Policing Services program for three years to hire five police officers, and **$150,000** to expand the Richmond Police Department's body-worn camera program. Lindsay Dec ¶ 6; Brown Dec ¶ 9.
- In addition, the Office of Juvenile Justice and Delinquency Prevention awarded **$1,500,000** to support the East Bay Mentoring Collaborative to provide vulnerable youth in low-income, high-crime neighborhoods with adult mentors. As a result, the EBMC will serve over 450 additional youth who are at high risk of dropping out of high school and entering the juvenile justice system. Lindsay Dec ¶ 6.
- The Department of Transportation has recently provided over **$3 million** to improve the condition of arterial streets in the community, and over **$400,000** to improve and provide safe routes for children to get to school. Lindsay Dec ¶ 7.

- The Department of Homeland Security Federal Emergency Management Agency (FEMA) also provides significant support for training and operating the Richmond Fire Department Office of Emergency Services, through the State of California Governor's Office of Emergency Services. Sheppard Dec ¶ 5.

These and other federal funds were granted without any preconditions relating to Richmond's policies concerning ICE. Lindsay Dec ¶¶ 5, 8. The loss of this revenue would have a catastrophic impact on the City, especially in the areas of public safety and assisting vulnerable populations. Lindsay Dec ¶ 8. The City would be unable to provide critical community services, including mandatory entitlement services. *Id.* Both federal programs and other programs would be lost or significantly impaired. *Id.* Essential City services would be affected by cuts in federal funds, including housing, public safety, environmental protection, employment and training, literacy, and transportation programs. Lindsay Dec ¶ 9.

D. THE EXECUTIVE ORDER PUTS RICHMOND IN AN UNTENABLE AND DANGEROUS POSITION

Under Section 1(b) of Article IV of the Richmond City Charter the City Manager is required to prepare an annual budget for review and approval by the City Council. Lindsay Dec ¶ 10. Richmond has already begun the process of adopting the annual budget for the fiscal year beginning on July 1, 2017. *Id.* Without preliminary relief and clarification regarding the legality and effect of the Executive Order, the City is in an untenable financial situation, and decisions that must be made while awaiting a final decision in this case which could take multiple budget cycles, could cause a financial crisis. *Id.*

Without preliminary relief, the City will be forced to choose whether to continue to provide services to City residents without knowing that the City will be reimbursed by the federal government for those services, or discontinue mandatory and essential services to its residents. Lindsay Dec ¶ 11. Either course of action has dire consequences and subjects the City and its residents to irreparable harm. *Id.*

Withdrawal of federal funds from programs that rely on federal grants would put the City and its residents in a crisis, and require a significant reduction in staff and contract services.

Lindsay Dec ¶ 12. The loss of federal revenue would endanger the health and safety of Richmond's residents. *Id.* As stated by Richmond's Fire Chief, Adrian Sheppard, loss of federal funding for the Richmond Fire Department Office of Emergency Services would significantly impact the City's capacity to prevent, protect against, mitigate, respond to, and recover from terrorist attacks and other catastrophes. Sheppard Dec ¶ 10. Without federal funds the City would need to take drastic action such as reducing RPD patrol services to dangerous levels, eliminating or substantially impairing emergency response services, and reducing government services and personnel to below basic minimum requirements. Lindsay Dec ¶ 12.

Attempting to comply with the Executive Order is not viable because it is uncertain what actions the City must take to comply, and attempting to do so would likely interfere with policy decisions that the Richmond City Council has made. Lindsay Dec ¶ 13. All of these considerations need to be reflected in the annual budget which the City is required to adopt on or before July 1, 2017. Lindsay Dec ¶ 14.

III. LEGAL STANDARD

To obtain a preliminary injunction, a plaintiff must establish "(1) 'that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest.'" *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). In the alternative, a preliminary injunction is appropriate if "serious questions going to the merits were raised and the balance of the hardships tips sharply in the plaintiff's favor," so long as there is a likelihood of irreparable injury and the injunction is in the public interest. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011). The Court has discretion, in appropriate circumstances, to issue a nationwide injunction. *See Texas v. United States*, 809 F.3d 134, 188 (5th Cir. 2015) ("[Because] the Constitution vests [district courts] with 'the judicial Power of the United States'. . . , [i]t is not beyond the power of the court, in appropriate circumstances, to issue a nationwide injunction.") (citing U.S. Const. art. III, § 1)), *aff'd by an equally divided Court*, 136 S. Ct. 2271 (2016); *Washington v. Trump*, 847 F.3d 1151, 1167 (9th Cir. 2017).

IV. ARGUMENT

A. THE CITY IS LIKELY TO SUCCEED ON THE MERITS OF ITS CLAIMS

1. The Executive Order Usurps Congress' Spending Power

Section 9(a) of the Executive Order violates the separation of powers inherent in the Constitution by making funding decisions that the Constitution vests in Congress, not the President. The federal system is a system of checks and balances. Our founders wanted to stop the President from exercising unbridled discretion like the King from whom they had just won their liberty. Therefore, the Constitution limits the power of the President. *See Youngstown*, 343 U.S. at 585 ("The President's power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself.").

Article I of the Constitution vests the federal spending power exclusively in Congress. U.S. Const. art. I, § 8, cl. 1. The President cannot unilaterally impose new restrictions on a jurisdiction's eligibility for federal funding. The President does not have "unilateral power to change the text of duly enacted statutes." *Clinton v. City of New York*, 524 U.S. 417, 447 (1998). The President may veto a bill, but may not revise or revoke an appropriation by Congress. *Id*. at 438; *In re Aiken Cty*., 725 F.3d 255, 261 n.1 (2013) ("President does not have unilateral authority to refuse to spend the funds"). To the contrary, the President must "take Care that the Laws be faithfully executed." U.S. Const. art. II, § 3, cl. 5. In directing that "sanctuary jurisdictions" are not eligible to receive federal funds, the Executive Order usurps Congress' spending power and violates the separation of powers inherent in the Constitution.

2. The Executive Order Unconstitutionally Imposes New And Unrelated Conditions On Existing Federal Grants

The Executive Order is also unconstitutional because it imposes new funding conditions on existing grants;[3] even Congress lacks this authority. Once Congress has

[3] *See* RJN, Ex. 2 (Attorney General stating the Justice Department will "**claw-back** any funds awarded to a jurisdiction that willfully violates 1373"); Executive Order § 9(a) (sanctuary jurisdictions "**are not eligible** to receive Federal grants"); *id.* § 9(c) (directing the Office of Management and Budget to obtain "information on all Federal grant money that **currently is received** by any sanctuary jurisdiction.") (emphases added).

authorized an appropriation to a State, county or city and it has been accepted, Congress cannot impose new conditions, after the fact. "[I]f Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously," in advance. *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981). "The legitimacy of Congress' power to legislate under the spending power . . . rests on whether the State voluntarily and knowingly accepts" Congress' conditions. *Id.* "There can, of course, be no knowing acceptance if a State is unaware of the conditions or is unable to ascertain what is expected of it." *Id.* The Executive Order thus violates the Spending Clause because it seeks to claw-back funds already authorized and accepted by a State, county, and city without any condition based on its status as a "sanctuary jurisdiction."

Moreover, Congress cannot impose conditions to the acceptance of federal funds when those conditions are unrelated to the purpose for which the funds are given. *See South Dakota v. Dole*, 483 U.S. 203, 208-09 & n.3 (1987) ("[T]he imposition of conditions under the spending power" must be 'germane' or 'related' to the purpose of federal funding.")' *New York v. United States*, 505 U.S. 144, 167 (1992). The Executive Order threatens the loss of all federal funds, not only those related to the purposes of the Executive Order, which purpose is related to immigration.

Here, there is no nexus between immigration and the federal funds that Richmond receives for its annual budget. The majority of these funds are used to provide affordable housing for low-income, elderly and disabled residents, and to increase access to City facilities for persons with disabilities. Other funds are used to create jobs and improve infrastructure, such as the condition of arterial streets and the safety of the routes children take to school. Richmond does receive $2.7 million in critical funding to support local law enforcement. However, these funds are used for purposes that are not germane to immigration; *e.g.*, hiring five police officers, expanding the body-worn camera program, and supporting the East Bay Mentoring Collaborative to provide vulnerable youth in low-income, high-crime neighborhoods with adult mentors. In any event, Section 9(a) of the Executive Order provides an exception for grants "deemed necessary for law enforcement purposes by the Attorney General or the Secretary."

Because the Executive Order impermissibly imposes new and unrelated conditions on existing appropriations, it contravenes established limits to Congress' spending power.

3. <u>The Executive Order Is Unconstitutionally Coercive</u>

The Executive Order's threat to strip Richmond of all federal funds and bring enforcement actions against it for violation of federal laws is manifestly coercive and, therefore unconstitutional. Congress cannot use coercion or a "power akin to undue influence" to force States, counties or cities to act in accordance with federal policies. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 132 S. Ct. 2566, 2602 (2012) (holding Congress could not compel unwilling states to participate in Medicaid expansion under the Affordable Care Act). Under the United States Constitution, Congress cannot compel state officials to execute federal law. *Printz v. United States*, 521 U.S. 898, 933 (1997) ("[T]he Federal Government may not compel the States to implement, by legislation or executive action, federal regulatory programs."). "In providing for a stronger central government, therefore, the Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States. As we have seen, the Court has consistently respected this choice. We have always understood that even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts." *New York v. United States*, 505 U.S. 144, 166 (1992). The Executive Order violates these principles of federalism and state sovereignty and is unconstitutional.

4. <u>The Executive Order Violates The Tenth Amendment</u>

The Executive Order is also unconstitutional because it violates the Tenth Amendment of the Constitution. The Tenth Amendment provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." This Amendment preserves the sovereignty of the States and local governments; but the Executive Order seeks to interfere with that sovereignty.

Under the Tenth Amendment, "Congress may not simply commandeer the legislative process of the States by directly compelling them to enact and enforce a federal regulatory program." *New York*, 505 U.S. at 161 (internal quotation omitted). "The commandeering cases involve attempts by Congress to direct states to perform certain functions, command state officers to administer federal regulatory programs, or to compel states to adopt specific legislation." *Raich v. Gonzales*, 500 F.3d 850, 867 n. 17 (9th Cir. 2007). This is precisely what the Executive Order is designed to do, in violation of the Tenth Amendment.

The Executive Order exceeds the power of the President or any federal branch of government because the Executive Order requires state and local governments to affirmatively assist federal immigration officials by, *inter alia*, complying, at their own expense, with ICE detainer requests. The federal government has made clear that the local agency bears the financial burden of the detention, providing that "[n]o detainer issued as a result of a determination made under this chapter . . . shall incur any fiscal obligation on the part of the Department." 8 C.F.R. § 287.7(e). The federal government also will not indemnify local governments or its officials against constitutional claims, even when they arise directly out of actions the local government has taken at the direction of the federal government. In Section 9(a) of the Executive Order, the "Attorney General shall take appropriate enforcement action against any entity that violates 8 U.S.C. § 1373, or which has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal Law." By demanding that state and local governments detain individuals who may be subject to removal at the request of federal officials even if those individuals would otherwise be subject to release from custody, and by ordering the Attorney General to take enforcement action against state and local governments which do not comply, the Executive Order commandeers state and local officials in furtherance of a federal regulatory program in violation of the Tenth Amendment to the United States Constitution.

The Executive Order also requires that state and local governments take action to avoid preventing or hindering the federal government in the enforcement of federal law. Executive Order, § 9(a). This requirement forces local officials to act as an arm of the federal government. This violates the Tenth Amendment. The federal government cannot use the appropriation of money to force Richmond to act in a certain way. This use of an Executive Order to coerce

Richmond to act on behalf of the federal government through a threat of the loss of all federal funds is unconstitutional. *Sebelius*, 132 S. Ct. at 2602-04.

The Executive Order further impermissibly seeks to interfere with Richmond's policy decisions in enacting Ordinance No. 29-90 and Resolution No. 11-07, which further legitimate local concerns and interests. This federal interference impermissibly penalizes state and local governments that are deemed to "prevent or hinder" the enforcement of federal law and thus impermissibly coerces state and local governments to adopt policies and practices that support the Executive Order to the subordination of state and local government interests.

The Executive Order additionally interferes with Richmond's ability to budget, by threatening to withdraw critical federal funds that have been appropriated by Congress.

The Executive Order is unconstitutional because it coerces Richmond to implement federal immigration policy. The Executive Order provides that federal funds will be withheld from jurisdictions that failed to comply with federal law, including specifically 8 U.S.C. § 1373. Executive Order, § 9(a). However, nothing in 8 U.S.C. § 1373 conditions any federal funding on complying with 8 U.S.C. § 1373 and no federal funds which Richmond receives are conditioned upon Richmond complying with 8 U.S.C. § 1373. In fact, in light of the plain language of the statute, there can be no requirement that as a condition of receiving federal funds, a jurisdiction comply with 8 U.S.C. § 1373. If the Executive Order is allowed to stand, its implementation would impermissibly intrude on Richmond's exercise of powers conferred upon it by the State of California, and would unlawfully restrict Richmond's ability to shape local government according to Richmond's needs and policy mandates of its residents.

Accordingly, the Executive Order is unconstitutional under the Tenth Amendment.

5. <u>The Executive Order Induces Violations Of The Fourth Amendment</u>

The Executive Order is also unconstitutional because it forces jurisdictions to keep people in custody who otherwise would be released, thus potentially exposing the jurisdictions to liability under the Fourth Amendment. This is not an idle concern. Public entities may be liable under the Fourth Amendment for honoring an ICE civil detainer request in the absence of probable cause. *Miranda-Olivares v. Clackamas Cty.*, No. 3:12-cv-02317-ST, 2014 U.S. Dist.

LEXIS 50340 (D. Or. Apr. 11, 2014); *see Morales v. Chadbourne*, 793 F.3d 208, 215-216 (1st Cir. 2015); *Orellana v. Nobles Cnty.*, No. 15-3852 ADM/SER, 2017 U.S. Dist. LEXIS 2438, at *23-24 (D. Minn. Jan. 6, 2017); *Mendia v. Garcia*, 165 F. Supp. 3d 861, 887 (N.D. Cal. 2016). Congress' spending power "may not be used to induce the States to engage in activities that would themselves be unconstitutional." *Dole,* 483 U.S. at 210. However, that is precisely what the Executive Order is designed to do

6. <u>The Executive Order Is Also Unconstitutionally Vague In Violation Of The Due Process Clause Of The Fifth Amendment</u>

A federal law is unconstitutionally vague if it "fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement. *United States v. Williams*, 553 U.S. 285, 304 (2008). "It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972); *see also Desertrain v. City of L.A.*, 754 F.3d 1147, 1155-56 (9th Cir. 2014); *Valle Del Sol Inc. v. Whiting*, 732 F.3d 1006, 1019 (9th Cir. 2013).

The Executive Order is unconstitutionally vague. The Executive Order fails to define key terms, such as "sanctuary jurisdiction." As stated in a recent Congressional Research Service report, "no official list exists of sanctuary jurisdictions—and the term itself has no formal definition . . . ." *See* RJN, Ex. 3 at 8, n.30 (CRS Report R44118, *Sanctuary Jurisdictions and Criminal Aliens: In Brief*, January 10, 2017). Although Richmond and numerous other jurisdictions have been referred to as "sanctuary cities," there are differences between the ordinances and policies of the various jurisdictions throughout the nation that have been referred to as a "sanctuary city." The fact that a public entity has been called a sanctuary city, or that it has enacted legislation concerning immigration policies, does not mean that it is a "sanctuary jurisdiction" under the Executive Order. No jurisdiction can determine by the language of the Executive Order if it is a "sanctuary jurisdiction" subject to the Executive Order.

The Executive Order is also unconstitutionally vague because it does not define what actions or inactions constitute a 'willful refusal' to comply with 8 U.S.C. § 1373. The Executive

Order gives unfettered discretion to the Attorney General and the Secretary of Homeland Security without providing any rules or guidance on how that discretion should be exercised. The Executive Order allows resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application. *See Grayned*, 408 U.S. at 109.

The Executive Order is also unconstitutionally vague because it fails to define what is meant by the phrase: "Ensure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law." Executive Order § 2(c). There is no way for Richmond to know what "applicable Federal law" means under the Executive Order; whether it is 8 U.S.C. § 1373, all immigration laws, or all federal laws. For each of these reasons, the Executive Order is unconstitutionally vague.

B. RICHMOND WILL SUFFER IRREPARABLE HARM WITHOUT PRELIMINARY RELIEF

As shown above, Richmond is likely to succeed on the merits of its claim that Section 9(a) of the Executive Order is unconstitutional. The Executive Order coerces the City to carry out federal immigration policies, commandeers City resources, is unconstitutionally vague, and imposes penalties without due process. The Executive Order violates the Separation of Powers, the Spending Clause, the Tenth Amendment, the Fourth Amendment, and the Due Process Clause of the Fifth Amendment. Such injury to constitutional rights constitutes irreparable harm. *de Jesus Ortega Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'") (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); *Washington v. Trump*, 847 F.3d at 1169 (same).

Due to Richmond's policies regarding immigrants, the Executive Order poses an imminent threat that all federal funding will be withdrawn pursuant to the Executive Order. If federal funds are withdrawn, the result will be catastrophic. As stated by Richmond's City Manager, Bill Lindsay, withdrawal of federal funds from programs that rely on federal grants would put the City and its residents in a crisis, require a significant reduction in essential services, and endanger the health and safety of Richmond's residents. Lindsay Dec ¶ 12. As stated by Richmond's Fire Chief, Adrian Sheppard, loss of federal funding for the Richmond Fire Department Office of Emergency Services would significantly impact the City's capacity to prevent, protect against, mitigate, respond to, and recover from terrorist attacks and other catastrophes. Sheppard Dec ¶ 10. Without federal funds the City would need to take drastic action such as reducing RPD patrol services to dangerous levels, eliminating or substantially impairing emergency response services, and reducing government services and personnel to below basic minimum requirements. Lindsay Dec ¶ 12.

Richmond also faces imminent and irreparable harm as a result of the uncertainty created by Executive Order Section 9(a). Richmond does not know when federal funding cuts will take place pursuant to the Executive Order, the extent of those cuts, or whether the federal government will "claw-back" funds allocated to ongoing programs. However, Richmond has already begun the process of adopting its annual budget for the fiscal year beginning on July 1, 2017. As stated by the City Manager, without preliminary relief and clarification regarding the legality and effect of the Executive Order, the City is in an untenable financial situation, and decisions that must be made while awaiting a final decision in this case which could take multiple budget cycles, could cause a financial crisis. Lindsay Dec ¶ 10. Without preliminary relief, even if Richmond ultimately prevails, the City and its residents, *especially its most vulnerable residents*, will have suffered irreparable harm by having been deprived of essential services while the case is litigated. Without preliminary relief, the City will be forced to choose whether to continue to provide services to City residents without knowing that the City will be reimbursed by the federal government for those services, or discontinue mandatory and essential services to its residents. Either course of action has dire consequences and subjects the City and its residents to irreparable harm. *Id.*

Moreover, the uncertainty created by the Executive Order threatens the safety and welfare of Richmond's residents. As stated by Richmond's Chief of Police, Allwyn Brown, RPD is noticing that residents are reluctant to cooperate out of fear and concern about RPD's relationship with ICE. Brown Dec ¶ 8. City Council Ordinance No. 29-90 and RPD Policy 428 helped Richmond residents to trust that they can report a crime without fear that their involvement will lead to their deportation. That trust is being eroded by the Executive order. *Id.* The Executive Order has increased fear in the immigrant community and made it harder for RPD to fulfill its mission and protect the public. Brown Dec ¶ 9. The Executive Order is thus interfering with a core function of local government, protecting the safety and welfare of its residents. These harms are ongoing and irreparable. Attempting to comply with the Executive Order is not viable because it is uncertain what actions the City must take to comply, and attempting to do so would likely interfere with policy decisions that the Richmond City Council has made. Lindsay Dec ¶ 13.

C. THE BALANCE OF EQUITIES AND PUBLIC INTEREST FAVOR A PRELIMINARY INJUNCTION

When the United States is a party, equities and the public interest merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1099 (9th Cir. 2014). Where, as here, there is a likelihood of a constitutional violation, "[t]he public interest and the balance of the equities favor prevent[ing] the violation of a party's constitutional rights." *Ariz. Dream Act Coal. v. Brewer*, No. 15-15307, 2017 U.S. App. LEXIS 1919, at *42 (9th Cir. Feb. 2, 2017) (citing *Melendres*, 695 F.3d at 1002 ("it is always in the public interest to prevent the violation of a party's constitutional rights")).

The federal government will suffer no harm if the motion is granted, as ICE and other federal agents will continue to enforce federal immigration law. But if a preliminary injunction is denied, Richmond will suffer immediate and tangible harm: Richmond will face a financial crisis, and be forced to choose whether to continue to provide services to City residents without knowing that the City will be reimbursed by the federal government, or discontinue essential services to its residents; the Executive Order will continue to erode trust and increase fear in Richmond's large immigrant community, making it harder for RPD to fulfill its mission and protect the public; and the City will continue to be coerced to change its laws and policies under the threat of catastrophic harm to the safety and welfare of the City and its residents, in violation of the Tenth Amendment of the Constitution. Richmond is not unique in the harm it will suffer; jurisdictions throughout the nation are facing the same Hobson's choice. Thus, the Court should issue a nation-wide injunction.

V. CONCLUSION

For the foregoing reasons, the Court should grant preliminary injunctive relief:

(1) prohibiting Defendants from enforcing Section 9(a) of Executive Order;

(2) prohibiting Defendants from taking any action pursuant to the Executive Order that would withhold or "claw-back" federal funds appropriated or allocated by Congress; and

(3) prohibiting Defendants from taking any action pursuant to the Executive Order that would declare or render Richmond or any jurisdiction ineligible for federal funds.

Because the Executive Order applies to jurisdictions throughout the United States, the injunction should apply nationwide.[4]

Respectfully submitted,

Dated: April 4, 2017

COTCHETT, PITRE & McCARTHY, LLP

By: /s/ *Joseph W. Cotchett*
JOSEPH W. COTCHETT

Attorneys for Plaintiff

Dated: April 4, 2017

CITY OF RICHMOND

By: /s/ *Bruce Reed Goodmiller*
BRUCE REED GOODMILLER

Attorneys for Plaintiff

[4] Because Richmond has shown a likelihood of success on the merits and irreparable harm, it has "necessarily establish[ed] . . . standing to seek injunctive relief." *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1286–87 (9th Cir. 2013). The City's claims are also ripe. *See MedImmune, Inc. v. Genentech, Inc.*, 549 U. S. 118, 128-129 (2007) ("where threatened action by *government* is concerned, we do not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat"); *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2341 (2014) (same).

ATTESTATION OF FILING

I, Nancy L. Fineman, hereby attest, pursuant to Northern District of California, Local Rule 5-1(i)(3) that concurrence to the filing of this document has been obtained from each signatory hereto.

/s/ Nancy L. Fineman

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CITY OF RICHMOND, a municipal corporation,

Plaintiff,

vs.

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

Defendants.

Case No. 3:17-cv-01535-WHO

DECLARATION OF ALLWYN BROWN IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Date: May 10, 2017
Time: 2:00 p.m.
Judge: Honorable William H. Orrick
Dept.: Courtroom 2

Complaint Filed: March 21, 2017
No Trial Date

I, ALLWYN BROWN, declare and state as follows:

1. I am a resident of the State of California. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently thereto.

2. I am the Chief of Police for the City of Richmond, California ("Richmond"). I joined the Richmond Police Department ("RPD") in 1984, and have served as a police officer for over 32 years, including as patrolman, sergeant, captain, deputy chief, and now chief of police.

3. The RPD serves a diverse community of more than 100,000 residents.

4. The mission of the RPD is to prevent crime, maintain order and enforce the law. To fulfill its mission, the RPD engages in community policing. The community policing model requires active, engaged, and empowered neighborhood residents who freely interact with police without reservations. It is critical that all residents, no matter their immigration status, are able to report crimes and assist in criminal investigations without fear that their immigration status will also be investigated. Over the past decade, the RPD has made significant progress in growing community trust. This has resulted in a significant reduction in crime and victimization. A true and correct copy of my open letter on community policing is attached hereto as **Exhibit 1**.

5. I am familiar with City Council Ordinance Nos. 29-90 and 11-07 which seek to "foster an atmosphere of trust and cooperation between the Richmond Police Department and all persons, regardless of immigration status, residing in the City of Richmond." RPD policies seek to build trust with all communities while complying with all state and federal laws.

6. Policy 428 of the RPD Policy Manual states that it is "department policy, consistent with its obligations under state and federal law, to adhere to the City of Richmond Ordinance 29-90" and that "all individuals, regardless of their immigration status, must feel secure that contacting law enforcement will not make them vulnerable to deportation." RPD Policy Manual Section 428.4 states: "Nothing in this policy is intended to restrict officers from exchanging legitimate law enforcement information with any other federal, state or local government entity (8 USC § 1373; 8 USC § 1644)." A true and correct copy of Policy 428 of the RPD Policy Manual is attached hereto as **Exhibit 2**.

7. I am also familiar with Executive Order 13768, dated January 25, 2017, and titled "Enhancing Public Safety in the Interior of the United States" (the "Executive Order").

8. The Executive Order increases fear in the immigrant community and makes it harder for RPD to fulfill its mission and protect the public. Ordinance No. 29-90 and RPD Policy 428 helped Richmond residents to trust that they can report a crime without fear that their involvement will lead to their deportation. That trust is being eroded by the Executive order. RPD is noticing that residents are reluctant to cooperate out of fear and concern about RPD's relationship with the United States Immigration and Customs Enforcement.

9. On March 27, 2017, United States Attorney General Jefferson Sessions announced that "the Department of Justice will require jurisdictions seeking or applying for Department grants to certify compliance with [8 U.S.C.] Section 1373 as a condition for receiving these awards." Sessions also stated that the Justice Department will take "all lawful steps to claw-back any funds awarded to a jurisdiction that willfully violates 1373." The City of Richmond receives over $2.7 million in Justice Department grants, including $625,000 per year from the Community Oriented Policing Services program for three years to hire five police officers, and $150,000 to equip RPD officers with body cameras.

10. The RPD believes that its policies are in compliance with all state, federal and constitutional requirements. It is uncertain what actions the City must take to comply with the Executive Order.

I declare under the penalty of perjury that the foregoing is true and correct. Executed on April 4, 2017 at Richmond, California.

ALLWYN BROWN

Exhibit 1

Richmond Police Department

Office of the Chief of Police

1701 Regatta Boulevard, Richmond, CA 94804-7409
Bus: (510) 621-1802 Fax: (510) 620-6880

Greetings:

I want to make it known that we (Richmond Police) value and appreciate our community, and that we expect to continue to rely on the engagement of all in order to help make Richmond safer. Our connection to community is indispensible when it comes to policing Richmond, responding to emergencies and assisting victims in seeking justice. It is my hope that the current climate of fear and anxiety around how immigration regulations are enforced nationally does not slow the progress we've made. The Richmond Police Department (RPD) is a component of local government, and its alignment is, and will remain with the priorities, direction and guidance offered by our local elected leaders.

Please know the RPD is committed to a proven effective community policing model that knows the unmistakable truth, that community safety is a responsibility for everyone, and not just a job for the police. This requires active, engaged, and empowered neighborhood residents who freely interact with police without reservation. The RPD does not enforce federal immigration laws - doing so would harm community trust, and run counter to our various crime prevention and reduction efforts. Our approach has long contemplated the reality that Richmond has a substantial undocumented population whose members tend be targets of certain types of criminal victimization, because most criminal offenders are "rational" in their target selection for the reason that they want to avoid being identified and reported to police. Perpetrators assume that certain targets for victimization will not report incidents to the police.

We've made good progress in growing community trust while also reducing crime and victimization, but still much work remains to be done. Community partners are essential to our collective progress moving forward.

Yours in service

Allwyn Brown
Chief of Police

Exhibit 2

Immigration Violations

428.1 PURPOSE AND SCOPE

It is the policy of the Richmond Police Department (RPD) to foster trust and cooperation with all people of the city and to encourage them to communicate with RPD officers without fear of inquiry regarding their immigration status. It is also department policy, consistent with its obligations under state and federal law, to adhere to the City of Richmond Ordinance 2990. This ordinance prohibits the use of City resources to assist in the enforcement of federal immigration laws without the specific authorization of the City Manager or the Chief of Police.

428.2 DEPARTMENT POLICY

The U.S. Immigration and Customs Enforcement (ICE) has primary jurisdiction for enforcement of the provisions of Title 8, United States Code dealing with illegal entry.

When assisting ICE at its specific request, or when suspected criminal violations are discovered as a result of inquiry or investigation based on probable cause originating from activities other than the isolated violations of 8 USC § 1304; 8 USC § 1324; 8 USC § 1325 and 8 USC § 1326, this department may assist in the enforcement of federal immigration laws.

428.2.1 IMMIGRATION "SWEEPS" AND SPECIAL ENFORCEMENT EFFORTS

The Richmond Police Department does not conduct immigration "sweeps" or engage in other concentrated efforts to identify or detain suspected undocumented individuals.

Equal consideration should be given to all suspected violations and not just those affecting a particular race, ethnic group, age group, gender, socioeconomic status, immigration status, or other group when enforcement efforts are increased in any particular area of the city.

The disposition of each contact (e.g., warning, citation, arrest), while discretionary in each case, should not be affected by such factors as race, ethnicity, sexual orientation, immigration status, etc.

428.2.2 ICE REQUEST FOR ASSISTANCE

If the U.S. Immigration and Customs Enforcement (ICE) requests assistance from this department for support services, such as traffic control or "keep the peace" efforts, authorization must be obtained from the Chief of Police.

RPD officers shall not participate in ICE operations such as immigration "sweeps", or activities related to immigration issues, other than as emergency back up.

428.2.3 BOOKING

If the officer is unable to reasonably establish an arrestee's identity, the individual may, upon approval of a supervisor, be booked into jail for the suspected criminal violation and held for bail.

A person detained exclusively pursuant to the authority of Vehicle Code § 40302(a) for any Vehicle Code infraction or misdemeanor shall not be detained beyond two hours for the purpose of establishing his/her true identity. Regardless of the status of that person's identity at the expiration of two hours, he/she shall be released on his/her signature with a promise to appear in court for the Vehicle Code infraction or misdemeanor involved.

428.2.4 NOTIFICATION OF IMMIGRATION AND CUSTOMS ENFORCEMENT

It is the policy of the City of Richmond and the Richmond Police Department that the Department shall not comply with Immigration and Customs Enforcement (ICE) hold "requests" or ICE detainers. Arrested persons shall not be held for these hold/retainer "requests." ICE has no legal authority to require compliance with these "requests." The Department shall comply with federal arrest warrants or orders signed by a judge.

ICE personnel shall not be allowed access to the Richmond Police Department Detention Unit (Temporary Holding Facility) unless they are there to pick up a prisoner on a federal warrant or order signed by a judge.

Richmond Police Department personnel shall not notify ICE of individuals who are taken into custody. If an arrested person meets Richmond Police Department criteria to be transported and booked into the County Jail, that person may be subject to an ICE hold or detainer "request" once he or she is booked into the county Jail based on the Contra Costa County Sheriff's Department's policy which provides ICE personnel access to the County Jail and shares information with ICE.

ICE personnel shall not be permitted access to any Richmond Police Department records, including booking sheets, booking logs, or police reports unless they have the approval of a Deputy Chief or Chief of Police.

Any deviations from this policy shall require the approval of a Deputy Chief or the Chief of Police.

428.3 U VISA PROGRAM

In October 2000, the United States Congress passed the Victims of Trafficking and Violence Prevention Act. As part of this Act, Congress sought to strengthen the ability of local law enforcement agencies to detect, investigate, and prosecute crimes against nonresident foreigners. In cases in which the victims are nonresident foreigners, their immigration status in the United States can directly affect their ability to cooperate and assist local law enforcement in the investigation and prosecution of these crimes.

Nonresident foreign victims usually need to be in the United States to be accessible to provide information and testimony as part of an investigation or prosecution. Nonresident foreign victims may also need a place of refuge so they can avoid returning to the same environment in another country where they might be exposed to further crimes. For this reason, Congress created a specific avenue for nonresident foreign crime victims to obtain lawful temporary immigrant status. This was accomplished by amending certain sections of the Immigration and Nationality Act (INA) to create the "U Visa." The Richmond Police Department participates in the U Visa Program.

428.3.1 GENERAL U-VISA INFORMATION

(a) Temporary Visa - allowing the victim to remain in the U.S. for up to four (4) years

(b) After three (3) years, the victim can apply for permanent residency

(c) Victim may legally work in the U.S.; and

(d) Nation-wide, a total of only 10,000 U-Visas are issued annually.

(e) Except for those cases protected under California Penal Code Section 293, U-Visa information/records are subject to the Public Records Access Act.

428.3.2 QUALIFIERS

In order for a Form I-918, Supplement b to be completed and certified by the Department, the facts of the case under investigation must demonstrate the following:

(a) The non-resident foreign victim has been, is being, or is likely to be "helpful" to an RPD investigation. For the purposes of this policy, the victim is described as being "helpful" when he/she:

1. Possesses and furnishes vital information about a qualifying crime;
2. Demonstrates continual cooperation during the investigation and/or prosecution;
3. Assists investigators with gathering additional vital information; and
4. Makes him/herself available to investigators.

(b) The non-resident foreigner was a victim of an actual crime (listed in subpart C. below) which took place in the United States.

1. If there is no Richmond connection (e.g., the Department has not and does not plan to open an investigation), the request shall be returned to the requester with instructions to forward to the appropriate investigating or charging agency.
2. If a prior investigation and related criminal case has been closed and the date of the incident exceeds the statute of limitations, the Department shall not process the request without first consulting with the District Attorney's Office.

(c) The non-resident foreign victim sustained physical injury or mental abuse and the crime was one of the following:

1. Rape;
2. Torture;
3. Trafficking;
4. Incest;
5. Domestic violence;
6. Sexual assaults;
7. Abusive sexual contact;
8. Prostitution, sexual exploitation;
9. Female genital mutilation;
10. Abduction;
11. Unlawful criminal restraint;
12. False imprisonment;
13. Blackmail;
14. Extortion;
15. Manslaughter;
16. Murder;
17. Felonious assault;
18. Witness tampering;

19. Obstruction of justice;
20. Perjury or attempt;
21. Conspiracy; or
22. Solicitation to commit any of the above mentioned crimes.

(d) The decision to complete the certification of Form I-918, Supplement B, is based solely on these qualifiers. If the application does not satisfy these criteria, the Form shall be returned to the requester uncompleted and "un-signed."

428.3.3 REQUEST FOR ASSISTANCE

The Richmond Police Department's U-Visa program is managed by the Lieutenant assigned to the Criminal Investigations Section. A petition for a U-Visa from the U.S. Citizenship and Immigrations Services must be completed on DHS Form I-918 by the assigned investigator or the assigned prosecutor and must include information on how the individual can assist in a criminal investigation or prosecution in order for a U-Visa to be issued.

Any request for assistance in applying for U-Visa status should be forwarded in a timely fashion to the Investigation Section Sergeant assigned to supervise the handling of any related case. The Investigation Section Sergeant should do the following:

- Consult with the assigned detective to determine the current status of any related case and whether an update on the case is warranted.
- Review the instructions for completing the certification if necessary. Instructions for completing Form I-918 can be found on the DHS website at http://www.uscis.gov/portal/site/uscis.
- Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the certification has not already been completed and that certification is warranted.
- Timely address the request and complete the certification if appropriate.
- Ensure that any decision to complete or not complete the form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed certification in the case file.

428.4 CONSIDERATIONS PRIOR TO REPORTING TO ICE

The Richmond Police Department is concerned for the safety of local citizens and thus detection of criminal behavior is of primary interest in dealing with any person. The decision to arrest shall be based upon those factors which establish probable cause and not on arbitrary aspects. Race, ethnicity, age, gender, sexual orientation, religion, and socioeconomic status alone are of no bearing on the decision to arrest.

All individuals, regardless of their immigration status, must feel secure that contacting law enforcement will not make them vulnerable to deportation. Members should not attempt to determine the immigration status of crime victims and witnesses or take enforcement action against them absent exigent circumstances or reasonable cause to believe that a crime victim or witness is involved in violating criminal laws. Generally, if an officer suspects that a victim or witness is an undocumented immigrant, the officer need not report the person to ICE unless circumstances indicate such reporting is reasonably necessary.

Nothing in this policy is intended to restrict officers from exchanging legitimate law enforcement information with any other federal, state or local government entity (8 USC § 1373; 8 USC § 1644).

428.4.1 U-VISA/T-VISA NONIMMIGRANT STATUS

Under certain circumstances, federal law allows temporary immigration benefits to victims and witnesses of certain qualifying crimes (8 USC § 1101(a)(15)(U); 8 USC § 1101(a)(15)(T)). A declaration/certification for a U-Visa/T-Visa from the U.S. Citizenship and Immigration Services may be completed on the appropriate U.S. DHS Form supplements (I-918 or I-914) by law enforcement and must include information on how the individual can assist in a criminal investigation or prosecution in order for a U-Visa/T-Visa to be issued.

Any request for assistance in applying for U-Visa/T-Visa status should be forwarded in a timely manner to the Investigation Section sergeant assigned to supervise the handling of any related case. The Investigation Section sergeant should do the following:

(a) Consult with the assigned detective to determine the current status of any related case and whether further documentation is warranted.

(b) Review the instructions for completing the declaration/certification if necessary. Instructions for completing Forms I-918/I-914 can be found on the U.S. DHS website.

(c) Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the declaration/certification has not already been completed and whether a declaration/certification is warranted.

(d) Address the request and complete the declaration/certification, if appropriate, in a timely manner.

(e) Ensure that any decision to complete or not complete the form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed declaration/certification in the case file.

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Attorneys for Plaintiff City of Richmond

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CITY AND COUNTY OF RICHMOND,

Plaintiff,

vs.

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

Defendants.

Case No. 3:17-cv-01535-WHO

DECLARATION OF WILLIAM LINDSAY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Date: May 10, 2017
Time: 2:00 p.m.
Judge: Honorable William H. Orrick
Dept.: Courtroom 2

Complaint Filed: March 21, 2017
No Trial Date

I, WILLIAM LINDSAY, declare and state as follows:

1. I am the City Manager of the City of Richmond, California ("Richmond" or the "City"). I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently thereto.

2. Under Article IV of the Richmond City Charter, the City Manager is the chief executive officer and the head of the administrative branch of the City Government. The City Manager's Office is responsible for implementing City Council policy, directing departments and the City's administrative function, providing day-to-day leadership in policy development and implementation, assuring an efficient and equitable delivery of City services, initiating and developing short and long-term special projects, overseeing the annual budget process, managing the City's inter-governmental relations and public information functions, and directing major economic development projects.

3. In my role as City Manager, I perform these functions. I have been City Manager since 2005 and have completed, and overseen implementation of, twelve budgets for the City. The City budget provides for the City's services, infrastructure, and economic and community development. A critical component of the City's budget is federal grants, including grants from the Department of Commerce, Department of Defense, Department of Health and Human Services, Department of Homeland Security, Department of Housing and Urban Development, Department of Justice, Department of Labor, Department of Transportation, and the Environmental Protection Agency.

4. The City currently has active grants that have awarded $77.2 million in federal funds to the City. Approximately $50 million of these funds have already been used for ongoing programs. For example, the Richmond Housing Authority receives approximately $26 million in grants from the U.S. Department of Housing and Urban Development (HUD) to provide affordable housing. In addition to 559 housing units for low-income, elderly and disabled residents, the Housing Authority provides Section 8 vouchers to 2,006 Richmond residents who can use these subsidies to pay rent anywhere in the City. The housing choice voucher program is the federal government's major program for assisting very low-income

families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market. Other HUD grants include Community Development Block Grant (CDGB) funds which have in the past been used for a variety of purposes, including to provide assistance to programs for lower income persons, to provide emergency and transitional housing for the homeless, to increase housing opportunities for lower income persons, and, most recently, to provide $3.1 million in funding to increase access to City facilities for persons with disabilities.

5. The Environmental Protection Agency has awarded Richmond an Environmental Workforce Development and Job Training grant of $192,300 to train 51 students in environmental jobs. The core training program includes 366 hours of instruction in 40-hour HAZWOPER; lead and asbestos abatement; confined space entry; OSHA 10-hour construction safety; refinery safety; emergency response; solar installation; forklift, logistics, and warehouse training; and Richmond BUILD pre-apprenticeship construction. Participants will earn four federal, two state, and three industry certifications and licenses. The City is targeting low income, unemployed, formerly incarcerated, and underemployed veterans and disadvantaged minority residents of Richmond.

6. The Department of Justice has granted over $2.7 million in critical funding to support law enforcement in Richmond. For example, Richmond received an award of $625,000 per year from the Community Oriented Policing Services program for three years to hire five police officers, and $150,000 to expand the Richmond Police Department's body-worn camera program. In addition, the Office of Juvenile Justice and Delinquency Prevention awarded $1,500,000 to support the East Bay Mentoring Collaborative to provide vulnerable youth in low-income, high-crime neighborhoods with adult mentors. As a result, the EBMC will serve over 450 additional youth who are at high risk of dropping out of high school and entering the juvenile justice system.

7. The Department of Transportation has recently provided over $3 million dollars to improve the condition of arterial streets in the community, and over $400,000 to improve and provide safe routes to school for children

8. These federal funds were granted without any preconditions relating to Richmond's policies concerning United States Immigration and Customs Enforcement ("ICE"). The loss of this revenue would have a catastrophic impact on the City, especially in the areas of public safety and assisting vulnerable populations. The City would be unable to provide critical community services, including mandatory entitlement services. Both federal programs and other programs would be lost or significantly impaired.

9. I have read Executive Order 13768 of January 25, 2017, entitled "Enhancing Public Safety in the Interior of the United States" (the "Executive Order"). The Executive Order threatens to withdraw federal funding from the City. Essential City services would be affected by cuts in federal funds, including housing, public safety, environmental protection, employment and training, literacy, and transportation programs.

10. Under Section 1(b) of Article IV of the Richmond City Charter the City Manager is required to prepare an annual budget for review and approval by the City Council. Richmond has already begun the process of adopting the annual budget for the fiscal year beginning on July 1, 2017. Without preliminary relief and clarification regarding the legality and effect of the Executive Order, the City is in an untenable financial situation, and decisions that must be made while awaiting a final decision in this case which could take multiple budget cycles, could cause a financial crisis.

11. Without preliminary relief, the City will be forced to choose whether to continue to provide services to City residents without knowing that the City will be reimbursed by the federal government for those services, or discontinue mandatory and essential services to its residents. Either course of action has dire consequences and subjects the City and its residents to irreparable harm.

12. Withdrawal of federal funds from programs that rely on federal grants would put the City and its residents in a crisis, and require a significant reduction in staff and contract services. The loss of federal revenue would endanger the health and safety of Richmond's residents. Without federal funds the City would need to take drastic action such as reducing Richmond Police Department patrol services to dangerous levels, eliminating or substantially

impairing emergency response services, and reducing government services and personnel to below basic minimum requirements.

13. Attempting to comply with the Executive Order is not viable because it is uncertain what actions the City must take to comply, and attempting to do so would likely interfere with policy decisions that the Richmond City Council has made.

14. All of these considerations need to be reflected in the annual budget which the City is required to adopt on or before July 1, 2017.

15. A true and correct copy of Richmond City Council Ordinance No. 29-90, adopted August 13, 1990, is attached hereto as **Exhibit 1**.

16. A true and correct copy of Richmond City Council Resolution No. 11-07, adopted February 6, 2007, is attached hereto as **Exhibit 2**.

I declare under the penalty of perjury that the foregoing is true and correct. Executed on April 4, 2017 at Richmond, California.

WILLIAM LINDSAY

Exhibit 1

ORDINANCE NO. 29-90 N.S.

AN ORDINANCE OF THE CITY OF RICHMOND, CALIFORNIA, ADOPTING CERTAIN POLICIES REGARDING THE REQUEST FOR INFORMATION, ASSISTANCE OR COOPERATION BY THE IMMIGRATION AND NATURALIZATION SERVICE OF THE UNITED STATES DEPARTMENT OF JUSTICE

WHEREAS, the Council of the City of Richmond desires to foster an atmosphere of trust and cooperation between the Richmond Police Department and all persons, regardless of immigration status, residing in the City of Richmond; and

WHEREAS, the creation of such trust and cooperation is important to law enforcement efforts in the City of Richmond in the war on drugs and criminal activity generally; and

WHEREAS, concerns have been raised that this positive environment may be compromised by certain actions engaged in by agents of the Immigration and Naturalization Service of the United States Department of Justice in the City of Richmond when aided by information or assistance provided by City of Richmond officers and employees; and

WHEREAS, the Council of the City of Richmond desires to respond to the community's concerns in an effective manner.

NOW, THEREFORE, the Council of the City of Richmond do ordain as follows:

Section 1. The Council of the City of Richmond hereby declares that it does not condone the detention of citizens and non-citizens by the Immigration and Naturalization Service based solely upon physical profiles or a lack of probable cause.

Section 2. In order to address the fears expressed by the immigrant and refugee community in the City of Richmond concerning Immigration and Naturalization Service activities in the City of Richmond while preserving the ability of the Richmond Police Department to utilize all available resources to fight criminal activity, the Council of the City of Richmond hereby adopts the following policy:

1. All officers and employees of the City of Richmond, while acting in their official capacities, who receive any oral or written request from the Immigration and Naturalization Service for information, cooperation or assistance shall refer

such request to the City Manager or the Chief of Police. The City Manager or the Chief of Police shall decide whether such information shall be given or whether such cooperation or assistance shall be provided to the Immigration and Naturalization Service. In exercising their discretion, the City Manager and the Chief of Police shall consider the possible disruption and inconvenience that may be experienced by the immigrant and refugee community in the City of Richmond and any requirements of any federal, state or local law or court decision. Nothing delineated in the foregoing policy shall be construed to prevent the City Manager or the Chief of Police from providing information, assistance or cooperation to the Immigration and Naturalization Service regarding the criminal violation of any federal, state or local law.

2. The City Manager and the Chief of Police shall report to the City Council regarding the activities of the Immigration and Naturalization Service within the City of Richmond as requested by the City Council or as the City Manager or Chief of Police may deem appropriate.

3. The City Manager shall distribute a copy of this policy to all current and new officers and employees of the City of Richmond and shall emphasize the importance of complying with this City Council policy.

Section 3. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed each section, subsection, subdiviaion, paragraph, sentence, clause or phrase of this Ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

First read at a regular meeting of the Council of the City of Richmond, California, held August 13, 1990, and finally passed and adopted at a regular meeting thereof held August 20, 1990, by the following vote:

AYES: Councilmembers Niccolls, Corbin, Marquez, Ziesenhenne, MacDiarmid, Griffin and Vice-Mayor McMillan

NOES: None

ABSENT: Councilmember Washington and Mayor Livingston

EULA M. BARNES
Clerk of the City of Richmond

(SEAL)

Approved:

GEORGE L. LIVINGSTON
Mayor

Approved as to form:

MALCOLM HUNTER
City Attorney

State of California)
County of Contra Costa : ss.
City of Richmond)

I certify that the foregoing is a true copy of Resolution No. 29-90 N.S. finally passed and adopted by the Council of the City of Richmond at a regular meeting held August 13, 1990, and published in accordance with law.

3 EULA M. BARNES
Clerk of the City of Richmond

By: Diane Holmes
Deputy City Clerk

Exhibit 2

RESOLUTION NO. 11-07

A RESOLUTION OF THE RICHMOND CITY COUNCIL REAFFIRMING ITS SUPPORT FOR COMPREHENSIVE IMMIGRATION REFORM THAT IS FAIR, JUST AND HUMANE

WHEREAS, The City of Richmond welcomes and values all of its residents and supports them to live and work free from discrimination, hostility, abuse, violence, exploitation and fear of local, state and federal law enforcement; and

WHEREAS, one fourth of the residents of Richmond are persons who were born in foreign countries and who have come to the U.S. in search of better lives for themselves and their families; and

WHEREAS; National experts and policy makers agree our federal immigration policy is broken, inconsistent and in need of reform; and

WHEREAS; Most economists agree that immigrants and undocumented workers are good for the US economy and studies show that immigrants contribute $25-30 billion more in taxes than they receive in services; and

WHEREAS; A crackdown on illegal immigration in 2004 caused a shortage of workers needed to bring in the agricultural crop in the Western United States which caused a $1 billion dollar loss for the industry; and

WHEREAS, The City of Richmond in resolution 35-06 of April 18, 2006 called for a comprehensive immigration reform bill that is fair, just and humane; that recognizes all immigrants for their contributions to our economic and social life; and

WHEREAS The City of Richmond passed Ordinance 29-90 to affirms its desire to foster an atmosphere of trust and cooperation between the Richmond Police Department and all residents of the city of Richmond; and

WHEREAS, Immigration and Customs Enforcement (ICE) has acknowledged through press reports that its officers identify themselves as "police", which technically correct misleads the residents of Richmond, by suggesting they are Richmond Police Department officers investigating local crimes and undermines the trust built by the Richmond Police Department; and

WHEREAS, the community and church leaders have received also numerous complaints of people arrested at places of work and in public places, for which no warrants existed, creating a climate of fear among immigrant families; and

NOW, THEREFORE, BE IT RESOLVED that the US Department of Homeland Security and the US Immigration and Customs Enforcement be called upon to issue a moratorium on raids until the US Congress comes to an agreement on comprehensive immigration reform so that the debate can be carried out in good faith, rather than against a backdrop of fear, repression and intimidation; and

BE IT FURTHER RESOLVED that the City of Richmond reaffirms the terms of ordinance No. 20-90 ordering all officers and employees of this City not to inform, assist or cooperate with the Immigration and Customs Enforcement (ICE) formerly known as Immigration and Naturalization Service, without the specific authorization of the Richmond City Manager or the Chief of Police; and

BE IT FURTHER RESOLVED that the City of Richmond calls for the Immigration and Customs Enforcement (ICE) officers conducting any future official business in Richmond to clearly and specifically identify themselves as federal immigration officers and to proactively and clearly state that they are not officers of the Richmond Police Department; and

BE IT FURTHER RESOLVED that the City of Richmond reaffirms its support for comprehensive immigration reform bill that is fair, just and humane; that recognizes all immigrants for their contributions to our economic and social life; that provides a system that addresses the backlog of visas to reunite families currently separated; that provides undocumented workers and students with a path toward permanent residency; and prevents the criminalization of the estimated 12 million undocumented immigrants currently residing in the United States; and

BE IT FURTHER RESOLVED that the Richmond City Council directs the Clerk of the Richmond City Council to send copies of this resolution to Michael Chertoff, Secretary for Homeland Security, and to Federal representatives including Senator Dianne Feinstein, Senator Barbara Boxer, and Congressman George Miller.

I certify that the foregoing resolution was passed and adopted by the Council of the City of Richmond, California at a meeting held on February 6, 2007, by the following vote:

Ayes:	Councilmembers Bates, Butt, Lopez, Marquez, Rogers, Sandhu, Thurmond, Viramontes, and Mayor McLaughlin
Noes:	None
Abstentions:	None
Absent:	None

DIANE HOLMES
Clerk of the City of Richmond

[SEAL]

APPROVED:

GAYLE McLAUGHLIN
Mayor

APPROVED AS TO FORM:

JOHN EASTMAN
City Attorney

State of California }
County of Contra Costa : ss
City of Richmond }

I certify that the foregoing is a true copy of Resolution No. 11-07, finally passed and adopted by the Council of the City of Richmond at a meeting held on February 6, 2007.

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Attorneys for Plaintiff City of Richmond

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CITY OF RICHMOND, a municipal corporation Plaintiff, **vs.** **DONALD J. TRUMP, President of the United States,** **JOHN F. KELLY, Secretary of the United States Department of Homeland Security, JEFFERSON B. SESSIONS, Attorney General of the United States, and the UNITED STATES OF AMERICA,** Defendants.	Case No. 3:17-cv-01535-WHO **DECLARATION OF GAYLE MCLAUGHLIN IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION** Date: May 10, 2017 Time: 2:00 p.m. Judge: Honorable William H. Orrick Dept.: Courtroom 2 Complaint Filed: March 21, 2017 No Trial Date

I, GAYLE MCLAUGHLIN, declare and state as follows:

1. I am a resident of the State of California. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently thereto.

2. I am currently a member of the City Council of the City of Richmond, California ("Richmond"). I was originally elected to the Richmond City Council in 2004. I was elected as Richmond's Mayor in 2006 and served as Mayor from January 2007 to January 2015. Since the City Charter only allows two terms as Mayor, I chose to run for a City Council seat to continue to serve the City of Richmond. I was sworn-in as a City Councilmember on January 13, 2015.

3. In early 2007, in my first year as mayor, we experienced a host of raids by United States Immigration and Customs Enforcement ("ICE") in Richmond that caused great pain and suffering in our community. Community and church leaders received numerous complaints of people arrested at places of work and in public places, for which no warrants existed, creating a climate of fear among immigrant families. In response, I spoke at various community meetings reassuring our community that we welcome and appreciate all our residents in Richmond and will stand up for the rights of all and oppose these raids. On May 17, 2007, I testified at a Congressional hearing in Washington DC on the traumatic impact to families and children in our community as a result of these ICE raids.

4. In February of 2007, I brought forward a resolution, unanimously approved by the City Council, that called for a moratorium on the raids until the United States Congress comes to an agreement on comprehensive immigration reform so that the debate can be carried out in good faith rather than against a backdrop of fear, repression and intimidation and reaffirmed the City's support for Ordinance 20-90.

5. During my tenure as Mayor, violent crime and property crimes showed significant declining trends: homicides decreased nearly 75 percent, with 2014 having the lowest homicide number on record, dating to 1971. That decline is attributable to violence prevention programs along with City officials and the Richmond Police Department reaching out to the immigrant community so that residents can report a crime and assist in investigations without fear that their

involvement will lead to their deportation or the deportation of their loved ones. Based on my discussions, that hard-earned trust is being undermined by Executive Order 13768, dated January 25, 2017, and titled "Enhancing Public Safety in the Interior of the United States" (the "Executive Order").

6. I declare under the penalty of perjury that the foregoing is true and correct. Executed on April 4, 2017 at Richmond, California.

Gayle McLaughlin

GAYLE MCLAUGHLIN

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Attorneys for Plaintiff City of Richmond

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CITY AND COUNTY OF RICHMOND,

Plaintiff,

vs.

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

Defendants.

Case No. 3:17-cv-01535-WHO

DECLARATION OF ADRIAN SHEPPARD IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Date: May 10, 2017
Time: 2:00 p.m.
Judge: Honorable William H. Orrick
Dept.: Courtroom 2

Complaint Filed: March 21, 2017
No Trial Date

I, ADRIAN SHEPPARD declare and state as follows:

1. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently thereto.

2. I am currently the Fire Chief of the City of Richmond, California and have served in that capacity since January 2015. I have been a firefighter for twenty years, beginning with the City of Oakland in 1997. Prior to being a firefighter, I served in the United States Air Force.

3. The Richmond Fire Department is responsible for emergency medical services, fire suppression, mitigation of disasters, and rescue activities. Firefighters inspect commercial and waterfront facilities on an annual basis within an area of 56.1 square miles, including 32 miles of shoreline. Personnel are assigned to seven stations throughout the city and respond to 11,000 alarms per year. All personnel are trained to the level of EMT-D and HazMat First Responder Operational.

4. In addition, the Richmond Fire Department Office of Emergency Services ("OES") leads the City in comprehensive emergency management including planning and preparedness for, response and recovery from, and mitigation of natural, manmade, and accidental incidents of high consequence. OES's core function is to promote, facilitate, and support the efforts of the City to prepare for, respond to, and recover from disasters, emergencies and complex incidents of all types, including both natural disasters, such as earthquakes, and manmade incidents and events, such as terrorist attacks. Among its many responsibilities, OES provides emergency management training, and engages in hazard planning, and coordinates public and private efforts to recover following incidents.

5. OES training and operations are significantly supported by federal grant funding from the Department of Homeland Security's Federal Emergency Management Agency (FEMA) that is administered by the State of California Governor's Office of Emergency Services (Cal OES). OES receives the benefit of these grants either directly and indirectly through the activities of Contra Costa County OES, including the State Homeland Security Grant Program (SHSGP), the Emergency Management Performance Grant (EMPG) program, Urban Areas Security

Initiative (UASI), and the Pre-Disaster Mitigation (PDM) program. All four grant programs are critical to keeping our community safe.

6. SHSGP provides funding to ensure that local communities have the capability to prevent, protect against, mitigate, respond to, and recover from acts of terrorism.

7. EMPG funding supports activities to prevent, prepare for, mitigate against, respond to, and recover from emergencies and disasters of all types – such as earthquake, fire, and flood hazards; transportation system hazards; and intentional and/or terrorism-related threats.

8. UASI funding addresses multiple homeland security needs, including cybersecurity, communications interoperability, emergency medical needs and public health preparedness, public information and warning needs, and infrastructure protection.

9. The PDM program supports the creation of pre-disaster hazard mitigation programs to reduce public exposure to risk.

10. Loss of federal funding for OES activities would significantly impact the City's capacity to prevent, protect against, mitigate, respond to, and recover from terrorist attacks and other catastrophes.

I declare under the penalty of perjury that the foregoing is true and correct. Executed on April 4, 2017 at Richmond, California.

ADRIAN SHEPPARD

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Attorneys for Plaintiff City of Richmond

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CITY OF RICHMOND, a municipal corporation,

Plaintiff,

vs.

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

Defendants.

Case No. 3:17-cv-01535-WHO

DECLARATION OF TOM BUTT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Date: May 10, 2017
Time: 2:00 p.m.
Judge: Honorable William H. Orrick
Dept.: Courtroom 2

Complaint Filed: March 21, 2017
No Trial Date

I, TOM BUTT, declare and state as follows:

1. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently thereto.

2. I am the Mayor of the City of Richmond, California ("Richmond"). I was elected Mayor in November of 2014 and was sworn-in on January 13, 2015. Prior to serving as Mayor, I served on the Richmond City Council for twenty years and served as Richmond's vice-mayor in 2002 and 2012.

3. Richmond is one of the most racially diverse cities in the Bay Area. Approximately one-third of Richmond residents are immigrants. In particular, in the late 1980s, Richmond experienced an increase of immigrants arriving from Central America. Many of these immigrants had been the victims of political persecution. Since arriving in Richmond, these individuals and their families have contributed to the City's success.

4. I am confident that the policies we have put in place to promote a community policing culture comply with all federal and state laws. However, Executive Order 13768, dated January 25, 2017, and titled "Enhancing Public Safety in the Interior of the United States" (the "Executive Order") suggests that Richmond will be targeted for protecting our residents.

5. On March 27, 2017, United States Attorney General Jeff Sessions announced that "the Department of Justice will require jurisdictions seeking or applying for Department grants to certify compliance with [8 U.S.C.] Section 1373 as a condition for receiving these awards," and that the Justice Department will take "all lawful steps to claw-back any funds awarded to a jurisdiction that willfully violates 1373."

6. It is uncertain what actions the City must take to comply with the Executive Order or whether the Executive Order is constitutional.

7. The City Council is required to adopt an annual budget on or before the first day of the fiscal year, July 1. The City Manager has already begun the process of preparing a proposed budget for the Council's approval. A significant portion of the City's budget relies on federal grants. Without preliminary relief, the City will be forced to adopt a budget without

knowing that the City will be reimbursed by the federal government for funds that have already been granted without preconditions.

8. Richmond has active grants that have awarded $77.2 million in federal funds to the City. Approximately $26 million of those grants are from the Department of Housing and Urban Development and go toward public housing and Section 8 vouchers. Richmond relies on these grants in providing necessary services to its residents. Under the Executive Order, funds granted by Congress without any preconditions and which the City is relying upon could be withdrawn. Withdrawal of federal funds would have a devastating impact on the City's finances and would threaten the safety and welfare of residents.

9. I declare under penalty of perjury that the foregoing is true and correct. Executed on April 4, 2017 at Richmond, California.

TOM BUTT

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Attorneys for Plaintiff City of Richmond

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CITY OF RICHMOND, a municipal corporation, Plaintiff, **vs.** **DONALD J. TRUMP, President of the United States,** **JOHN F. KELLY, Secretary of the United States Department of Homeland Security,** **JEFFERSON B. SESSIONS, Attorney General of the United States, and the UNITED STATES OF AMERICA,** Defendants.	Case No. 3:17-cv-01535-WHO **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF CITY OF RICHMOND'S MOTION FOR PRELIMINARY INJUNCTION** Date: May 10, 2017 Time: 2:00 p.m. Judge: Honorable William H. Orrick Dept.: Courtroom 2 Complaint Filed: March 21, 2017 No Trial Date

Plaintiff City of Richmond hereby respectfully requests, pursuant to Federal Rule of Evidence 201, that this Court take judicial notice of the following documents.

1. Attached hereto as **Exhibit 1** is a true and correct copy of Executive Order 13768, entitled "Enhancing Public Safety in the Interior of the United States." The Executive Order is posted on the Whitehouse press office website, at https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united.

2. Attached hereto as **Exhibit 2** is a true and correct copy of a press release entitled "Attorney General Jeff Sessions Delivers Remarks on Sanctuary Jurisdictions." The press release is posted on the website of the United States Department of Justice, Office of Public Affairs, at https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-sanctuary-jurisdictions.

3. Attached hereto as **Exhibit 3** is a true and correct copy of a report by Congressional Research Service, Report R44118, entitled "Sanctuary Jurisdictions and Criminal Aliens: In Brief," dated January 10, 2017. According to the Library of Congress website, http://www.loc.gov/crsinfo/, the Congressional Research Service is a nonpartisan, legislative branch agency within the Library of Congress.

Each of these documents is judicially noticeable because government memoranda, bulletins, letters, and opinions are matters of public record appropriate for judicial notice. *Brown v. Valoff*, 422 F.3d 926, 933 n.9 (9th Cir. 2005) (judicially noticing an administrative bulletin); *Mack v. S. Bay Beer Distribs., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986) (court may take judicial notice of records and reports of state administrative bodies), *overruled on other grounds by Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 111 (1991); *see also* Fed. R. Evid. 201(b); *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) (a court may judicially notice matters of public record unless the matter is a fact subject to reasonable dispute).

Exhibits 1 and 2 are also judicially noticeable because they are posted to official government websites. *See* Fed. R. Evid. 201(b)(2) (allowing judicial notice of facts capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned); *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 199 n.18 (2008) (judicial

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notice of information on government website); *Daniels–Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998–99 (9th Cir. 2010) (same); *Paralyzed Veterans of America v. McPherson*, No. C 06–4670 SBA, 2008 WL 4183981, at *5 (N.D. Cal. Sept. 9, 2008) (noting courts commonly take judicial notice of information and documents on government websites; citing cases).

Respectfully submitted,

Dated: April 4, 2017

COTCHETT, PITRE & McCARTHY, LLP

By: /s/ *Nancy L. Fineman*

NANCY L. FINEMAN
Attorneys for Plaintiff

Dated: April 4, 2017

CITY OF RICHMOND

By: /s/ *Bruce Reed Goodmiller*

BRUCE REED GOODMILLER
Attorneys for Plaintiff

ATTESTATION OF FILING

I, Nancy L. Fineman, hereby attest, pursuant to Northern District of California, Local Rule 5-1(i)(3) that concurrence to the filing of this document has been obtained from each signatory hereto.

/s/ Nancy L. Fineman

NANCY L. FINEMAN
Attorney for Plaintiff

Exhibit 1

The White House

Office of the Press Secretary

For Immediate Release January 25, 2017

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

EXECUTIVE ORDER

- - - - - - -

ENHANCING PUBLIC SAFETY IN THE INTERIOR OF THE UNITED STATES

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq.), and in order to ensure the public safety of the American people in communities across the United States as well as to ensure that our Nation's immigration laws are faithfully executed, I hereby declare the policy of the executive branch to be, and order, as follows:

Section 1. Purpose. Interior enforcement of our Nation's immigration laws is critically important to the national security and public safety of the United States. Many aliens who illegally enter the United States and those who overstay or otherwise violate the terms of their visas present a significant threat to national security and public safety. This is particularly so for aliens who engage in criminal conduct in the United States.

Sanctuary jurisdictions across the United States willfully violate Federal law in an attempt to shield aliens from removal from the United States. These jurisdictions have caused immeasurable harm to the American people and to the very fabric of our Republic.

Tens of thousands of removable aliens have been released into communities across the country, solely because their home countries refuse to accept their repatriation. Many of these aliens are criminals who have served time in our Federal, State, and local jails. The presence of such individuals in the United States, and the practices of foreign nations that refuse the repatriation of their nationals, are contrary to the national interest.

Although Federal immigration law provides a framework for Federal-State partnerships in enforcing our immigration laws to ensure the removal of aliens who have no right to be in the United States, the Federal Government has failed to discharge this basic sovereign responsibility. We cannot faithfully execute the immigration laws of the United States if we exempt classes or categories of removable aliens from potential enforcement. The purpose of this order is to direct executive departments and agencies (agencies) to employ all lawful means to enforce the immigration laws of the United States.

Sec. 2. Policy. It is the policy of the executive branch to:

(a) Ensure the faithful execution of the immigration laws of the United States, including the INA, against all removable aliens, consistent with Article II, Section 3 of the United States Constitution and section 3331 of title 5, United States Code;

(b) Make use of all available systems and resources to ensure the efficient and faithful execution of the immigration laws of the United States;

(c) Ensure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law;

(d) Ensure that aliens ordered removed from the United States are promptly removed; and

(e) Support victims, and the families of victims, of crimes committed by removable aliens.

Sec. 3. Definitions. The terms of this order, where applicable, shall have the meaning provided by section 1101 of title 8, United States Code.

Sec. 4. Enforcement of the Immigration Laws in the Interior of the United States. In furtherance of the policy described in section 2 of this order, I hereby direct agencies to employ all lawful means to ensure the faithful execution of the immigration laws of the United States against all removable aliens.

Sec. 5. Enforcement Priorities. In executing faithfully the immigration laws of the United States, the Secretary of Homeland Security (Secretary) shall prioritize for removal those aliens described by the Congress in sections 212(a)(2), (a)(3), and (a)(6)(C), 235, and 237(a)(2) and (4) of the INA (8 U.S.C. 1182(a)(2), (a)(3), and (a)(6)(C), 1225, and 1227(a)(2) and (4)), as well as removable aliens who:

(a) Have been convicted of any criminal offense;

(b) Have been charged with any criminal offense, where such charge has not been resolved;

(c) Have committed acts that constitute a chargeable criminal offense;

(d) Have engaged in fraud or willful misrepresentation in connection with any official matter or application before a governmental agency;

(e) Have abused any program related to receipt of public benefits;

(f) Are subject to a final order of removal, but who have not complied with their legal obligation to depart the United States; or

(g) In the judgment of an immigration officer, otherwise pose a risk to public safety or national security.

Sec. 6. Civil Fines and Penalties. As soon as practicable, and by no later than one year after the date of this order, the Secretary shall issue guidance and promulgate regulations, where required by law, to ensure the assessment and collection of all fines and penalties that the Secretary is authorized under the law to assess and collect from aliens unlawfully present in the United States and from those who facilitate their presence in the United States.

Sec. 7. Additional Enforcement and Removal Officers. The Secretary, through the Director of U.S. Immigration and Customs Enforcement, shall, to the extent permitted by law and subject to the availability of appropriations, take all appropriate action to hire 10,000 additional immigration officers, who shall complete relevant training and be authorized to perform the law enforcement functions described in section 287 of the INA (8 U.S.C. 1357).

Sec. 8. Federal-State Agreements. It is the policy of the executive branch to empower State and local law enforcement agencies across the country to perform the functions of an immigration officer in the interior of the United States to the maximum extent permitted by law.

(a) In furtherance of this policy, the Secretary shall immediately take appropriate action to engage with the Governors of the States, as well as local officials, for the purpose of preparing to enter into agreements under section 287(g) of the INA (8 U.S.C. 1357(g)).

(b) To the extent permitted by law and with the consent of State or local officials, as appropriate, the Secretary shall take appropriate action, through agreements under section 287(g) of the INA, or otherwise, to authorize State and local law enforcement officials, as the Secretary determines are qualified and appropriate, to perform the functions of immigration officers in relation to the investigation, apprehension, or detention of aliens in the United States under the direction and the supervision of the Secretary. Such authorization shall be in addition to, rather than in place of, Federal performance of these duties.

(c) To the extent permitted by law, the Secretary may structure each agreement under section 287(g) of the INA in a manner that provides the most effective model for enforcing Federal immigration laws for that jurisdiction.

Sec. 9. Sanctuary Jurisdictions. It is the policy of the executive branch to ensure, to the fullest extent of the law, that a State, or a political subdivision of a State, shall comply with 8 U.S.C. 1373.

(a) In furtherance of this policy, the Attorney General and the Secretary, in their discretion and to the extent consistent with law, shall 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 law enforcement purposes by the Attorney General or the Secretary. The Secretary has the authority to designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction. The Attorney General shall take appropriate enforcement action against any entity that violates 8 U.S.C. 1373, or which has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law.

(b) To better inform the public regarding the public safety threats associated with sanctuary jurisdictions, the Secretary shall utilize the Declined Detainer Outcome Report or its equivalent and, on a weekly basis, make public a comprehensive list of criminal actions committed by aliens and any jurisdiction that ignored or otherwise failed to honor any detainers with respect to such aliens.

(c) The Director of the Office of Management and Budget is directed to obtain and provide relevant and responsive information on all Federal grant money that currently is received by any sanctuary jurisdiction.

Sec. 10. Review of Previous Immigration Actions and Policies. (a) The Secretary shall immediately take all appropriate action to terminate the Priority Enforcement Program (PEP) described in the memorandum issued by the Secretary on November 20, 2014, and to reinstitute the immigration program known as "Secure Communities" referenced in that memorandum.

(b) The Secretary shall review agency regulations, policies, and procedures for consistency with this order and, if required, publish for notice and comment proposed regulations rescinding or revising any regulations inconsistent with this order and shall consider whether to withdraw or modify any inconsistent policies and procedures, as appropriate and consistent with the law.

(c) To protect our communities and better facilitate the identification, detention, and removal of criminal aliens within constitutional and statutory parameters, the Secretary shall consolidate and revise any applicable forms to more effectively communicate with recipient law enforcement agencies.

Sec. 11. Department of Justice Prosecutions of Immigration Violators. The Attorney General and the Secretary shall work together to develop and implement a program that ensures that adequate resources are devoted to the prosecution of criminal immigration offenses in the United States, and to develop cooperative strategies to reduce violent crime and the reach of transnational criminal organizations into the United States.

Sec. 12. Recalcitrant Countries. The Secretary of Homeland Security and the Secretary of State shall cooperate to effectively implement the sanctions provided by section 243(d) of the INA (8 U.S.C. 1253(d)), as appropriate. The Secretary of State shall, to the maximum extent permitted by law, ensure that diplomatic efforts and negotiations with foreign states include as a condition precedent the acceptance by those foreign states of their nationals who are subject to removal from the United States.

Sec. 13. Office for Victims of Crimes Committed by Removable Aliens. The Secretary shall direct the Director of U.S. Immigration and Customs Enforcement to take all appropriate and lawful action to establish within U.S. Immigration and Customs Enforcement an office to provide proactive, timely, adequate, and professional services to victims of crimes committed by removable aliens and the family members of such victims. This office shall provide quarterly reports studying the effects of the victimization by criminal aliens present in the United States.

Sec. 14. Privacy Act. Agencies shall, to the extent consistent with applicable law, ensure that their privacy policies exclude persons who are not United States citizens or lawful permanent residents from the protections of the Privacy Act regarding personally identifiable information.

Sec. 15. Reporting. Except as otherwise provided in this order, the Secretary and the Attorney General shall each submit to the President a report on the progress of the directives contained in this order within 90 days of the date of this order and again within 180 days of the date of this order.

Sec. 16. Transparency. To promote the transparency and situational awareness of criminal aliens in the United States, the Secretary and the Attorney General are hereby directed to collect relevant data and provide quarterly reports on the following:

(a) the immigration status of all aliens incarcerated under the supervision of the Federal Bureau of Prisons;

(b) the immigration status of all aliens incarcerated as Federal pretrial detainees under the supervision of the United States Marshals Service; and

(c) the immigration status of all convicted aliens incarcerated in State prisons and local detention centers throughout the United States.

Sec. 17. Personnel Actions. The Office of Personnel Management shall take appropriate and lawful action to facilitate hiring personnel to implement this order.

Sec. 18. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

> (i) the authority granted by law to an executive department or agency, or the head thereof; or
>
> (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE,
January 25, 2017.

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Exhibit 2

JUSTICE NEWS

Attorney General Jeff Sessions Delivers Remarks on Sanctuary Jurisdictions

Washington, DC, United States ~ Monday, March 27, 2017

Good afternoon. The Department of Justice has a duty to enforce our nation's laws, including our immigration laws. Those laws require us to promptly remove aliens when they are convicted of certain crimes.

The vast majority of the American people support this common-sense requirement. According to one recent poll, 80 percent of Americans believe that cities that arrest illegal immigrants for crimes should be required to turn them over to immigration authorities.

Unfortunately, some states and cities have adopted policies designed to frustrate the enforcement of our immigration laws. This includes refusing to detain known felons under federal detainer requests, or otherwise failing to comply with these laws. For example, the Department of Homeland Security recently issued a report showing that in a single week, there were more than 200 instances of jurisdictions refusing to honor Immigration and Customs Enforcement (ICE) detainer requests with respect to individuals charged or convicted of a serious crime. The charges and convictions against these aliens include drug trafficking, hit and run, rape, sex offenses against a child and even murder.

Such policies cannot continue. They make our nation less safe by putting dangerous criminals back on our streets.

We all remember the tragic case of Kate Steinle, the 32-year-old woman who was shot and killed two years ago in San Francisco as she walked along a pier with her father. The shooter, Francisco Sanchez, was an illegal immigrant who had already been deported five times and had seven felony convictions.

Just eleven weeks before the shooting, San Francisco had released Sanchez from its custody, even though ICE had filed a detainer requesting that he be kept in custody until immigration authorities could pick him up for removal. Even worse, Sanchez admitted that the only reason he came to San Francisco was because of its sanctuary policies.

A similar story unfolded just last week, when Ever Valles, an illegal immigrant and Mexican national, was charged with murder and robbery of a man at a light rail station. Valles was released from a Denver jail in late December, despite the fact that ICE had lodged a detainer for his removal.

The American people are justifiably angry. They know that when cities and states refuse to help enforce immigration laws, our nation is less safe. Failure to deport aliens who are convicted for criminal offenses puts whole communities at risk – especially immigrant communities in the very sanctuary jurisdictions that seek to protect the perpetrators.

DUIs, assaults, burglaries, drug crimes, gang crimes, rapes, crimes against children and murders. Countless Americans would be alive today – and countless loved ones would not be grieving today – if the policies of these sanctuary jurisdictions were ended.

Not only do these policies endanger the lives of every American; just last May, the Department of Justice Inspector General found that these policies also violate federal law.

The President has rightly said that this disregard for the law must end. In his executive order, he stated that it is the policy of the executive branch to ensure that states and cities comply with all federal laws, including our immigration laws.

The order also states that "the Attorney General and the Secretary [of Homeland Security] . . . shall ensure that jurisdictions that willfully refuse to comply" with the law "are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary."

Today I am urging all states and local jurisdictions to comply with all federal laws, including 8 U.S.C. Section 1373. Moreover, the Department of Justice will require jurisdictions seeking or applying for Department grants to certify compliance with Section 1373 as a condition for receiving these awards.

This policy is entirely consistent with the Department of Justice's Office of Justice Programs (OJP) guidance issued last July under the previous administration. This guidance requires state and local jurisdictions to comply and certify compliance with Section 1373 in order to be eligible for OJP grants. It also made clear that failure to remedy violations could result in withholding of grants, termination of grants, and disbarment or ineligibility for future grants.

The Department of Justice will also take all lawful steps to claw-back any funds awarded to a jurisdiction that willfully violates Section 1373.

In the current fiscal year, department's OJP and Community Oriented Policing Services anticipate awarding more than $4.1 billion dollars in grants.

I urge our nation's states and cities to consider carefully the harm they are doing to their citizens by refusing to enforce our immigration laws, and to re-think these policies. Such policies make their cities and states less safe, and put them at risk of losing valuable federal dollars.

The American people want and deserve a lawful immigration system that keeps us safe and serves our national interest. This expectation is reasonable, and our government has a duty to meet it. And we will meet it.

Speaker:
Attorney General Jeff Sessions

Office of the Attorney General

Updated March 31, 2017

Exhibit 3

Congressional Research Service
Informing the legislative debate since 1914

Sanctuary Jurisdictions and Criminal Aliens: In Brief

William A. Kandel
Analyst in Immigration Policy

January 10, 2017

Congressional Research Service
7-5700
www.crs.gov
R44118

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

The prominence of immigration enforcement issues during the 2016 presidential election as well as publicity surrounding crimes committed by some unauthorized aliens have reignited debates over immigration enforcement in the interior of the country. One homicide case, the July 2, 2015, slaying of a woman in San Francisco by a reported unauthorized alien with a criminal and deportation history, is noteworthy, because the law enforcement agency in question reportedly did not honor an immigration detainer issued by the Department of Homeland Security's (DHS's) Immigration and Customs Enforcement (ICE) for the individual who committed the crime. ICE has made the removal of certain criminal aliens its top priority. Funding for all criminal alien programs has increased substantially since their inception in FY2004. In FY2016, funding amounted to $341 million, compared to $6 million in FY2004.

In 2014, noncitizens represented 7.0% of the U.S. population. At the end of 2014, noncitizens accounted for 11.2% of the 209,561 individuals incarcerated in federal prisons, 3.5% of the 1,268,740 individuals incarcerated in state prisons, and 4.6% of the entire incarcerated population. These figures are understated because they do not include figures for California which did not report its non-citizen incarcerated population.

Drug and immigration offenses represented almost 90% of all federal offenses committed by noncitizens in FY2013. Incarceration data from FY2013 indicate that drug offenders accounted for 50% of all offenders in federal prison, with incarcerated noncitizens having a comparable if slightly lower proportion in this offense category (46%) compared with incarcerated citizens (52%). Although immigration offenders represented almost 12% of all incarcerated federal offenders, they represented 43% of all federal noncitizen offenders. Published data on the state and local prisoners by offense type and citizenship status are not available.

Immigration enforcement is a federal responsibility, but efforts have been made continually to use the potential "force multipliers" offered by local law enforcement. Legislation enacted in 1996 allows the federal government to enter into "287(g)" agreements with state and local law enforcement jurisdictions that permit it to delegate certain immigration enforcement functions to state and local law enforcement agents. After the September 11, 2001 terrorist attacks, this program and others involving federal and state and local cooperation expanded.

ICE also operates the Criminal Alien Program (CAP), which is guided by the *Priority Enforcement Program (PEP)*, a set of immigration enforcement priorities that describe which foreign nationals should be removed and in what priority order. PEP also employs "interoperability," a data sharing infrastructure between DHS and the Department of Justice (DOJ) that screens individuals for immigration-related violations when they are booked by law enforcement jurisdictions. PEP replaced the former *Secure Communities*, which many jurisdictions with large foreign-born populations had opposed.

In recent years, some jurisdictions have expressly defined or limited their roles and the activities of their employees regarding immigration enforcement. These have been referred to as "sanctuary" jurisdictions. Critics of sanctuary jurisdictions contend that they impede law enforcement's primary mission in ways that could lead to calamitous outcomes (such as the homicide in San Francisco) or could encourage illegal immigration. Supporters maintain that they are needed because of resource and legal constraints, the need to avoid the disruption of critical municipal services by diverting local law enforcement personnel to handle immigration enforcement, and community policing concerns.

Congress may choose to consider several issues, including whether the potentially positive impacts on public safety of state and local involvement in immigration enforcement outweigh the

potentially negative impacts on both law enforcement resource utilization and community relations within such jurisdictions; and whether increasing law enforcement funding or tying the provision of certain federal grants to greater cooperation with federal immigration enforcement agencies—or a mix of both approaches—would yield the greater cooperation proponents seek.

The 114th Congress introduced several legislative proposals related to sanctuary jurisdictions. Some would have prohibited jurisdictions from receiving certain federal grants if they limited in specified ways their cooperation with ICE regarding immigration enforcement. The House passed H.R. 3009 on July 23, 2015. That bill would have penalized states and localities that restrict information gathering or communication with federal immigration enforcement agencies regarding an individual's citizenship or immigration status by withholding funding for three DOJ grant programs: the State Criminal Alien Assistance Program (SCAAP), the Community-Oriented Policing Services Program (COPS), and the Edward Byrne Memorial Justice Assistance Grant (JAG) program.

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Introduction

The Department of Homeland Security's (DHS's) U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) has primary responsibility for locating removable aliens[1] and ensuring that aliens directed to depart from the United States do so. In carrying out its mission, ICE relies, in part, on state and local law enforcement agencies throughout the country to assist it by identifying removable aliens.

The prominence of immigration enforcement issues during the 2016 presidential election as well as publicity surrounding crimes committed by some unauthorized aliens have reignited debates over immigration enforcement in the interior of the country. More specifically, concerns have intensified over the level of cooperation shown by some state and local law enforcement agencies in notifying ICE when they have an alien in their custody. One homicide case, the July 2, 2015, slaying of a woman on a San Francisco pier by a reported unauthorized alien with a criminal and deportation history,[2] is particularly noteworthy because the law enforcement agency in question reportedly had not honored an ICE request to detain the criminal alien who, upon his release, subsequently committed the crime.[3]

Some jurisdictions, through resolutions, executive orders, or local ordinances, have expressly defined or limited their roles and the activities of their employees regarding immigration enforcement.[4] These have been referred to as "sanctuary" jurisdictions, and their policies range from limiting law enforcement agents (LEAs) from cooperating with ICE in enforcing immigration law to restricting some types of information that can be shared about an alien with federal law enforcement. Given the range of such enforcement policies, there remains no generally agreed upon definition for "sanctuary" jurisdiction.

Critics of sanctuary jurisdictions contend that they impede law enforcement's primary mission in ways that could lead to calamitous outcomes (such as the homicide described above) or could encourage illegal immigration. Supporters of sanctuary jurisdictions maintain that they are needed because of resource and legal constraints, the need to avoid the disruption of critical municipal services by diverting local law enforcement personnel to handle immigration enforcement, and community policing concerns.

This report examines the interplay between the federal government (i.e., ICE) and state and local jurisdictions in enforcing immigration law, with a specific focus on noncitizens who have been convicted of a crime. It explores federal resources available to state and local law enforcement agencies that cooperate with ICE to enforce immigration law. The report begins by briefly discussing the evolution of cooperation between the federal government and local law enforcement in carrying out federal immigration policy. It then discusses current administrative efforts to involve state and local law enforcement in enforcing immigration law. A brief discussion of resources dedicated to these efforts follows. The report concludes with a discussion of select issues and an analysis of possible policy approaches for Congress.

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[1] An alien is anyone who is not a citizen or national of the United States—this term is synonymous with the terms noncitizen and foreign national. A noncitizen may be in the United States temporarily or permanently and may be either lawfully present or present without authorization.

[2] See Steve Almasy, Pamela Brown, and Augie Martin, "Suspect in killing of San Francisco woman had been deported five times," CNN.com, July 4, 2015.

[3] See CRS Legal Sidebar WSLG1330, *Recent Shooting in San Francisco Raises Questions about "Sanctuary Cities" and Compliance with Immigration Detainers*.

[4] See CRS Report R43457, *State and Local "Sanctuary" Policies Limiting Participation in Immigration Enforcement*.

Background

The enforcement of immigration laws in the interior of the United States has long been a controversial topic. Traditionally, the debate emphasized economic and labor market issues, with those concerned about whether unauthorized aliens were depressing wages and taking jobs from native workers pitted against those who argued that foreign labor was critical for certain industries and benefitted the broader economy. After the attacks of September 11, 2001 (9/11), attention refocused on the adequacy of interior immigration enforcement, especially the perceived lack of federal resources.[5] Although ICE has seen an increase in resources to carry out its immigration enforcement responsibilities, the number of ICE agents pales in comparison to the resources available to local law enforcement agencies (LEAs) throughout the country.[6] While immigration enforcement is a federal responsibility, interior enforcement programs that involve cooperation between ICE and state and local law enforcement agencies can allow a relatively small number of ICE agents to leverage much larger numbers of state and local law enforcement agents.

Criminal Alien Programs[7]

ICE operates four major programs that target criminal aliens. The *Criminal Alien Program (CAP)* serves as an umbrella program for marshaling the agency's resources to identify and remove criminal and other removable aliens.[8] CAP is guided by the *Priority Enforcement Program (PEP)*,[9] which represents a set of enforcement priorities that describe which foreign nationals should be removed and in what priority order. PEP also comprises a data sharing infrastructure or "interoperability" between DHS and the Department of Justice (DOJ) that screens for immigration violations when individuals are booked into jails.[10] ICE's *§287(g) program*[11] allows

[5] Prior to the September 11, 2001, terrorist attacks, the former Immigration and Naturalization Service (INS) had fewer than 2,000 immigration agents to enforce immigration laws within the United States. Since the merger of the interior enforcement function of the former INS with the investigative arm of the U.S. Customs Service into ICE, the number of interior agents has increased to over 7,000.

[6] There were 605,000 LEAs in 2013, see U.S. Department of Justice Office of Justice Programs, *Local Police Department, 2013: Personnel, Policies, and Practices*, May 2015.

[7] For a detailed discussion of criminal aliens and related programs, see CRS Report R42057, *Interior Immigration Enforcement: Programs Targeting Criminal Aliens*.

[8] The term criminal alien is not specifically defined in immigration law or regulation. At the broadest level, *a "criminal alien" is any noncitizen who has ever been convicted of a crime in the United States*.

[9] PEP is not a formal program per se. It consists of a data sharing infrastructure and a set of enforcement priority and policy guidelines. Throughout this report, the term "program" is necessarily embedded within "PEP" for linguistic ease.

[10] PEP replaced the former Secure Communities program, which some jurisdictions—particularly those with sizable foreign-born populations—had opposed. Begun in 2008, Secure Communities had the same database interoperability as PEP but used a broader set of enforcement priorities. Immigrant advocacy groups criticized Secure Communities from its inception for removing relatively large numbers of unauthorized aliens who had committed minor or nonviolent crimes and who often had family ties in the United States. Some law enforcement officials argued that the program hampered community policing within immigrant communities, because it helped to conflate immigration enforcement with general law enforcement. Supporters of Secure Communities saw it as an efficient and impartial way of identifying criminal aliens. Following its replacement with PEP in November 2014 (FY2015), criticism shifted toward concerns about insufficient enforcement, with some observers criticizing ICE's use of prosecutorial discretion that emphasizes enforcement for only the most serious criminal aliens. They argue that such priorities come at the expense of removing other criminal aliens and unauthorized aliens more generally, and that all unauthorized aliens have violated U.S. immigration law and should be subject to removal. For more discussion on Secure Communities, see archived CRS Report R42057, *Interior Immigration Enforcement: Programs Targeting Criminal Aliens*. For more discussion on alien removals and returns, see CRS Report R43892, *Alien Removals and Returns: Overview and Trends*.

DHS to delegate certain immigration enforcement functions to specially trained state and local law enforcement officers, under federal supervision. The *National Fugitive Operations Program* (NFOP) pursues known at-large criminal aliens and fugitive aliens outside of controlled settings (i.e., administrative offices or custodial settings).

Criminal Alien Program

The Criminal Alien Program (CAP) is an umbrella program that includes several systems for identifying, detaining, and initiating removal proceedings against incarcerated criminal aliens. According to ICE, "CAP provides ICE-wide direction and support in the biometric and biographic identification, arrest, and removal of priority aliens who are incarcerated within federal, state, and local prisons and jails, as well as at-large criminal aliens that have circumvented identification."[12] CAP is intended to prevent the release of criminal aliens from jails and prisons by securing final orders of removal prior to the termination of aliens' criminal sentences and by taking custody of and removing aliens who complete their criminal sentences.

CAP jail enforcement officers screen people to identify and prioritize potentially removable aliens as they are being booked into jails and prisons and while they are serving their sentences. Such screening covers almost all persons booked into federal and state prisons and local jails.[13] CAP officers search biometric and biographic databases to identify matches in DHS databases and interview arrestees and prisoners to identify potentially removable aliens without DHS records.[14]

In addition to onsite deployment of ICE officers, CAP uses video teleconference equipment that connects jails and prisons to ICE's Detention Enforcement and Processing Offenders by Remote Technology (DEPORT) Center in Chicago, IL. CAP also works with state and local correctional departments that provide inmate roster data that ICE then compares to its immigration databases. CAP also manages the Law Enforcement Support Center (LESC), a 24/7 call-center that conducts database checks on the identity and immigration status of arrestees for ICE officers and law enforcement agencies.

Priority Enforcement Program (PEP)[15]

The Priority Enforcement Program (PEP) has two components. First, PEP includes enforcement priorities that guide immigration enforcement. Second, PEP uses interoperability, a biometric information sharing program between DOJ and DHS that screens for potentially removable aliens when individuals are arrested by state and local law enforcement agents.

(...continued)

[11] The formal program name is *Agreements entered into pursuant to Immigration and Nationality Act (INA) §287(g)*.

[12] ICE, *Criminal Alien Program*, http://www.ice.gov/criminal-alien-program, accessed by CRS on July 1, 2016.

[13] Criminal aliens who have no previous record may elude detection through interoperability because they may not appear in DHS databases. This shortcoming is overcome by having ICE agents visit or stationed in prisons and selected jails who can interview individuals in these custodial settings.

[14] Aliens who overstay a nonimmigrant visa or who have previously been removed typically have records in one or more DHS databases and may be identified through a biographic or biometric search. A person who enters without inspection and has had no previous contact with DHS often can only be identified as an unauthorized alien based on an interview with an experienced immigration officer.

[15] Portions of this section were excerpted from CRS Report R43852, *The President's Immigration Accountability Executive Action of November 20, 2014: Overview and Issues*.

ICE takes enforcement action against individuals unlawfully present or removable due to a criminal conviction in accordance with its immigration enforcement priorities. Individuals prioritized for removal must either be threats to national security, border security, and public safety (Priority 1); misdemeanants and new immigration violators (Priority 2); or aliens issued final orders of removal on or after January 1, 2014 (Priority 3).[16]

Under CAP, when law enforcement agencies book (i.e., take custody of) an arrestee and submit the person's fingerprints to the FBI for a criminal background check,[17] the fingerprints also are automatically checked against DHS's Automated Biometric Identification System (IDENT) database.[18] Potential matches are forwarded to the Law Enforcement Support Center (LESC, see "Criminal Alien Program (CAP)").[19] ICE agents at the LESC confirm the identity of matched fingerprints and screen their records for immigration violations and criminal histories. If the LESC determines that the arrestee may be a removable alien, it notifies one of ICE's Enforcement and Removal Operations (ERO) field offices for the arresting jurisdiction about the match.

After being notified that a removable alien has been arrested, the local ERO supervisor reviews the record and decides how to proceed based on the individual's criminal conviction record, DHS enforcement priorities, and the office's available resources. If the office decides to initiate removal proceedings against an alien, it will typically request to be notified within 48 hours of the individual's scheduled release from law enforcement custody. Under some circumstances, ICE may request that state and local law enforcement agencies detain, for 48 hours, individuals flagged for removal.

Since August 2015, ICE also has been using a *Request for Voluntary Transfer* for certain cases falling outside of the PEP priority categorization.[20] Priority noncriminal subcategories that are not covered under PEP, but for which ICE may seek transfer from cooperative jurisdictions, are

- aliens apprehended while attempting to illegally enter the country;

[16] U.S. Department of Homeland Security, Memorandum to Thomas S. Winkowski, Acting Director, U.S. Immigration and Customs Enforcement, R. Gil Kerlikowske, Commissioner, U.S. Customs and Border Protection, Leon Rodriquez, Director, U.S. Citizenship and Immigration Services, and Alan D. Bersin, Acting Assistant Secretary for Policy, from Jeh Charles Johnson, Secretary of Homeland Security, *Policies for the Apprehension, Detention, and Removal of Undocumented Immigrants*, November 20, 2014. For more background on the evolution of DHS interior enforcement priorities, see CRS Report R44627, *Interior Immigration Enforcement: Criminal Alien Programs*.

[17] The Integrated Automated Fingerprint Identification System (IAFIS) conducts criminal and terrorist background checks in response to requests from federal, state, and local law enforcement agencies by checking fingerprints against the IAFIS database of fingerprints, criminal histories, photographs, and biographic information. The IAFIS database includes the records of more than 66 million subjects in its criminal master file, along with more than 25 million civil fingerprints. See Federal Bureau of Investigation, "Integrated Automated Fingerprint Identification System," http://www.fbi.gov/about-us/cjis/fingerprints_biometrics/iafis/iafis.

[18] The Automated Biometric Identification System (IDENT) database is DHS's primary department-wide biometric database, and includes photographs, fingerprints, biographic name and personal identifier data, citizenship and nationality information, and derogatory information, if applicable. See U.S. Department of Homeland Security, *Privacy Impact Assessment Update for the Biometric Interoperability between the U.S. Department of Homeland Security and the U.S. Department of Justice, DHS/NPPD/USVISIT/PIA-007(b)*, October 13, 2011. According to ICE, IDENT included over 186 million unique records as of June 10, 2015.

[19] The Law Enforcement Support Center (LESC) is ICE's national point of contact for local, state, and federal law enforcement agencies, corrections systems, and court systems seeking information about aliens suspected, arrested, or convicted of criminal activity. The LESC staffs a 24-hour phone line to respond to queries, and provides customs, immigration, and identity information based on ICE records. See ICE, "Law Enforcement Support Center," http://www.ice.gov/lesc/.

[20] See U.S. Immigration and Customs Enforcement, *Priority Enforcement Program*, accessed by CRS on March 25, 2016, at https://www.ice.gov/pep.

- unlawfully present aliens who have not resided continuously in the United States since January 1, 2014;
- aliens who have significantly abused the visa or visa waiver programs; and
- aliens issued final removal orders on or after January 1, 2014.

Section 287(g) Program

Section 287(g) of the Immigration and Nationality Act (INA) permits the Secretary of Homeland Security[21] to delegate certain immigration enforcement functions to state and local law enforcement agencies. This authority was enacted into law in 1996[22] but was given new urgency following the terrorist attacks in September 2001. In 2002, the Attorney General proposed an initiative to enter into Section 287(g) agreements with a number of jurisdictions in an effort to carry out the country's anti-terrorism mission. Under these agreements, commonly referred to as Section 287(g) programs, state and local law enforcement officers could be trained to assist ICE with enforcing certain aspects of immigration law.

Prior to 2013, the Section 287(g) program encompassed both *task force* and *jail enforcement agreements*. However, ICE currently only has jail enforcement agreements with state and local jurisdictions. Under these agreements, specially trained officers within state and local corrections facilities are authorized to identify criminal aliens by interviewing them and screening their biographic information against the same DHS databases used by CAP agents and officers. The LEAs also use ICE's database and the Enforcement Case Tracking System (known as ENFORCE) to enter information about aliens in their custody. LEAs are supervised by CAP officers.

As of July 1, 2016, ICE had Section 287(g) agreements with 32 law enforcement agencies in 16 states.[23] At least 1,675 state and local law enforcement officers had completed ICE's four-week Section 287(g) training and were certified to conduct certain immigration enforcement duties.[24]

Resources Dedicated to Select Immigration Interior Enforcement Programs

Table 1 presents funding for CAP, Interoperability (formerly Secure Communities and currently Priority Enforcement Program), and the 287(g) program since they were first funded. Funding dedicated specifically to identifying and removing criminal aliens (i.e., CAP and Secure Communities/Interoperability) rose from just $6 million in FY2004 to $392.5 million in FY2010, a 58-fold increase, before dropping to $317.2 million in FY2016. The Obama Administration's FY2017 budget request for these programs totaled $371.5 million. DHS folded Secure Communities funding into CAP in FY2015 and the program was replaced with the Priority Enforcement Program. The Section 287(g) program received an appropriation of $68 million at its peak (FY2010-FY2013); its funding has declined to $24 million in the four most recent years.

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[21] Prior to the creation of DHS, this authority was given to the Attorney General.

[22] See §439 of the Antiterrorism and Effective Death Penalty Act (AEDPA; P.L. 104-132) and §133 and §372 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA; P.L. 104-208).

[23] ICE, "Fact Sheet: Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act," http://www.ice.gov/factsheets/287g, accessed on July 1, 2016.

[24] *Ibid.*

Table 1. Appropriations for Three Criminal Alien Programs, FY2004-FY2017

(millions of dollars)

Fiscal Year	CAP[a]	Interoperability[b]	§287(g)[c]	Total:
2004	$6.0	NA[d]	NA[e]	$6.0
2005	$33.7	NA	NA	$33.7
2006	$93.0	NA	$5.0	$98.0
2007	$137.5	NA	$15.0	$152.5
2008	$180.0	$200.0	$42.1	$422.1
2009	$189.1	$150.0	$54.0	$393.1
2010	$192.5	$200.0	$68.0	$460.5
2011	$192.5	$200.0	$68.0	$460.5
2012	$196.7	$189.1	$68.0	$453.8
2013	$216.5	$138.1	$68.0	$422.6
2014	$294.2	$25.3	$24.3	$343.8
2015	$327.2	$0.0[f]	$24.0	$351.2
2016	$317.2	$0.0	$24.0	$341.2
2017*	$347.5	$0.0	$24.0	$371.5

Sources: U.S. Immigration and Customs Enforcement "Fact Sheet: Updated Facts on ICE's 287(g) Program," S.Rept. 108-280, S.Rept. 109-83, S.Rept. 109-273, H.Rept. 109-699, S.Rept. 110-396, S.Rept. 111-31, S.Rept. 111-222, S.Rept. 112-169, P.L. 113-6, and Senate Explanatory Statement accompanying P.L. 113-6; *Congressional Record*, House of Representatives, January 15, 2014; House Explanatory Statement accompanying P.L. 114-4; FY2015 DHS Budget in Brief; FY2015 DHS Budget Justification; FY2016 DHS Budget Justification; and FY2017 DHS Budget Justification.

Notes: FY2017* represents only the Administration's request. FY2013 data reflect across-the-board rescissions included in P.L. 113-6 to comply with discretionary budget caps, but do not include the effects of sequestration as required by P.L. 112-25 because post-sequester data were not available for all programs. **CAP** refers to the Criminal Alien Program; **§287(g)** refers to agreements entered pursuant to INA §287(g).

a. The Criminal Alien Program was known as the Institutional Review Program prior to FY2007.

b. Interoperability/Secure Communities was also known as the Comprehensive Identification and Removal of Criminal Aliens (CIRCA) program until it was replaced by the Priority Enforcement Program in FY2015.

c. Includes §287(g) jail enforcement and §287(g) task force programs. §287(g) task force programs were discontinued during FY2012.

d. The Secure Communities/CIRCA program received its first appropriation in FY2008.

e. The §287(g) program received its first appropriation in FY2006.

f. The Secure Communities funding was folded into the Criminal Alien Program in FY2015.

Criminal Alien Numbers and Crimes

As mentioned, ICE has made the removal of certain criminal aliens its top priority. This section examines incarceration data at federal, state, and local levels, which represents one measure of criminality. Data are available for the total number of prisoners at these levels and are broken out by citizenship status.[25] Federal data are compiled by the U.S. Marshals Service (USMS) Prisoner Tracking System and published by DOJ's Bureau of Justice Statistics (BJS) through its online Federal Justice Statistics Resource Center (FJSRC).[26] State and local facilities report their data to DOJ.[27]

Table 2. Prison Population by Citizenship Status and Jurisdiction, CY2014

	Total Prisoners		U.S. Citizen Prisoners		Noncitizen Prisoners	
Jurisdiction	**Number**	**Percentage**	**Number**	**Percentage**	**Number**	**Percentage**
Federal	209,561	100.0%	186,029	88.8%	23,532	11.2%
State	1,268,740	100.0%	1,224,435	96.5%	44,305	3.5%
Total	1,478,301	100.0%	1,410,464	95.4%	67,837	4.6%

Source: Total and Noncitizen Federal and State Prisoners: DOJ, Bureau of Justice Statistics, Corrections Statistical Analysis Tool (CSAT)-Prisoners, accessed by CRS at http://www.bjs.gov/index.cfm?ty=nps on July 1, 2016; **U.S. Citizen Federal and State Prisoners**: computed by CRS as the difference between total prisoners and noncitizen prisoners.

Notes: Figures presented are the most recent publically available statistics. They represent the calendar year-end prison population that includes prisoners in the federal Bureau of Prisons (BOP) prisons and private prisons that hold federal prisoners, and state *and* local correctional facilities. Figures also include pre-sentenced/pre-trial prisoners. California had not reported its 2014 noncitizen prisoner population to BJS. However, between 2008 and 2012 an average of 16,871 noncitizen prisoners were incarcerated in California state prisons. If this average figure were added to the state total of 47,861 shown in the table, the noncitizen percentage of state prisoners for 2014 would increase from 3.5% to 4.8% and the noncitizen percentage of all state and federal prisoners would increase from 4.6% to 5.7%. BJS warns that because federal and state departments of corrections and county jails have varying definitions of noncitizens, one should exercise caution when interpreting these results.

Federal statistics on incarcerations are broken out by citizenship and further delineated by federal versus state and local jurisdiction. **Table 2** indicates that at the end of CY2014, the most recent year for which these data are available, 23,532 noncitizens accounted for 11.2% of the 209,561 individuals incarcerated in federal prisons. In state prisons, 44,305 noncitizens accounted for 3.5% of the 1,268,740 individuals incarcerated at the end of CY2014. In total, noncitizens represented 4.6% of the year-end incarcerated population in CY2014. As a basis for comparison, noncitizens represented 7.0% of the total U.S. population in 2014,[28] which suggests that the noncitizen proportion of federal and state prisoners, as reported in the figures above, was less than that of the U.S. population as a whole in 2014.

Table 3, which presents the federal prison population by offense category for the end of FY2013,[29] shows that drug offenders accounted for 50% of all federal offenders in federal prison, with incarcerated noncitizens having a comparable if slightly lower proportion in this category

[25] Note that citizenship status refers to citizens and noncitizens. Data are not available on immigration status. Hence, noncitizens include both persons lawfully present in the United States (either permanently or temporarily) and unauthorized aliens.

[26] The prisoner tracking system (PTS) contains data on suspects arrested for violations of federal law, by federal enforcement agencies and data about warrants initiated or cleared. The data include information on characteristics of federal arrestees. See p. 107 of http://bjs.ojp.usdoj.gov/content/pub/pdf/cfjs0407.pdf.

[27] Other data on arrests and convictions are available at the state and local levels, but those data do not delineate crime type and citizenship status.

[28] Figure computed by CRS using data from the American Community Survey, 2014 one-year estimates, accessed on the Census Bureau's American Factfinder website, July 1, 2016.

[29] FY2013 is the most recent year for which these data were publically available from BJS.

(46%) compared with incarcerated citizens (52%). Although immigration offenders represented almost 12% of all incarcerated federal offenders at the end of FY2013, they represented 43% of all federal noncitizen offenders. Together, drug and immigration offenses represented almost 90% of all noncitizen federal offenses at the end of FY2013.

Table 3. Federal Prison Population by Citizenship Status and Offense Type, FY2013

	Number of Offenses				Percentage of Citizenship Status Total			
Offense Type	**Total**	**Citizen**	**Non-citizen**	**Un-known**	**Total**	**Citizen**	**Non-citizen**	**Un-known**
Violent	11,459	10,830	619	10	5.8%	7.3%	1.2%	15.4%
Property	12,219	10,721	1,494	4	6.1%	7.2%	2.9%	6.2%
Drug	100,287	77,201	23,065	21	50.3%	52.0%	45.5%	32.3%
Public-Order	20,332	18,545	1,775	12	10.2%	12.5%	3.5%	18.5%
Weapon	30,575	28,891	1,669	15	15.3%	19.5%	3.3%	23.1%
Immigration	22,964	992	21,969	3	11.5%	0.7%	43.3%	4.6%
Unknown	1,408	1,269	139	0	0.7%	0.9%	0.3%	0.0%
Total	199,244	148,449	50,730	65	100.0%	100.0%	100.0%	100.0%

Source: U.S. Department of Justice, Bureau of Justice Statistics (BJS), Federal Criminal Case Processing Statistics, http://www.bjs.gov/fjsrc/index.cfm.

Notes: FY2013 represents the most recent data available online from BJS's Federal Criminal Case Processing Statistics. The prison population is measured as of September 30, 2012. According to BJS, the universe of cases reported excludes both pre-sentenced/pre-trial prisoners and suspects who were charged in the District of Columbia's Superior Court. BJS warns that because federal and state departments of corrections and county jails have varying definitions of noncitizens, one should exercise caution when interpreting these results. For a more detailed offense list, see BJS, Federal Criminal Case Processing Statistics, http://www.bjs.gov/fjsrc/index.cfm.

Sanctuary Jurisdictions

Starting in 2011, a number of jurisdictions—often referred to as "sanctuary cities," and referred to herein as "sanctuary jurisdictions"—began to expressly define or limit their roles regarding immigration enforcement.[30] The jurisdictions have policies that range from limiting cooperation of local law enforcement agents with ICE, typically regarding compliance with detainers; restricting what types of information local law enforcement can inquire about or share with ICE regarding a foreign national;[31] or restricting the use of local funds for immigration enforcement, among other measures. In implementing such policies, some jurisdictions were responding to increased numbers of removals from the U.S. interior of unauthorized aliens who were identified

[30] Although no official list exists of sanctuary jurisdictions—and the term itself has no formal definition—one unofficial count included four states (California, Connecticut, Rhode Island, and Vermont) plus the District of Columbia; dozens of cities, including Chicago, New York, Los Angeles, and New Orleans; and hundreds of counties. Jasmine C. Lee, Rudy Omri, and Julia Preston, "What Are Sanctuary Cities?," *New York Times*, September 3, 2016. The exact number of sanctuary jurisdictions remains imprecise because jurisdictions regularly change their policies regarding detainers. Jessica Vaughan, "Update on Sanctuary Jurisdiction," Center for Immigration Studies.

[31] Under 8 USC §1373, federal, state, and local government entities cannot restrict the flow of information to or from DHS regarding an individual's legal status or citizenship status. However, some jurisdictions that have not directly restricted the sharing of information about individual's citizenship or legal status have sought to restrict the sharing of other information, such as the date when an individual will be released from state or local custody.

through Secure Communities. Many such unauthorized aliens, apart from their illegal status, reportedly had relatively minor or no criminal records.[32] Other jurisdictions were reportedly responding to federal court decisions finding that holding an alien solely on the basis of an ICE detainer could violate the Fourth Amendment, potentially subjecting law enforcement to liability for doing so.[33]

The number of sanctuary jurisdictions, many of which imposed restrictions on compliance with ICE detainers, contributed to the Obama Administration's decision to replace Secure Communities with the Priority Enforcement Program in November 2014. With the introduction of PEP, jurisdictions that previously resisted ICE enforcement measures and detainer requests have increasingly cooperated with the agency, allowing it to effectively custom tailor immigration enforcement mechanisms that comply with local ordinances and preferences.[34] For example, some jurisdictions had concerns about detainers issued for aliens whom ICE did not have probable cause to believe were subject to removal. In response, ICE amended its detainer forms to note the basis for determining that an individual alien is subject to removal.[35] Since establishing PEP, ICE reports that over 275 jurisdictions that previously had not honored ICE detainers have agreed to honor requests for notification and/or detention.[36]

Implementing PEP, however, has altered immigration enforcement. According to ICE, state and local law enforcement agencies declined 16,495 immigration detainers between January 2014 and June 2015, "resulting in convicted criminals being released back into U.S. communities with the potential to re-offend, notwithstanding ICE's request for those individuals."[37] In addition to potential public safety concerns, ICE contends that under PEP, more agents are required to locate and arrest convicted at-large criminals compared to the fewer number of agents needed to obtain custody of criminal aliens in controlled settings. ICE agents who previously might have been working in such custodial settings under Secure Communities protocols now work in multi-person teams to locate criminal aliens once they have been released, typically under more hazardous conditions.[38]

Select Issues

The following sections discuss issues in debates over sanctuary jurisdictions and immigration enforcement as well as possible policy options that Congress may consider should it legislate or conduct oversight in this area.

Impact on Communities

As mentioned, since the 9/11 terrorist attacks, greater emphasis has been placed on enforcing the nation's immigration laws. The role of state and local law enforcement in enforcing these laws

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[32] See for example, Elina Treyger, Aaron Chalfin, and Charles Loeffler. "Immigration enforcement, policing, and crime: Evidence from the Secure Communities Program," *Criminology & Public Policy*, vol. 13 (2014), pp. 285-322.

[33] U.S. Immigration and Customs Enforcement, *ICE Enforcement and Removal Operations Report, Fiscal Year 2015*, December 22, 2015, p. 5. See also CRS Report R42690, *Immigration Detainers: Legal Issues*.

[34] ICE briefing to CRS on the Criminal Alien Program, April 7, 2016.

[35] Department of Homeland Security, Form I-247D, Immigration Detainer, Request for Voluntary Action, https://www.ice.gov/sites/default/files/documents/Document/2016/I-247D.PDF.

[36] U.S. Department of Homeland Security, *FY2017 Congressional Budget Justification*, vol. 2, p. 68.

[37] See DHS, *ICE Enforcement and Removal Operations Report, Fiscal Year 2015*, December 22, 2015, p. 5.

[38] Ibid, and ICE briefings to CRS on the Criminal Alien Program, June 25, 2015 and April 7, 2016.

continues to be debated, including the issue of whether LEAs should be required to notify ICE when an alien is in their custody.

Critics of this idea argue that imposing such a requirement undermines the relationship between local law enforcement agencies and the immigrant communities they serve.[39] For example, victims and potential witnesses may be reluctant to come forward to report crimes in fear of actions that might be taken against them by immigration officials. Critics assert that the trust between noncitizens and local authorities is tenuous in many jurisdictions and that such a policy could threaten the fragile cooperation that exists between immigrant communities and local law enforcement.

Proponents contend that state and local law enforcement agents may have strong connections to local communities, further enhancing their ability to contribute to ICE's enforcement efforts. Such partnership, they contend, could help ICE facilitate the removal of potential criminals who are illegally present in the country, thus providing an elevated level of security for the nation.

Resources

The issue of resources is a perennial concern for federal, state, and local LEAs. At the federal level, ICE has approximately 7,300 personnel in its Enforcement and Removal Operations program to identify; apprehend; detain, if appropriate; and remove aliens that fall under their priority scheme.[40]

Under PEP, ICE must now issue requests for notification to state and local jails and prisons to be notified of specific release dates so that ICE can take custody of criminal aliens at the time of release. However, the number of jurisdictions that are restricting or preventing their LEAs from notifying ICE may hamper ICE's ability to carry out its duties. For example, if an alien is released from state or local custody without ICE being notified, ICE must then deploy enforcement agents to re-apprehend the individual. ICE indicates that this not only increases the need for personnel for each released criminal alien but also increases the level of personal risk for ICE agents who must apprehend the criminal alien in the community rather than in a controlled setting such as a jail or prison.[41]

State and local law enforcement agencies throughout the country collectively employ over 605,000 LEAs.[42] Proponents of having state and local LEAs assist ICE in carrying out immigration enforcement view the vast number of LEAs as a "force multiplier" for ICE. Critics, however, contend that state and local law enforcement resources should not be used to fund a federal responsibility.[43] They argue that such action could result in the reduction of local law enforcement resources available for other purposes. At a time when local jurisdictions are

[39] See, for example, the testimony Richard David Wiles, El Paso, TX, County Sheriff's office. House Homeland Security Committee Subcommittee on Border and Maritime Security, *Border Security and Enforcement: Department of Homeland Security's Cooperation with State and Local Law Enforcement Stakeholders*, May 3, 2011 (Hereinafter referred to as "Wiles testimony").

[40] Testimony of Sarah Saldana, Director of U.S. Immigration and Customs Enforcement, House Committee on Oversight and Government Reform, *A Review of the Department of Homeland Security Policies and Procedures for the Apprehension, Detention, and Release of Non-Citizens Unlawfully Present in the United States*, March 19, 2015.

[41] Ibid.

[42] This figure is as of January 1, 2013. U.S. Department of Justice Office of Justice Programs, *Local Police Department, 2013: Personnel, Policies, and Practices*, May 2015.

[43] See Wiles testimony.

witnessing a depletion of traditional funding to fight crime, they argue such action could be detrimental to many communities.

Funding for State and Local Cooperation

Congress could appropriate additional funding to state and local law enforcement agencies for their cooperation with enforcing immigration law. A common argument made by local law enforcement officials against enforcing immigration law is the lack of resources.[44] Many states face budget shortfalls and police departments have seen decreases in federal funding for some law enforcement programs. On the other hand, Congress could limit such funding from going to states and localities that refuse to cooperate with ICE or limit such cooperation.[45]

There are several potential grant programs Congress could target to both facilitate and serve as a trigger for state and local law enforcement cooperation. Both DOJ and DHS have several grant programs that provide funding to state and local law enforcement for related activities.

Congressional Action in the 114th Congress

The 114th Congress introduced several legislative proposals related to sanctuary jurisdictions. Some would have prohibited jurisdictions from receiving certain federal grants if they limited in specified ways their cooperation with ICE regarding immigration enforcement. The House passed H.R. 3009 on July 23, 2015. That bill would have penalized states and localities that restrict information gathering or communication with federal immigration enforcement agencies regarding an individual's citizenship or immigration status[46] by withholding funding for three Department of Justice grant programs: the State Criminal Alien Assistance Program (SCAAP), the Community-Oriented Policing Services Program (COPS), and the Edward Byrne Memorial Justice Assistance Grant (JAG) program.[47]

Similarly, amendments adopted during the House Committee on Appropriations markup of the FY2016 Department of Homeland Security appropriations bill and the House consideration of Commerce, Justice, Science and Related Agencies Appropriations Act, 2016 (H.R. 2578)[48] would have prohibited federal funds from going to jurisdictions that restrict their law enforcement agents from notifying ICE on the immigration status of aliens. The former would have prohibited Federal Emergency Management Agency funds, while the latter would have done so for State and Local Law Enforcement Assistance grant funds.

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[44] See for example the testimony of Todd Entrekin, Etowah County, AL, Sherriff's office. House Homeland Security Committee Subcommittee on Border and Maritime Security, *Border Security and Enforcement: Department of Homeland Security's Cooperation with State and Local Law Enforcement Stakeholders*, May 3, 2011.

[45] See for example, the Mobilizing Against Sanctuary Cities Act (H.R. 3002) and H.Amdt. 352 to H.R. 2578, S. 80 and S. 1764.

[46] Section 642(a) of the Illegal Immigration Reform and Immigrant Responsibility Act (P.L. 104-208), as codified in 8 U.S.C. §1373, prevents impeding the flow of information regarding any individual's legal status or citizenship status by a federal, state, or local entity to the federal government.

[47] Court decisions have held that conditions attached to the receipt of federal funds that regulate state and local governments must be unambiguous; relate to the federal interest in particular programs; not be barred by another constitutional provision; and not be so coercive as to compel states into participation. For more information, see CRS Report R44104, *Federal Power over Local Law Enforcement Reform: Legal Issues*. Legislation that would withhold funding to sanctuary jurisdictions has often centered on the SCAAP, COPS, and JAG grant programs, which are related to law enforcement. See CRS Report RS22416, *Edward Byrne Memorial Justice Assistance Grant (JAG) Program: In Brief*; and CRS Report RL33308, *Community Oriented Policing Services (COPS): In Brief*.

[48] See H.Amdt. 352 to H.R. 2578.

S.Rept. 114-66 to accompany H.R. 2578 contained no language supporting such restrictions. On October 20, 2015, the Senate failed to pass a cloture motion to consider S. 2146, which would have made sanctuary jurisdictions ineligible for certain federal grants. This bill also sought to ensure that states and localities had the "authority to carry out detainers" and to limit their liability for actions taken pursuant to immigration detainers.

The Senate also considered two measures, S. 3100 and S. 2193, that would have restricted federal funding to cities that decline to honor detainers; and increase penalties (i.e., prison sentence) for migrants who illegally renter the country. S. 3100 would have withheld a range of federal grants for public works, economic development, planning, administrative expenses, training, research, and technical assistance from such sanctuary jurisdictions. S. 2193 would have increased maximum prison terms for unauthorized aliens by setting a five-year maximum sentence for unauthorized aliens with felony convictions caught two or more times, and a 10-year maximum sentence on unauthorized aliens caught reentering three times. The Senate failed to pass a cloture motion to consider either bill.[49]

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Acknowledgments

Lisa Seghetti, Section Research Manager, was one of the original authors of this report.

[49] Other proposals related to sanctuary jurisdictions that were introduced in the 114th Congress included H.R. 191, H.R. 1148, H.R. 3002, H.R. 5485 (as amended), S. 129, S. 1640, S. 80, and S. 1764.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CITY OF RICHMOND, a municipal corporation, Plaintiff, **vs.** **DONALD J. TRUMP, President of the United States,** **JOHN F. KELLY, Secretary of the United States Department of Homeland Security,** **JEFFERSON B. SESSIONS, Attorney General of the United States, and the UNITED STATES OF AMERICA,** Defendants.	Case No. 3:17-cv-01535-WHO **[PROPOSED] ORDER GRANTING CITY OF RICHMOND'S MOTION FOR PRELIMINARY INJUNCTION** Date: May 10, 2017 Time: 2:00 p.m. Judge: Hon. William H. Orrick Dept.: Courtroom 2 Complaint Filed: March 21, 2017 No Trial Date

On April 4, 2017, City of Richmond ("Richmond") filed a Motion for Preliminary Injunction ("Motion"). The Court, having considered the Motion and documents filed therewith, all of the papers on file in this action, and the evidence and arguments of counsel presented at the hearing, hereby **GRANTS** Richmond's Motion. The Court finds that each of the necessary elements for issuing a preliminary injunction are met: Richmond is likely to prevail on the merits of its claims; absent a preliminary injunction, Richmond would likely suffer irreparable injury; the balance of the equities favors Richmond; and the requested relief is in the public interest.

PRELIMINARY INJUNCTION

Now, therefore, it is hereby ORDERED that:

Defendants Donald J. Trump, President of the United States of America, John F. Kelly, in his official capacity as Secretary of the United States Department of Homeland Security, Jefferson B. Sessions, in his official capacity as Attorney General of the United States, the United States of America, and their officers, agents, employees, and attorneys, and any other persons who are in active concert or participation with them, ARE HEREBY RESTRAINED AND ENJOINED from committing, or performing, directly and indirectly, any and all of the following acts:

1. Enforcing Section 9(a) of Executive Order 13768, entitled "Enhancing Public Safety in the Interior of the United States," against Richmond [or any jurisdiction in the United States]; and

2. Taking any action pursuant to the Executive Order that would withhold or claw-back from Richmond [or any jurisdiction in the United States] federal funds that were appropriated or allocated by Congress; and

3. Taking any action pursuant to the Executive Order that would declare or render Richmond [or any jurisdiction in the United States] ineligible for federal funds.

IT IS SO ORDERED

Dated:

HONORABLE WILLIAM H. ORRICK
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CITY OF RICHMOND, a municipal corporation, Plaintiff, **vs.** **DONALD J. TRUMP, President of the United States, JOHN F. KELLY, Secretary of the United States Department of Homeland Security, JEFFERSON B. SESSIONS, Attorney General of the United States, and the UNITED STATES OF AMERICA,** Defendants.	Case No. 3:17-cv-01535-WHO **PROOF OF SERVICE VIA E-MAIL BY AGREEMENT OF PARTIES** Date: May 10, 2017 Time: 2:00 p.m. Judge: Honorable William H. Orrick Dept.: Courtroom 2 Complaint Filed: March 21, 2017 No Trial Date

PROOF OF SERVICE

I am employed in the County of San Mateo; I am over the age of 18 years and not a party to the within cause. My business address is the Law Offices of Cotchett, Pitre & McCarthy, LLP, San Francisco Airport Office Center, 840 Malcolm Road, Burlingame, California, 94010. On this day, I served the following document(s) in the manner described below:

1. **CITY OF RICHMOND'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION**
2. **DECLARATION OF ALLWYN BROWN IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**
3. **DECLARATION OF WILLIAM LINDSAY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**
4. **DECLARATION OF GAYLE MCLAUGHLIN IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**
5. **DECLARATION OF ADRIAN SHEPPARD IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**
6. **DECLARATION OF TOM BUTT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**
7. **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF CITY OF RICHMOND'S MOTION FOR PRELIMINARY INJUNCTION**
8. **[PROPOSED] ORDER GRANTING CITY OF RICHMOND'S MOTION FOR PRELIMINARY INJUNCTION**

__✘__ **VIA E-MAIL:** My e mail address is pluc@cpmlegal.com. I am readily familiar with this firm's practice for causing documents to be served by e-mail. Following that practice, I caused the aforementioned document(s) to be emailed to the addressee(s) specified below.

W. Scott Simpson
Department of Justice, Room 7210
Post Office Box 883
Washington, D.C. 20044
Scott.simpson@usdoj.gov

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Burlingame, California, on April 4, 2017.

/s/ Peter Luc
PETER LUC