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
Hon. Harry D. Leinenweber

REPLY BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

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Congress has not authorized, and the Constitution does not permit, the Attorney General (AG) to require Chicago to enforce federal immigration law as a condition of receiving Byrne JAG (JAG) funds. The text, structure, and purpose of the JAG statute all make clear that the program is meant to respect and promote local control of law enforcement policy, not compel police departments everywhere to pursue a single set of federally defined objectives. The AG's three conditions, however, would do just that, and thus exceed his statutory authority. The conditions also violate the Constitution. They upset the separation of powers by exercising Spending Clause authority assigned to Congress, not the Executive. They further violate that Clause's germaneness requirement by straying far from the JAG program's purpose of providing local flexibility. The § 1373 condition unconstitutionally commandeers state and local officials. And the original notice and access conditions would require Chicago to violate the Fourth Amendment.

The AG's opposition confirms the strength of these claims. Rather than dispute Chicago's reading of the JAG statute, the AG principally (and for the notice and access conditions, exclusively) relies on *another* statute describing the duties and functions of another official in the Department of Justice (DOJ). But that provision does not, as the AG urges, grant unbounded authority to place *any* condition on *any* grant that DOJ administers. And it certainly does not authorize conditions, such as these, that nullify or violate express restrictions in the JAG statute. Such vast power, moreover, far exceeds the separation-of-powers, federalism, and Spending Clause limits set by the Constitution. As for the Fourth Amendment, the AG has effectively conceded the defect in the original notice and access conditions by rewriting them the day before filing his opposition.

Meanwhile, the AG's policy arguments are misleading at best (and cannot overcome the legal deficiencies in the AG's position in any event). The AG portrays the new conditions as needed to target "criminal aliens" and "reduc[e] violent crime," as if Chicago were ignoring both. But Chicago's Welcoming City Ordinance already allows cooperation with federal immigration agencies

regarding persons suspected or convicted of serious crimes. And his conditions reach far beyond such persons to people who have not even been accused—much less convicted—of any crime. Chicago has chosen to refrain from needlessly targeting those individuals, and to foster relations between police and immigrant communities. DOJ improperly seeks to force an end to that policy.

The AG's own words crystallize the irreparable injury Chicago faces: "[R]equir[ing]" Chicago to "reorder[its] law enforcement practice" or "los[e] federal grant money" is "exactly the point!" of the new conditions. Second Request for Judicial Notice (RJN II), Ex. A. Either the City must repeal its Ordinance, notwithstanding the judgment of Chicago's law enforcement leaders that doing so will undermine cooperation from immigrant communities and make Chicago less safe, or it must forgo critical public safety funds, including for ShotSpotter technology that will help police pinpoint the location of shooting incidents faster and with more precision, Fahey Decl., Ex. A. Forcing that choice on Chicago would be troubling even if it were not also unlawful. Preliminary relief is needed.

ARGUMENT

I. CHICAGO IS LIKELY TO SUCCEED ON THE MERITS OF ITS CLAIMS

A. The Notice And Access Conditions Lack Statutory Authorization And Therefore Are *Ultra Vires* And Violate The Separation Of Powers

1. The Notice And Access Conditions Are *Ultra Vires*

Under the JAG statute, the AG lacks authority to condition funds on compliance with the notice and access conditions. Mem. 10-12. Unlike other grant statutes that authorize him to "impose reasonable conditions on grant awards," *e.g.*, 42 U.S.C. § 3796gg-1(e)(3), the JAG statute nowhere provides open-ended conditioning authority. Rather, Congress structured the JAG program as a formula grant, mandating that the AG "shall allocate" funds to local governments, *id.* § 3755(d)(2)(A), "in accordance with" a formula based on population and crime statistics, *id.* § 3751(a)(1). Congress promised to fund locally defined priorities within "any one" of eight broadly defined programmatic goals. *Id.* §§ 3751(a)(1)-(2), 3752(a)(6)(B). Congress adopted this formula-

driven, locally responsive approach to achieve an overarching objective: 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 (2005). The AG's claimed conditioning authority conflicts with Congress's express instructions and goals.

The AG's lack of authority is dispositive. An agency "has no power to act . . . unless and until Congress confers power upon it." *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986). Thus, "when [agencies] act improperly, no less than when they act beyond their jurisdiction, what they do is *ultra vires*." *City of Arlington v. FCC*, 133 S. Ct. 1863, 1869 (2013).[1] The AG bears a heavy burden to demonstrate his authority: When an action would "upset the usual constitutional balance of federal and state powers," Congress must make its intention to authorize it "'unmistakably clear in the language of the statute.'" *Gregory v. Ashcroft*, 501 U.S. 452, 452 (1991). Such authorization is most urgent where, as here, federal action threatens to interfere with "the States' police power," *Gonzales v. Oregon*, 546 U.S. 243, 274 (2006), and especially where, as here, "an administrative interpretation" (not an express legislative directive) purports to "alter[] the federal-state framework," *Solid Waste Agency of N. Cook Cty. v. U.S. Army Corps of Eng'rs*, 531 U.S. 159, 172-73 (2001).

The AG disputes neither these principles nor Chicago's reading of the JAG statute. Remarkably, he does not once discuss that statute in defending his authority to impose the notice and access conditions. Opp. 11-12. Rather, he argues that another, obscure provision specifying the "Duties and Functions of the Assistant Attorney General" (AAG) for the Office of Justice Programs, a subordinate official, 42 U.S.C. § 3712(a)(6), somehow grants DOJ unlimited authority to

[1] The AG contends (Opp. 14) that an *ultra vires* claim must be based on a "officer's lack of delegated power" rather on a mere "error in the exercise of that power." Chicago's claim *is* that Congress did not delegate to the AG the power to impose the conditions at issue. In any event, the cases relied on by the AG are inapposite, because they address whether claims of *ultra vires* action by *state* officials preclude the assertion of state sovereign immunity under the Eleventh Amendment. *See Ex parte Young*, 209 U.S. 123 (1908). In cases involving unauthorized *federal* administrative action the law is clear that actions are "ultra vires" if they are either "improper[]" or "beyond [an agency's] jurisdiction." *City of Arlington,* 133 S. Ct. at 1869.

impose policy conditions on grants "*regardless* of whether there is some independent source of statutory authority." Opp. 11 (emphasis added). Such a sweeping construction cannot be reconciled with that provision's text and would violate bedrock principles of statutory interpretation. Moreover, it would nullify express requirements and defy specific constraints in the JAG statute (and many other Departmental grant programs besides). It must be rejected.

First, as a textual matter, § 3712(a)(6) does not independently confer *any* conditioning authority at all. Following a list of duties expressly given to the AAG, § 3712(a)(6) provides that he may also "exercise such other powers and functions as may be vested in [him] pursuant to this chapter or by delegation of the [AG], *including* placing special conditions on all grants, and determining priority purposes for formula grants." § 3712(a)(6) (emphasis added). That language is clear: The first clause of § 3712(a)(6) authorizes the AAG to exercise those "powers" that are "vested in [him]" either directly by a provision in "this chapter" or indirectly "by delegation" from the AG. Mem. 12-13. The second clause provides that the powers that "*may* be vested" in those ways "*includ*[*e*]" the power to "plac[e] special conditions on all grants, and determin[e] priority purposes for formula grants." The AG's assertion that the second clause operates as an independent delegation of unlimited conditioning authority must be wrong because the word "including" has an established meaning: The grant-conditioning powers in the second clause are a "part" or "subset" of powers, that "*may* be vested" in the AAG *if* another statute or the AG so vests them. *See Chickasaw Nation v. United States*, 534 U.S. 84, 89 (2001) ("To "include' is to 'contain' or 'comprise as part of a whole.'"); *Gaffney v. Riverboat Servs.*, 451 F.3d 424, 459 (7th Cir. 2006) ("'Including' … is interpreted as a word of . . . illustrative application").[2] The AG cannot rewrite "'including' [to] mean[] 'and' or 'as well as.'" *P.C. Pfeiffer Co. v. Ford*, 444 U.S. 69, 77 n.7 (1979).[3]

[2] The AG suggests (Opp. 12) that declining to interpret § 3712(a)(6) as he proposes would leave "no reason" for the second clause. But Congress often uses clauses to "perform[] . . . [the] significant function . . . [of] clarifying" statutory text. *See United States v. Atl. Research Corp.*, 551 U.S. 128, 137 (2007). By contrast, the

Second, it defies reason to believe that Congress conferred such vast powers in a provision like § 3712(a)(6). Congress created dozens of grant programs for DOJ to administer, each with a specific purpose and method for allocating funds. But the AG argues Congress also used a minor amendment to an ancillary provision governing a sub-cabinet post to confer limitless power—wholly unmentioned in the grant statutes themselves—to condition and prioritize those funds (totaling $2.32 billion in 2017 (Fahey Decl., Ex. B)). The power the AG now claims is not limited to this grant program or these conditions; it could be used to impose whatever policies this or any other AG deems worthwhile—from ever more aggressive immigration policies to strict restrictions on gun possession. That cannot be. Congress "does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001). And it certainly does not do so in ways that would radically alter the federal-state balance of power. *See Gonzales*, 546 U.S. at 274 ("principles of our federal system . . . belie the notion that Congress would use . . . an obscure grant of authority to regulate areas traditionally supervised by the States' police power").[4]

Third, the AG's unrestrained reading of § 3712(a)(6) would nullify or violate multiple provisions of the JAG statue, which was enacted simultaneously with the relevant language in

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AG's overreading would render superfluous every statutory provision giving DOJ authority to impose *specific* grant conditions, including at least two statutes enacted after § 3712(a)(6) that authorize DOJ to reduce JAG funds for recipients in particular, specified circumstances. *See* 42 U.S.C. § 13727(c)(2) (Death In Custody Reporting Act of 2013); 42 U.S.C. § 16925(a) (Adam Walsh Child Protection and Safety Act of 2006).

[3] Nor does 8 U.S.C. § 1357(a)(1) have any bearing on the AAG's authority under § 3712, as DOJ suggests. Opp. 11-12. Section 1357 meets none of the requirements of § 3712: It is part of the Immigration and Nationality Act and not "this chapter," it does not "vest[]" any power in the AAG, and it does not mention "special conditions" or "priority purposes" for OJP (or any other) grant programs.

[4] Nor can the AG distract from his lack of authority by pointing to the inclusion of "fifty-two" so-called "Special Conditions" in Chicago's 2016 grant award. Opp. 8. It is not even clear that those conditions are "special" within the meaning of § 3712. DOJ has never defined that term and elsewhere refers to many of these same conditions as "General Conditions." *Compare* RJN II, Ex. B, *with* Dkt. 32-1 (Hanson Decl.) Ex. C. Those conditions, moreover, range from standard OMB financial integrity requirements to conditions expressly authorized by the JAG statute or other federal statutes. None of them imposes substantive conditions across-the-board on all grantees that are not independently authorized by statute and that are wholly unconnected from how the grantee will use the grant.

§ 3712(a)(6)—thereby breaching the rule that simultaneously enacted provisions must be construed "harmoni[ously]." *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270, 298 (1956); *see* Pub. L. No. 109-162 § 1111 (2005) (enacting JAG); *id.* § 1152 (amending § 3712(a)(6)). To start, the AG's construction would nullify the JAG statute's mandatory formula. The AG maintains (Opp. 11) that § 3712(a)(6) authorizes the AAG to "prioritize … the Byrne JAG program[] for jurisdictions that assist federal authorities in the enforcement of immigration law." But the JAG formula mandates that the AG "shall" allocate funds based on population and crime statistics, not which jurisdictions comply with his immigration enforcement priorities. 42 U.S.C. § 3755(d)(2)(A). Reprioritizing based on the AG's immigration goals would significantly distort the statute's formula: Denying JAG funds to just Chicago and the local amici would reallocate nearly 20% of the funds allocated to localities nationally and 65% of such funds allocated to localities in Illinois. RJN II, Ex.C-Q.

The AG's asserted powers would also violate an express prohibition in the JAG statute's "Reserved Funds" provision. That provision grants the AG the authority to reallocate JAG funds based on policy priorities—but only when "necessary" to address "extraordinary increases in crime" or to "mitigate significant programmatic harm" caused by the formula, and only for "not more than 5 percent" of the total pool of available JAG funds. 42 U.S.C. § 3756(b). It cannot be that Congress imposed substantive limits and a hard 5% cap on the AG's authority to reallocate JAG funds and yet simultaneously gave the AAG boundless authority to impose any condition on 100% of those same funds. The Reserved Funds provision demonstrates that when Congress wished to confer some discretion on DOJ to administer JAG funds, it did so expressly and precisely. Congress did nothing of the sort with respect to the sweeping power now claimed by the AG.[5]

[5] In a brief footnote, the AG also asserts (Opp. 15, n.3) that the solicitation describing the conditions was not "final agency action," 5 U.S.C. § 704. That is wrong, but in any event, the AG has waived such a defense by advancing it with only a conclusory, "one-sentence assertion that lacks citation to record evidence." *Long v. Teachers' Ret. Sys. of Ill.*, 585 F.3d 344, 349 (7th Cir. 2009).

2. The Notice And Access Conditions Violate The Separation Of Powers

Because DOJ lacked the authority to impose the notice and access conditions, its attempt to do so represents an unlawful attempt to exercise authority assigned only to Congress. Mem. 17-18. The AG's only response to this is to double down on its assertion that Congress did, in fact, authorize it to issue the conditions at issue. Opp. 15-16. But, as explained above, DOJ has failed to identify any authority for its actions. The conditions therefore necessarily transgress the Constitution's distribution of power between the Legislature and the Executive.

B. The Section 1373 Condition Is Likewise Unauthorized And Unconstitutional

The AG is no more persuasive in arguing that the JAG statute's requirement that applicants certify compliance with "all applicable Federal laws" extends to § 1373. Congress chose not to make the JAG program a compliance mechanism for "all Federal laws," instead limiting the required certifications to "*applicable* Federal laws." Mem. 19. This language points to the body of laws governing federal grantmaking that, by their express terms, apply to recipients of federal funds. That reading accords with the Certified Standard Assurances DOJ has long required grantees to complete, which (except for § 1373) requires certifications concerning this exact set of grant-specific laws. Mem. 19-20; *see also* RJN Ex. K at 41 (Certified Standard Assurances form).

The AG does not dispute that Congress intended "applicable" to perform this limiting function. Instead, he argues that besides making certain laws applicable by statute, Congress also "delegate[d]" the AG power to make *additional* laws applicable as he sees fit—treating the U.S. Code like a menu from which he may select laws to enforce through the JAG program. Opp. 13.

That breathtakingly broad reading is at war with the structure and purpose of the JAG statute. "[R]ather than impose a 'one size fits all' solution," the JAG statute's formula-based design is meant to constrain the AG's discretion, while providing state and local governments "flexibility to spend money for programs that work for them." H.R. Rep. No. 109-233, at 89 (2005); *see also* Mem.

12. Unable to reconcile his reading of "applicable" with that structure and purpose, the AG locates (Opp. 12-13) his claim to unfettered authority in Congress's instruction that the AG specify the "form" of the JAG "application." 42 U.S.C. § 3752(a). But such a modest assignment of a classically ministerial function—literally to specify "form," not substance—is hardly a delegation of sweeping power to repurpose the JAG program to impose the very "one size fits all" policy dictates that Congress rejected. It certainly falls short of a "clear statement" from Congress inviting the AG to invade a "traditionally sensitive area[]" and alter "the federal balance." *Gregory*, 501 U.S. at 461.

The AG's attempt to dispute the nature of the laws cited in the Certified Standard Assurances (Opp. 13), simply proves Chicago's point: The "laws relating to civil rights protections" are the various anti-discrimination provisions that Congress made applicable to *recipients of federal financial assistance* (*e.g.*, 42 U.S.C. § 2000d); the laws related to "the treatment of displaced persons" are those that govern the rights of individuals displaced by *programs receiving federal funds* (*e.g.*, *id.* § 4604(c)); and the laws related to "political activities of government employees" are those that apply specifically to state and local employees whose employment is *made possible by federal funds* (*e.g.* 5 U.S.C. § 1501(4)). It is true, as DOJ asserts (Opp. 13) that these laws are "wide-ranging," but that is immaterial; what matters is that each contains a *statutory* provision making it applicable to recipients of federal funds. *See, e.g.* 42 U.S.C. § 2000d (prohibiting discrimination on various grounds "under any program or activity receiving Federal financial assistance").[6] Section 1373 stands alone as the only federal law the AG seeks to apply to grantees that Congress itself did not tie to federal funds.

[6] *See also* 29 U.S.C. § 794(a) (applying to "any program or activity receiving Federal financial assistance"); 20 U.S.C. § 1681(a) ("any educational program or activity receiving Federal financial assistance"); 42 U.S.C. § 6102 ("any program or activity receiving Federal financial assistance"); *id.* § 3789d(c) ("in connection with any programs or activity funded in whole or in part with funds made available under this chapter"); *id.* § 10604 ("Each recipient of sums under this chapter."); *id.* § 5671 *et seq.* (setting forth general administrative provisions for certain DOJ funding programs); *id.* § 13925(b)(13) (setting forth conditions for Violence Against Women Act grants); *id.* § 4322(D) (applying to "major Federal action funded under a program of grants to States"); *id.* § 4604(c) (agency may "withhold [its] approval of any Federal financial assistance"); 54 U.S.C. § 306108 (requiring certain actions "prior to the approval of the expenditure of any Federal funds"); *id.*

Moreover, even if DOJ's unjustifiably broad interpretation of "applicable" were colorable, the § 1373 condition would fail for yet another reason: Section 1373 itself is unconstitutional. The statute impermissibly "requir[es] [state and local officers] to provide information that belongs to [Chicago] and is available to them only in their official capacity." *Printz v. United States*, 521 U.S. 898, 932 n.17 (1997). This is classically improper federal intrusion in local matters. Mem. 20.[7]

The AG relies on *City of New York v. United States*, 179 F.3d 29 (2d Cir. 1999). But that decision departs from the commandeering analysis that is required in this Circuit. As the Seventh Circuit has instructed, "[w]hen the national government conscripts the legislative or executive arms of a state, the law violates a structural immunity and 'a "balancing" analysis is inappropriate.'" *Travis v. Reno*, 163 F.3d 1000, 1003 (7th Cir. 1998). The decision in *New York*, however, relies on precisely that kind of balancing. There, the Second Circuit considered the degree to which § 1373 intruded on "integral" operations of city government, and concluded that it barely did—all while suggesting that if the conflicting city law played a more prominent role, the analysis might have turned out differently. *New York*, 179 F.3d at 37. That analysis is foreclosed by *Travis* and cannot control here.

Moreover, the Second Circuit dismissed concerns that § 1373 might require affirmative conduct by states and cities, and analyzed the statute solely as a negative restriction. *New York*, 179 F.3d at 35. But mandated action and inaction cannot be so neatly distinguished for § 1373. *Cf. Alton R. Co. v. United States*, 287 U.S. 229, 235 (1932) (order "negative in form" was "in effect, an affirmative one."). The provision was deliberately tailored to induce local officials to share sensitive information with the federal government. *See* S. Rep. No. 104-249, at 19-20 (1996) (seeking "a

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§ 312502(b)(1) (requiring certain actions in connection with Federal "financial assistance"); 5 U.S.C. § 1501(4) (applying to any "individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States").

[7] The AG misunderstands this argument. The problem is not, as he says (Opp. 13-14), that conditioning funding on compliance with § 1373 amounts to unconstitutional commandeering. Rather, it is that § 1373 is *itself* facially unconstitutional and so cannot be saved by the AG repurposing it as a grant condition. *See Branch v. Smith*, 538 U.S. 254, 281 (2003) (state law not applicable despite phrase "as state law requires" because state law was unconstitutional and therefore "a legal nullity").

cooperative effort" to enforce federal immigration law through "[t]he acquisition, maintenance, and exchange of immigration-related information by State and local agencies"). And DOJ itself has pressed an especially aggressive (though mistaken) view of the *actions* that § 1373 that requires. As early as October 2016, DOJ suggested that localities must affirmatively instruct employees that they could freely communicate with federal officials. RJN Ex. O at 1 ("Your personnel *must be informed* … federal law does not allow any government entity or official to prohibit" sharing status information with federal officials). And in explaining recently why Miami's § 1373 certification passed muster, the AG pointed to Miami's decision to cooperate with ICE detainer requests, *see* RJN II, Ex. A, further implying his belief that § 1373 requires affirmative cooperation. The Constitution forbids commandeering City law enforcement in this way.

C. The Notice And Access Conditions Violate The Spending Clause

1. Neither Condition Is Germane To The Purposes Of The JAG Program

The AG does not dispute that the JAG program is intended to provide "flexibility" for grantees to set policing priorities and to broadly distribute funds based on population and crime statistics. Nor does he contend the notice and access conditions are related to those goals. Rather, he says (Opp. 5) that the JAG grant also advances the broader goal of promoting "criminal justice," to which the notice and access conditions supposedly relate. The AG's claim fails on its own terms, as the conditions largely seek to enforce *civil*, not *criminal* laws. More fundamentally, it misses the point. The defining feature of the JAG program is not that it promotes "criminal justice" generally, but *the way* it does so. What distinguishes the JAG grant from other criminal justice grants is its formula model and its emphasis on local flexibility. The germaneness inquiry would be meaningless if the federal government could frame a programmatic objective at the highest level of generality to justify a condition that overtly *contradicts* the program's more specific purposes. A condition on the program must relate to the statute considered as a whole, not to a generic phrase like "criminal

justice" snipped from a single provision of the statutory text, *see* Opp. 18 (citing only 42 U.S.C. § 3751(a)(1)), let alone to an unrelated statute like the INA, *see* Opp. 18 (citing INA provisions).

2. DOJ Has Effectively Conceded That Its Original Notice And Access Conditions Would Violate The Fourth Amendment

The grant solicitation states unequivocally that JAG awards "will include" conditions requiring recipients to "provide *at least* 48 hours' advance notice" of an "alien's" release, and to permit ICE on-demand access to any "detention facility" to interrogate non-citizens. RJN Ex. K at 30. As Chicago explained, such conditions would routinely require prolonging detention, thereby violating the Fourth Amendment. Mem. 14-17; *accord City of El Cenizo v. Texas*, No. SA-17-CV-404, slip op. at 85 (W.D. Tex. Aug. 30, 2017), ECF No. 189 (Fourth Amendment bars extending seizure).

The AG has responded not by disputing that such prolonged detention is unconstitutional but by effectively conceding the point and then *rewriting* the conditions. The rewritten conditions first appeared in award documents for other jurisdictions issued the day before the AG filed his opposition. Hanson Decl., Exs. A, B. Instead of insisting on "at least 48 hours' advance notice," the new notice condition requests notice "as early as *practicable* (at least 48 hours, *if possible*)." *Id.*, Ex. A at 18 (emphasis added). And both new conditions, for the first time, state that no grantee is required to "maintain (or detain) any individual in custody beyond the date and time the individual would have been released" absent the conditions. *Id.* This reformulation reveals the AG's awareness that his earlier formulation was unconstitutional, and follows a now-familiar pattern of first asserting sweeping authority, only to claim a narrower objective when the original claim's weakness is exposed in litigation. *E.g.*, *Washington v. Trump*, 847 F.3d 1151, 1165-1166 (9th Cir. 2017) (declining to rely on federal Executive's "shifting interpretations"); *Cty. of Santa Clara v. Trump*, 2017 WL 1459081, at *27 (N.D. Cal. Apr. 25, 2017) (criticizing this "schizophrenic approach").

These latest developments do not, however, resolve Chicago's Fourth Amendment claim because Chicago cannot and need not rely on the AG's as-yet unsubstantiated promise regarding

Chicago's JAG award documents. *Cf. Cty. of Santa Clara v. Trump*, 2017 WL 3086064, at *8 (N.D. Cal. July 20, 2017) (describing similar promises regarding scope of "Sanctuary Cities" Executive Order as "illusory"). The AG bears a "heavy burden" of demonstrating that the original notice and access conditions "'cannot reasonably be expected'" to appear in Chicago's award documents. *Ciarpaglini v. Norwood*, 817 F.3d 541, 545 (7th Cir. 2016). Given the clear language of the grant solicitation, and Chicago's experience to date, that burden remains unmet. In the absence of unequivocal evidence that the Fourth Amendment defects in the original conditions have been cured, Chicago remains entitled to an injunction restraining the AG from imposing the conditions on its FY2017 JAG funds—or on those of any other eligible jurisdiction, *see infra* Part IV. *See Sefick v. Gardner*, 164 F.3d 370, 372 (7th Cir. 1998) (where cessation takes the form of a policy change, rather than amendment to statute or regulation, it does not "eliminate the controversy.").

II. CHICAGO WILL BE IRREPARABLY HARMED ABSENT PRELIMINARY RELIEF

Chicago faces a clear threat of irreparable harm. As the AG recently declared, Chicago must either "reorder[] [its] law enforcement practice" or "los[e] federal grant money" for itself and eleven neighboring localities. Fahey Decl. Ex. A. Both of those roads lead to irreparable injury: a subjugation of the City's policy preferences to DOJ's, and a precipitous loss of cooperation between officers and immigrant communities, on the one hand; or police officers with inadequate equipment and technology, on the other. Mem. 22-24; *see also El Cenizo*, slip op. at 89-90. Merely being forced to make that kind of "unreasonable choice" is itself "irreparable harm." *Cty. of Santa Clara*, 2017 WL 1459081, at *27-*28; *accord Am. Trucking Ass'ns v. City of Los Angeles*, 559 F.3d 1046, 1058-1059 (9th Cir. 2009). All the more so here, where the federal government has targeted another sovereign that has the right to set criminal justice policy "free from federal interference," *Kelly v. Robinson*, 479 U.S. 36, 49 (1986). *See Kansas v. United States*, 249 F.3d 1213, 1227 (10th Cir. 2001) (where "sovereign interests and public policies [are] at stake, … the harm the [City] stands to suffer [is] irreparable").

None of the AG's arguments defeats that showing of irreparable harm. His first assertion—that the risk of harm to the City is "speculative or conjectural," Opp. 21—is demonstrably wrong. DOJ acknowledges (Opp. 4, 7) that the City must, within "45 days" of receiving an award letter, decide "whether to accept or reject" the funding and conditions. There is no third option: abandon the Welcoming City Ordinance or forever forgo crucial grant dollars that will be reallocated to other grantees. It is *certain*—not speculative—that the harms from this unlawful choice will occur.[8]

Next, the AG asserts that because a coercion-based Spending Clause violation is *sufficient* to show irreparable harm, it must also be *necessary*. There is no irreparable harm, he says, because the "amount of funding at stake" does not meet the "threshold for establishing unconstitutional coercion." Opp. 22. This is a stark reversal from the Administration's prior (public) characterizations of this "defunding" and "withholding grants" as a "weapon" that would "get cities into … compliance." *Santa Clara*, 2017 WL 1459081, at *14-*15 (quoting the President, AG, and Press Secretary). In any event, "unconstitutional coercion" is just one way the conditions could cause irreparable harm, not the only way. Irreparable injury exists anytime the federal government unlawfully interferes with a locality's "regulatory powers" or ability to set "public policies"—regardless of whether "unconstitutional coercion" is involved. *Kansas*, 249 F.3d at 1227-1228. The AG's conditions—which demand that Chicago repeal its Welcoming City Ordinance—do just that.

The AG next claims (Opp. 22-23) that the City's harm from having to shutter its Force for Good program or dismiss its Grants Research Specialist is not "substantial" enough to support an injunction. To start, the AG ignores the harm from being unable to purchase essential police equipment, such as ShotSpotter technology Chicago seeks to fund this year, Fahey Decl., Ex. B. And in any event, injunctions are not limited to large injuries; they issue to prevent irreparable ones:

[8] For the same reason, the AG's claim—mentioned in passing in the introduction (Opp. 4) but never again—that harm to Chicago is not "immediate" is baffling. Irreparable harm is sufficiently immediate if it will be suffered "before a decision on the merits can be rendered." *Winter v. Natural Res. Def. Counsel*, 555 U.S. 7, 22 (2008). Here it is undisputed that Chicago must either change its laws or lose funds within 45 days.

"[I]t is not so much the magnitude but the irreparability that counts for purposes of a preliminary injunction." *Dennis Melancon, Inc. v. City of New Orleans*, 703 F.3d 262, 279 (5th Cir. 2012). The one case the AG cites does not say otherwise. Rather, it explains that the "threat [*i.e.*, likelihood] of irreparable injury"—not the magnitude of the harm—must be "substantial." *Ditton v. Rusch*, 2014 WL 4435928, at *3 (N.D. Ill. Sept. 9, 2014). Here the threat is not just substantial but certain.

Finally, the AG asserts (Opp. 23) that increased budgetary uncertainty can never qualify as irreparable harm because there is always some level of uncertainty in "any municipality's fiscal affairs." But the fact that *some* uncertainty not "attributable to the challenged" conditions may exist in Chicago's budget does not give the AG carte blanche to inflict more. The AG does not dispute that the new conditions will "exacerbate" budgetary uncertainty by putting millions of critical dollars into a state of limbo; they thus "inflict[] cognizable irreparable injury for purposes of a preliminary injunction" *M.R. v. Dreyfus*, 697 F.3d 706, 729 (9th Cir. 2012).[9]

III. THE EQUITIES AND THE PUBLIC INTEREST FAVOR PRELIMINARY RELIEF

The AG does not dispute the significance of Chicago's interest in its own sovereignty or its residents' and officers' interests in safe and effective community policing. *See* Mem. 25. Instead, he asserts (Opp. 24) that those must give way to the federal government's generic interest "in enforcing federal law." But that interest only exists where the enforcement itself is *lawful*. *See Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013). Where the opposite is true, as here, the "public interest is served by 'curtailing [the] unlawful executive action.'" *Hawaii v. Trump*, 859 F.3d 741, 784 (9th Cir. 2017) (quoting *Texas v. United States*, 809 F.3d 134, 187 (5th Cir. 2015)).

[9] The AG tacks a quote from *American Hospital Association v. Harris*, 625 F.2d 1328 (7th Cir. 1980), onto the end of his discussion (Opp. 23), but fails to explain how it advances his position. *Harris* states that "ordinarily" the costs of "attempted compliance with government regulation" will not constitute irreparable harm. *Id.* at 1331. But that is true only because ordinarily when an entity complies with a regulation "all that is lost is profits," which may be generally be replaced by money damages. *A.O. Smith Corp. v. FTC*, 530 F.2d 515, 527 (3d Cir. 1976), *cited in Harris*, 625 F.2d at 1331. By contrast, where (as here) compliance requires "significant changes in a[n entity's] operations" or threatens "permanently injur[y] … [to] its goodwill," those harms do "constitute irreparable injury." *Id.* at 527-528.

Moreover, the AG's repeated refrain (Opp. 24-25) that the new conditions will deliver "concrete" law enforcement benefits is simply wrong. Solving crimes and prosecuting criminals is impossible without community cooperation. *See* Hannigan Decl. ¶ 5. When victims and witnesses are afraid to come forward, offenders—often violent ones—walk free. Forcing Chicago to repeal the Welcoming City Ordinance will generate fear within immigrant communities, undermining cooperation with law enforcement. And it will do so not (as the AG sometimes claims, Opp. 18, 24) in service of "reducing violent crime" or targeting "criminal aliens" but (as he admits in a footnote, Opp. 21 n.5) primarily to enforce "purely civil laws" against non-citizen pre-trial detainees. The public will be disserved by dismantling the City's policies and sapping its crime-fighting effectiveness in order to advance the AG's fixation with civil immigration enforcement.

IV. THE REQUESTED INJUNCTION SHOULD BE NATIONWIDE

Finally, the AG argues (Opp. 25) that any preliminary relief should be limited to Chicago. But Courts have repeatedly issued nationwide preliminary injunctions against executive actions that are likely unlawful or unconstitutional to preserve the uniform application of federal law, particularly in the immigration context. *E.g.*, *IRAP v. Trump*, 857 F.3d 554, 605 (4th Cir.), *cert. granted*, 137 S. Ct. 2080 (2017); *Texas v. United States*, 787 F.3d 733, 769 (5th Cir. 2015). Here, the AG expressly invokes the Executive Branch's authority under the immigration laws (Opp. 5), and seeks to impose unlawful immigration-related conditions on a program that Congress intended to be administered on a consistent basis nationwide. *See supra* at 2. Indeed, because every grantee receives a formula-based percentage of a fixed total appropriation, each grantee's allocation will rise or fall depending on which jurisdictions claim funds. That allocation process binds all JAG applicants' fates together, underscoring the need for uniformity. This Court should not artificially constrain preliminary relief in this case, creating one set of conditions for Chicago and another for the rest of the country.

CONCLUSION

The motion for a preliminary injunction should be granted.

August 31, 2017

Respectfully Submitted,

By /s/ Edward N. Siskel

EDWARD N. SISKEL
Corporation Counsel of the City of Chicago

JUSTIN A. HOUPPERT
Assistant Corporation Counsel
SCOTT D. SPEARS
Assistant Corporation Counsel
121 N. LaSalle Street, Suite 600
Chicago, IL 60602
(312) 744-0220
edward.siskel@cityofchicago.org

ANDREW W. WORSECK
Chief Assistant Corporation Counsel
30 N. LaSalle Street, Suite 1230
Chicago, IL 60602
(312) 744-0220

RONALD S. SAFER
MATTHEW C. CROWL
NICK KAHLON
LAURA KLEINMAN
RILEY SAFER HOLMES & CANCILA LLP
Three First National Plaza
70 West Madison Street, Suite 2900
Chicago, IL 60602
(312) 471-8700

Attorneys for the City of Chicago

JAMIE S. GORELICK (*pro hac vice*)
DAVID W. OGDEN (*pro hac vice*)
ARI HOLTZBLATT (*pro hac vice*)
ARI SAVITZKY (*pro hac vice*)
MOLLY JENNINGS (*pro hac vice*)
BRIDGET FAHEY* (*pro hac vice*)
WILMER CUTLER PICKERING HALE AND DORR LLP
1875 Pennsylvania Avenue NW
Washington, DC 20006
(202) 663-6000

DEBO P. ADEGBILE (*pro hac vice*)
WILMER CUTLER PICKERING HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
(212) 230-8800

* Admitted to practice only in Colorado. Supervised by members of the firm who are members of the District of Columbia Bar

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was filed electronically using the CM/ECF system on August 31, 2017, which automatically notifies and effects service on all counsel of record for the Defendant, who is deemed to have consented to electronic service via the Court's CM/ECF system per L.R. 5.9.

/s/ Edward N. Siskel
Edward N. Siskel
Attorney for Plaintiff

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
Hon. Harry D. Leinenweber

STATUTORY ADDENDUM TO REPLY BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Provisions of the U.S. Code relevant to this case are currently undergoing an editorial reclassification, in which certain provisions are being consolidated into a new Title 34. That reclassification alters citations, but does not repeal or amend any law. The new citations become effective on September 1, 2017. For consistency with already-filed briefs by Plaintiff the City of Chicago and the Attorney General, Chicago's reply cites to the version of the U.S. Code in effect until September 1, 2017. To aid the Court, Chicago submits the attached addendum of relevant Code provisions, listing their existing and future citations.

42 U.S.C. § 3751 (effective until August 31, 2017), transferred to 34 U.S.C. § 10152 (effective on September 1, 2017)

(a) Grants authorized

(1) In general

From amounts made available to carry out this part, the Attorney General may, in accordance with the formula established under section 3755 of this title, make grants to States and units of local government, for use by the State or unit of local government 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 programs:

(A) Law enforcement programs.

(B) Prosecution and court programs.

(C) Prevention and education programs.

(D) Corrections and community corrections programs.

(E) Drug treatment and enforcement programs.

(F) Planning, evaluation, and technology improvement programs.

(G) Crime victim and witness programs (other than compensation).

(H) Mental health programs and related law enforcement and corrections programs, including behavioral programs and crisis intervention teams.

(2) Rule of construction

Paragraph (1) shall be construed to ensure that a grant under that paragraph may be used for any purpose for which a grant was authorized to be used under either or both of the programs specified in section 3750(b) of this title, as those programs were in effect immediately before January 5, 2006.

(b) Contracts and subawards

A State or unit of local government may, in using a grant under this part for purposes authorized by subsection (a) of this section, use all or a portion of that grant to contract with or make one or more subawards to one or more--

(1) neighborhood or community-based organizations that are private and nonprofit; or

(2) units of local government.

(3) Repealed. Pub.L. 109-271, § 8(h)(3), Aug. 12, 2006, 120 Stat. 767

(c) Program assessment component; waiver

(1) Each program funded under this part shall contain a program assessment component, developed pursuant to guidelines established by the Attorney General, in coordination with the National Institute of Justice.

(2) The Attorney General may waive the requirement of paragraph (1) with respect to a program if, in the opinion of the Attorney General, the program is not of sufficient size to justify a full program assessment.

(d) Prohibited uses

Notwithstanding any other provision of this Act, no funds provided under this part may be used, directly or indirectly, to provide any of the following matters:

(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); or

(E) any similar matters.

(e) Administrative costs

Not more than 10 percent of a grant made under this part may be used for costs incurred to administer such grant.

(f) Period

The period of a grant made under this part shall be four years, except that renewals and extensions beyond that period may be granted at the discretion of the Attorney General.

(g) Rule of construction

Subparagraph (d)(1) shall not be construed to prohibit the use, directly or indirectly, of funds provided under this part to provide security at a public event, such as a political convention or major sports event, so long as such security is provided under applicable laws and procedures.

42 U.S.C. § 3752 (effective until August 31, 2017), transferred to 34 U.S.C. § 10153 (effective September 1, 2017)

(a) In general

To request a grant under this part, the chief executive officer of a State or unit of local government shall submit an application to the Attorney General within 120 days after the date on which funds to carry out this part are appropriated for a fiscal year, in such form as the Attorney General may require. Such application shall include the following:

(1) A certification that Federal funds made available under this part will not be used to supplant State or 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.

(2) An assurance that, not fewer than 30 days before the application (or any amendment to the application) was submitted to the Attorney General, the application (or amendment) was submitted for review to the governing body of the State or unit of local government (or to an organization designated by that governing body).

(3) An assurance that, before the application (or any amendment to the application) was submitted to the Attorney General--

(A) the application (or amendment) was made public; and

(B) an opportunity to comment on the application (or amendment) was provided to citizens and to neighborhood or community-based organizations, to the extent applicable law or established procedure makes such an opportunity available.

(4) An assurance that, for each fiscal year covered by an application, the applicant shall maintain and report such data, records, and information (programmatic and financial) as the Attorney General may reasonably require.

(5) A certification, made in a form acceptable to the Attorney General and executed by the chief executive officer of the applicant (or by another officer of the applicant, if qualified under regulations promulgated by the Attorney General), that--

(A) the programs to be funded by the grant meet all the requirements of this part;

(B) all the information contained in the application is correct;

(C) there has been appropriate coordination with affected agencies; and

(D) the applicant will comply with all provisions of this part and all other applicable Federal laws.

(6) A comprehensive Statewide plan detailing how grants received under this section will be used to improve the administration of the criminal justice system, which shall--

(A) be designed in consultation with local governments, and representatives of all segments of the criminal justice system, including judges, prosecutors, law enforcement personnel, corrections personnel, and providers of indigent defense services, victim services, juvenile justice delinquency prevention programs, community corrections, and reentry services;

(B) include a description of how the State will allocate funding within and among each of the uses described in subparagraphs (A) through (G) of section 3751(a)(1) of this title;

(C) describe the process used by the State for gathering evidence-based data and developing and using evidence-based and evidence-gathering approaches in support of funding decisions;

(D) describe the barriers at the State and local level for accessing data and implementing evidence-based approaches to preventing and reducing crime and recidivism; and

(E) be updated every 5 years, with annual progress reports that--

(i) address changing circumstances in the State, if any;

(ii) describe how the State plans to adjust funding within and among each of the uses described in subparagraphs (A) through (G) of section 3751(a)(1) of this title;

(iii) provide an ongoing assessment of need;

(iv) discuss the accomplishment of goals identified in any plan previously prepared under this paragraph; and

(v) reflect how the plan influenced funding decisions in the previous year.

(b) Technical assistance

(1) Strategic planning

Not later than 90 days after December 16, 2016, the Attorney General shall begin to provide technical assistance to States and local governments requesting support to develop and implement the strategic plan required under subsection (a)(6). The Attorney General may enter into agreements with 1 or more non-governmental organizations to provide technical assistance and training under this paragraph.

(2) Protection of constitutional rights

Not later than 90 days after December 16, 2016, the Attorney General shall begin to provide technical assistance to States and local governments, including any agent thereof with responsibility for administration of justice, requesting support to meet the obligations established by the Sixth Amendment to the Constitution of the United States, which shall include--

(A) public dissemination of practices, structures, or models for the administration of justice consistent with the requirements of the Sixth Amendment; and

(B) assistance with adopting and implementing a system for the administration of justice consistent with the requirements of the Sixth Amendment.

(3) Authorization of appropriations

For each of fiscal years 2017 through 2021, of the amounts appropriated to carry out this subpart, not less than $5,000,000 and not more than $10,000,000 shall be used to carry out this subsection.

42 U.S.C. § 3753 (effective until August 31, 2017), transferred to 34 U.S.C. § 10154 (effective September 1, 2017)

The Attorney General shall not finally disapprove any application (or any amendment to that application) submitted under this part without first affording the applicant reasonable notice of any deficiencies in the application and opportunity for correction and reconsideration.

42 U.S.C. § 3754 (effective until August 31, 2017), transferred to 34 U.S.C. § 10155 (effective September 1, 2017)

The Attorney General shall issue rules to carry out this part. The first such rules shall be issued not later than one year after the date on which amounts are first made available to carry out this part.

42 U.S.C. § 3755 (effective until August 31, 2017), transferred to 34 U.S.C. § 10156 (effective September 1, 2017)

(a) Allocation among States

(1) In general

Of the total amount appropriated for this part, the Attorney General shall, except as provided in paragraph (2), allocate--

(A) 50 percent of such remaining amount to each State in amounts that bear the same ratio of--

(i) the total population of a State to--

(ii) the total population of the United States; and

(B) 50 percent of such remaining amount to each State in amounts that bear the same ratio of--

(i) the average annual number of part 1 violent crimes of the Uniform Crime Reports of the Federal Bureau of Investigation reported by such State for the three most recent years reported by such State to--

(ii) the average annual number of such crimes reported by all States for such years.

(2) Minimum allocation

If carrying out paragraph (1) would result in any State receiving an allocation less than 0.25 percent of the total amount (in this paragraph referred to as a "minimum allocation State"), then paragraph (1), as so carried out, shall not apply, and the Attorney General shall instead--

(A) allocate 0.25 percent of the total amount to each State; and

(B) using the amount remaining after carrying out subparagraph (A), carry out paragraph (1) in a manner that excludes each minimum allocation State, including the population of and the crimes reported by such State.

(b) Allocation between States and units of local government

Of the amounts allocated under subsection (a) of this section--

(1) 60 percent shall be for direct grants to States, to be allocated under subsection (c) of this section; and

(2) 40 percent shall be for grants to be allocated under subsection (d) of this section.

(c) Allocation for State governments

(1) In general

Of the amounts allocated under subsection (b)(1) of this section, each State may retain for the purposes described in section 3751 of this title an amount that bears the same ratio of--

(A) total expenditures on criminal justice by the State government in the most recently completed fiscal year to--

(B) the total expenditure on criminal justice by the State government and units of local government within the State in such year.

(2) Remaining amounts

Except as provided in subsection (e)(1) of this section, any amounts remaining after the allocation required by paragraph (1) shall be made available to units of local government by the State for the purposes described in section 3751 of this title.

(d) Allocations to local governments

(1) In general

Of the amounts allocated under subsection (b)(2) of this section, grants for the purposes described in section 3751 of this title shall be made directly to units of local government within each State in accordance with this subsection, subject to subsection (e) of this section.

(2) Allocation

(A) In general

From the amounts referred to in paragraph (1) with respect to a State (in this subsection referred to as the "local amount"), the Attorney General shall allocate to each unit of local government an amount which bears the same ratio to such share as the average annual number of part 1 violent crimes reported by such unit to the Federal Bureau of Investigation for the 3 most recent calendar years for which such data is available bears to the number of part 1 violent crimes reported by all units of

local government in the State in which the unit is located to the Federal Bureau of Investigation for such years.

(B) Transitional rule

Notwithstanding subparagraph (A), for fiscal years 2006, 2007, and 2008, the Attorney General shall allocate the local amount to units of local government in the same manner that, under the Local Government Law Enforcement Block Grants program in effect immediately before January 5, 2006, the reserved amount was allocated among reporting and nonreporting units of local government.

(3) Annexed units

If a unit of local government in the State has been annexed since the date of the collection of the data used by the Attorney General in making allocations pursuant to this section, the Attorney General shall pay the amount that would have been allocated to such unit of local government to the unit of local government that annexed it.

(4) Resolution of disparate allocations

(A) Notwithstanding any other provision of this part, if--

(i) the Attorney General certifies that a unit of local government bears more than 50 percent of the costs of prosecution or incarceration that arise with respect to part 1 violent crimes reported by a specified geographically constituent unit of local government; and

(ii) but for this paragraph, the amount of funds allocated under this section to--

(I) any one such specified geographically constituent unit of local government exceeds 150 percent of the amount allocated to the unit of local government certified pursuant to clause (i); or

(II) more than one such specified geographically constituent unit of local government exceeds 400 percent of the amount allocated to the unit of local government certified pursuant to clause (i),

then in order to qualify for payment under this subsection, the unit of local government certified pursuant to clause (i), together with any such specified geographically constituent units of local government described in clause (ii), shall submit to the Attorney General a joint application for the aggregate of funds allocated to such units of local government. Such application shall specify the amount of such funds that are to be distributed to each of the units of local government and the purposes for which such funds are to be used. The units of local government involved may establish a joint local advisory board for the purposes of carrying out this paragraph.

(B) In this paragraph, the term "geographically constituent unit of local government" means a unit of local government that has jurisdiction over areas located within the boundaries of an area over which a unit of local government certified pursuant to clause (i) has jurisdiction.

(e) Limitation on allocations to units of local government

(1) Maximum allocation

No unit of local government shall receive a total allocation under this section that exceeds such unit's total expenditures on criminal justice services for the most recently completed fiscal year for which data are available. Any amount in excess of such total expenditures shall be allocated proportionally among units of local government whose allocations under this section do not exceed their total expenditures on such services.

(2) Allocations under $10,000

If the allocation under this section to a unit of local government is less than $10,000 for any fiscal year, the direct grant to the State under subsection (c) of this section shall be increased by the amount of such allocation, to be distributed (for the purposes described in section 3751 of this title) among State police departments that provide criminal justice services to units of local government and units of local government whose allocation under this section is less than $10,000.

(3) Non-reporting units

No allocation under this section shall be made to a unit of local government that has not reported at least three years of data on part 1 violent crimes of the Uniform Crime Reports to the Federal Bureau of Investigation within the immediately preceding 10 years.

(f) Funds not used by the State

If the Attorney General determines, on the basis of information available during any grant period, that any allocation (or portion thereof) under this section to a State for such grant period will not be required, or that a State will be unable to qualify or receive funds under this part, or that a State chooses not to participate in the program established under this part, then such State's allocation (or portion thereof) shall be awarded by the Attorney General to units of local government, or combinations thereof, within such State, giving priority to those jurisdictions with the highest annual number of part 1 violent crimes of the Uniform Crime Reports reported by the unit of local government to the Federal Bureau of Investigation for the three most recent calendar years for which such data are available.

(g) Special rules for Puerto Rico

(1) All funds set aside for Commonwealth government

Notwithstanding any other provision of this part, the amounts allocated under subsection (a) of this section to Puerto Rico, 100 percent shall be for direct grants to the Commonwealth government of Puerto Rico.

(2) No local allocations

Subsections (c) and (d) of this section shall not apply to Puerto Rico.

(h) Units of local government in Louisiana

In carrying out this section with respect to the State of Louisiana, the term "unit of local government" means a district attorney or a parish sheriff.

(i) Part 1 violent crimes to include human trafficking

For purposes of this section, the term "part 1 violent crimes" shall include severe forms of trafficking in persons (as defined in section 7102 of Title 22).

42 U.S.C. § 3756 (effective until August 31, 2017), transferred to 34 U.S.C. § 10157 (effective September 1, 2017)

(a) Of the total amount made available to carry out this part for a fiscal year, the Attorney General shall reserve not more than--

(1) $20,000,000, for use by the National Institute of Justice in assisting units of local government to identify, select, develop, modernize, and purchase new technologies for use by law enforcement, of which $1,000,000 shall be for use by the Bureau of Justice Statistics to collect data necessary for carrying out this part; and

(2) $20,000,000, to be granted by the Attorney General to States and units of local government to develop and implement antiterrorism training programs.

(b) Of the total amount made available to carry out this part for a fiscal year, the Attorney General may reserve not more than 5 percent, to be granted to 1 or more States or units of local government, for 1 or more of the purposes specified in section 3751 of this title, pursuant to his determination that the same is necessary--

(1) to combat, address, or otherwise respond to precipitous or extraordinary increases in crime, or in a type or types of crime; or

(2) to prevent, compensate for, or mitigate significant programmatic harm resulting from operation of the formula established under section 3755 of this title.

42 U.S.C. § 3757 (effective until August 31, 2017), transferred to 34 U.S.C. § 10158 (effective September 1, 2017)

(a) Trust fund required

A State or unit of local government shall establish a trust fund in which to deposit amounts received under this part.

(b) Expenditures

(1) In general

Each amount received under this part (including interest on such amount) shall be expended before the date on which the grant period expires.

(2) Repayment

A State or unit of local government that fails to expend an entire amount (including interest on such amount) as required by paragraph (1) shall repay the unexpended portion to the Attorney General not later than 3 months after the date on which the grant period expires.

(3) Reduction of future amounts

If a State or unit of local government fails to comply with paragraphs (1) and (2), the Attorney General shall reduce amounts to be provided to that State or unit of local government accordingly.

(c) Repaid amounts

Amounts received as repayments under this section shall be subject to section 3712g of this title as if such amounts had not been granted and repaid. Such amounts shall be deposited in the Treasury in a dedicated fund for use by the Attorney General to carry out this part. Such funds are hereby made available to carry out this part.

42 U.S.C. § 3712 (effective until August 31, 2017), transferred to 34 U.S.C. § 10102 (effective September 1, 2017)

(a) Specific, general and delegated powers

The Assistant Attorney General shall--

(1) publish and disseminate information on the conditions and progress of the criminal justice systems;

(2) maintain liaison with the executive and judicial branches of the Federal and State governments in matters relating to criminal justice;

(3) provide information to the President, the Congress, the judiciary, State and local governments, and the general public relating to criminal justice;

(4) maintain liaison with public and private educational and research institutions, State and local governments, and governments of other nations relating to criminal justice;

(5) coordinate and provide staff support to coordinate the activities of the Office and the Bureau of Justice Assistance, the National Institute of Justice, the Bureau of Justice Statistics, the Office for Victims of Crime, and the Office of Juvenile Justice and Delinquency Prevention; and

(6) exercise such other powers and functions as may be vested in the Assistant Attorney General pursuant to this chapter or by delegation of the Attorney General, including placing special conditions on all grants, and determining priority purposes for formula grants.

(b) Annual report to President and Congress

The Assistant Attorney General shall submit an annual report to the President and to the Congress not later than March 31 of each year.

8 U.S.C. § 1373

(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.