

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

THE CITY OF CHICAGO,

Plaintiff,

v.

**JEFFERSON BEAUREGARD SESSIONS III,
Attorney General of the United States**

Defendant.

Civil Action No. 1:17-cv-5720

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiff the City of Chicago hereby alleges as follows:

INTRODUCTION

1. Chicago brings this action to enjoin the Attorney General of the United States from imposing sweeping new conditions on an established federal grant program—the Edward Byrne Memorial Justice Assistance Grant (“Byrne JAG”)—that has for years provided crucial support for law enforcement in Chicago and other cities. These new conditions—which would give federal officials the power to enter city facilities and interrogate arrestees at will and would force the City to detain individuals longer than justified by probable cause, solely to permit federal officials to investigate their immigration status—are unauthorized and unconstitutional. These new conditions also fly in the face of longstanding City policy that promotes cooperation between local law enforcement and immigrant communities, ensures access to essential city services for all residents, and makes all Chicagoans safer. Neither federal law nor the United

States Constitution permits the Attorney General to force Chicago to abandon this critical local policy.

2. Since the 1980s, the City has directed its police officers to prioritize local law enforcement and public safety rather than diverting time, attention, and resources to investigating residents' immigration status. Now codified as the Welcoming City Ordinance, this policy promotes public safety by ensuring that no city resident or visitor, regardless of immigration status, is afraid to cooperate with law enforcement, report criminal activity to the police, testify as a witness in court, or seek help as a victim of crime; and by ensuring that police officers focus on criminal activity occurring in Chicago instead of federal civil immigration infractions. The Welcoming City Ordinance represents a clear, concerted, and smart policy choice in favor of inclusion and strong relations between the community and law enforcement. Chicago, its residents, and its leaders have stood behind that choice for over a generation.

3. The federal government's aggressive and escalating efforts to force Chicago and other cities, counties, and States to adhere to federal priorities began during the current President's first week in office, with an executive order targeting so-called sanctuary cities—*i.e.*, cities that have exercised their basic right to self-government by focusing their resources on enforcement of local laws rather than on policing federal civil immigration violations. The executive order commanded federal agencies to withhold funds from these cities unless they changed their policies. After a court enjoined enforcement of much of that order, the Department of Justice (the "Department" or "DOJ") singled out Chicago and eight other cities by demanding, on pain of losing their funding under last year's Byrne JAG program, that they certify compliance with 8 U.S.C. § 1373 ("Section 1373"), a federal statute that bars local

governments from restricting the sharing of immigration status information with federal immigration agents.

4. Chicago complied. In fact, Chicago officials simply do not collect immigration status information in the first place, and thus there is no information for the City to share (or restrict from sharing). Moreover, if Chicago officials happen to come across immigration status information, they are not restricted from sharing it with federal officials. Accordingly, because it is in fact in compliance, Chicago certified its compliance with Section 1373 in late June without conceding that the federal government could constitutionally condition Byrne JAG funding on compliance with that provision. In response to Chicago's and other cities' good-faith effort, the Department issued an ominous press statement indicating that it believes some cities that certified compliance with Section 1373 are in violation of that statute. But the Department did not identify those jurisdictions, or explain why they are not in compliance.

5. Then, in late July 2017, the Department announced via press release that the FY 2017 Byrne JAG application would include two *additional* intrusive grant conditions. These new conditions would require Chicago (1) to detain its own residents and others at federal immigration officials' request, in order to give the federal government a 48-hour notice window prior to an arrestee's release; and (2) to give federal immigration officials unlimited access to local police stations and law enforcement facilities in order to interrogate any suspected non-citizen held there, effectively federalizing all of the City's detention facilities. On top of this, the Department has demanded yet *another* certification of compliance with Section 1373—but this time under the cloud of confusion caused by the Department's aforementioned statements.

6. The FY 2017 Byrne JAG application is due on September 5, 2017 and requires compliance with all three of these conditions.

7. These conditions are inconsistent with the Byrne JAG statute itself, with the limitations imposed by the Constitution's Spending Clause and the Fourth Amendment, and with basic separation of powers principles. Compliance with the conditions would require Chicago to violate Illinois law. And it would undermine public safety and effective policing in the City and upend Chicago's Welcoming City policy.

8. The executive branch of the federal government may not arrogate to itself the powers that our Constitution reserves to Congress, on the one hand, or to state and local governments on the other. It may not unilaterally concoct and import into the Byrne JAG program sweeping new policy conditions that were never approved (and indeed were considered and rejected) by Congress and that would federalize local jails and police stations, mandate warrantless detentions in order to investigate for federal civil infractions, sow fear in local immigrant communities, and ultimately make the people of Chicago less safe. Nor may it continue to insist that Chicago certify compliance with Section 1373 even as it withholds clear guidance about the City's prior certifications while implying that it does not accept them, or others like them, for some unarticulated reason.

9. The Department puts Chicago in an untenable position, with the clock winding down: agree, by September 5, 2017, to accept the Department's new unconstitutional grant conditions, which would wipe away policies that have built trust and cooperation between law enforcement and immigrant communities over the decades; or stand on its rights and forfeit crucial funds that it and the eleven other jurisdictions on whose behalf it submits Byrne JAG applications have counted on for more than a decade to provide critical (and, at times, lifesaving) equipment to Chicago Police officers and critical services to Chicago residents.

10. Chicago thus brings this action to avoid that impending harm and to prevent the Department from imposing unlawful and counterproductive conditions on the Byrne JAG program that would override local judgments about how best to enforce the law and protect the community. Chicago seeks a declaration that it complies with Section 1373 and that the Department's immigration-related conditions on Byrne JAG funding are unlawful, as well as an injunction preventing those conditions from being included in the FY 2017 Byrne JAG application or in future applications, thereby ensuring that Chicago's longstanding Welcoming City Ordinance can remain in full effect.

PARTIES

11. Plaintiff Chicago is a municipal corporation and home rule unit organized and existing under the constitution and laws of the State of Illinois. Chicago was incorporated in 1837, is the third largest city in the United States, and is home to almost 3 million residents, including a diverse array of immigrant communities.

12. Defendant Jefferson Beauregard Sessions III is the Attorney General of the United States. He is sued in his official capacity. The Attorney General is the federal official in charge of the United States Department of Justice, which took and threatens imminently to take the governmental actions at issue in this lawsuit.

JURISDICTION AND VENUE

13. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1346. The Court is authorized to issue the relief sought here under the Administrative Procedure Act, 5 U.S.C. §§ 702, 705, 706, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202.

14. Venue is proper in the Northern District of Illinois under 28 U.S.C. § 1391(e)(1) because substantial events giving rise to this action occurred therein and because Chicago resides therein and no real property is involved in this action.

FACTUAL ALLEGATIONS

I. CHICAGO HAS OPERATED UNDER ITS WELCOMING CITY POLICY FOR DECADES

15. Chicago is one of America's great cities, a metropolis of almost 3 million people that has attracted migrants and immigrants of different races, nationalities, and creeds to the shores of Lake Michigan for nearly two centuries, seeking good jobs and better futures for themselves and their children.

16. Chicago's diverse population requires a public safety strategy that takes into account the needs of all the City's residents. One aspect of that strategy—Chicago's Welcoming City Ordinance—has developed over the past few decades to address the needs and concerns of the City's residents.

17. The first formal iteration of the current policy was announced by then-Mayor Harold Washington in March 1985 in Executive Order 85-1, which provided that "all residents of the City of Chicago, regardless of nationality or citizenship, shall have fair and equal access to municipal benefits, opportunities and services." To ensure this equal access, the Order stated that City officials would not "request information about or otherwise investigate or assist in the investigation of the citizenship or residency status of any person" unless required by other law to do so.

18. Mayor Richard M. Daley reiterated this policy upon taking office in April 1989. His Executive Order 89-6 similarly emphasized that all Chicago residents "shall have fair and equal access to municipal benefits, opportunities and services" and prohibited City agents and agencies from "request[ing] information about or otherwise investigat[ing] or assist[ing] in the investigation of the citizenship or residency status of any person unless such inquiry or investigation is required by statute, ordinance, federal regulation or court decision."

19. In 2006, the Chicago City Council unanimously incorporated the policies of the 1985 and 1989 executive orders into the City's Municipal Code by enacting the Welcoming City Ordinance in response to increased pressure from the federal government to assist in immigration enforcement. The City Council was concerned by the suggestion that Chicago should "expend limited local resources on traditionally federal functions." Furthermore, the City Council noted that "requiring, or even promoting, local enforcement of immigration laws" would both "give[] rise to an increased threat of immigrant and minority profiling and harassment" and "cause a chilling effect on crime prevention and solving if both witnesses and victims are called upon to weigh a need to cooperate with local authorities against a fear of deportation, thereby undermining long-standing efforts to engender trust and cooperation between law enforcement officials and immigrant communities."

20. Like the executive orders that preceded it, the 2006 Ordinance prohibited City "agent[s]" and "agenc[ies]" from "request[ing] information about or otherwise investigat[ing] or assist[ing] in the investigation of the citizenship or residency status of any person unless such inquiry or investigation is required by Illinois State Statute, federal regulation, or court decision." It also barred disclosure of "information regarding the citizenship or residency status of any person unless required to do so by legal process or such disclosure has been authorized in writing by the individual to whom such information pertains."

21. In 2012, Mayor Rahm Emmanuel and the Chicago City Council expanded the Welcoming City Ordinance to address increasing federal requests that Chicago detain individuals suspected of immigration-related offenses. Also known as "immigration detainers" or "immigration holds," these requests issued by U.S. Immigration and Customs Enforcement ("ICE") ask that local law enforcement "maintain custody" of a targeted individual for up to "48

hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the Department [of Homeland Security (“DHS”)].” 8 C.F.R. § 287.7(d).

22. The expanded Welcoming City Ordinance provides that undocumented individuals will be detained at the federal government’s request only when Chicago has an independent reason to believe they might pose a threat to public safety: for example, if they have an outstanding criminal warrant, have been convicted of a felony, are a defendant in a criminal case where judgment has not been entered and a felony charge is pending, or have been identified as a known gang member.

23. This expansion responded in part to concerns that “undocumented Chicagoans who have not been convicted of a serious crime and are not wanted on a criminal warrant” might be denied “basic protections” in the face of an ICE detainer request.¹

24. These concerns have proven to be well founded. Since the Welcoming City Ordinance was expanded in 2012, many courts have held that detaining persons for additional time solely because of an ICE detainer request is unconstitutional or otherwise unlawful. *County of Santa Clara v. Trump*, Nos. 17-cv-00574-WHO & 17-cv-00485-WHO, 2017 WL 1459081, at *4 (N.D. Cal. Apr. 25, 2017) (“Several courts have held that it is a violation of the Fourth Amendment for local jurisdictions to hold suspected or actual removable aliens subject to civil detainer requests because [such] requests are often not supported by an individualized determination of probable cause that a crime has been committed.”); *see, e.g., Morales v. Chadbourne*, 793 F.3d 208, 214-218 (1st Cir. 2015); *Galarza v. Szalczyk*, 745 F.3d 634, 643-645 (3d Cir. 2014). Indeed, apparently recognizing that such detentions are likely illegal, United States Senators Jeff Flake and John McCain recently introduced legislation that would

¹ See Press Release, Office of the Mayor, City of Chicago, Mayor Emanuel Introduces Welcoming City Ordinance 1 (July 10, 2012), <https://tinyurl.com/yb6pzhhy>.

“indemnify local law enforcement entities for complying” with ICE detainers. *See* S. 1039, 115th Cong. (2017); *see id.* § 2 (“[T]he Federal Government shall be responsible to pay for the costs of any legally cognizable injuries to third parties resulting from the issuance and execution of [immigration] detainers.”).

25. The 2012 Welcoming City Ordinance reflects the Chicago City Council’s findings that (1) “the cooperation of all persons, both documented citizens and those without documentation status, is essential to achieve the City’s goals of protecting life and property, preventing crime and resolving problems,” (2) “assistance from a person, whether documented or not, who is a victim of, or a witness to, a crime is important to promoting the safety of all [of the City’s] residents,” and (3) “[t]he cooperation of the City’s immigrant communities is essential to prevent and solve crimes and maintain public order, safety and security in the entire City.” Chicago Municipal Code § 2-173-005.

26. In its current form, the Welcoming City Ordinance, codified as Chapter 2-173 of the Chicago Municipal Code, contains four key prohibitions relevant to this lawsuit.

- a. Subject to certain exceptions for certain criminal suspects and gang members,² Section 2-173-042 prohibits City “agent[s]” or “agenc[ies]” from “arrest[ing], detain[ing] or continu[ing] to detain a person solely on the belief that the person is not present legally in the United States, or that the person has committed a civil immigration violation,” or doing so “based upon an immigration detainer, when such immigration detainer is based solely on a violation of a civil immigration law.”

² Specifically, and as noted above, the Section 2-173-042 restrictions do not apply if the subject of the ICE investigation “(1) has an outstanding criminal warrant; (2) has been convicted of a felony in any court of competent jurisdiction; (3) is a defendant in a criminal case in any court of competent jurisdiction where a judgment has not been entered and a felony charge is pending; or (4) has been identified as a known gang member.”

- b. Subject to the same exceptions, as well as an exception for “legitimate law enforcement purpose[s] . . . unrelated to the enforcement of a civil immigration law,” Section 2-173-042 also prohibits City “agent[s]” or “agenc[ies]” from, “while on duty, expend[ing] their time responding to ICE inquiries or communicating with ICE regarding a person’s custody status or release date,” or from “permit[ting] ICE agents access to a person being detained by, or in the custody of, the agency or agent” or “permit[ting] ICE agents use of agency facilities for investigative interviews or other investigative purpose.”
- c. Section 2-173-020 prohibits City “agent[s]” or “agenc[ies]” from “request[ing] information about or otherwise investigat[ing] or assist[ing] in the investigation of the citizenship or immigration status of any person unless such inquiry or investigation is required by Illinois State Statute, federal regulation, or court decision.”
- d. Section 2-173-030 prohibits City “agent[s]” or “agenc[ies]” from “disclos[ing] information regarding the citizenship or immigration status of any person” unless “otherwise provided under applicable federal law,” the City is “required to do so by legal process,” or “such disclosure has been authorized in writing by the individual to whom such information pertains.”

27. These and other provisions of the Welcoming City Ordinance play a vital role in strengthening the relationship between Chicago’s government, its police force, and its immigrant communities. This relationship is built city block by city block, and it is essential that Chicago’s police officers have the flexibility they need to engage the immigrant communities in their crime-fighting initiatives without projecting a constant threat of deportation.

II. THE ADMINISTRATION ATTACKS SO-CALLED “SANCTUARY CITIES” AND TARGETS THE CITY OF CHICAGO

28. The City’s Welcoming City policies are sound. In fact, as one study found, “crime is statistically significantly lower in sanctuary counties compared to nonsanctuary counties . . . controlling for population characteristics.”³ Indeed, as a broad coalition of police chiefs explained recently, “build[ing] trusting and supportive relations with immigrant communities . . . is essential to reducing crime and helping victims.”⁴

29. The idea that policies like Chicago’s encourage or facilitate crime is simply a “[m]yth”: “[S]tudies have found no support for the idea that immigrants are responsible for more crime” or that “sanctuary policies lead to increased crime.”⁵

30. Despite the soundness of Chicago’s policies—and despite the City’s inherent right to decide its own law enforcement priorities and strategies—the Trump Administration has singled out Chicago and other so-called sanctuary jurisdictions for criticism. In his first week in office, President Trump issued Executive Order 13768, which threatened to deny federal grants and take enforcement actions against such jurisdictions. Purporting to “inform the public regarding the public safety threats associated with sanctuary jurisdictions,” President Trump ordered DHS to publish weekly lists of any municipalities that refused to comply with detainer requests, together with lists of any undocumented immigrants arrested—but not necessarily convicted—for any non-immigration offenses.⁶ This executive order was later enjoined in large

³ Tom K. Wong, Center for American Progress, *The Effects of Sanctuary Policies on Crime and the Economy* 6 (2017), <http://tinyurl.com/y75lsykd> (emphasis added).

⁴ Press Release, Major Cities Chiefs Ass’n, U.S. Mayors, Police Chiefs Concerned with Sanctuary Cities Executive Order (Jan. 25, 2017), <http://tinyurl.com/y8zqhypw>.

⁵ Benjamin Gonzalez et al., *The Politics of Refuge: Sanctuary Cities, Crime, and Undocumented Immigration*, 53 Urb. Aff. Rev. (forthcoming 2017) (manuscript at 9-10, 18-24), <http://tinyurl.com/y8hb9fnc>.

⁶ See Alan Gomez, *Trump Pressures ‘Sanctuary Cities’ That Won’t Hold Undocumented Immigrants*, USA Today (Mar. 20, 2017, 6:14 PM ET), <http://tinyurl.com/yctkoj9e>.

part by a federal court for violating numerous provisions of the Constitution. *See County of Santa Clara*, 2017 WL 1459081, at *21-*29.

31. Just last month, President Trump spoke of “predators and criminal aliens who poison our communities with drugs and prey on innocent young people,” avowing that these “animals” “will find no safe haven anywhere in our country.”⁷ He added: “[T]hey’re not being protected any longer, folks. And that is why my administration is launching a nationwide crackdown on sanctuary cities.”⁸

32. Attorney General Sessions, without any factual basis, has also labeled sanctuary jurisdictions a “clear and ongoing threat to public safety.”⁹ He recently announced, for instance, that “‘sanctuary’ policies make all of us less safe because they intentionally undermine our laws and protect illegal aliens who have committed crimes”; he even suggested that they “encourage . . . human trafficking.”¹⁰ And he has insisted that “cities with these policies have more violent crime on average than those that don’t.”¹¹

33. The Administration’s rhetoric is divorced from reality. As explained above, the City’s policies are a sound approach to reducing crime, building trust with immigrant

⁷ See Maya Oppenheim, *Donald Trump Brands Illegal Immigrant Gang Members ‘Animals’ Who ‘Slice and Dice’ Young Beautiful Girls*, *Indep.* (July 26, 2017), <http://tinyurl.com/y986sguu>.

⁸ *Id.*; see also Pete Williams, *Attorney General Sessions Raises Stakes for Sanctuary Cities*, *NBC News* (July 25, 2017, 8:49 PM ET), <http://tinyurl.com/yb3rzza8> (President Trump declaring that cities should be sanctuaries “for law-abiding Americans,” “not for criminals and gang members that we want the hell out of our country”).

⁹ Press Release, U.S. Dep’t of Justice, Statement by Attorney General Jeff Sessions on the U.S. Immigration and Customs Enforcement Declined Detainer Outcome Report (Mar. 20, 2017), <http://tinyurl.com/ybrnrf8g>.

¹⁰ See Michelle Mark, *The Trump Administration Just Toughened Its Crackdown on ‘Sanctuary Cities,’* *Bus. Insider* (July 25, 2017, 6:42 PM), <http://tinyurl.com/yb29dpob>.

¹¹ See Michelle Ye Hee Lee, *Attorney General Jeff Sessions’s Claim That ‘Criminals Take Notice’ of Cities with Sanctuary Policies*, *Wash. Post* (July 17, 2017), <http://tinyurl.com/ycwho7u5>; see also Press Release, Dep’t of Justice, Department of Justice Reviewing Letters from Ten Potential Sanctuary Jurisdictions (July 6, 2017), <http://tinyurl.com/ybdhf7vy> (quoting Attorney General Sessions as saying that sanctuary policies “put the lives and well-being of their residents at risk” and “give sanctuary to criminals, not to law-abiding Americans”).

communities, and enhancing cooperation with law enforcement. Indeed, the authors of the very study cited by Attorney General Sessions have squarely rejected his position, saying he misrepresented their work.¹²

34. Meanwhile, Congress has also considered legislation that would penalize cities for seeking to set their own law enforcement priorities. See Stop Sanctuary Policies and Protect Americans Act, S. 2146, 114th Cong. (2015) (proposing funding cuts for any sanctuary jurisdiction that violates Section 1373 or “prohibits any government entity or official from complying with a detainer”). Notably, however, Congress has *never passed* any such legislation authorizing the executive branch to impose any penalty on local jurisdictions based on their refusal to comply with detainer or other immigration enforcement requests.

III. THE ADMINISTRATION SEEKS TO USE CONDITIONS ON THE BYRNE JAG PROGRAM, A CRITICAL SOURCE OF FUNDS FOR CHICAGO, TO DICTATE CITY POLICING STRATEGY

35. With Congress having declined to authorize the executive branch to override Welcoming City-style policies, and courts having blocked the executive branch’s effort to do so through executive order, the Trump Administration has sought to expand its limited role in administering an existing congressional program, the Byrne JAG program, in an attempt to pressure cities and other local governments to abandon their policies.

36. Congress established the Byrne JAG program in 2005 to serve as the primary source of federal criminal justice funding for States and localities. The goal of the program is to allow State and local governments the “flexibility to spend money for programs that work for

¹² See Miriam Valverde, *Jeff Sessions Cites Study on Sanctuary Cities, Researchers Say He Misrepresented It*, PolitiFact (July 24, 2017, 10:35 AM), <http://tinyurl.com/y7ohqtz6>; see also Loren Collingwood & Benjamin Gonzalez-O’Brien, *Jeff Sessions Used Our Research to Claim That Sanctuary Cities Have More Crime. He’s Wrong*, Wash. Post (July 14, 2017), <http://tinyurl.com/y8rwwwbz> (objecting that author’s “findings have been so misrepresented” by the Justice Department).

them rather than to impose a ‘one size fits all’ solution” for local policing. *See* H.R. Rep. No. 109-233, at 89 (2005).¹³

37. To that end, the Byrne JAG is structured as a formula grant, awarding funds to all eligible grantees according to a prescribed formula. *See* 42 U.S.C. § 3755(d)(2)(A) (providing that the Attorney General “shall allocate to each unit of local government” funds consistent with the established formula). The Byrne JAG distribution formula for States is a function of population and violent crime. *See id.* § 3755(a). The formula for local governments, in turn, is a function of the State’s allocation and the ratio of violent crime in the locality to violent crime in the State. *See id.* § 3755(d).

38. Unlike discretionary grants, which agencies award on a competitive basis subject to agency discretion, “formula grants . . . are not awarded at the discretion of a state or federal agency, but are awarded pursuant to a statutory formula.” *City of Los Angeles v. McLaughlin*, 865 F.2d 1084, 1088 (9th Cir. 1989). States and local governments are entitled to their share of the formula allocation as long as their proposed programs meet at least one of eight broadly defined goals, *see* 42 U.S.C. § 3751(a)(1)(A)-(H) (listing eligible programs ranging from general law enforcement to technology to mental health), and their applications contain a series of statutorily required certifications and attestations. *See id.* § 3752(a).

39. The statute nowhere authorizes the Department to create new substantive conditions on grant funds. Indeed, doing so would upend Congress’s formula approach for distributing funds based on population and violent crime, instead allocating grants using criteria invented by the Department. *See Amalgamated Transit Union v. Skinner*, 894 F.2d 1362, 1364 (D.C. Cir. 1990) (“Where Congress prescribes the form in which an agency may exercise its

¹³ The Byrne JAG program was created in the Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960 (2006), which in turn amended the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 197.

authority, . . . we cannot elevate the goals of an agency's action, however reasonable, over that prescribed form."").

40. Chicago has received Byrne JAG funds since 2005, the year the program began, and every year since. In FY 2016, Chicago received \$2.33 million through the Byrne JAG program.

41. Chicago has used Byrne JAG funds to support projects ranging from critical law enforcement equipment and overtime to community policing outreach and engagement. Since FY 2005, for instance, Chicago has spent approximately \$33 million in Byrne JAG funds to buy nearly 1,000 police vehicles. Several of those projects have extended across multiple grant years, including the Force for Good program, which began in 2011 and helps not-for-profit organizations meet community needs. Recognizing that creating safe neighborhoods is impossible unless government and communities work together, the Force for Good program provides capacity-building support to over 80 not-for-profit organizations that operate in neighborhoods experiencing high rates of violent crime in order to help improve their ability to provide services such as emergency shelter, food, and clothing; youth mentoring and structured activities in safe places; job training and placement; conflict resolution; and activities to strengthen community cohesion and resilience. Without Byrne JAG funds, Chicago would have to shut down some or all of these programs, change their staffing, scope, or goals, or else divert funds from other policing objectives to sustain them.

42. Additionally, eleven other localities depend on Chicago's Byrne JAG application for the funds they receive through the program each year. Because Chicago's costs of preventing and investigating violent crimes far outstrip those of the surrounding jurisdictions—including those of Cook County, in which it sits—42 U.S.C. § 3755(d)(4) obligates Chicago to file a Byrne

JAG application on behalf of not only itself but also those other, neighboring communities.

Accordingly, each year Cook County, the Village of Bellwood, the City of Calumet, the City of Chicago Heights, the Town of Cicero, the Village of Dolton, the City of Evanston, the City of Harvey, the Village of Maywood, the Village of Riverdale, and the Village of Skokie rely on Chicago's application to receive their own Byrne JAG funds.

43. Until now, the Department has never questioned Chicago's ability to achieve the programmatic goals for Byrne JAG funds because of the City's approach to improving law enforcement through respect for and collaboration with immigrant communities.

A. THE DEPARTMENT OF JUSTICE REQUIRES CHICAGO TO CERTIFY COMPLIANCE WITH SECTION 1373 AS A CONDITION OF RECEIVING BYRNE JAG FUNDING

44. For over a decade, the Department administered the Byrne JAG program as Congress intended: funding critical local law enforcement initiatives without once seeking to leverage that funding to conscript local agencies to enforce federal immigration law. But that changed in late 2016 when, for the first time, DOJ required grantees to "undertake a review to validate [their] compliance with 8 U.S.C. § 1373" as a condition of receiving FY 2016 Byrne JAG funds.

45. On April 21, 2017, the Department sent letters to Chicago and eight other jurisdictions seeking submission of "documentation to [the Department's Office of Justice Programs ("OJP")] that validates that your jurisdiction is in compliance with 8 U.S.C. § 1373." The letter indicated that the "documentation must be accompanied by an official legal opinion from counsel that adequately supports the validation and must be submitted to OJP no later than June 30, 2017."¹⁴

¹⁴ See Letter from Alan R. Hanson, Acting Assistant Attorney Gen., U.S. Dep't of Justice, to Eddie T. Johnson, Superintendent of Police, Chi. Police Dep't (Apr. 21, 2017), <https://tinyurl.com/y7t4mxxxy>.

46. Section 1373, the statute for which DOJ sought certification, prohibits state and local entities from “prohibit[ing], or in any way restrict[ing]” their entities and officials from “sending,” “requesting,” “receiving,” “maintaining,” or “requesting” citizenship or immigration status information from or to federal immigration enforcement authorities.

47. Section 1373 imposes no affirmative obligation on state or local entities to collect immigration status information; does not require state or local entities to take any specific actions upon receiving immigration status information absent a request for that information; does not address detainer requests or release-date notification requests; and does not require state or local entities to act in a manner inconsistent with the United States Constitution or other federal law.

48. The Byrne JAG authorizing statute requires a “certification” that “the applicant will comply with all provisions of this part and all other applicable Federal laws.” 42 U.S.C. § 3752(a)(5)(D). OJP indicated that it considers “all other applicable Federal laws” to encompass Section 1373.

49. Chicago replied to the Department’s letter on June 30, 2017, explaining how and why it complies with Section 1373. *See* Memorandum from Edward Siskel, Corporation Counsel, City of Chicago, to Tracey Trautman, Acting Director, Bureau of Justice Assistance, Office of Justice Programs, U.S. Dep’t of Justice (June 30, 2017) (attached as Ex. A).

50. Chicago’s letter explained that the City, as a general rule, does not collect citizenship or immigration status information from its residents. Both the Welcoming City Ordinance and Chicago Police Department policy bar the City from doing so. *See* Chicago Municipal Code § 2-173-020; Chicago Police Department Special Order S06-14-03. Chicago therefore does not “restrict” or “prohibit” its employees from taking any actions with regard to

information covered by this non-collection policy: The City cannot prohibit or restrict the sharing of information it does not possess. *See* Ex. A at 2-5.

51. The letter further explained that when the City's officers or agents do happen to possess citizenship or immigration status information, the Welcoming City Ordinance expressly permits them to share this information with federal immigration enforcement officials. Although the Ordinance prohibits disclosure of citizenship or immigration status information in response to requests from private parties, it expressly permits such disclosure as "provided under applicable federal law." One such "applicable federal law" is Section 1373. The Welcoming City Ordinance thus does not restrict city officers and employees from responding to requests from federal immigration enforcement officials. *See* Ex. A. at 5-6.

52. A few days after receiving certifications from Chicago and the other targeted jurisdictions, the Department issued a press release suggesting that some jurisdictions' certifications might be found insufficient: "It is not enough to assert compliance, the jurisdictions must actually be in compliance." The press release further indicated that the Department was "in the process of reviewing" the certifications and planned to "examine these claims carefully." Press Release, U.S. Dep't of Justice, Department of Justice Reviewing Letters from Ten Potential Sanctuary Jurisdictions (July 6, 2017), <http://tinyurl.com/ybdhf7vy>.

53. Despite generally expressing skepticism about the certifications of some unspecified jurisdictions and even though the deadline to submit Byrne JAG applications for FY 2017 is less than a month away, the Department has not communicated any particular concerns to Chicago or, on information and belief, to any of the other eight jurisdictions.

54. The FY 2017 grant application will require Chicago to again certify compliance with Section 1373—but this time, it must do so after DOJ purports to impose new requirements

that reach well beyond the statute, discussed below, and under a cloud of uncertainty created by DOJ's increasingly aggressive positions. Furthermore, the FY 2017 application requires certifications by both Chicago's chief legal officer and its chief executive. Although Chicago is confident that it complies with Section 1373 and has certified as such, DOJ's public statements concerning the Section 1373 certifications it has received to date make it unclear whether DOJ will agree that Chicago's existing certification is satisfactory under DOJ's interpretation of the law.

B. THE DEPARTMENT OF JUSTICE ANNOUNCES TWO ADDITIONAL UNLAWFUL CONDITIONS FOR THE FY 2017 BYRNE JAG PROGRAM

55. In late July 2017, shortly before the Byrne JAG application for FY 2017 was set to go online, the Department suddenly announced significant changes to the Byrne JAG application process in a two-paragraph press release and accompanying press "backgrounder" document. See Press Release, U.S. Dep't of Justice, Attorney General Sessions Announces Immigration Compliance Requirements for Edward Byrne Memorial Justice Assistance Grant Programs (July 25, 2017), <https://tinyurl.com/y9ttqhs1> (attached as Ex. B); U.S. Dep't of Justice, Backgrounder on Grant Requirements, <https://tinyurl.com/ycfgbgl4> (attached as Ex. C).

56. These changes, announced with virtually no analysis or explanation and no opportunity for public notice and comment, apply to the FY 2017 grant application, which is due on September 5, 2017. See U.S. Dep't of Justice, Edward Byrne Memorial Justice Assistance Grant Program: FY 2017 Local Solicitation (2017), <https://tinyurl.com/ya535xua> (attached as Ex. D).

57. Both changes would countermand the Welcoming City Ordinance and require a reordering of law enforcement practice in Chicago to accommodate a major new role for federal immigration enforcement.

58. *The “notice” condition:* First, the Department will require grant applicants to “provide at least 48 hours’ advance notice to DHS regarding the scheduled release date and time of an alien in the jurisdiction’s custody when DHS requests such notice in order to take custody of the alien pursuant to the Immigration and Nationality Act.” Ex. D at 30. This policy directly conflicts with the City’s longstanding Welcoming City Ordinance (Section 2-173-042(a), (b)(1)(C)), would effectively require compliance with detainer requests even in the absence of any probable cause, and would sow fear and mistrust as between immigrant communities and law enforcement.

59. *The “access” condition:* Second, the Department will require grant applicants to “permit personnel of the [DHS] to access any correctional or detention facility in order to meet with an alien (or an individual believed to be an alien) and inquire as to his or her right to be or remain in the United States.” Ex. D at 30. The Department has not defined “correctional” or “detention” facility,¹⁵ but the requirement appears to mandate that federal immigration agents be given unprecedented and unfettered access to local law enforcement facilities and to any person being held there. This policy directly conflicts with the City’s longstanding Welcoming City Ordinance (Section 2-173-042(b)(1)(A)-(B)), would interfere with the administration of local police stations and lockups, including the investigations of criminal activity that routinely take place there, and would sow fear and mistrust as between immigrant communities and law enforcement.

¹⁵ As explained elsewhere, Chicago operates only temporary “lockup” facilities, in which individuals are briefly detained prior to release or their appearances in Cook County court for probable cause proceedings. It is not at all clear whether these temporary facilities are “detention facilities” within the meaning of this condition. Nor is it clear whether Chicago can comply with this condition without impeding the timely and orderly administration of probable cause hearings in the Cook County courts. Timely and orderly administration of such hearings is necessary as a matter of both constitutional law and public safety.

60. The City of Chicago does not itself operate jails or long-term detention facilities. The City detains arrestees in 18 temporary police “lockup” facilities, used for immediate post-arrest holding and processing, as well as post-arrest investigation. Arrestees not released on their own recognizance generally are transported by the Chicago Police Department the next morning to the Circuit Court of Cook County for probable cause proceedings or to Cook County detention facilities. Thus, as a matter of practice and procedure, the City itself infrequently detains individuals for more than 24 hours.

61. Moreover, in compliance with the Supreme Court’s ruling in *County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991), Chicago Police Department regulations require that individuals arrested without a warrant be released or transferred to Cook County court “without unnecessary delay,” but “[u]nder no circumstances . . . any later than 48 hours from the time of arrest.” Chicago Police Department General Order G06-01 § II(C).

62. These regulations are also informed by Chicago’s obligations under state law. The Illinois Code of Criminal Procedure requires that any arrested person in lockup be taken “without unnecessary delay” to a judge. Ill. Code Crim. Proc. § 109-1(a). The Illinois Administrative Code additionally specifies that “[t]he maximum period of detention in a jail should not normally exceed 48 hours” and that “[n]o minor shall be detained in a municipal lockup for more than six hours.” Ill. Admin. Code §§ 720.30, 720.150.

63. As a practical matter, then, Chicago can comply with the Department’s new notice condition and provide DHS with 48 hours of lead time prior to arrestees’ release only if the City detains arrestees for longer than they would otherwise be held in the City’s custody, which implicates constitutional, state-law, fiscal, logistical, and other legal concerns. In particular, the prolonged detention caused by the notification requirement would force the City to

potentially violate both arrestees' Fourth Amendment rights to be free of unreasonable seizures and state law, putting Chicago at risk of liability under the civil rights laws.

64. The Department imposed these new notice and access conditions without any explanation, reasoning, or opportunity for exchange with local governments or law enforcement. The Department's press release makes perfunctory mention of community safety and criminal behavior. *See* Ex. B. But it fails to explain how it arrived at these new conditions or what alternatives it may have considered. The press release is silent as to the purposes of the Byrne JAG program and in what ways the newly imposed notice or access conditions (or for that matter the Section 1373 condition) are related to, let alone serve to advance, the interests of the Byrne JAG program. And it fails to provide local law enforcement any guidance as to how the conditions will operate in practice.

65. In fact, these conditions have no legal basis. The Department has not pointed to any statutory authority for imposing these conditions on Byrne JAG applicants. To be sure, the authorizing legislation requires program applicants to certify that they will "comply with all . . . applicable Federal laws." 42 U.S.C. § 3752(a)(5)(D). But even stretching that provision to cover Section 1373—a construction the City has never endorsed as a lawful interpretation, *see* Ex. A at 1 n.1—the Department has made no effort to identify any federal law requiring "at least 48 hours' advance notice" before the City releases an alien in its custody, or any law requiring local police departments to allow DHS officials to access detention facilities.

66. These conditions also represent a sharp break with core constitutional principles. In our constitutional order, "the National Government possesses only limited powers; the States and the people retain the remainder." *National Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 533 (2012). Federalism "secures to citizens the liberties that derive from the diffusion of

sovereign power.” *Id.* at 536 (quoting *New York v. United States*, 505 U.S. 144, 181 (1992)).

Because of its intimate connection to liberty, our federalist design is protected by constitutional limits on undue federal encroachment on state and local autonomy. And separation of powers principles also operate as independent restraints on cooperative federalism arrangements like the Byrne JAG program. The Constitution gives the spending power to Congress, not the Executive Branch. Federal agencies therefore may not invent funding conditions out of whole cloth.

IV. THE DEPARTMENT OF JUSTICE’S UNLAWFUL NEW CONDITIONS WILL INJURE CHICAGO, FORCING THE CITY TO CHOOSE BETWEEN VITAL LAW ENFORCEMENT FUNDING AND ITS CONSTITUTIONAL RIGHTS

67. The Administration’s unlawful actions pose a threat of imminent harm to Chicago. Its Byrne JAG application for FY 2017 is due in just 29 days—on September 5, 2017. For over ten years, the City has routinely applied for and received those funds, which have gone toward police vehicle purchases, law enforcement equipment, and community crime-prevention programs. This year, however, the Department’s actions loom over the City’s decisionmaking process.

68. After demanding that Chicago certify and justify its compliance with Section 1373, the Department cryptically announced that “[s]ome” jurisdictions “potentially violate” Section 1373, without indicating which certifications it found lacking and without identifying any particular defect.¹⁶ This uncertainty has clouded the City’s ability to apply for critical law enforcement funds that it has relied upon for over a decade.

69. The two new conditions that the Department just announced are equally if not more harmful. The notice condition would require the City to detain individuals longer than it otherwise would, potentially violating the individuals’ Fourth Amendment rights and state law

¹⁶ Press Release, U.S. Dep’t of Justice, Department of Justice Reviewing Letters from Ten Potential Sanctuary Jurisdictions (July 6, 2017), <http://tinyurl.com/ybdhf7vy>.

and thereby expose the City to liability; the access condition would demand that the City open its lockup facilities to federal officials without regard to local detention needs.

70. Just as fundamentally, complying with the new conditions would undermine public safety in Chicago. The Welcoming City Ordinance assists effective policing by building trust between law enforcement officers and the immigrant community. Conversely, policing suffers when members of that community, whatever their immigration status, do not feel free to report crimes, assist in investigations, or testify as witnesses. The Department's insistence that Chicago give immigration enforcement agents on-demand access to its detention facilities in order to investigate potential civil immigration violations, and that Chicago detain individuals solely so that they can be investigated for possible civil immigration violations, would undermine crucial public trust, cut local law enforcement efforts off at the knees, and make everyone in Chicago less safe.

71. The Department has thus put Chicago to an impossible choice: sacrifice its sovereignty and its residents' safety by acceding to unlawful funding demands that will undermine community-officer trust and cooperation built over decades; or forfeit crucial monies on which it has relied for more than a decade to fund essential policing operations. And if the City chooses the latter, the City will not be the only jurisdiction to lose out on critical funding. The eleven neighboring jurisdictions that depend on Chicago's Byrne JAG application for their own Byrne JAG funding will lose their funding as well.

72. Worse still, the Department has required Chicago to make its decision under extreme time pressure. Chicago's FY 2017 application is due in just 29 days.

73. As that deadline swiftly approaches, Chicago faces the prospect of a severe federal incursion on its sovereignty. Sovereignty implies self-determination—a government's

ability to select and implement policies of its own choosing. But in a little under a month, Chicago will be denied that most basic right: Instead of focusing (as it always has) on the best interests of its residents and officers, Chicago will soon be required to revise basic law enforcement policy decisions in order to suit the demands of the Department. When a municipality is forced to desert its concerted policy choices under the influence of the federal government's coercive power, it suffers a deep and irreparable injury to its sovereignty.

74. Moreover, whichever decision Chicago ultimately makes, its residents and police force will be immediately and irreparably harmed. If Chicago submits to the Department's demands, it will forfeit decades' worth of trust and goodwill that its police force has built in the communities it serves. And as those decades of experience show, that kind of trust, once lost, is lost forever. Alternatively, if Chicago asserts its right to determine its own policy and refuses to certify compliance with the Department's new and unlawful conditions, it (and the eleven other jurisdictions who depend on Chicago's application for their Byrne JAG funds) will forever forfeit the FY 2017 Byrne JAG grant monies—monies that are critical to Chicago's community policing operation and that purchase essential and life-saving equipment for Chicago and its neighboring jurisdictions. Indeed, the FY 2017 Byrne JAG application itself makes clear that if Chicago refuses the federal government's demands and thus declines to submit an application by September 5, it will miss out on that year's funds. Ex. D at 28 (explaining that untimely applications will not be considered). Moreover, the Byrne JAG statute's grant formula indicates that those forfeited funds will be divvied up and parceled out to other jurisdictions around the country, impossible for Chicago and its neighboring communities to later reclaim. See 42 U.S.C. § 3755 (providing the formula for dividing each year's total grant funds). And even if Chicago and its neighbors could later claw back those funds, the damage would have already been done in

the months or years their police forces and residents will have spent without access to crucial equipment and services.

75. The Department cannot force Chicago to choose between its right to make smart policing decisions for itself as an exercise of municipal sovereignty and its right to receive formula grant funds that Congress has allocated to it.

COUNT ONE: ULTRA VIRES

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

77. The Department of Justice may exercise only authority conferred by statute. *See City of Arlington v. FCC*, 133 S. Ct. 1863, 1869 (2013) (federal agencies’ “power to act and how they are to act is authoritatively prescribed by Congress, so that when they act improperly, no less than when they act beyond their jurisdiction, what they do is ultra vires”).

78. The Department lacks statutory authority to condition Byrne JAG funds on the new notice and access conditions. Indeed, such authority is at odds with the text, structure, and purpose of the Byrne JAG statute.

79. The text of the Byrne JAG statute recognizes no authority for DOJ to impose additional substantive grant conditions on Byrne JAG funds. In fact, Congress has repeatedly demonstrated its ability (when it so desires) to expressly confer agency discretion to add substantive conditions to federal grants. In the same statute that includes the Byrne JAG grant, the Omnibus Crime Control and Safe Streets Act of 1968, Congress created a different grant program that expressly authorized administering agencies to impose reasonable grant conditions. *See* 42 U.S.C. § 3796gg-1(e)(3) (Attorney General may “impose reasonable conditions on grant awards”); *see also Jama v. Immigration & Customs Enf’t*, 543 U.S. 335, 341 (2005) (courts will not “lightly assume that Congress has omitted from its adopted text requirements that it nonetheless intends to apply” especially where Congress has done so in the “same statute”). And

Congress has expressly conferred such authority in other federal grant programs. *See, e.g.*, 47 U.S.C. § 1204(b)(2) (Under Secretary of Commerce can “establish such conditions . . . as may be appropriate to ensure the efficiency and integrity of the grant program”); 25 U.S.C. § 1652(b) (similar); 42 U.S.C. § 2850-2(b) (similar).

80. It did not do so with the Byrne JAG program. Rather, the Byrne JAG statute expressly gives the Attorney General a limited ministerial authority to specify the “form” of the application, 42 U.S.C. § 3752(a) (requiring jurisdictions to submit an application containing the enumerated components “in such form as the Attorney General may require”), but omits any authorization to add additional substantive conditions to that application. Congress’s decision to confer discretion over form, but not substance, should be respected. *Russello v. United States*, 464 U.S. 16, 23-24 (1983) (“Congress acts intentionally and purposely in the disparate inclusion or exclusion of statutory text.”).

81. The Department’s purported authority to promulgate the new notice and access conditions is also contradicted by the formula-grant structure of the Byrne JAG program. Byrne JAG funds are distributed across States and localities based on their population and relative levels of violent crime. *See* 42 U.S.C. § 3755(d)(2)(A). The formula-based approach makes States and localities eligible to receive their formula-specified share as long as they comply with the grant’s administrative requirements and propose using funds in at least one of eight broadly defined programmatic areas. *See* 42 U.S.C. § 3751(a)(1)(A)-(H) (noting that grants can be used for “any one or more of the following programs” and then listing areas ranging from “[l]aw enforcement” to “[d]rug treatment” to “[m]ental health”); *id.* § 3752(a)(6)(B) (requiring applications to “include a description of how the State will allocate funding within and among [those uses]”). If DOJ had the authority to impose new substantive conditions on all grantees,

the effect would be to contradict Congress's formula and reallocate funds to jurisdictions that adopted DOJ's preferred policy.

82. It would also contradict the fundamental purpose of the JAG program: to give States and local governments the "flexibility to spend money for programs that work for them rather than to impose a 'one size fits all' solution." H.R. Rep. No. 109-233, at 89.

83. Moreover, the Department also lacks statutory authority to condition Byrne JAG funds on compliance with Section 1373. The Byrne JAG statute's requirement that grantees comply with "all applicable Federal laws" does not confer authority on DOJ to condition Byrne JAG funding on Section 1373 compliance, because Section 1373 is not an "applicable" law here. The phrase "all applicable Federal laws" in the Byrne JAG statute refers to the host of laws that regulate the conduct of federal grant recipients *as grant recipients*.¹⁷ It does not refer to every section of the U.S. Code that could possibly apply to a state or local government. Section 1373 does not regulate grantees as grantees nor do its terms mention federal grants or funds.

84. As a direct and proximate result of these unlawful conditions, Chicago will be forced to accept unlawful and unconstitutional grant conditions or forego Byrne JAG funds and shut down the programs they support.

85. Pursuant to 5 U.S.C. § 706 and 28 U.S.C. § 2201, Plaintiff is entitled to a declaration that Attorney General is without authority to impose the notice, access, and Section

¹⁷ See, e.g., 41 U.S.C. § 4712(a)(1) ("An employee of a contractor, subcontractor, grantee, or subgrantee or personal services contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body . . . information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds"); 42 U.S.C. § 2000d ("No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."); 29 U.S.C. § 794(a) ("No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.").

1373 conditions for FY 2017 Byrne JAG funds, an order that those conditions be set aside, and an injunction preventing those conditions from going into effect.

COUNT TWO: SEPARATION OF POWERS

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

87. The Constitution vests the spending power in Congress, not the President. U.S. Const. art. I § 8, cl. 1; *see Clinton v. City of New York*, 524 U.S. 417, 438 (1998) (line-item veto violates constitutional separation of powers principles); *County of Santa Clara*, 2017 WL 1459081, at *21-*22.

88. The President “does not have unilateral authority to refuse to spend . . . funds” that have already been appropriated by Congress “for a particular project or program.” *In re Aiken Cty.*, 725 F.3d 255, 261 n.1 (D.C. Cir. 2013); *see also Train v. City of New York*, 420 U.S. 35, 44 (1975) (the Executive lacked discretion to spend less than the full amount of funds authorized by Congress under the Federal Water Pollution Contract Act Amendments of 1972).

89. Imposing a new condition on a federal grant program amounts to refusing to spend money appropriated by Congress unless that condition is satisfied.

90. The notice condition was not imposed by Congress, but rather by the Department in issuing the FY 2017 Byrne JAG application. Therefore, the notice condition amounts to improper usurpation of Congress’s spending power by the Executive Branch.

91. The access condition was not imposed by Congress, but rather by the Department in issuing the FY 2017 Byrne JAG application. Therefore, the access condition amounts to improper usurpation of Congress’s spending power by the Executive Branch.

92. The Section 1373 condition was not imposed by Congress, but rather by the Department in issuing its Office of Justice Programs guidance and the FY 2016 and FY 2017

Byrne JAG applications. Therefore, the Section 1373 condition amounts to improper usurpation of Congress's spending power by the Executive Branch.

93. Pursuant to 28 U.S.C. § 2201, Plaintiff is entitled to a declaration that the notice, access, and Section 1373 conditions for the FY 2017 Byrne JAG violate the constitutional principle of separation of powers and impermissibly arrogate to the executive branch power that is reserved to the legislative branch, as well as an injunction preventing those conditions from going into effect.

COUNT THREE: SPENDING CLAUSE

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

95. In any event, Congress could not have authorized the immigration conditions here because they do not satisfy the additional requirements of the Spending Clause.

96. Accordingly, those requirements must be enjoined. *National Fed'n of Indep. Bus.*, 567 U.S. at 585 (to “fully remed[y]” a Spending Clause violation, the federal government must be barred from withholding “funds for failure to comply with the [unconstitutional] requirements”).

A. The Department's Three Immigration-Related Conditions Are Not Germane To The Byrne JAG Funds It Has Received For Over A Decade

97. Conditions on spending grants must be “relevant to [the] federal interest” in the particular grant program. *Ivanhoe Irr. Dist. v. McCracken*, 357 U.S. 275, 295 (1958); accord *South Dakota v. Dole*, 483 U.S. 203, 207-208 & n.3 (1987) (conditions must be “reasonably related,” or “germane[,]” to the particular program). This nexus requirement ensures that the federal government does not use spending conditions to regulate state and local governments beyond the contours of the spending program itself. *See also N. Ill. Chapter of Associated*

Builders & Contractors, Inc. v. Lavin, 431 F.3d 1004, 1006 (7th Cir. 2005) (“Conditions on spending may become regulation if they affect conduct other than the financed project.”).

98. The notice and access conditions are not relevant to the federal interest in the Byrne JAG funds Chicago receives. Chicago uses those funds for the purchase of replacement vehicles for worn-out police patrol cars, funding the Force for Good program, and law enforcement equipment. Information concerning when detainees will be released from lockup and policies respecting access for federal immigration agents bear no relevance to the acquisition of safe and effective patrol cars, community programs, or other uses to which Chicago puts Byrne JAG funds.

99. The notice and access conditions also are not relevant to the federal interest in the Byrne JAG program more generally. The central objectives of the Byrne JAG program are (1) to ensure that funds are distributed across the country in a way that accounts for population and violent crime, *see* 42 U.S.C. § 3755, and (2) to “give State and local governments more flexibility to spend [federal] money for programs that work for them rather than to impose a ‘one size fits all’ solution,” H.R. Rep. No. 109-233, at 89. The conditions do not support those goals; indeed, they undermine them. The conditions virtually guarantee that cities across the country that have used the local flexibility promoted by the Byrne JAG program to innovate police-immigrant relations will not receive their share of Byrne JAG formula funds. And, by their very nature, the broadly applicable, locally indifferent conditions contradict Congress’s express rejection of a “one size fits all” approach to federal law enforcement funding. Conditions that undermine Congress’s goals cannot satisfy the constitutional nexus requirement.

100. The Section 1373 condition is not relevant to the federal interest in the Byrne JAG funds Chicago receives. Information sharing with federal officials regarding an individual’s

immigration status bears no connection to the replacement vehicles for worn-out police patrol cars, support for the Force for Good program, or the acquisition of new law enforcement equipment.

101. The Section 1373 condition also is not relevant to the federal interest in the Byrne JAG program more generally. As with the other conditions, it actively undermines Congress's goals of dispersing funds across the country, targeting funds to combat violent crime, and respecting local judgment in setting law enforcement strategy. The Section 1373 condition would in effect rewrite Congress's formula and mandate a "one size fits all" approach to local policies regarding immigration status.

102. All three immigration-related conditions are therefore not germane to the Byrne JAG funding Chicago receives or to the Byrne JAG program generally.

B. The Department's Notice And Access Conditions Would Impermissibly Induce Unconstitutional Activities

103. The Spending Clause additionally prohibits the federal government from imposing spending conditions in order to "induce the States to engage in activities that would themselves be unconstitutional." *Dole*, 483 U.S. at 210.

104. The notice and access conditions require Chicago to inject unreasonable delays into its existing booking, charging, and release processes in violation of the Fourth Amendment. With regard to the notice condition in particular, providing DHS with 48 hours' advance notice of an arrestee's release from Chicago's custody would require the City to presumptively violate the Fourth Amendment every time it arrested a possible non-citizen without a warrant; the only way Chicago could provide the requested notice is by holding those arrestees longer than *McLaughlin*'s presumptively reasonable 48 hours. *See* 500 U.S. at 56. Holding an individual for longer than 48 hours without probable cause is only reasonable where the government

“demonstrate[s] the existence of an emergency or other extraordinary circumstance” justifying the delay. *Lopez v. City of Chicago*, 464 F.3d 711, 714 (7th Cir. 2006). Extended detention in order to provide release notifications to DHS qualifies as neither “extraordinary” nor an “emergency.” *See Arizona v. United States*, 567 U.S. 387, 413 (2012) (“[D]elay[ing] the release of some detainees for no reason other than to verify their immigration status . . . would raise constitutional concerns.”).

105. Independent of *McLaughlin*’s 48-hour presumption, the notice condition would require detention beyond the period authorized by the Fourth Amendment in many instances. A warrantless arrest initially reasonable for Fourth Amendment purposes becomes unreasonable once the task that occasioned the original seizure is complete. *See Illinois v. Caballes*, 543 U.S. 405, 407 (2005); *United States v. Jacobsen*, 466 U.S. 109, 124 (1984) (“[A] seizure lawful at its inception can nevertheless violate the Fourth Amendment.”). Detaining an arrestee beyond the period justified by the probable cause supporting the initial arrest requires independent probable cause to justify continued seizure. *See Morales*, 793 F.3d at 218; *Miranda-Olivares*, 2014 WL 1414305, at *9.

106. Nearly all of Chicago’s arrestees who are released from the City’s custody are released within 24 hours. Holding arrestees for 48 hours in order to comply with the notice condition would require Chicago to hold individuals longer than required by the fact of their initial arrest, and would thus require independent probable cause.

107. Probable cause to detain any person must be measured on an individual basis. Plainly, Chicago would not have probable cause to detain every known or suspected non-citizen for the 48-hour period DOJ seeks. Yet the notice condition is not limited to situations where there exists probable cause sufficient to extend the detention. The notice condition states only

that jurisdictions receiving Byrne JAG funding are required to hold suspected non-citizens “when DHS requests such notice.” Ex. D at 30. Complying with the notice condition any time DHS “requests” such notice without regard to probable cause exists to justify continued detention would violate the Fourth Amendment.

108. The notice condition seeks to require grant recipients to engage in unconstitutional activity and is therefore impermissible under the Spending Clause.

109. The access condition would similarly require Chicago to hold individuals longer than necessitated by the initial probable cause finding supporting their arrests in at least some circumstances. Permitting DHS to question suspected non-citizens in Chicago’s custody would inevitably require an extension of the detention period beyond that justified by the fact of arrest; at least some of those custodial interviews would interfere with Chicago’s existing booking and release process.

110. Any extension to the detention period constitutes a subsequent seizure that must be independently supported by probable cause. *See Morales*, 793 F.3d at 218; *Miranda-Olivares*, 2014 WL 1414305, at *9. Unless Chicago has independent probable cause sufficient to justify continued detention, it cannot extend the period of arrest to allow such questioning. *See Rodriguez v. United States*, 135 S. Ct. 1609, 1615 (2015); *Arizona*, 567 U.S. at 387; *Muehler v. Mena*, 544 U.S. 93, 101 (2005).

111. The access condition is not limited to those situations in which there exists probable cause sufficient to extend the detention. Instead, it requires Chicago to permit DHS personnel to access “any correctional or detention facility in order to meet with an alien (or an individual believed to be an alien)” without articulating a limiting principle. Ex. D at 30.

112. The access condition seeks to require grant recipients to engage in unconstitutional activity and is therefore impermissible under the Spending Clause.

C. The Department's Three Immigration-Related Conditions Are Unconstitutionally Ambiguous

113. Federal restrictions on state and local funding must also be articulated “unambiguously” so that the recipient can “voluntarily and knowingly accept[]” Congress’s terms. *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 16-17 (1981). Under *Pennhurst*, grant conditions are not “unambiguous[]” if the recipient “is unable to ascertain what is expected of it.” *Id.*; see also *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006) (“[Recipients] cannot knowingly accept conditions of which they are ‘unaware’ or which they are ‘unable to ascertain.’” (quoting *Pennhurst*, 451 U.S. at 17)).

114. All three immigration-related conditions are ambiguous as to what is expected of grant recipients in Chicago’s position, particularly given Chicago’s Welcoming City Ordinance and other relevant policies and practices.

115. The notice condition is ambiguous because, as explained in detail already, it would require Chicago to engage in presumptively unconstitutional behavior. This condition forces grantees to (a) decide whether DOJ intends the condition to be read consistent with the Constitution, and assuming so, (b) decide for themselves how the condition could be complied with *without* raising constitutional difficulties. Requiring grantees to embark on careful constitutional analysis of federal grant conditions does not give grantees appropriate notice of what is “expected of” them.

116. The access condition is ambiguous because, as drafted, Chicago cannot discern what “detention facilities” it must permit federal agents to access. Specifically, it is not clear whether “detention facility” encompasses the holding cells operated by the Chicago Police

Department. Nor is it clear how the City should proceed when, given the very brief nature of most detentions, it is impossible to grant ICE access to a detainee because doing so would interfere with the Police Department's internal practices and unduly delay a detainee's release from custody. *Cf. McLaughlin*, 500 U.S. at 56 (Fourth Amendment prohibits "unreasonable delay" in releasing arrestees held without a judicial determination of probable cause).

117. The Section 1373 condition is also ambiguous, and the Department's guidance documents and other actions have only added to the confusion. For instance, the statute uses sweeping language with no discernable limiting principle—*i.e.*, barring agencies from "prohibit[ing], or *in any way* restrict[ing]" the sharing, maintenance, or exchange of immigration status information. And the Department has added to the difficulties State and localities would have in discerning the scope of that bar by suggesting without explanation that Section 1373 implicates a wide range of state and local governance practices from formal laws to informal cultural norms. At other times, the Department has actively contradicted itself in a bid to interpret Section 1373. For instance, it has stated both that Section 1373 requires no affirmative action by States and local governments, U.S. Dep't of Justice, Office of Justice Programs Guidance Regarding Compliance with 8 U.S.C. § 1373, at 1 (2016), <https://tinyurl.com/y8e4j8es>, and that States and local governments may need to provide affirmative instruction to employees to be in compliance, Memorandum from Michael E. Horowitz, Inspector Gen., U.S. Dep't of Justice, to Karol V. Mason, Assistant Attorney Gen., Office of Justice Programs, U.S. Dep't of Justice, Department of Justice Referral of Allegations of Potential Violations of 8 U.S.C. § 1373 by Grant Recipients 6 (May 31, 2016), <https://tinyurl.com/y9rpwge4> ("[W]e have concerns that unless city employees were made explicitly aware that the local ordinance did not limit their

legal authority to respond to such ICE requests, employees likely would be unaware of their legal authority to act inconsistently with the local ordinance.”).

118. Finally, many interpretations of Section 1373 would raise serious constitutional concerns. Where a grant recipient must resolve tension between the Constitution and an informal interpretation announced by an agency in a guidance document to ascertain what is expected of it, the condition cannot be characterized as unambiguous.

D. The Department’s Three Immigration-Related Conditions Are Unconstitutionally Coercive

119. The Spending Clause further prohibits grant conditions that are “so coercive as to pass the point at which ‘pressure turns into compulsion.’” *Dole*, 483 U.S. at 211 (citation omitted).

120. As a direct and proximate result of the notice, access, and Section 1373 conditions, Chicago is forced to either accept an unlawful and unconstitutional grant condition or forego Byrne JAG funds.

121. The loss of Byrne JAG funds would strain the Chicago Police Department’s budget resources for replacing failing and inoperable patrol cars needed to provide a public presence and respond to emergency calls, and would curtail community outreach and engagement programs, such as the Chicago Police Department’s Force for Good program.

122. All three immigration-related conditions therefore threaten financial consequences that exceed the point at which pressure turns to constitutionally impermissible compulsion.

123. Pursuant to 28 U.S.C. § 2201, Plaintiff is entitled to a declaration that the three immigration-related conditions for the FY 2017 Byrne JAG violate the Constitution’s Spending Clause as well as an injunction preventing those conditions from going into effect.

COUNT FOUR: COMMANDEERING

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

125. The Tenth Amendment prohibits the federal government from “requir[ing]” States and localities “to govern according to Congress’s instructions,” *New York*, 505 U.S. at 162, or “command[ing] the States’ officers . . . to administer or enforce a federal regulatory program,” *Printz v. United States*, 521 U.S. 898, 935 (1997).

126. Where the “whole object” of a provision of a federal statute is to “direct the functioning” of state and local governments, that provision is unconstitutional, *Printz*, 521 U.S. at 932, and must be enjoined, *id.* at 935; *New York*, 505 U.S. at 186-187. That description precisely fits each of the three immigration-related conditions.

127. The notice condition seeks to fundamentally reorganize the manner in which Chicago has chosen to balance its Fourth Amendment obligations against its interest in effective law enforcement. Compliance with the notice condition would require Chicago to hold detainees longer than it currently does and would, at bottom “command the States’ officers . . . to administer or enforce a federal regulatory program,” *Printz*, 521 U.S. at 935.

128. The notice condition therefore impermissibly commandeers local governments and cannot be validly imposed on Byrne JAG funding recipients.

129. The access condition requires a fundamental restructuring of Chicago Police Department procedures and functions in order to accommodate on-demand access to detainees by federal agents. This federalization of bedrock local government functions violates the Tenth Amendment’s anti-commandeering principle. State and local governments can define their sovereignty only “[t]hrough the structure of [their] government, and the character of those who exercise government authority.” *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991). Instituting an open-door policy for federal immigration officials to enter local facilities and interrogate local

detainees displaces Chicago's exercise of its fundamental police powers and compromises local political and law enforcement officials' ability freely to direct the City's law enforcement strategies and priorities.

130. The access condition therefore impermissibly commandeers local governments and cannot be validly imposed on Byrne JAG funding recipients.

131. Congress enacted Section 1373 on the belief that "[e]ffective immigration law enforcement requires a cooperative effort between all levels of government." S. Rep. No. 104-249, at 19 (1996). Specifically, Congress sought to ensure that "[t]he acquisition, maintenance, and exchange of immigration-related information by State and local agencies" could be used to enforce federal law. *Id.* at 19-20. In doing so, it sought to "require [state and local officers] to provide information that belongs to the State and is available to them only in their official capacity"—in other words, to engage in unconstitutional commandeering. *Printz*, 521 U.S. at 932 n.17.

132. Further, Section 1373 prohibits state and local governments from engaging in a core aspect of governing: controlling the actions of their own employees. States and local governments can act "only through [their] officers and agents." *Nevada v. Hicks*, 533 U.S. 353, 365 (2001) (quoting *Tennessee v. Davis*, 100 U.S. 257, 263 (1879)). Thus, personnel decisions—including decisions about how personnel interact with the federal government—are "decision[s] of the most fundamental sort" for Chicago. *Gregory*, 501 U.S. at 460. Statutes like Section 1373—which require state officers to follow federal directives and usurp the state-level policymaking process—break the chain of accountability for state-level officers.

133. Section 1373 is therefore facially unconstitutional and cannot be validly imposed on Byrne JAG recipients as "applicable Federal law[]." 42 U.S.C. § 3752(5)(D).

134. As a direct and proximate result of these unconstitutional conditions, Chicago will be forced to accept unlawful and unconstitutional grant conditions or forego Byrne JAG funds and shut down or materially alter the programs they support.

135. Pursuant to 28 U.S.C. § 2201, Plaintiff is entitled to a declaration that the three immigration-related grant conditions the Department has sought to impose on FY 2017 Byrne JAG program participants violate the Tenth Amendment as well as an injunction preventing those conditions from going into effect.

**COUNT FIVE: DECLARATORY JUDGMENT THAT CHICAGO COMPLIES WITH
SECTION 1373**

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

137. Chicago has certified compliance with Section 1373 and provided an accompanying legal analysis describing the basis for the City's certification. DOJ guidance indicates that the statute does not impose an affirmative obligation on state or local entities to collect information from private individuals regarding their immigration status. *See* U.S. Dep't of Justice, Office of Justice Programs Guidance Regarding Compliance with 8 U.S.C. § 1373, at 1 (2016), <https://tinyurl.com/y8e4j8es> ("Section 1373 does not impose on states and localities the affirmative obligation to collect information from private individuals regarding their immigration status, nor does it require that states and localities take specific actions upon obtaining such information."). Section 20 of Chicago's Welcoming City Ordinance and Chicago Police Department Special Order S06-14-03 establish a general policy of not collecting immigration status information unless such collection is required by state or federal law, a judicial decision, or as part of anticipated litigation. Because Chicago cannot restrict the sharing of information it does not collect, the City's policy of non-collection renders it necessarily compliant with Section 1373 for all cases covered by the non-collection policy.

138. Where City officials or agents do incidentally come to possess immigration status information, the City has no policy restricting the sharing of such information contrary to Section 1373 because Section 30 of the Welcoming City Ordinance contains a “saving clause” that limits the disclosure of an individual’s citizenship or immigration status information “[e]xcept as otherwise provided by applicable federal law.” In the context of the Welcoming City Ordinance, “applicable federal law” includes Section 1373 to whatever extent Section 1373 and any individual federal request made pursuant to that provision is a lawful and constitutional exercise of federal authority.

139. Chicago has received no formal notification regarding the acceptability of that certification but the Department has indicated that certifications from at least some jurisdictions are likely to be rejected. *See* Press Release, U.S. Dep’t of Justice, Department of Justice Reviewing Letters from Ten Potential Sanctuary Jurisdictions (July 6, 2017), <http://tinyurl.com/ybdhf7vy>.

140. While Chicago is confident it complies with Section 1373, DOJ’s conduct has sown confusion and created the impression that the federal government believes otherwise, notwithstanding Chicago’s legal analysis. Chicago is reluctant to certify compliance with the Section 1373 in its FY 2017 Byrne JAG application, which is due imminently, until the Department affirms that the City’s prior certification is acceptable.

141. Pursuant to 28 U.S.C. § 2201, Plaintiff is entitled to a declaration that it complies with Section 1373.

COUNT SIX: ADMINISTRATIVE PROCEDURE ACT (FAILURE TO USE NOTICE AND COMMENT PROCEDURES; ARBITRARY AND CAPRICIOUS)

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

143. In addition to lacking statutory and constitutional authority to impose the immigration-related conditions, the conditions were adopted without using notice-and-comment procedures and are arbitrary and capricious, in violation of the Administrative Procedure Act, 5 U.S.C. § 706.

144. DOJ's decision to condition Byrne JAG funds on compliance with the notice, access, and Section 1373 conditions is a legislative rule that "impose[s] obligations . . . on private interests." *Associated Builders & Contractors, Inc. v. Reich*, 922 F. Supp. 676, 681 (D.D.C. 1996). It is therefore subject to the APA's requirement that legislative rules be enacted through notice and comment rulemaking procedures. *See Perez v. Mortg. Bankers Ass'n*, 135 S. Ct. 1199, 1204 (2015); *see also* 42 U.S.C. § 3754 ("The Attorney General shall issue rules to carry out this part."). DOJ issued the Section 1373 compliance condition through a guidance document and the notice and access conditions through a press release and subsequent inclusion by fiat in the grant solicitation. Those steps do not comply with notice and comment procedures. *See* 5 U.S.C. § 553.

145. All three conditions are also arbitrary and capricious because DOJ failed to rely on reasoned decisionmaking and, to the extent it cited reasons at all, those reasons are contradicted by evidence. Among other things, DOJ "relied on factors which Congress has not intended it to consider," *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983), by, for example, evaluating grant applicants on the basis of their immigration policies rather than on their compliance with expressly enumerated statutory application requirements. *See* 42 U.S.C. § 3752(a)(1)-(5). It "entirely failed to consider an important aspect of the problem," *State Farm*, 463 U.S. at 43, including but not limited to the policing challenges created by alienating and inducing fear in immigrant communities. It

“offered an explanation for its decision that runs counter to the evidence before the agency,” *id.*, including the evidence submitted by nine jurisdictions in their Section 1373 certification letters indicating that Welcoming City-style policies promote rather than detract from effective policing. Indeed, when the Attorney General referred to one study in the press that showed that such policies lead to higher crime, *the study’s own authors said he was misrepresenting their work.*

146. Pursuant to 5 U.S.C. § 706 and 28 U.S.C. § 2201, Plaintiff is entitled to a declaration that the three immigration-related conditions for the FY 2017 Byrne JAG funds are in violation of the APA as well as an injunction preventing those conditions from going into effect.

**COUNT SEVEN: ADMINISTRATIVE PROCEDURE ACT (PAPERWORK
REDUCTION ACT)**

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

148. DOJ additionally issued the new conditions “without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).

149. The FY 2017 Certification of Compliance with Section § 1373 attached to the FY 2017 Byrne JAG application, *see* Ex. D. at 37-38, is a “collection of information” within the meaning of the Paperwork Reduction Act and implementing regulations. *See* 44 U.S.C. § 3502; 5 C.F.R. § 1320.3(h) (“[A] certification would likely involve the collection of ‘information’ if an agency conducted or sponsored it . . . to monitor . . . compliance with regulatory standards.”).

150. The Paperwork Reduction Act bars federal agencies, including the Department, from “conduct[ing] or sponsor[ing] a collection of information” unless that agency has provided “60-day[s] notice in the Federal Register” and “otherwise consult[ed] with members of the public and affected agencies” to, *inter alia*, “evaluate whether the proposed collection of

information is necessary for the proper performance of the functions of the agency.” 44 U.S.C. §§ 3506(c)(2), 3507(a)(1); 5 C.F.R. § 1320.10.

151. The Department has not published a Paperwork Reduction Act Notice in the Federal Register relevant to the FY 2017 Certification of Compliance with Section 1373.

152. The Paperwork Reduction Act and implementing regulations further provide that that “no person shall be subject to any penalty for failing to comply with a collection of information” if the relevant collection of information does not display “a currently valid OMB control number” or if the agency “fails to inform” the person responding to the collection of information “that such person is not required to respond to the collection of information unless it displays a currently valid OMB control number.” 44 U.S.C. § 3512; 5 C.F.R. § 1320.6; *see also Center for Auto Safety v. Nat’l Highway Traffic Safety Admin.*, 244 F.3d 144, 149 (D.C. Cir. 2001) (where agency “did not get prior approval from OMB” for an information collection covered by the Paperwork Reduction Act, agency “had no authority to enforce the information request”).

153. The protection provided by the Paperwork Reduction Act “may be raised in the form of a complete defense, bar, or otherwise at any time during the agency administrative process or judicial action applicable thereto.” 44 U.S.C. § 3512(b).

154. The FY 2017 Certification of Compliance with Section 1373 displays no OMB control number, and Chicago has not been informed that it is not required to submit the FY 2017 Certification of Compliance.

155. Pursuant to 5 U.S.C. § 706 and 28 U.S.C. § 2201, Chicago is entitled to a declaration that it is not required to submit a FY 2017 Certification of Compliance with Section 1373 and that its failure to do so cannot the basis for denying it FY 2017 Byrne JAG funds.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays this Court:

- a) Declare that all three immigration-related conditions for the FY 2017 Byrne JAG are unlawful and that Chicago complies with 8 U.S.C. § 1373;
- b) Enjoin the Department of Justice from enforcing the notice, access, or Section 1373 conditions for the FY 2017 Byrne JAG and retain jurisdiction to monitor the Department's compliance with this Court's judgment; and
- c) Grant such other relief as this Court may deem proper.

August 7, 2017.

Respectfully Submitted,

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Exhibit A



DEPARTMENT OF LAW
CITY OF CHICAGO

MEMORANDUM

TO: TRACEY TRAUTMAN
Acting Director, Bureau of Justice Assistance
Office of Justice Programs
United States Department of Justice

FROM: EDWARD SISKEL *ES*
Corporation Counsel, Department of Law

RE: Validation of Compliance with 8 U.S.C. § 1373
FY 2016 Byrne JAG Grant
Project Number: 2016-DJ-BX-0106 (City of Chicago)
Date of Award: September 7, 2016

DATE: June 30, 2017

In response to Special Condition #52 of the FY 2016 Byrne JAG grant received by the City of Chicago ("Chicago"), and correspondence dated April 21, 2017 from Acting Assistant Attorney General Alan R. Hanson to Chicago Police Superintendent Eddie Johnson, this office has reviewed the Municipal Code of Chicago ("Municipal Code"), including Chicago's Welcoming City Ordinance ("WCO"), codified at Section 2-173, as well as the general and special orders of the Chicago Police Department promulgated thereunder, to determine whether they comply with 8 U.S.C. § 1373 ("Section 1373").¹

This evaluation was informed by the Office of Justice Programs' July 7, 2016 guidance statement, "Office of Justice Programs Guidance Regarding Compliance with 8 U.S.C. § 1373;" and that office's subsequent October 6, 2016 guidance statement, "Additional Guidance Regarding Compliance with 8 U.S.C. § 1373."

Based on that guidance, as well as the statutory text and other relevant provisions of law, we understand that Section 1373 (1) does not impose any affirmative obligation on state or local entities to collect information from private individuals regarding their immigration status; (2) does not require that state or local entities take any specific actions upon obtaining information concerning a private individual's immigration status in the absence of an intergovernmental

¹ By submitting this memorandum validating its compliance, Chicago reserves all rights, and specifically does not concede that Section 1373 constitutes "applicable federal law" within the meaning of the Edward Byrne Memorial Justice Assistance grant program's authorizing statute, 42 U.S.C. § 3752, or that federal funding can lawfully be conditioned on compliance with Section 1373.

request for such information; (3) does not address any restrictions by state or local entities on cooperation with ICE regarding detainers or release date notification requests, and (4) does not require state or local entities to act in a manner inconsistent with the U.S. Constitution or federal law.

Having reviewed the applicable statute, ordinances, general and special orders of the Chicago Police Department, and Department of Justice guidance, Chicago can certify that the WCO and police department orders comply with Section 1373. Neither the WCO nor the police department orders prohibits or in any way restricts Chicago or Chicago's employees from sending to or receiving from Immigration and Customs Enforcement ("ICE") information regarding the lawful or unlawful citizenship or immigration status of any person. Furthermore, neither the WCO nor the police department orders prohibits, or in any way restricts, information concerning the lawful or unlawful immigration status of any person from being sent to, or requested from, ICE; maintaining such information; or exchanging such information with any other federal, state, or local government entity.

BACKGROUND

1. Chicago's Welcoming City Ordinance and Police Department Orders

Chicago has long been committed to serving as a welcoming city, and to fostering an environment of safety and inclusion among its residents. That commitment was embodied in an Executive Order issued by Mayor Harold Washington on March 7, 1985 ("Order").² The Order's purpose was to encourage equal access where permitted by law to benefits and services to which Chicago residents are entitled regardless of national origin or citizenship status. To that end, Section 3 of the Order prohibited Chicago agents and agencies from requesting information about or otherwise investigating or assisting in the investigation of a person's citizenship or residency status. Section 4 of the Order prohibited an agent or agency from disseminating information about a person's citizenship or residency status "unless required to do so by legal process."

On March 29, 2006, the City Council of the City of Chicago codified the Order by enacting the WCO. *See* Coun. J. 3-29-06, p. 74325. In its preamble, the WCO affirmed Chicago's policy of ensuring that all residents have access to city services for which they are eligible or entitled, without regard to their immigration status under federal law. The preamble further stated that requiring local law enforcement to enforce federal civil immigration law would cause a chilling effect on crime prevention and investigation, as witnesses and victims might be afraid to cooperate with local authorities for fear of possible deportation.

Mayor Rahm Emanuel amended the WCO in 2012 to add sections stating the ordinance's purpose and intent, and clarifying that the enforcement of civil immigration law is primarily a federal responsibility. Mayor Emanuel amended the WCO again in 2016 to prohibit City agents and agencies from making threats based on a person's citizenship or immigration status. Given Chicago's unwavering commitment to public safety and community policing, cooperation between law enforcement officials and the immigrant community was of vital concern to Chicago—and it remains a vital concern today.

² Mayor Washington's Executive Order 85-1 was ratified and adopted in subsequent mayoral administrations by Mayor David Orr as Executive Order 87-5, Mayor Eugene Sawyer as Executive Order 87-8, and Mayor Richard M. Daley as Executive Order 89-6.

Like Sections 3 and 4 of the Order, Sections 20 and 30 of the WCO address sharing information concerning a person's citizenship or immigration status:

2-173-020 Requesting information prohibited.

No agent or agency shall request information about or otherwise investigate or assist in the investigation of the citizenship or immigration status of any person unless such inquiry or investigation is required by Illinois State Statute, federal regulation, or court decision. Notwithstanding this provision, the Corporation Counsel may investigate and inquire about immigration status when relevant to potential or actual litigation or an administrative proceeding in which the City is or may be a party.

2-173-030 Disclosing information prohibited.³

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

The policies embodied by the WCO are reflected in Chicago Police Department Special Order S06-14-03 ("Special Order").⁴ The Special Order deals primarily with issues related to detainer and notification requests that the Chicago Police Department receives from ICE. In addition, consistent with the WCO's non-collection policy concerning an individual's citizenship or immigration status, the Special Order provides that the Chicago Police Department "may seek information on immigration status during the course of an investigation ... only when the individual is in custody and" certain other criteria are met. It does not restrict individuals from sharing information regarding citizenship or immigration status with the federal government.

2. 8 U.S.C. Section 1373

Section 1373 bars state or local entities from "prohibit[ing], or in any way restrict[ing], any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual." 8 U.S.C. § 1373(a). In addition, "no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual: (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service. (2) Maintaining such information. (3) Exchanging such information with any other Federal, State, or local government entity." 8 U.S.C. § 1373(b).

³ Headings provided in the Municipal Code are for convenience and reference only, and are not considered part of the text of any section. Municipal Code § 1-4-100.

⁴ Available at <https://goo.gl/KetR56>.

By its plain terms, Section 1373 relates solely to prohibitions on sharing an individual's citizenship or immigration status among governmental entities, and does not require that such information be shared. Furthermore, Section 1373 creates no affirmative obligation to collect information concerning a person's citizenship or immigration status. *See* Dep't of Justice, July 7, 2016 Guidance ("Section 1373 does not impose on states and localities the affirmative obligation to collect information from private individuals regarding their immigration status, nor does it require that states and localities take specific actions upon obtaining such information.").

Additionally, Section 1373 does not require Chicago to comply with immigration detainer requests issued by ICE. *See* Memorandum from the United States Department of Justice, Office of the Inspector General dated May 31, 2016 ("IG Memo") at p. 4 ("A primary and frequently cited indicator of limitations placed on cooperation by...local jurisdictions with ICE is how the particular...local jurisdiction handles immigration detainer requests issued by ICE, although Section 1373 does not specifically address restrictions by...local entities on cooperation with ICE regarding detainees.") (Emphasis added). Section 1373 refers only to "information regarding the citizenship or immigration status" of an individual. In contrast, a detainer request asks a local law enforcement agency to detain a person of interest to ICE for up to an additional 48 hours after that person would have been released in order to provide ICE an opportunity to take the person into custody. By its terms, Section 1373's prohibition on restricting information sharing with ICE regarding immigration status cannot be construed to include a mandate that local government keep a person in custody.

DISCUSSION

The WCO complies with Section 1373 for at least two independent reasons. First, the WCO generally prohibits Chicago from requesting or otherwise investigating a person's citizenship or immigration status, whereas Section 1373 prohibits restrictions on the sharing of such information. It follows that Chicago cannot share information concerning a person's citizenship or immigration status if it does not have that information in its possession. Second, while the WCO contains an overall prohibition on the sharing of a person's citizenship or immigration status, it also contains an exception for compliance with applicable federal law. As such, if Chicago were to come into possession of this information, the WCO would not bar Chicago or its officials from sharing the information with the federal government, such as in response to a lawful request.

1. Chicago cannot share information that is not in its possession.

By its terms, Section 1373's scope is limited to addressing policies that prohibit or restrict sharing ("sending" or "receiving") individual citizenship or immigration status information with another unit of government. A policy that prohibits the collection of such information in the first place simply is not a violation of Section 1373. Like the 1985 Order before it, Section 20 of the WCO and the Special Order prohibit the collection of such information unless collection is required by state or federal law, a court decision, or as part of anticipated or pending litigation. To the extent that Chicago might nonetheless come into possession of information concerning an individual's citizenship or immigration status, Section 1373 only addresses policies that prohibit or restrict the sharing of such information with other units of government. But outside of such particular instances, Chicago's overarching policy is non-collection—and Chicago cannot share (or restrict the sharing of) information that it does not have in its possession in the first place. The non-collection policy means that Chicago generally does not possess information to "send[]," but that policy does not prevent any "sending" or "receiving." Thus, except where

Chicago acquires immigration status information notwithstanding its non-collection policy, Section 1373 does not apply.

2. The WCO does not restrict sharing citizenship or immigration status information with ICE when required by applicable federal law.

To the extent that Chicago has any citizenship or immigration status information, the non-disclosure provisions of Section 30 of the WCO do not restrict such information from being shared within the meaning of Section 1373. Section 30 restricts the disclosure of an individual's citizenship or immigration status information, "[e]xcept as otherwise provided under applicable federal law." Section 30 thus makes clear that an individual's citizenship or immigration status information will *not* be kept confidential if federal law provides otherwise, or the individual has consented to the release of such information.⁵ This language, referred to as a "savings clause" in the IG Memo, makes Section 30 compliant with Section 1373.

The IG Memo raised questions about whether the savings clause was sufficient to demonstrate compliance with Section 1373. In particular, the IG Memo stated that the savings clause in Section 30 "creates a potential ambiguity as to the proper construction of the [WCO] ... because, to be effective, the 'savings clause' would render the ordinance null and void whenever ICE officials requested immigration status information from city employees." With respect, this interpretation is wrong for at least two reasons.

First, the plain text of Section 30 is clear that City employees are permitted to share immigration information as "provided under applicable federal law" – including Section 1373 to the extent it is applicable and enforceable. To the extent that Chicago comes into possession of information concerning an individual's citizenship or immigration status, Section 30 prevents Chicago from releasing this information publicly, except where such disclosure is provided for under federal law. There is no ambiguity as to when citizenship and immigration status information may be disclosed.

Second, Section 30 is not rendered "null and void" when the conditions of the saving clause are met. Rather, Section 30's prohibition on disclosure continues to "do work," because (except to the extent provided by federal law) it bars the release of immigration status information to *private* entities making the same request. Moreover, Section 30 also prevents Chicago from *sua sponte* releasing an individual's citizenship or immigration status information to the general public.

The IG Memo further states that "the very purpose of the Chicago ordinance, based on our review of its history, was to restrict and largely prohibit the cooperation of city employees with ICE." IG Memo at p. 6. This characterization of the purpose of Chicago's WCO is wrong as demonstrated by the history outlined above. The IG Memo's sole support for its assertion is a July 11, 2012 *Chicago Tribune* article in which Mayor Emanuel is quoted as saying "[w]e're not going to turn people over to ICE and we're not going to check their immigration status, we'll check for criminal background, but not for immigration status." Respectfully, this article addresses an amendment to the WCO enacted in September of 2012 that added a new Section 42 concerning the circumstances under which Chicago would comply with detainer or notification

⁵ This assumes that a governmental request for information concerning an individual's citizenship and immigration status is consistent with the U.S. Constitution and the federal authority being invoked. In the event that the request was unlawful, Chicago would be under no obligation to provide the requested information.

requests, and does not restrict in any way the provision of information about citizenship or immigration status information. *See* Coun. J. 9-12-06, p. 33041, § 1. This September 2012 amendment made no change to Sections 20 or 30's information sharing policies, which were enacted six years earlier in 2006.

In sum, Section 30 does not prohibit or restrict the sharing of citizenship or immigration status information with other units of government, and therefore complies with Section 1373. Nor do other Chicago ordinances or any policy of the Chicago Police Department. That conclusion is consistent with decades of practice under the 1985 Order and the WCO, whereby Chicago has applied for and received many grants from the Department of Justice, and at no previous time has Chicago's compliance with Section 1373 been called into question.

CONCLUSION

Having reviewed the Municipal Code, 8 U.S.C. § 1373, the general and special orders of the Chicago Police Department, and guidance issued by the Department of Justice, we can validate that the WCO and the Police Department's orders are in compliance with 8 U.S.C. § 1373. Should you, or any entity receiving this validation, have questions or wish to discuss further, please do not hesitate to contact me.

Exhibit B

JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Tuesday, July 25, 2017

Attorney General Sessions Announces Immigration Compliance Requirements for Edward Byrne Memorial Justice Assistance Grant Programs

The Department of Justice today posted a solicitation for the Edward Byrne Memorial Justice Assistance Grant Programs ("Byrne JAG"). Recipients for FY 2017 will be notified of new conditions of their grants that will increase information sharing between federal, state, and local law enforcement, ensuring that federal immigration authorities have the information they need to enforce immigration laws and keep our communities safe.

"So-called 'sanctuary' policies make all of us less safe because they intentionally undermine our laws and protect illegal aliens who have committed crimes," Attorney General Jeff Sessions said. "These policies also encourage illegal immigration and even human trafficking by perpetuating the lie that in certain cities, illegal aliens can live outside the law. This can have tragic consequences, like the 10 deaths we saw in San Antonio this weekend. As part of accomplishing the Department of Justice's top priority of reducing violent crime, we must encourage these 'sanctuary' jurisdictions to change their policies and partner with federal law enforcement to remove criminals. From now on, the Department will only provide Byrne JAG grants to cities and states that comply with federal law, allow federal immigration access to detention facilities, and provide 48 hours notice before they release an illegal alien wanted by federal authorities. This is consistent with long-established cooperative principles among law enforcement agencies. This is what the American people should be able to expect from their cities and states, and these long overdue requirements will help us take down MS-13 and other violent transnational gangs, and make our country safer."

Attachment(s):

[Download Byrne JAG Grant Policy Backgrounder](#)

Component(s):

[Office of the Attorney General](#)

Press Release Number:

17-826

Updated July 25, 2017

Exhibit C

BACKGROUNDER ON GRANT REQUIREMENTS

The following is on background, attributable to a DOJ official:

- Today, consistent with the goal of increasing information sharing between federal, state, and local law enforcement, Edward Byrne Memorial Justice Assistance Grant Program (“Byrne JAG”) recipients for FY 2017 have been notified that they will be required to do the following:
 - certify compliance with section 1373, a federal statute applicable to state and local governments that generally bars restrictions on communications between state and local agencies and officials at the Department of Homeland Security;
 - permit personnel of the U.S. Department of Homeland Security (“DHS”) to access any detention facility in order to meet with an alien and inquire as to his or her right to be or remain in the United States; and
 - provide at least 48 hours advance notice to DHS regarding the scheduled release date and time of an alien in the jurisdiction’s custody when DHS requests such notice in order to take custody of the alien.

For background on the Byrne JAG program, please click [here](#).

For more information on Byrne JAG allocation for past fiscal years, please click [here](#).

For more information on Byrne JAG as it pertains to FY2017, please click [here](#).

- Improving the flow of information between federal and state law enforcement authorities is paramount to ensuring that federal immigration authorities have the information they need to enforce the law and keep our communities safe.
- 8 U.S.C. § 1373 is a federal statute applicable to state and local governments that generally bars restrictions on communication between state and local agencies and officials at the Department of Homeland Security (and certain other entities) with respect to information regarding the citizenship or immigration status of any individual.
- In March 2016, the Department’s Office of Justice Programs (“OJP”) notified recipients of Byrne JAG grants of the requirement to comply with 8 U.S.C. § 1373. The Department has also announced that it will take all lawful steps to claw back any funds awarded to a jurisdiction that violates its grant agreement, including the condition to comply with section 1373.
- These common-sense measures will improve the flow of information between federal, state, and local law enforcement, and help keep our communities safe. Every year, the Department of Justice awards billions of dollars in grants to state and local jurisdictions across the United States. Unfortunately, some of these jurisdictions have adopted policies and regulations that frustrate the enforcement of federal immigration law, including by refusing to cooperate with federal immigration authorities in information sharing about illegal aliens who commit crimes.
- These measures will also prevent the counterproductive use of federal funds for policies that frustrate federal immigration enforcement. By refusing to communicate with the federal officials, these jurisdictions jeopardize the safety of their residents and undermine the Department’s ability to protect the public and reduce crime and violence.

Exhibit D

OMB No. 1121-0329
Approval Expires 12/31/2018

U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Assistance



The [U.S. Department of Justice](#) (DOJ), [Office of Justice Programs](#) (OJP), [Bureau of Justice Assistance](#) (BJA) is seeking applications for the Edward Byrne Memorial Justice Assistance Grant (JAG) Program. This program furthers the Department's mission by assisting State, local, and tribal efforts to prevent or reduce crime and violence.

Edward Byrne Memorial Justice Assistance Grant Program FY 2017 Local Solicitation Applications Due: September 5, 2017

Eligibility

Only units of local government may apply under this solicitation. By law, for purposes of the JAG Program, the term "units of local government" includes a town, township, village, parish, city, county, borough, or other general purpose political subdivision of a state; or, it may also be a federally recognized Indian tribal government that performs law enforcement functions (as determined by the Secretary of the Interior). A unit of local government may be any law enforcement district or judicial enforcement district established under applicable State law with authority to independently establish a budget and impose taxes; for example, in Louisiana, a unit of local government means a district attorney or parish sheriff.

A JAG application is not complete, and a unit of local government may not receive award funds, unless the chief executive of the applicant unit of local government (e.g., a mayor) properly executes, and the unit of local government submits, the "Certifications and Assurances by Chief Executive of Applicant Government" attached to this solicitation as [Appendix I](#).

In addition, as discussed further [below](#), in order validly to accept a Fiscal Year (FY) 2017 JAG award, the chief legal officer of the applicant unit of local government must properly execute, and the unit of local government must submit, the specific certification regarding compliance with 8 U.S.C. § 1373 attached to this solicitation as [Appendix II](#). (Note: this requirement does not apply to Indian tribal governments.) (The text of 8 U.S.C. § 1373 appears in [Appendix II](#).)

Eligible allocations under JAG are posted annually on the [JAG web page](#) under "Funding."

Deadline

Applicants must register in the [OJP Grants Management System \(GMS\)](#) prior to submitting an application under this solicitation. All applicants must register, even those that previously registered in GMS. Select the “Apply Online” button associated with the solicitation title. All registrations and applications are due by 5 p.m. eastern time on September 5, 2017.

This deadline does **not** apply to the certification regarding compliance with 8 U.S.C. § 1373. As explained [below](#), a unit of local government (other than an Indian tribal government) may not validly accept an award unless that certification is submitted to the Office of Justice Programs (OJP) on or before the day the unit of local government submits the signed award acceptance documents.

For additional information, see [How to Apply](#) in [Section D. Application and Submission Information](#).

Contact Information

For technical assistance with submitting an application, contact the Grants Management System (GMS) Support Hotline at 888-549-9901, option 3, or via email at GMS.HelpDesk@usdoj.gov. The [GMS](#) Support Hotline operates 24 hours a day, 7 days a week, including on federal holidays.

An applicant that experiences unforeseen GMS technical issues beyond its control that prevent it from submitting its application by the deadline must email the National Criminal Justice Reference Service (NCJRS) Response Center at grants@ncjrs.gov **within 24 hours after the application deadline** in order to request approval to submit its application. Additional information on reporting technical issues appears under “Experiencing Unforeseen GMS Technical Issues” in [How to Apply](#) in [Section D. Application and Submission Information](#).

For assistance with any other requirement of this solicitation, applicants may contact the NCJRS Response Center by telephone at 1-800-851-3420; via TTY at 301-240-6310 (hearing impaired only); by email at grants@ncjrs.gov; by fax to 301-240-5830, or by web chat at <https://webcontact.ncjrs.gov/ncjchat/chat.jsp>. The NCJRS Response Center hours of operation are 10:00 a.m. to 6:00 p.m. eastern time, Monday through Friday, and 10:00 a.m. to 8:00 p.m. eastern time on the solicitation close date. Applicants also may contact the appropriate BJA [State Policy Advisor](#).

Funding opportunity number assigned to this solicitation: BJA-2017-11301

Release date: August 3, 2017

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Edward Byrne Memorial Justice Assistance Grant Program FY 2017 Local Solicitation CFDA #16.738

A. Program Description

Overview

The Edward Byrne Memorial Justice Assistance Grant (JAG) Program is the primary provider of federal criminal justice funding to States and units of local government. BJA will award JAG Program funds to eligible units of local government under this FY 2017 JAG Program Local Solicitation. (A separate solicitation will be issued for applications to BJA directly from States.)

Statutory Authority: The JAG Program statute is Subpart I of Part E of Title I of the Omnibus Crime Control and Safe Streets Act of 1968. Title I of the "Omnibus Act" generally is codified at Chapter 26 of Title 42 of the United States Code; the JAG Program statute is codified at 42 U.S.C. §§ 3750-3758. See also 28 U.S.C. § 530C(a).

Program-Specific Information

Permissible uses of JAG Funds – In general

In general, JAG funds awarded to a unit of local government under this FY 2017 solicitation may be used to provide additional personnel, equipment, supplies, contractual support, training, technical assistance, and information systems for criminal justice, including for any one or more of the following:

- Law enforcement programs
- Prosecution and court programs
- Prevention and education programs
- Corrections and community corrections programs
- Drug treatment and enforcement programs
- Planning, evaluation, and technology improvement programs
- Crime victim and witness programs (other than compensation)
- Mental health programs and related law enforcement and corrections programs, including behavioral programs and crisis intervention teams

Under the JAG Program, units of local government may use award funds for broadband deployment and adoption activities as they relate to criminal justice activities.

Limitations on the use of JAG funds

Prohibited and controlled uses of funds – JAG funds may not be used (whether directly or indirectly) for any purpose prohibited by federal statute or regulation, including those purposes specifically prohibited by the JAG Program statute as set out at 42 U.S.C. § 3751(d):

- (1) Any security enhancements or any equipment to any nongovernmental entity that is not engaged in criminal justice or public safety.
- (2) Unless the Attorney General certifies that extraordinary and exigent circumstances exist that make the use of such funds to provide such matters essential to the maintenance of public safety and good order—
 - (a) Vehicles (excluding police cruisers), vessels (excluding police boats), or aircraft (excluding police helicopters)
 - (b) Luxury items
 - (c) Real estate
 - (d) Construction projects (other than penal or correctional institutions)
 - (e) Any similar matters

For additional information on expenditures prohibited under JAG, as well as expenditures that are permitted but “controlled,” along with the process for requesting approval regarding controlled items, refer to the [JAG Prohibited and Controlled Expenditures Guidance](#). Information also appears in the [JAG FAQs](#).

Cap on use of JAG award funds for administrative costs – A unit of local government may use up to 10 percent of a JAG award, including up to 10 percent of any earned interest, for costs associated with administering the award.

Prohibition of supplanting; no use of JAG funds as “match” – JAG funds may not be used to supplant State or local funds but must be used to increase the amounts of such funds that would, in the absence of federal funds, be made available for law enforcement activities. See the [JAG FAQs](#) on BJA’s JAG web page for examples of supplanting.

Although supplanting is prohibited, as discussed under “[What An Application Should Include](#),” the leveraging of federal funding is encouraged.

Absent specific federal statutory authority to do so, JAG award funds may not be used as “match” for the purposes of other federal awards.

Other restrictions on use of funds – If a unit of local government chooses to use its FY 2017 JAG funds for particular, defined types of expenditures, it must satisfy certain preconditions:

- **Body-Worn Cameras (BWC)**
A unit of local government that proposes to use FY 2017 JAG award funds to purchase BWC equipment or to implement or enhance BWC programs, must provide to OJP a certification(s) that the unit of local government has policies and procedures in place related to BWC equipment usage, data storage and access, privacy considerations, training, etc. The certification can be found at:
<https://www.bja.gov/Funding/BodyWornCameraCert.pdf>.

A unit of local government that proposes to use JAG funds for BWC-related expenses will have funds withheld until the required certification is submitted and approved by OJP.

The BJA [BWC Toolkit](#) provides model BWC policies and best practices to assist departments in implementing BWC programs.

Apart from the JAG Program, BJA provides funds under the Body-Worn Camera Policy and Implementation Program (BWC Program). The BWC Program allows jurisdictions to develop and implement policies and practices required for effective program adoption and address program factors including the purchase, deployment, and maintenance of camera systems and equipment; data storage and access; and privacy considerations. Interested units of local government may wish to refer to the [BWC web page](#) for more information. Units of local government should note, however, that JAG funds may not be used as any part of the 50 percent match required by the BWC Program.

- **Body Armor**

Ballistic-resistant and stab-resistant body armor can be funded through the JAG Program, as well as through BJA's Bulletproof Vest Partnership (BVP) Program. The BVP Program is designed to provide a critical resource to local law enforcement through the purchase of ballistic-resistant and stab-resistant body armor. For more information on the BVP Program, including eligibility and application, refer to the [BVP web page](#). Units of local government should note, however, that JAG funds may not be used as any part of the 50 percent match required by the BVP Program.

Body armor purchased with JAG funds may be purchased at any threat level, make, or model from any distributor or manufacturer, as long as the body armor has been tested and found to comply with the latest applicable National Institute of Justice (NIJ) ballistic or stab standards. In addition, body armor purchased must be made in the United States.

As is the case in the BVP Program, units of local government that propose to purchase body armor with JAG funds must certify that law enforcement agencies receiving body armor have a written "mandatory wear" policy in effect. FAQs related to the mandatory wear policy and certifications can be found at:

<https://www.bja.gov/Funding/JAGFAQ.pdf>. This policy must be in place for at least all uniformed officers before any FY 2017 funding can be used by the unit of local government for body armor. There are no requirements regarding the nature of the policy other than it being a mandatory wear policy for all uniformed officers while on duty. The certification must be signed by the Authorized Representative and must be attached to the application if proposed as part of the application. If the unit of local government proposes to change project activities to utilize JAG funds to purchase body armor after the award is accepted, the unit of local government must submit the signed certification to BJA at that time. A mandatory wear concept and issues paper and a model policy are available by contacting the BVP Customer Support Center at vests@usdoj.gov or toll free at 1-877-758-3787. The certification form related to mandatory wear can be found at: www.bja.gov/Funding/BodyArmorMandatoryWearCert.pdf.

- **DNA Testing of Evidentiary Materials and Upload of DNA Profiles to a Database**

If JAG Program funds will be used for DNA testing of evidentiary materials, any resulting **eligible** DNA profiles must be uploaded to the Combined DNA Index System (CODIS, the national DNA database operated by the Federal Bureau of Investigation [FBI]) by a government DNA lab with access to CODIS. No profiles generated with JAG funding may be entered into any other non-governmental DNA database without prior express written approval from BJA.

In addition, funds may not be used for purchase of DNA equipment and supplies when the resulting DNA profiles from such technology are not accepted for entry into CODIS.

- **Interoperable Communication**

Units of local government (including subrecipients) that use FY 2017 JAG funds to support emergency communications activities (including the purchase of interoperable communications equipment and technologies such as voice-over-internet protocol bridging or gateway devices, or equipment to support the build out of wireless broadband networks in the 700 MHz public safety band under the Federal Communications Commission [FCC] Waiver Order) should review [FY 2017 SAFECOM Guidance](#). The SAFECOM Guidance is updated annually to provide current information on emergency communications policies, eligible costs, best practices, and technical standards for State, local, tribal, and territorial grantees investing federal funds in emergency communications projects. Additionally, emergency communications projects should support the Statewide Communication Interoperability Plan (SCIP) and be coordinated with the fulltime Statewide Interoperability Coordinator (SWIC) in the State of the project. As the central coordination point for their State's interoperability effort, the SWIC plays a critical role, and can serve as a valuable resource. SWICs are responsible for the implementation of SCIP through coordination and collaboration with the emergency response community. The U.S. Department of Homeland Security Office of Emergency Communications maintains a list of SWICs for each of the States and territories. Contact OEC@hq.dhs.gov. All communications equipment purchased with FY 2017 JAG Program funding should be identified during quarterly performance metrics reporting.

In order to promote information sharing and enable interoperability among disparate systems across the justice and public safety communities, OJP requires the recipient to comply with DOJ's Global Justice Information Sharing Initiative guidelines and recommendations for this particular grant. Recipients must conform to the Global Standards Package (GSP) and all constituent elements, where applicable, as described at: https://www.it.ojp.gov/gsp_grantcondition. Recipients must document planned approaches to information sharing and describe compliance to GSP and an appropriate privacy policy that protects shared information, or provide detailed justification for why an alternative approach is recommended.

Required compliance with applicable federal laws

By law, the chief executive (e.g., the mayor) of each unit of local government that applies for an FY 2017 JAG award must certify that the unit of local government will "comply with all provisions of [the JAG program statute] and all other applicable Federal laws." To satisfy this requirement, each unit of local government applicant must submit two properly executed certifications using the forms shown in Appendix I and Appendix II.

All applicants should understand that OJP awards, including certifications provided in connection with such awards, are subject to review by DOJ, including by OJP and by the DOJ

Office of the Inspector General. Applicants also should understand that a materially false, fictitious, or fraudulent statement (or concealment or omission of a material fact) in a certification submitted to OJP in support of an application may be the subject of criminal prosecution, and also may result in civil penalties and administrative remedies for false claims or otherwise. Administrative remedies that may be available to OJP with respect to an FY 2017 award include suspension or termination of the award, placement on the DOJ high risk grantee list, disallowance of costs, and suspension or debarment of the recipient.

BJA areas of emphasis

BJA recognizes that there are significant pressures on local criminal justice systems. In these challenging times, shared priorities and leveraged resources can make a significant impact. As a component of OJP, BJA intends to focus much of its work on the areas of emphasis described below, and encourages each unit of local government recipient of an FY 2017 JAG award to join us in addressing these challenges:

- *Reducing Gun Violence* – Gun violence has touched nearly every State and local government in America. While our nation has made great strides in reducing violent crime, some municipalities and regions continue to experience unacceptable levels of violent crime at rates far in excess of the national average. BJA encourages units of local government to invest JAG funds in programs to combat gun violence, enforce existing firearms laws, and improve the process for ensuring that persons prohibited from purchasing guns are prevented from doing so by enhancing reporting to the FBI's National Instant Criminal Background Check System (NICS).
- *National Incident-Based Reporting System (NIBRS)* – The FBI has formally announced its intentions to establish NIBRS as the law enforcement crime data reporting standard for the nation. The transition to NIBRS will provide a more complete and accurate picture of crime at the national, State, and local levels. Once this transition is complete, the FBI will no longer collect summary data and will accept data only in the NIBRS format. Also, once the transition is complete, JAG award amounts will be calculated on the basis of submitted NIBRS data. Transitioning all law enforcement agencies to NIBRS is the first step in gathering more comprehensive crime data. BJA encourages recipients of FY 2017 JAG awards to use JAG funds to expedite the transition to NIBRS.
- *Officer Safety and Wellness* – The issue of law enforcement safety and wellness is an important priority for the Department of Justice. Preliminary data compiled by the National Law Enforcement Officers Memorial Fund indicates that there were 135 line-of-duty law enforcement deaths in 2016—the highest level in the past 5 years and a 10 percent increase from 2015 (123 deaths).

Firearms-related deaths continued to be the leading cause of death (64), increasing 56 percent from 2015 (41). Of particular concern is that of the 64 firearms-related deaths, 21 were as a result of ambush-style attacks representing the highest total in more than two decades. Traffic-related deaths continued to rise in 2016 with 53 officers killed, a 10 percent increase from 2015 (48 deaths). Additionally, there were 11 job-related illness deaths in 2016, mostly heart attacks.

BJA sees a vital need to focus not only on tactical officer safety concerns but also on health and wellness as they affect officer performance and safety. It is important for law enforcement to have the tactical skills necessary, and also be physically and mentally well, to perform, survive, and be resilient in the face of the demanding duties of the

profession. BJA encourages units of local government to use JAG funds to address these needs by providing training, including paying for tuition and travel expenses related to attending trainings such as [VALOR training](#), as well as funding for health and wellness programs for law enforcement officers.

- *Border Security* – The security of United States borders is critically important to the reduction and prevention of transnational drug-trafficking networks and combating all forms of human trafficking within the United States (sex and labor trafficking of foreign nationals and U.S. citizens of all sexes and ages). These smuggling operations on both sides of the border contribute to a significant increase in violent crime and U.S. deaths from dangerous drugs. Additionally, illegal immigration continues to place a significant strain on federal, State, and local resources—particularly on those agencies charged with border security and immigration enforcement—as well as the local communities into which many of the illegal immigrants are placed. BJA encourages units of local government to use JAG funds to support law enforcement hiring, training, and technology enhancement in the area of border security.
- *Collaborative Prosecution* – BJA supports strong partnerships between prosecutors and police as a means to improve case outcomes and take violent offenders off the street. BJA strongly encourages State and local law enforcement to foster strong partnerships with prosecutors to adopt new collaborative strategies aimed at combating increases in crime, particularly violent crime. (BJA's "Smart Prosecution" Initiative is a related effort by OJP to promote partnerships between prosecutors and researchers to develop and deliver effective, data-driven, evidence-based strategies to solve chronic problems and fight crime.)

Goals, Objectives, and Deliverables

In general, the FY 2017 JAG Program is designed to provide additional personnel, equipment, supplies, contractual support, training, technical assistance, and information systems for criminal justice. The JAG Local Program is designed to assist units of local government with respect to criminal justice.

As discussed in more detail [below](#), a unit of local government that receives an FY 2017 JAG award will be required to prepare various types of reports and to submit data related to performance measures and accountability. The Goals, Objectives, and Deliverables are directly related to the [JAG Program accountability measures](#).

Evidence-Based Programs or Practices

OJP strongly emphasizes the use of data and evidence in policy making and program development in criminal justice, juvenile justice, and crime victim services. OJP is committed to:

- Improving the quantity and quality of evidence OJP generates
- Integrating evidence into program, practice, and policy decisions within OJP and the field
- Improving the translation of evidence into practice

OJP considers programs and practices to be evidence-based when their effectiveness has been demonstrated by causal evidence, generally obtained through one or more outcome evaluations. Causal evidence documents a relationship between an activity or intervention (including technology) and its intended outcome, including measuring the direction and size of a change, and the extent to which a change may be attributed to the activity or intervention.

Causal evidence depends on the use of scientific methods to rule out, to the extent possible, alternative explanations for the documented change. The strength of causal evidence, based on the factors described above, will influence the degree to which OJP considers a program or practice to be evidence-based. The OJP [CrimeSolutions.gov](http://www.crimesolutions.gov) website is one resource that applicants may use to find information about evidence-based programs in criminal justice, juvenile justice, and crime victim services.

A useful matrix of evidence-based policing programs and strategies is available through the [Center for Evidence-Based Crime Policy](http://www.bja.gov/Programs/CRPPE/smartsuite.html) at George Mason University. BJA offers a number of program models designed to effectively implement promising and evidence-based strategies through the BJA “Smart Suite” of programs, including Smart Policing, Smart Supervision, Smart Pretrial, Smart Defense, Smart Prosecution, Smart Reentry, and others (see: <https://www.bja.gov/Programs/CRPPE/smartsuite.html>). BJA encourages units of local government to use JAG funds to support these “smart on crime” strategies, including effective partnerships with universities, research partners, and non-traditional criminal justice partners.

BJA Success Stories

The [BJA Success Stories](#) web page features projects that have demonstrated success or shown promise in reducing crime and positively impacting communities. This web page will be a valuable resource for States, localities, territories, tribes, and criminal justice professionals that seek to identify and learn about JAG and other successful BJA-funded projects linked to innovation, crime reduction, and evidence-based practices. **BJA strongly encourages the recipient to submit success stories annually (or more frequently).**

If a unit of local government has a success story it would like to submit, it may be submitted through [My BJA account](#), using “add a Success Story” and the Success Story Submission form. Register for a My BJA account using this [registration](#) link.

B. Federal Award Information

BJA estimates that it will make up to 1,100 local awards totaling an estimated \$83,000,000.

Awards of at least \$25,000 are 4 years in length, and award periods will be from October 1, 2016 through September 30, 2020. Extensions beyond this period may be made on a case-by-case basis at the discretion of BJA and must be requested via GMS no less than 30 days prior to the grant end date.

Awards of less than \$25,000 are 2 years in length, and award periods will be from October 1, 2016 through September 30, 2018. Extensions of up to 2 years can be requested for these awards via GMS **no less than 30 days prior to the grant end date**, and will be automatically granted upon request.

All awards are subject to the availability of appropriated funds and to any modifications or additional requirements that may be imposed by statute.

Type of Award

BJA expects that any award under this solicitation will be in the form of a grant. See [Statutory and Regulatory Requirements; Award Conditions](#), under [Section F. Federal Award Administration Information](#), for a brief discussion of important statutes, regulations, and award conditions that apply to many (or in some cases, all) OJP grants.

JAG awards are based on a statutory formula as described below.

Once each fiscal year's overall JAG Program funding level is determined, BJA works with the Bureau of Justice Statistics (BJS) to begin a four-step grant award calculation process, which, in general, consists of:

- (1) Computing an initial JAG allocation for each State, based on its share of violent crime and population (weighted equally).
- (2) Reviewing the initial JAG allocation amount to determine if the State allocation is less than the minimum award amount defined in the JAG legislation (0.25 percent of the total). If this is the case, the State is funded at the minimum level, and the funds required for this are deducted from the overall pool of JAG funds. Each of the remaining States receive the minimum award plus an additional amount based on its share of violent crime and population.
- (3) Dividing each State's final award amount (except for the territories and District of Columbia) between the State and its units of local governments at a rate of 60 and 40 percent, respectively.
- (4) Determining unit of local government award allocations, which are based on their proportion of the State's 3-year violent crime average. If the "eligible award amount" for a particular unit of local government as determined on this basis is \$10,000 or more, then the unit of local government is eligible to apply directly to OJP (under the JAG Local solicitation) for a JAG award. If the "eligible award amount" to a particular unit of local government as determined on this basis would be less than \$10,000, however, the funds are not made available for a direct award to that particular unit of local government, but instead are added to the amount that otherwise would have been awarded to the State.

Financial Management and System of Internal Controls

Award recipients and subrecipients (including recipients or subrecipients that are pass-through entities¹) must, as described in the Part 200 Uniform Requirements² as set out at 2 C.F.R. 200.303:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that [the recipient (and any subrecipient)] is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

¹ For purposes of this solicitation, the phrase "pass-through entity" includes any recipient or subrecipient that provides a subaward ("subgrant") to carry out part of the funded award or program.

² The "Part 200 Uniform Requirements" refers to the DOJ regulation at 2 C.F.R. Part 2800, which adopts (with certain modifications) the provisions of 2 C.F.R. Part 200.

- (c) Evaluate and monitor [the recipient's (and any subrecipient's)] compliance with statutes, regulations, and the terms and conditions of Federal awards.
- (d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.
- (e) Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or [the recipient (or any subrecipient)] considers sensitive consistent with applicable Federal, State, local, and tribal laws regarding privacy and obligations of confidentiality.

To help ensure that applicants understand the administrative requirements and cost principles, OJP encourages prospective applicants to enroll, at no charge, in the DOJ Grants Financial Management Online Training, available [here](#).

Budget and Financial Information

Trust Fund – Units of local government may draw down JAG funds either in advance or on a reimbursement basis. To draw down in advance, a trust fund must be established in which to deposit the funds. The trust fund may or may not be an interest-bearing account. If subrecipients draw down JAG funds in advance, they also must establish a trust fund in which to deposit funds.

Tracking and reporting regarding JAG funds used for State administrative costs – As indicated earlier, a unit of local government may use up to 10 percent of a JAG award, including up to 10 percent of any earned interest, for costs associated with administering the award. Administrative costs (when utilized) must be tracked separately; a recipient must report in separate financial status reports (SF-425) those expenditures that specifically relate to each particular JAG award during any particular reporting period.

No commingling – Both the unit of local government recipient and all subrecipients of JAG funds are prohibited from commingling funds on a program-by-program or project-by-project basis. *For this purpose, use of the administrative JAG funds to perform work across all active awards in any one year is not considered comingling.*

Disparate Certification – In some cases, as defined by the legislation, a disparity may exist between the funding eligibility of a county and its associated municipalities. Three different types of disparities may exist:

- The first type is a zero-county disparity. This situation exists when one or more municipalities within a county are eligible for a direct award but the county is not; yet the county is responsible for providing criminal justice services (such as prosecution and incarceration) for the municipality. In this case, the county is entitled to part of the municipality's award because it shares the cost of criminal justice operations, although it may not report crime data to the FBI. This is the most common type of disparity.
- A second type of disparity exists when both a county and a municipality within that county qualify for a direct award, but the award amount for the municipality exceeds 150 percent of the county's award amount.

- The third type of disparity occurs when a county and multiple municipalities within that county are all eligible for direct awards, but the sum of the awards for the individual municipalities exceeds 400 percent of the county's award amount.

Jurisdictions certified as disparate must identify a fiscal agent that will submit a joint application for the aggregate eligible allocation to all disparate municipalities. The joint application must determine and specify the award distribution to each unit of local government and the purposes for which the funds will be used. When beginning the JAG application process, a Memorandum of Understanding (MOU) that identifies which jurisdiction will serve as the applicant or fiscal agent for joint funds must be completed and signed by the Authorized Representative for each participating jurisdiction. The signed MOU should be attached to the application. For a sample MOU, go to: www.bja.gov/Funding/JAGMOU.pdf.

Cost Sharing or Match Requirement

The JAG Program does not require a match.

For additional cost sharing and match information, see the [DOJ Grants Financial Guide](#).

Pre-Agreement Costs (also known as Pre-award Costs)

Pre-agreement costs are costs incurred by the applicant prior to the start date of the period of performance of the grant award.

OJP does *not* typically approve pre-agreement costs. An applicant must request and obtain the prior written approval of OJP for any such costs. All such costs incurred prior to award and prior to approval of the costs are incurred *at the sole risk* of the applicant. (Generally, no applicant should incur project costs *before* submitting an application requesting federal funding for those costs.)

Should there be extenuating circumstances that make it appropriate for OJP to consider approving pre-agreement costs, the applicant may contact the point of contact listed on the title page of this solicitation for the requirements concerning written requests for approval. If approved in advance by OJP, award funds may be used for pre-agreement costs, consistent with the recipient's approved budget and applicable cost principles. See the section on "Costs Requiring Prior Approval" in the [DOJ Grants Financial Guide](#) for more information.

Prior Approval, Planning, and Reporting of Conference/Meeting/Training Costs

OJP strongly encourages every applicant that proposes to use award funds for any conference-, meeting-, or training-related activity (or similar event) to review carefully—before submitting an application—the OJP and DOJ policy and guidance on approval, planning, and reporting of such events, available at:

<https://www.ojp.gov/financialguide/DOJ/PostawardRequirements/chapter3.10a.htm>.

OJP policy and guidance (1) encourage minimization of conference, meeting, and training costs; (2) require prior written approval (which may affect project timelines) of most conference, meeting, and training costs for cooperative agreement recipients, as well as some conference, meeting, and training costs for grant recipients; and (3) set cost limits, which include a general prohibition of all food and beverage costs.

Costs Associated with Language Assistance (if applicable)

If an applicant proposes a program or activity that would deliver services or benefits to individuals, the costs of taking reasonable steps to provide meaningful access to those services

or benefits for individuals with limited English proficiency may be allowable. Reasonable steps to provide meaningful access to services or benefits may include interpretation or translation services, where appropriate.

For additional information, see the “Civil Rights Compliance” section under “[Overview of Legal Requirements Generally Applicable to OJP Grants and Cooperative Agreements - FY 2017 Awards](#)” in the [OJP Funding Resource Center](#).

C. Eligibility Information

For information on eligibility, see the title page of this solicitation.

Note that, as discussed in more detail [below](#), the certification regarding compliance with 8 U.S.C. § 1373 must be executed and submitted before a unit of local government (other than an Indian tribal government) can make a valid award acceptance. Also, a unit of local government may not receive award funds (and its award will include a condition that withholds funds) until it submits a properly executed “Certifications and Assurances by Chief Executive of Applicant Government.”

D. Application and Submission Information

What an Application Should Include

This section describes in detail what an application should include. An applicant should anticipate that if it fails to submit an application that contains all of the specified elements, it may negatively affect the review of its application; and, should a decision be made to make an award, it may result in the inclusion of award conditions that preclude the recipient from accessing or using award funds until the recipient satisfies the conditions and OJP makes the funds available.

An applicant may combine the Budget Narrative and the Budget Detail Worksheet in one document. If an applicant submits only one budget document, however, it must contain **both** narrative and detail information. Please review the “Note on File Names and File Types” under [How to Apply](#) to be sure applications are submitted in permitted formats.

OJP strongly recommends that applicants use appropriately descriptive file names (e.g., “Program Narrative,” “Budget Detail Worksheet and Budget Narrative,” “Timelines,” “Memoranda of Understanding,” “Résumés”) for all attachments. Also, OJP recommends that applicants include résumés in a single file.

In general, if a unit of local government fails to submit required information or documents, OJP either will return the unit of local government’s application in the Grants Management System (GMS) for submission of the missing information or documents, or will attach a condition to the award that will withhold award funds until the necessary information and documents are submitted. (As discussed elsewhere in this solicitation, the certification regarding compliance with 8 U.S.C. § 1373—which is set out at [Appendix II](#)—will be handled differently. Unless and until that certification is submitted, the unit of local government (other than an Indian tribal government) will be unable to make a valid acceptance of the award.)

1. Information to Complete the Application for Federal Assistance (SF-424)

The SF-424 is a required standard form used as a cover sheet for submission of pre-applications, applications, and related information. GMS takes information from the applicant's profile to populate the fields on this form.

To avoid processing delays, an applicant must include an accurate legal name on its SF-424. Current OJP award recipients, when completing the field for "Legal Name," should use the same legal name that appears on the prior year award document, which is also the legal name stored in OJP's financial system. On the SF-424, enter the Legal Name in box 5 and Employer Identification Number (EIN) in box 6 exactly as it appears on the prior year award document. An applicant with a current, active award(s) must ensure that its GMS profile is current. If the profile is not current, the applicant should submit a Grant Adjustment Notice updating the information on its GMS profile prior to applying under this solicitation.

A new applicant entity should enter the Official Legal Name and address of the applicant entity in box 5 and the EIN in box 6 of the SF-424.

Intergovernmental Review: This solicitation ("funding opportunity") is within the scope of [Executive Order 12372](#), concerning State opportunities to coordinate applications for federal financial assistance. See 28 C.F.R. Part 30. An applicant may find the names and addresses of State Single Points of Contact (SPOCs) at the following website: https://www.whitehouse.gov/omb/grants_spoc/. If the State appears on the SPOC list, the applicant must contact the State SPOC to find out about, and comply with, the State's process under E.O. 12372. In completing the SF-424, an applicant whose State appears on the SPOC list is to make the appropriate selection in response to question 19 once the applicant has complied with its State E.O. 12372 process. (An applicant whose State does not appear on the SPOC list should answer question 19 by selecting the response that the "Program is subject to E.O. 12372 but has not been selected by the State for review.")

2. Project Abstract

Applications should include a high-quality project abstract that summarizes the proposed project in 400 words or less. Project abstracts should be:

- Written for a general public audience.
- Submitted as a separate attachment with "Project Abstract" as part of its file name.
- Single-spaced, using a standard 12-point font (Times New Roman) with 1-inch margins.
- Include applicant name, title of the project, a brief description of the problem to be addressed and the targeted area/population, project goals and objectives, a description of the project strategy, any significant partnerships, and anticipated outcomes.
- Identify up to 10 project identifiers that would be associated with proposed project activities. The list of identifiers can be found at www.bja.gov/funding/JAGIdentifiers.pdf.

3. Program Narrative

The following sections **should** be included as part of the program narrative³:

- a. Statement of the Problem – Identify the unit of local government's strategy/funding priorities for the FY 2017 JAG funds, the subgrant award process and timeline, and a

³ For information on subawards (including the details on proposed subawards that should be included in the application), see "Budget and Associated Documentation" under [Section D. Application and Submission Information](#).

description of the programs to be funded over the grant period. Units of local government are strongly encouraged to prioritize the funding on evidence-based projects.

- b. Project Design and Implementation – Describe the unit of local government's strategic planning process, if any, that guides its priorities and funding strategy. This should include a description of how the local community is engaged in the planning process and the data and analysis utilized to support the plan; it should identify the stakeholders currently participating in the strategic planning process, the gaps in the needed resources for criminal justice purposes, and how JAG funds will be coordinated with State and related justice funds.
- c. Capabilities and Competencies – Describe any additional strategic planning/coordination efforts in which the units of local government participates with other criminal justice criminal/juvenile justice agencies in the State.
- d. Plan for Collecting the Data Required for this Solicitation's Performance Measures – OJP will require each successful applicant to submit specific performance measures data as part of its reporting under the award (see "[General Information about Post-Federal Award Reporting Requirements](#)" in [Section F. Federal Award Administration Information](#)). The performance measures correlate to the goals, objectives, and deliverables identified under "[Goals, Objectives, and Deliverables](#)" in [Section A. Program Description](#). Post award, recipients will be required to submit quarterly performance metrics through BJA's Performance Measurement Tool (PMT), located at: <https://bjapmt.ojp.gov>. The application should describe the applicant's plan for collection of all of the performance measures data listed in the JAG Program accountability measures at: <https://bjapmt.ojp.gov/help/jagdocs.html>.

BJA does not require applicants to submit performance measures data with their application. Performance measures are included as an alert that BJA will require successful applicants to submit specific data as part of their reporting requirements. For the application, applicants should indicate an understanding of these requirements and discuss how they will gather the required data, should they receive funding.

Note on Project Evaluations

An applicant that proposes to use award funds through this solicitation to conduct project evaluations should be aware that certain project evaluations (such as systematic investigations designed to develop or contribute to generalizable knowledge) may constitute "research" for purposes of applicable DOJ human subjects protection regulations. However, project evaluations that are intended only to generate internal improvements to a program or service, or are conducted only to meet OJP's performance measure data reporting requirements, likely do not constitute "research." Each applicant should provide sufficient information for OJP to determine whether the particular project it proposes would either intentionally or unintentionally collect and/or use information in such a way that it meets the DOJ regulatory definition of research that appears at 28 C.F.R. Part 46 ("Protection of Human Subjects").

Research, for the purposes of human subjects protection for OJP-funded programs, is defined as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." 28 C.F.R. 46.102(d).

For additional information on determining whether a proposed activity would constitute research for purposes of human subjects protection, applicants should consult the decision tree in the “Research and the Protection of Human Subjects” section of the “Requirements related to Research” web page of the [“Overview of Legal Requirements Generally Applicable to OJP Grants and Cooperative Agreements - FY 2017”](#) available through the OJP Funding Resource Center. Every prospective applicant whose application may propose a research or statistical component also should review the “Data Privacy and Confidentiality Requirements” section on that web page.

4. Budget and Associated Documentation

(a) Budget Detail Worksheet

A sample Budget Detail Worksheet can be found at www.ojp.gov/funding/Apply/Resources/BudgetDetailWorksheet.pdf. An applicant that submits its budget in a different format should use the budget categories listed in the sample budget worksheet. The Budget Detail Worksheet should break out costs by year.

For questions pertaining to budget and examples of allowable and unallowable costs, see the [DOJ Grants Financial Guide](#).

(b) Budget Narrative

The Budget Narrative should thoroughly and clearly describe every category of expense listed in the proposed Budget Detail Worksheet. OJP expects proposed budgets to be complete, cost effective, and allowable (e.g., reasonable, allocable, and necessary for project activities). This narrative should include a full description of all costs, including administrative costs (if applicable).

An applicant should demonstrate in its Budget Narrative how it will maximize cost effectiveness of award expenditures. Budget narratives should generally describe cost effectiveness in relation to potential alternatives and the goals of the project. For example, a budget narrative should detail why planned in-person meetings are necessary, or how technology and collaboration with outside organizations could be used to reduce costs, without compromising quality.

The Budget Narrative should be mathematically sound and correspond clearly with the information and figures provided in the Budget Detail Worksheet. The narrative should explain how the applicant estimated and calculated all costs, and how those costs are necessary to the completion of the proposed project. The narrative may include tables for clarification purposes, but need not be in a spreadsheet format. As with the Budget Detail Worksheet, the Budget Narrative should describe costs by year.

(c) Information on Proposed Subawards (if any), as well as on Proposed Procurement Contracts (if any)

Applicants for OJP awards typically may propose to make “subawards.” Applicants also may propose to enter into procurement “contracts” under the award.

Whether—for purposes of federal grants administrative requirements—a particular agreement between a recipient and a third party will be considered a “subaward” or instead considered a procurement “contract” under the award is determined by federal rules and applicable OJP guidance. It is an important distinction, in part because the

federal administrative rules and requirements that apply to “subawards” and procurement “contracts” under awards differ markedly.

In general, the central question is the relationship between what the third party will do under its agreement with the recipient and what the recipient has committed (to OJP) to do under its award to further a public purpose (e.g., services the recipient will provide, products it will develop or modify, research or evaluation it will conduct). If a third party will provide some of the services the recipient has committed (to OJP) to provide, will develop or modify all or part of a product the recipient has committed (to OJP) to develop or modify, or conduct part of the research or evaluation the recipient has committed (to OJP) to conduct, OJP will consider the agreement with the third party a subaward for purposes of federal grants administrative requirements.

This will be true **even if** the recipient, for internal or other non-federal purposes, labels or treats its agreement as a procurement, a contract, or a procurement contract. Neither the title nor the structure of an agreement determines whether the agreement—for purposes of federal grants administrative requirements—is a “subaward” or is instead a procurement “contract” under an award.

Additional guidance on the circumstances under which (for purposes of federal grants administrative requirements) an agreement constitutes a subaward as opposed to a procurement contract under an award is available (along with other resources) on the [OJP Part 200 Uniform Requirements](#) web page.

(1) Information on proposed subawards and required certification regarding 8 U.S.C. § 1373 from certain subrecipients

General requirement for federal authorization of any subaward; statutory authorizations of subawards under the JAG Program statute. Generally, a recipient of an OJP award may not make subawards (“subgrants”) unless the recipient has specific federal authorization to do so. Unless an applicable statute or DOJ regulation specifically authorizes (or requires) particular subawards, a recipient must have authorization from OJP before it may make a subaward.

JAG subawards that are required or specifically authorized by statute (see 42 U.S.C. § 3751(a) and 42 U.S.C. § 3755) do not require prior approval to authorize subawards. This includes subawards made by units of local government under the JAG Program.

A particular subaward may be authorized by OJP because the recipient included a sufficiently detailed description and justification of the proposed subaward in the application as approved by OJP. If, however, a particular subaward is not authorized by federal statute or regulation and is not sufficiently described and justified in the application as approved by OJP, the recipient will be required, post award, to request and obtain written authorization from OJP before it may make the subaward.

If an applicant proposes to make one or more subawards to carry out the federal award and program, and those subawards are not specifically authorized (or required) by statute or regulation, the applicant should: (1) identify (if known) the proposed subrecipient(s), (2) describe in detail what each subrecipient will do to carry out the federal award and federal program, and (3) provide a justification for the

subaward(s), with details on pertinent matters such as special qualifications and areas of expertise. Pertinent information on subawards should appear not only in the Program Narrative but also in the Budget Detail Worksheet and budget narrative.

NEW Required certification regarding 8 U.S.C. § 1373 from any proposed subrecipient that is a unit of local government or “public” institution of higher education. Before a unit of local government may subaward FY 2017 award funds to another unit of local government or to a public institution of higher education, it will be required (by award condition) to obtain a properly executed certification regarding compliance with 8 U.S.C. § 1373 from the proposed subrecipient. (This requirement regarding 8 U.S.C. § 1373 will not apply to subawards to Indian tribes). The specific certification the unit of local government must require from another unit of local government will vary somewhat from the specific certification it must require from a public institution of higher education. The forms will be posted and available for download at: <https://ojp.gov/funding/Explore/SampleCertifications-8USC1373.htm>.

(2) Information on proposed procurement contracts (with specific justification for proposed noncompetitive contracts over \$150,000)

Unlike a recipient contemplating a subaward, a recipient of an OJP award generally does not need specific prior federal authorization to enter into an agreement that—for purposes of federal grants administrative requirements—is considered a procurement contract, **provided that** (1) the recipient uses its own documented procurement procedures and (2) those procedures conform to applicable federal law, including the Procurement Standards of the (DOJ) Part 200 Uniform Requirements (as set out at 2 C.F.R. 200.317 - 200.326). The Budget Detail Worksheet and budget narrative should identify proposed procurement contracts. (As discussed above, subawards must be identified and described separately from procurement contracts.)

The Procurement Standards in the (DOJ) Part 200 Uniform Requirements, however, reflect a general expectation that agreements that (for purposes of federal grants administrative requirements) constitute procurement “contracts” under awards will be entered into on the basis of full and open competition. If a proposed procurement contract would exceed the simplified acquisition threshold—currently, \$150,000—a recipient of an OJP award may not proceed without competition, unless and until the recipient receives specific advance authorization from OJP to use a non-competitive approach for the procurement.

An applicant that (at the time of its application) intends—without competition—to enter into a procurement contract that would exceed \$150,000 should include a detailed justification that explains to OJP why, in the particular circumstances, it is appropriate to proceed without competition. Various considerations that may be pertinent to the justification are outlined in the [DOJ Grants Financial Guide](#).

(d) Pre-Agreement Costs

For information on pre-agreement costs, see [Section B. Federal Award Information](#).

5. Indirect Cost Rate Agreement (if applicable)

Indirect costs may be charged to an award only if:

- (a) The recipient has a current (that is, unexpired), federally approved indirect cost rate; or

- (b) The recipient is eligible to use, and elects to use, the “de minimis” indirect cost rate described in the (DOJ) Part 200 Uniform Requirements, as set out at 2 C.F.R. 200.414(f).

Note: This rule does not eliminate or alter the JAG-specific restriction in federal law that charges for administrative costs may not exceed 10 percent of the award amount, regardless of the approved indirect cost rate.

An applicant with a current (that is, unexpired) federally approved indirect cost rate is to attach a copy of the indirect cost rate agreement to the application. An applicant that does not have a current federally approved rate may request one through its cognizant federal agency, which will review all documentation and approve a rate for the applicant entity, or, if the applicant’s accounting system permits, applicants may propose to allocate costs in the direct cost categories.

For assistance with identifying the appropriate cognizant federal agency for indirect costs, please contact the OCFO Customer Service Center at 1–800–458–0786 or at ask.ocfo@usdoj.gov. If DOJ is the cognizant federal agency, applicants may obtain information needed to submit an indirect cost rate proposal at: www.ojp.gov/funding/Apply/Resources/IndirectCosts.pdf.

Certain OJP recipients have the option of electing to use the “de minimis” indirect cost rate. An applicant that is eligible to use the “de minimis” rate that wishes to use the “de minimis” rate should attach written documentation to the application that advises OJP of both: (1) the applicant’s eligibility to use the “de minimis” rate, and (2) its election to do so. If an eligible applicant elects the “de minimis” rate, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. The “de minimis” rate may no longer be used once an approved federally-negotiated indirect cost rate is in place. (No entity that ever has had a federally approved negotiated indirect cost rate is eligible to use the “de minimis” rate.)

6. Tribal Authorizing Resolution (if applicable)

An applicant that proposes to provide direct services or assistance to residents on tribal lands should include in its application a resolution, a letter, affidavit, or other documentation, as appropriate, that demonstrates (as a legal matter) that the applicant has the requisite authorization from the tribe(s) to implement the proposed project on tribal lands.

OJP will not deny an application for an FY 2017 award for failure to submit such tribal authorizing resolution (or other appropriate documentation) by the application deadline, but a unit of local government will not receive award funds (and its award will include a condition that withholds funds) until it submits the appropriate documentation.

7. Financial Management and System of Internal Controls Questionnaire (including applicant disclosure of high-risk status)

Every unit of local government is to complete the [OJP Financial Management and System of Internal Controls Questionnaire](#) as part of its application. In accordance with the Part 200 Uniform Requirements as set out at [2 C.F.R. 200.205](#), federal agencies must have in place a framework for evaluating the risks posed by applicants before they receive a federal award.

8. Applicant Disclosure of High Risk Status

Applicants that are currently designated high risk by another federal grant making agency must disclose that status. For purposes of this disclosure, high risk includes any status under which a federal awarding agency provides additional oversight due to the applicant's past performance, or other programmatic or financial concerns with the applicant. If an applicant is designated high risk by another federal awarding agency, the applicant must provide the following information:

- The federal agency that currently designated the applicant as high risk
- Date the applicant was designated high risk
- The high risk point of contact at that federal awarding agency (name, phone number, and email address).
- Reasons for the high risk status, as set out by the federal awarding agency

OJP seeks this information to help ensure appropriate federal oversight of OJP awards. An applicant that is considered "high risk" by another federal awarding agency is not automatically disqualified from receiving an OJP award. OJP may, however, consider the information in award decisions, and may impose additional OJP oversight of any award under this solicitation (including through the conditions that accompany the award document).

9. Disclosure of Lobbying Activities

An applicant that expends any funds for lobbying activities is to provide all of the information requested on the form [Disclosure of Lobbying Activities \(SF-LLL\)](#).

10. Certifications and Assurances by the Chief Executive of the Applicant Government

A JAG application is not complete, and a unit of local government may not receive award funds, unless the chief executive of the applicant unit of local government (e.g., the mayor) properly executes, and the unit of local government submits, the "Certifications and Assurances by the Chief Executive of the Applicant Government" attached to this solicitation as [Appendix I](#).

OJP will not deny an application for an FY 2017 award for failure to submit these "Certifications and Assurances by the Chief Executive of the Applicant Government" by the application deadline, but a unit of local government will not receive award funds (and its award will include a condition that withholds funds) until it submits these certifications and assurances, properly executed by the chief executive of the unit of local government (e.g., the mayor).

11. Certification of Compliance with 8 U.S.C. § 1373 by the Chief Legal Officer of the Applicant Government

The chief legal officer of an applicant unit of local government (e.g., the General Counsel) is to carefully review the "State or Local Government: FY 2017 Certification of Compliance with 8 U.S.C. § 1373" that is attached as [Appendix II](#) to this solicitation. If the chief legal officer determines that he or she may execute the certification, the unit of local government is to submit the certification as part of its application. (Note: this requirement does not apply to Indian tribal governments.)

As discussed further [below](#), a unit of local government (other than an Indian tribal government) applicant will be *unable to make a valid award acceptance* of an FY 2017 JAG

award unless and until a properly executed certification by its chief legal officer is received by OJP on or before the day the unit of local government submits an executed award document.

12. Additional Attachments

(a) Applicant Disclosure of Pending Applications

Each applicant is to disclose whether it has (or is proposed as a subrecipient under) any pending applications for federally funded grants or cooperative agreements that (1) include requests for funding to support the same project being proposed in the application under this solicitation and (2) would cover identical cost items outlined in the budget submitted to OJP as part of the application under this solicitation. The applicant is to disclose applications made directly to federal awarding agencies, and also applications for subawards of federal funds (e.g., applications to State agencies that will subaward ("subgrant") federal funds).

OJP seeks this information to help avoid any inappropriate duplication of funding. Leveraging multiple funding sources in a complementary manner to implement comprehensive programs or projects is encouraged and is not seen as inappropriate duplication.

Each applicant that has one or more pending applications as described above is to provide the following information about pending applications submitted within the last 12 months:

- The federal or State funding agency
- The solicitation name/project name
- The point of contact information at the applicable federal or State funding agency

Federal or State Funding Agency	Solicitation Name/Project Name	Name/Phone/Email for Point of Contact at Federal or State Funding Agency
DOJ/Office of Community Oriented Policing Services (COPS)	COPS Hiring Program	Jane Doe, 202/000-0000; jane.doe@usdoj.gov
Health & Human Services/ Substance Abuse and Mental Health Services Administration	Drug-Free Communities Mentoring Program/ North County Youth Mentoring Program	John Doe, 202/000-0000; john.doe@hhs.gov

Each applicant should include the table as a separate attachment to its application. The file should be named "Disclosure of Pending Applications." The applicant Legal Name on the application must match the entity named on the disclosure of pending applications statement.

Any applicant that does not have any pending applications as described above is to submit, as a separate attachment, a statement to this effect: “[Applicant Name on SF-424] does not have (and is not proposed as a subrecipient under) any pending applications submitted within the last 12 months for federally funded grants or cooperative agreements (or for subawards under federal grants or cooperative agreements) that request funding to support the same project being proposed in this application to OJP and that would cover identical cost items outlined in the budget submitted as part of this application.”

(b) Research and Evaluation Independence and Integrity (if applicable)

If an application involves research (including research and development) and/or evaluation, the applicant must demonstrate research/evaluation independence and integrity, including appropriate safeguards, before it may receive award funds. The applicant must demonstrate independence and integrity regarding both this proposed research and/or evaluation, and any current or prior related projects.

Each application should include an attachment that addresses **both** i. and ii. below.

- i. For purposes of this solicitation, each applicant is to document research and evaluation independence and integrity by including one of the following two items:
 - a. A specific assurance that the applicant has reviewed its application to identify any actual or potential apparent conflicts of interest (including through review of pertinent information on the principal investigator, any co-principal investigators, and any subrecipients), and that the applicant has identified no such conflicts of interest—whether personal or financial or organizational (including on the part of the applicant entity or on the part of staff, investigators, or subrecipients)—that could affect the independence or integrity of the research, including the design, conduct, and reporting of the research.

OR

- b. A specific description of actual or potential apparent conflicts of interest that the applicant has identified—including through review of pertinent information on the principal investigator, any co-principal investigators, and any subrecipients—that could affect the independence or integrity of the research, including the design, conduct, or reporting of the research. These conflicts may be personal (e.g., on the part of investigators or other staff), financial, or organizational (related to the applicant or any subrecipient entity). Some examples of potential investigator (or other personal) conflict situations are those in which an investigator would be in a position to evaluate a spouse's work product (actual conflict), or an investigator would be in a position to evaluate the work of a former or current colleague (potential apparent conflict). With regard to potential organizational conflicts of interest, as one example, generally an organization would not be given an award to evaluate a project, if that organization had itself provided substantial prior technical assistance to that specific project or a location implementing the project (whether funded by OJP or other sources), because the organization in such an

instance might appear to be evaluating the effectiveness of its own prior work. The key is whether a reasonable person understanding all of the facts would be able to have confidence that the results of any research or evaluation project are objective and reliable. Any outside personal or financial interest that casts doubt on that objectivity and reliability of an evaluation or research product is a problem and must be disclosed.

- ii. In addition, for purposes of this solicitation, each applicant is to address possible mitigation of research integrity concerns by including, at a minimum, one of the following two items:
 - a. If an applicant reasonably believes that no actual or potential apparent conflicts of interest (personal, financial, or organizational) exist, then the applicant should provide a brief narrative explanation of how and why it reached that conclusion. The applicant also is to include an explanation of the specific processes and procedures that the applicant has in place, or will put in place, to identify and prevent (or, at the very least, mitigate) any such conflicts of interest pertinent to the funded project during the period of performance. Documentation that may be helpful in this regard may include organizational codes of ethics/conduct and policies regarding organizational, personal, and financial conflicts of interest. There is no guarantee that the plan, if any, will be accepted as proposed.

OR

- b. If the applicant has identified actual or potential apparent conflicts of interest (personal, financial, or organizational) that could affect the independence and integrity of the research, including the design, conduct, or reporting of the research, the applicant is to provide a specific and robust mitigation plan to address each of those conflicts. At a minimum, the applicant is expected to explain the specific processes and procedures that the applicant has in place, or will put in place, to identify and eliminate (or, at the very least, mitigate) any such conflicts of interest pertinent to the funded project during the period of performance. Documentation that may be helpful in this regard may include organizational codes of ethics/conduct and policies regarding organizational, personal, and financial conflicts of interest. There is no guarantee that the plan, if any, will be accepted as proposed.

OJP will assess research and evaluation independence and integrity based on considerations such as the adequacy of the applicant's efforts to identify factors that could affect the objectivity or integrity of the proposed staff and/or the applicant entity (and any subrecipients) in carrying out the research, development, or evaluation activity; and the adequacy of the applicant's existing or proposed remedies to control any such factors.

(c) Local Governing Body Review

Applicants must submit information via the Certification and Assurances by the Chief Executive (See [Appendix I](#)) which documents that the JAG application was made available for review by the governing body of the unit of local government, or to an organization designated by that governing body, for a period that was not less than 30

days before the application was submitted to BJA. The same Chief Executive Certification will also specify that an opportunity to comment on this application was provided to citizens prior to the application submission to the extent applicable law or established procedures make such opportunity available. In the past, this has been accomplished via submission of specific review dates; now OJP will only accept a chief executive's certification to attest to these facts. Units of local government may continue to submit actual dates of review should they wish to do so, in addition to the submission of the Chief Executive Certification.

How to Apply

An applicant must submit its application through the [Grants Management System \(GMS\)](#), which provides support for the application, award, and management of awards at OJP. Each applicant entity **must register in GMS for each specific funding opportunity**. Although the registration and submission deadlines are the same, OJP urges each applicant entity to **register promptly**, especially if this is the first time the applicant is using the system. Find complete instructions on how to register and submit an application in GMS at www.ojp.gov/gmscbt/. An applicant that experiences technical difficulties during this process should email GMS.HelpDesk@usdoj.gov or call 888-549-9901 (option 3), 24 hours every day, including during federal holidays. OJP recommends that each applicant **register promptly** to prevent delays in submitting an application package by the deadline.

Note on File Types: GMS does not accept executable file types as application attachments. These disallowed file types include, but are not limited to, the following extensions: “.com,” “.bat,” “.exe,” “.vbs,” “.cfg,” “.dat,” “.db,” “.dbf,” “.dll,” “.ini,” “.log,” “.ora,” “.sys,” and “.zip.”

Every applicant entity must comply with all applicable System for Award Management (SAM) and unique entity identifier (currently, a Data Universal Numbering System [DUNS] number) requirements. If an applicant entity has not fully complied with applicable SAM and unique identifier requirements by the time OJP makes award decisions, OJP may determine that the applicant is not qualified to receive an award and may use that determination as a basis for making the award to a different applicant.

All applicants should complete the following steps:

1. Acquire a unique entity identifier (DUNS number). In general, the Office of Management and Budget requires every applicant for a federal award (other than an individual) to include a “unique entity identifier” in each application, including an application for a supplemental award. Currently, a DUNS number is the required unique entity identifier.

A DUNS number is a unique nine-digit identification number provided by the commercial company Dun and Bradstreet. This unique entity identifier is used for tracking purposes, and to validate address and point of contact information for applicants, recipients, and subrecipients. It will be used throughout the life cycle of an OJP award. Obtaining a DUNS number is a free, one-time activity. Call Dun and Bradstreet at 866-705-5711 to obtain a DUNS number or apply online at www.dnb.com. A DUNS number is usually received within 1–2 business days.

2. Acquire registration with the SAM. SAM is the repository for certain standard information about federal financial assistance applicants, recipients, and subrecipients. All applicants for OJP awards (other than individuals) must maintain current registrations in the SAM database.

Each applicant must **update or renew its SAM registration at least annually** to maintain an active status. SAM registration and renewal can take as long as 10 business days to complete.

Information about SAM registration procedures can be accessed at <https://www.sam.gov/>.

3. Acquire a GMS username and password. New users must create a GMS profile by selecting the “First Time User” link under the sign-in box of the [GMS](#) home page. For more information on how to register in GMS, go to www.ojp.gov/gmscbt. Previously registered applicants should ensure, prior to applying, that the user profile information is up-to-date in GMS (including, but not limited to, address, legal name of agency and authorized representative) as this information is populated in any new application.

4. Verify the SAM (formerly CCR) registration in GMS. OJP requires each applicant to verify its SAM registration in GMS. Once logged into GMS, click the “CCR Claim” link on the left side of the default screen. Click the submit button to verify the SAM (formerly CCR) registration.

5. Search for the funding opportunity on GMS. After logging into GMS or completing the GMS profile for username and password, go to the “Funding Opportunities” link on the left side of the page. Select BJA and **FY 17 Edward Byrne Memorial Local Justice Assistance Grant (JAG) Program**.

6. Register by selecting the “Apply Online” button associated with the funding opportunity title. The search results from step 5 will display the “funding opportunity” (solicitation) title along with the registration and application deadlines for this solicitation. Select the “Apply Online” button in the “Action” column to register for this solicitation and create an application in the system.

7. Follow the directions in GMS to submit an application consistent with this solicitation. Once the application is submitted, GMS will display a confirmation screen stating the submission was successful. **Important:** In some instances, applicants must wait for GMS approval before submitting an application. OJP urges each applicant to submit its application **at least 72 hours prior** to the application due date.

Note: Application Versions

If an applicant submits multiple versions of the same application, OJP will review **only** the most recent system-validated version submitted.

Experiencing Unforeseen GMS Technical Issues

An applicant that experiences unforeseen GMS technical issues beyond its control that prevent it from submitting its application by the deadline may contact the [GMS Help Desk](#) or the [SAM Help Desk](#) (Federal Service Desk) to report the technical issue and receive a tracking number. The applicant is expected to email the NCJRS Response Center identified in the Contact Information section on the title page **within 24 hours after the application deadline** to request approval to submit its application after the deadline. The applicant’s email must describe the technical difficulties, and must include a timeline of the applicant’s submission efforts, the complete grant application, the applicant’s DUNS number, and any GMS Help Desk or SAM tracking number(s).

Note: OJP does not automatically approve requests to submit a late application. After OJP reviews the applicant’s request, and contacts the GMS Help Desk to verify the reported technical issues, OJP will inform the applicant whether the request to submit a late application

has been approved or denied. If OJP determines that the untimely application submission was due to the applicant's failure to follow all required procedures, OJP will deny the applicant's request to submit its application.

The following conditions generally are insufficient to justify late submissions to OJP solicitations:

- Failure to register in SAM or GMS in sufficient time (SAM registration and renewal can take as long as 10 business days to complete.)
- Failure to follow GMS instructions on how to register and apply as posted on the GMS website
- Failure to follow each instruction in the OJP solicitation
- Technical issues with the applicant's computer or information technology environment such as issues with firewalls

E. Application Review Information

Review Process

OJP is committed to ensuring a fair and open process for making awards. BJA reviews the application to make sure that the information presented is reasonable, understandable, measurable, and achievable, as well as consistent with the solicitation. BJA will also review applications to help ensure that JAG program-statute requirements have been met.

Pursuant to the (DOJ) Part 200 Uniform Requirements, before awards are made, OJP also reviews information related to the degree of risk posed by applicants. Among other things, to help assess whether an applicant that has one or more prior federal awards has a satisfactory record with respect to performance, integrity, and business ethics, OJP checks whether the applicant is listed in SAM as excluded from receiving a federal award. In addition, if OJP anticipates that an award will exceed \$150,000 in federal funds, OJP also must review and consider any information about the applicant that appears in the non-public segment of the integrity and performance system accessible through SAM (currently, the Federal Awardee Performance and Integrity Information System; "FAPIIS").

Important note on FAPIIS: An applicant, at its option, may review and comment on any information about itself that currently appears in FAPIIS and was entered by a federal awarding agency. OJP will consider any such comments by the applicant, in addition to the other information in FAPIIS, in its assessment of the risk posed by the applicant.

The evaluation of risks goes beyond information in SAM, however. OJP itself has in place a framework for evaluating risks posed by applicants. OJP takes into account information pertinent to matters such as—

1. Applicant financial stability and fiscal integrity
2. Quality of the management systems of the applicant, and the applicant's ability to meet prescribed management standards, including those outlined in the DOJ Grants Financial Guide
3. Applicant's history of performance under OJP and other DOJ awards (including compliance with reporting requirements and award conditions), as well as awards from other federal agencies

4. Reports and findings from audits of the applicant, including audits under the (DOJ) Part 200 Uniform Requirements
5. Applicant's ability to comply with statutory and regulatory requirements, and to effectively implement other award requirements

Absent explicit statutory authorization or written delegation of authority to the contrary, the Assistant Attorney General will make all final award decisions.

F. Federal Award Administration Information

Federal Award Notices

OJP expects to issue award notifications by September 30, 2017. OJP sends award notifications by email through GMS to the individuals listed in the application as the point of contact and the authorizing official. The email notification includes detailed instructions on how to access and view the award documents, and steps to take in GMS to start the award acceptance process. GMS automatically issues the notifications at 9:00 p.m. eastern time on the award date.

NOTE: In order validly to accept an award under the FY 2017 JAG Program, a unit of local government (other than an Indian tribal government) must submit to GMS the certification by its chief legal officer regarding compliance with 8 U.S.C. § 1373, executed using the form that appears in [Appendix II](#). (The form also may be downloaded at <https://ojp.gov/funding/Explore/SampleCertifications-8USC1373.htm>.) Unless the executed certification either (1) is submitted to OJP together with the signed award document or (2) is uploaded in GMS no later than the day the signed award document is submitted, **OJP will reject as invalid** any submission by a unit of local government (other than an Indian tribal government) that purports to accept an award under this solicitation.

Rejection of an initial submission as an invalid award acceptance is not a denial of the award. Consistent with award requirements, once the unit of local government **does** submit the necessary certification regarding 8 U.S.C. § 1373, the unit of local government **will** be permitted to submit an award document executed by the unit of local government on or after the date of that certification.

Also, in order for a unit of local government applicant validly to accept an award under the FY 2017 JAG Program, an individual with the necessary authority to bind the applicant will be required to log in; execute a set of legal certifications and a set of legal assurances; designate a financial point of contact; thoroughly review the award, including **all** award conditions; and sign and accept the award. The award acceptance process requires physical signature of the award document by the authorized representative and the scanning of the fully executed award document (along with the required certification regarding 8 U.S.C. § 1373, if not already uploaded in GMS) to OJP.

Statutory and Regulatory Requirements; Award Conditions

If selected for funding, in addition to implementing the funded project consistent with the OJP-approved application, the recipient must comply with all award requirements (including all award conditions), as well as all applicable requirements of federal statutes and regulations (including those referred to in assurances and certifications executed as part of the application or in

connection with award acceptance, and administrative and policy requirements set by statute or regulation).

OJP strongly encourages prospective applicants to review information on post-award legal requirements generally applicable to FY 2017 OJP awards and common OJP award conditions **prior** to submitting an application.

Applicants should consult the "[Overview of Legal Requirements Generally Applicable to OJP Grants and Cooperative Agreements - FY 2017 Awards](#)," available in the [OJP Funding Resource Center](#). In addition, applicants should examine the following two legal documents, as each successful applicant must execute both documents in GMS before it may receive any award funds.

- [Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements](#)
- OJP Certified Standard Assurances (attached to this solicitation as [Appendix IV](#))

The web pages accessible through the "[Overview of Legal Requirements Generally Applicable to OJP Grants and Cooperative Agreements - FY 2017 Awards](#)" are intended to give applicants for OJP awards a general overview of important statutes, regulations, and award conditions that apply to many (or in some cases, all) OJP grants and cooperative agreements awarded in FY 2017. Individual OJP awards typically also will include additional award conditions. Those additional conditions may relate to the particular statute, program, or solicitation under which the award is made; to the substance of the funded application; to the recipient's performance under other federal awards; to the recipient's legal status (e.g., as a for-profit entity); or to other pertinent considerations.

Individual FY 2017 JAG awards will include two new express conditions that, with respect to the "program or activity" that would be funded by the FY 2017 award, are designed to ensure that States and units of local government that receive funds from the FY 2017 JAG award: (1) permit personnel of the U.S. Department of Homeland Security (DHS) to access any correctional or detention facility in order to meet with an alien (or an individual believed to be an alien) and inquire as to his or her right to be or remain in the United States and (2) provide at least 48 hours' advance notice to DHS regarding the scheduled release date and time of an alien in the jurisdiction's custody when DHS requests such notice in order to take custody of the alien pursuant to the Immigration and Nationality Act.

Compliance with the requirements of the two foregoing new award conditions will be an authorized and priority purpose of the award. The reasonable costs (to the extent not reimbursed under any other federal program) of developing and putting into place statutes, rules, regulations, policies, or practices as required by these conditions, and to honor any duly authorized requests from DHS that is encompassed by these conditions, will be allowable costs under the award.

General Information about Post-Federal Award Reporting Requirements

A unit of local government recipient of an award under this solicitation will be required to submit the following reports and data:

Required reports. Recipients typically must submit quarterly financial status reports, semi-annual progress reports, final financial and progress reports, and, if applicable, an annual audit report in accordance with the (DOJ) Part 200 Uniform Requirements or specific award conditions. Future awards and fund drawdowns may be withheld if reports are delinquent. (In appropriate cases, OJP may require additional reports.)

Awards that exceed \$500,000 will include an additional condition that, under specific circumstances, will require the recipient to report (to FAPIIS) information on civil, criminal, and administrative proceedings connected with (or connected to the performance of) either the OJP award or any other grant, cooperative agreement, or procurement contract from the federal government. Additional information on this reporting requirement appears in the text of the award condition posted on the OJP website at: <https://ojp.gov/funding/FAPIIS.htm>

Data on performance measures. In addition to required reports, each recipient of an award under this solicitation also must provide data that measure the results of the work done under the award. To demonstrate program progress and success, as well as to assist DOJ with fulfilling its responsibilities under GPRA and the GPRA Modernization Act of 2010, OJP will require State recipients to provide accountability metrics data. Accountability metrics data must be submitted through BJA's Performance Measurement Tool (PMT), available at <https://bjapmt.ojp.gov>. The accountability measures are available at: <https://bjapmt.ojp.gov/help/jagdocs.html>. (Note that if a law enforcement agency receives JAG funds from a State, the State must submit quarterly accountability metrics data related to training that officers have received on use of force, racial and ethnic bias, de-escalation of conflict, and constructive engagement with the public.)

OJP may restrict access to award funds if a recipient of an OJP award fails to report required performance measures data in a timely manner.

G. Federal Awarding Agency Contact(s)

For OJP contact(s), see the title page of this solicitation.

For contact information for GMS, see the title page.

H. Other Information

Freedom of Information Act and Privacy Act (5 U.S.C. § 552 and 5 U.S.C. § 552a)

All applications submitted to OJP (including all attachments to applications) are subject to the federal Freedom of Information Act (FOIA) and to the Privacy Act. By law, DOJ may withhold information that is responsive to a request pursuant to FOIA if DOJ determines that the responsive information either is protected under the Privacy Act or falls within the scope of one of nine statutory exemptions under FOIA. DOJ cannot agree in advance of a request pursuant to FOIA not to release some or all portions of an application.

In its review of records that are responsive to a FOIA request, OJP will withhold information in those records that plainly falls within the scope of the Privacy Act or one of the statutory exemptions under FOIA. (Some examples include certain types of information in budgets, and names and contact information for project staff other than certain key personnel.) In appropriate

circumstances, OJP will request the views of the applicant/recipient that submitted a responsive document.

For example, if OJP receives a request pursuant to FOIA for an application submitted by a nonprofit or for-profit organization or an institution of higher education, or for an application that involves research, OJP typically will contact the applicant/recipient that submitted the application and ask it to identify—quite precisely—any particular information in the application that applicant/recipient believes falls under a FOIA exemption, the specific exemption it believes applies, and why. After considering the submission by the applicant/recipient, OJP makes an independent assessment regarding withholding information. OJP generally follows a similar process for requests pursuant to FOIA for applications that may contain law-enforcement sensitive information.

Provide Feedback to OJP

To assist OJP in improving its application and award processes, OJP encourages applicants to provide feedback on this solicitation, the application submission process, and/or the application review process. Provide feedback to OJPSolicitationFeedback@usdoj.gov.

IMPORTANT: This email is for feedback and suggestions only. OJP does **not** reply to messages it receives in this mailbox. A prospective applicant that has specific questions on any program or technical aspect of the solicitation **must** use the appropriate telephone number or email listed on the front of this solicitation document to obtain information. These contacts are provided to help ensure that prospective applicants can directly reach an individual who can address specific questions in a timely manner.

If you are interested in being a reviewer for other OJP grant applications, please email your résumé to ojppeerreview@lmsolas.com. (Do not send your résumé to the OJP Solicitation Feedback email account.) **Note:** Neither you nor anyone else from your organization or entity can be a peer reviewer in a competition in which you or your organization/entity has submitted an application.

Application Checklist

Edward Byrne Memorial Justice Assistance Grant (JAG) Program:

FY 2017 Local Solicitation

This application checklist has been created as an aid in developing an application.

What an Applicant Should Do:

Prior to Registering in GMS:

- _____ Acquire a DUNS Number (see page 27)
- _____ Acquire or renew registration with SAM (see page 27)

To Register with GMS:

- _____ For new users, acquire a GMS username and password* (see page 27)
- _____ For existing users, check GMS username and password* to ensure account access (see page 27)
- _____ Verify SAM registration in GMS (see page 27)
- _____ Search for correct funding opportunity in GMS (see page 27)
- _____ Select correct funding opportunity in GMS (see page 27)
- _____ Register by selecting the “Apply Online” button associated with the funding opportunity title (see page 27)
- _____ Read OJP policy and guidance on conference approval, planning, and reporting available at ojp.gov/financialguide/DOJ/PostawardRequirements/chapter3.10a.htm (see page 14)
- _____ If experiencing technical difficulties in GMS, contact the NCJRS Response Center (see page 2)

*Password Reset Notice – GMS users are reminded that while password reset capabilities exist, this function is only associated with points of contact designated within GMS at the time the account was established. Neither OJP nor the GMS Help Desk will initiate a password reset unless requested by the authorized official or a designated point of contact associated with an award or application.

Overview of Post-Award Legal Requirements:

- _____ Review the “[Overview of Legal Requirements Generally Applicable to OJP Grants and Cooperative Agreements - FY 2017 Awards](#)” in the OJP Funding Resource Center.

Scope Requirement:

- _____ The federal amount requested is within the allowable limit(s) of the FY 2017 JAG Allocations List as listed on BJA’s [JAG web page](#).

What an Application Should Include:

_____ Application for Federal Assistance (SF-424)	(see page 16)
_____ Project Abstract	(see page 16)
_____ Program Narrative	(see page 17)
_____ Budget Detail Worksheet	(see page 18)
_____ Budget Narrative	(see page 18)
_____ Indirect Cost Rate Agreement (if applicable)	(see page 21)
_____ Tribal Authorizing Resolution (if applicable)	(see page 21)
_____ Financial Management and System of Internal Controls Questionnaire	(see page 22)
_____ Disclosure of Lobbying Activities (SF-LLL) (if applicable)	(see page 22)
_____ Certifications and Assurances by Chief Executive	(see page 22)
_____ Certification of Compliance with 8 U.S.C. § 1373 by Chief Legal Officer (Note: this requirement does not apply to Indian tribal governments.)	(see page 23)
_____ OJP Certified Standard Assurances	(see page 40)
_____ Additional Attachments	
_____ Applicant Disclosure of Pending Applications	(see page 23)
_____ Research and Evaluation Independence and Integrity (if applicable)	(see page 24)

Appendix I

Certifications and Assurances by the Chief Executive of the Applicant Government

Template for use by *chief executive* of the “Unit of local government” (e.g., the mayor)

Note: By law, for purposes of the JAG Program, the term “unit of local government ” includes a town, township, village, parish, city, county, borough, or other general purpose political subdivision of a state; or, it may also be a federally recognized Indian tribal government that performs law enforcement functions (as determined by the Secretary of the Interior). A unit of local government may be any law enforcement district or judicial enforcement district established under applicable State law with authority to independently establish a budget and impose taxes; for example, in Louisiana, a unit of local government means a district attorney or parish sheriff.

**U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS**

**Edward Byrne Justice Assistance Grant Program
FY 2017 Local Solicitation**

**Certifications and Assurances
by the Chief Executive of the Applicant Government**

On behalf of the applicant unit of local government named below, in support of that locality's application for an award under the FY 2017 Edward Byrne Justice Assistance Grant ("JAG") Program, and further to 42 U.S.C. § 3752(a), I certify under penalty of perjury to the Office of Justice Programs ("OJP"), U.S. Department of Justice ("USDOJ"), that all of the following are true and correct:

1. I am the chief executive of the applicant unit of local government named below, and I have the authority to make the following representations on my own behalf and on behalf of the applicant unit of local government. I understand that these representations will be relied upon as material in any OJP decision to make an award, under the application described above, to the applicant unit of local government.
2. I certify that no federal funds made available by the award (if any) that OJP makes based on the application described above will be used to supplant local funds, but will be used to increase the amounts of such funds that would, in the absence of federal funds, be made available for law enforcement activities.
3. I assure that the application described above (and any amendment to that application) was submitted for review to the governing body of the unit of local government (e.g., city council or county commission), or to an organization designated by that governing body, not less than 30 days before the date of this certification.
4. I assure that, before the date of this certification— (a) the application described above (and any amendment to that application) was made public; and (b) an opportunity to comment on that application (or amendment) was provided to citizens and to neighborhood or community-based organizations, to the extent applicable law or established procedure made such an opportunity available.
5. I assure that, for each fiscal year of the award (if any) that OJP makes based on the application described above, the applicant unit of local government will maintain and report such data, records, and information (programmatic and financial), as OJP may reasonably require.
6. I certify that— (a) the programs to be funded by the award (if any) that OJP makes based on the application described above meet all the requirements of the JAG Program statute (42 U.S.C. §§ 3750-3758); (b) all the information contained in that application is correct; (c) in connection with that application, there has been appropriate coordination with affected agencies; and (d) in connection with that award (if any), the applicant unit of local government will comply with all provisions of the JAG Program statute and all other applicable federal laws.
7. I have examined certification entitled "State or Local Government: FY 2017 Certification of Compliance with 8 U.S.C. § 1373" executed by the chief legal officer of the applicant government with respect to the FY 2017 JAG program and submitted in support of the application described above, and I hereby adopt that certification as my own on behalf of that government.

I acknowledge that a materially false, fictitious, or fraudulent statement (or concealment or omission of a material fact) in this certification, or in the application that it supports, may be the subject of criminal prosecution (including under 18 U.S.C. §§ 1001 and/or 1621, and/or 42 U.S.C. § 3795a), and also may subject me and the applicant unit of local government to civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. §§ 3729-3730 and §§ 3801-3812). I also acknowledge that OJP awards, including certifications provided in connection with such awards, are subject to review by USDOJ, including by OJP and by the USDOJ Office of the Inspector General.

Signature of Chief Executive of the Applicant Unit of
Local Government

Date of Certification

Printed Name of Chief Executive

Title of Chief Executive

Name of Applicant Unit of Local Government

Appendix II

State or Local Government:

Certification of Compliance with 8 U.S.C. § 1373

Template for use by the *chief legal officer* of the “Local Government”

(e.g., the General Counsel) (Note: this Certification is not required by Indian tribal government applicants.)

Available for download at:

<https://ojp.gov/funding/Explore/SampleCertifications-8USC1373.htm>

**U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS**

State or Local Government: FY 2017 Certification of Compliance with 8 U.S.C. § 1373

On behalf of the applicant government entity named below, and in support of its application, I certify under penalty of perjury to the Office of Justice Programs ("OJP"), U.S. Department of Justice ("USDOJ"), that all of the following are true and correct:

- (1) I am the chief legal officer of the State or local government of which the applicant entity named below is a part ("the jurisdiction"), and I have the authority to make this certification on behalf of the jurisdiction and the applicant entity (that is, the entity applying directly to OJP). I understand that OJP will rely upon this certification as a material representation in any decision to make an award to the applicant entity.
- (2) I have carefully reviewed 8 U.S.C. § 1373(a) and (b), including the prohibitions on certain actions by State and local government entities, -agencies, and -officials regarding information on citizenship and immigration status. I also have reviewed the provisions set out at (or referenced in) 8 U.S.C. § 1551 note ("Abolition ... and Transfer of Functions"), pursuant to which references to the "Immigration and Naturalization Service" in 8 U.S.C. § 1373 are to be read, as a legal matter, as references to particular components of the U.S. Department of Homeland Security.
- (3) I (and also the applicant entity) understand that the U.S. Department of Justice will require States and local governments (and agencies or other entities thereof) to comply with 8 U.S.C. § 1373, with respect to any "program or activity" funded in whole or in part with the federal financial assistance provided through the FY 2017 OJP program under which this certification is being submitted ("the FY 2017 OJP Program" identified below), specifically including any such "program or activity" of a governmental entity or -agency that is a subrecipient (at any tier) of funds under the FY 2017 OJP Program.
- (4) I (and also the applicant entity) understand that, for purposes of this certification, "program or activity" means what it means under title VI of the Civil Rights Act of 1964 (see 42 U.S.C. § 2000d-4a), and that terms used in this certification that are defined in 8 U.S.C. § 1101 mean what they mean under that section 1101, except that the term "State" also shall include American Samoa (*cf.* 42 U.S.C. § 901(a)(2)). Also, I understand that, for purposes of this certification, neither a "public" institution of higher education (*i.e.*, one that is owned, controlled, or directly funded by a State or local government) nor an Indian tribe is considered a State or local government entity or -agency.
- (5) I have conducted (or caused to be conducted for me) a diligent inquiry and review concerning both—
 - (a) the "program or activity" to be funded (in whole or in part) with the federal financial assistance sought by the applicant entity under this FY 2017 OJP Program; and
 - (b) any prohibitions or restrictions potentially applicable to the "program or activity" sought to be funded under the FY 2017 OJP Program that deal with sending to, requesting or receiving from, maintaining, or exchanging information of the types described in 8 U.S.C. § 1373(a) or (b), whether imposed by a State or local government entity, -agency, or -official.
- (6) As of the date of this certification, neither the jurisdiction nor any entity, agency, or official of the jurisdiction has in effect, purports to have in effect, or is subject to or bound by, any prohibition or any restriction that would apply to the "program or activity" to be funded in whole or in part under the FY 2017 OJP Program (which, for the specific purpose of this paragraph 6, shall not be understood to include any such "program or activity" of any subrecipient at any tier), and that deals with either— (1) a government entity or -official sending or receiving information regarding citizenship or immigration status as described in 8 U.S.C. § 1373(a); or (2) a government entity or -agency sending to, requesting or receiving from, maintaining, or exchanging information of the types (and with respect to the entities) described in 8 U.S.C. § 1373(b).

I acknowledge that a materially false, fictitious, or fraudulent statement (or concealment or omission of a material fact) in this certification, or in the application that it supports, may be the subject of criminal prosecution (including under 18 U.S.C. §§ 1001 and/or 1621, and/or 42 U.S.C. § 3795a), and also may subject me and the applicant entity to civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. §§ 3729-3730 and §§ 3801-3812). I also acknowledge that OJP awards, including certifications provided in connection with such awards, are subject to review by USDOJ, including by OJP and by the USDOJ Office of the Inspector General.

Signature of Chief Legal Officer of the Jurisdiction

Printed Name of Chief Legal Officer

Date of Certification

Title of Chief Legal Officer of the Jurisdiction

Name of Applicant Government Entity (*i.e.*, the applicant to the FY 2017 OJP Program identified below)

FY 2017 OJP Program: Byrne Justice Assistance Grant ("JAG") Program

Appendix III

8 U.S.C. § 1373 (as in effect on June 21, 2017)

Communication between government agencies and the Immigration and Naturalization Service

(a) In general

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) Additional authority of government entities

Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

- (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.
- (2) Maintaining such information.
- (3) Exchanging such information with any other Federal, State, or local government entity.

(c) Obligation to respond to inquiries

The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.

See *also* provisions set out at (or referenced in) 8 U.S.C. § 1551 note (“Abolition ... and Transfer of Functions”)

Appendix IV

OJP Certified Standard Assurances

OMB No. 1121-0140
Expires 5/31/2019U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS

CERTIFIED STANDARD ASSURANCES

On behalf of the Applicant, and in support of this application for a grant or cooperative agreement, I certify under penalty of perjury to the Office of Justice Programs (OJP), U.S. Department of Justice ("Department"), that all of the following are true and correct:

- (1) I have the authority to make the following representations on behalf of myself and the Applicant. I understand that these representations will be relied upon as material in any OJP decision to make an award to the Applicant based on its application.
- (2) I certify that the Applicant has the legal authority to apply for the federal assistance sought by the application, and that it has the institutional, managerial, and financial capability (including funds sufficient to pay any required non-federal share of project costs) to plan, manage, and complete the project described in the application properly.
- (3) I assure that, throughout the period of performance for the award (if any) made by OJP based on the application—
 - (a) the Applicant will comply with all award requirements and all federal statutes and regulations applicable to the award;
 - (b) the Applicant will require all subrecipients to comply with all applicable award requirements and all applicable federal statutes and regulations; and
 - (c) the Applicant will maintain safeguards to address and prevent any organizational conflict of interest, and also to prohibit employees from using their positions in any manner that poses, or appears to pose, a personal or financial conflict of interest.
- (4) The Applicant understands that the federal statutes and regulations applicable to the award (if any) made by OJP based on the application specifically include statutes and regulations pertaining to civil rights and nondiscrimination, and, in addition—
 - (a) the Applicant understands that the applicable statutes pertaining to civil rights will include section 601 of the Civil Rights Act of 1964 (42 U.S.C. § 2000d); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794); section 901 of the Education Amendments of 1972 (20 U.S.C. § 1681); and section 303 of the Age Discrimination Act of 1975 (42 U.S.C. § 6102);
 - (b) the Applicant understands that the applicable statutes pertaining to nondiscrimination may include section 815(c) of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3789d(c)); section 1407(e) of the Victims of Crime Act of 1984 (42 U.S.C. § 10604(e)); section 299A(b) of the Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. § 5672(b)); and that the grant condition set out at section 40002(b)(13) of the Violence Against Women Act (42 U.S.C. § 13925(b)(13)) also may apply;
 - (c) the Applicant understands that it must require any subrecipient to comply with all such applicable statutes (and associated regulations); and
 - (d) on behalf of the Applicant, I make the specific assurances set out in 28 C.F.R. §§ 42.105 and 42.204.
- (5) The Applicant also understands that (in addition to any applicable program-specific regulations and to applicable federal regulations that pertain to civil rights and nondiscrimination) the federal regulations applicable to the award (if any) made by OJP based on the application may include, but are not limited to, 2 C.F.R. Part 2800 (the DOJ "Part 200 Uniform Requirements") and 28 C.F.R. Parts 22 (confidentiality - research and statistical information), 23 (criminal intelligence systems), and 46 (human subjects protection).
- (6) I assure that the Applicant will assist OJP as necessary (and will require subrecipients and contractors to assist as necessary) with the Department's compliance with section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. § 306106), the Archeological and Historical Preservation Act of 1974 (54 U.S.C. §§ 312501-312508), and the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4335), and 28 C.F.R. Parts 61 (NEPA) and 63 (floodplains and wetlands).
- (7) I assure that the Applicant will give the Department and the Government Accountability Office, through any authorized representative, access to, and opportunity to examine, all paper or electronic records related to the award (if any) made by OJP based on the application.
- (8) I assure that, if the Applicant is a governmental entity, with respect to the award (if any) made by OJP based on the application—
 - (a) it will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655), which govern the treatment of persons displaced as a result of federal and federally-assisted programs; and
 - (b) it will comply with requirements of 5 U.S.C. §§ 1501-1508 and 7324-7328, which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by federal assistance.

I acknowledge that a materially false, fictitious, or fraudulent statement (or concealment or omission of a material fact) in this certification, or in the application that it supports, may be the subject of criminal prosecution (including under 18 U.S.C. §§ 1001 and/or 1621, and/or 42 U.S.C. § 3795a), and also may subject me and the Applicant to civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. §§ 3729-3730 and 3801-3812). I also acknowledge that OJP awards, including certifications provided in connection with such awards, are subject to review by the Department, including by OJP and by the Department's Office of the Inspector General.