

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES CONFERENCE OF	)	
MAYORS; CITY OF CHICAGO,	)	
	)	
Plaintiffs,	)	Case No. 17-CV-5720
v.	)	
	)	Honorable Harry D. Leinenweber
JEFFERSON BEAUREGARD SESSIONS	)	
III,	)	
	)	
Defendant.	)	

**THE UNITED STATES CONFERENCE OF MAYORS’
MOTION FOR A PRELIMINARY INJUNCTION**

The United States Conference of Mayors (the “Conference”), by its undersigned attorneys, as intervening co-plaintiff with the City of Chicago, and pursuant to Federal Rule of Civil Procedure 65, hereby moves for a nationwide preliminary injunction against the three unauthorized and unconstitutional conditions concerning federal civil immigration enforcement that Defendant Jefferson Beauregard Sessions III (“Defendant” or the “Attorney General”) has attempted to place on the Byrne JAG program.

In support of this motion, the Conference submits the appended declaration of Tom Cochran, the Conference’s Chief Executive Officer and Executive Director (Exhibit 1). In further support of this motion, the Conference states as follows:

BACKGROUND

1. On August 7, 2017, the City of Chicago (“Chicago”), one of the Conference’s members, filed this action seeking declaratory and injunctive relief. (Docket (“Dkt.”) 1.) Chicago sought to invalidate three unauthorized and unconstitutional conditions concerning federal immigration enforcement that Defendant placed on the receipt of federal law enforcement funds under the Edward Byrne Memorial Justice Assistance Grant (“Byrne JAG”).

2. Specifically, Chicago challenged three of Defendant's conditions for the receipt of Byrne JAG funds, under which grant applicants must agree to (1) "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;" (2) "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;" and (3) certify compliance with 8 U.S.C. § 1373, which prohibits localities from restricting officers from sharing information regarding "citizenship or immigration status" with federal authorities. (See Conference Complaint, ¶¶ 46-57, Ex. E at 30.)

3. On August 10, 2017, Chicago moved for a preliminary injunction to enjoin these three conditions. (Dkt. 21, 22.)

4. On August 31, 2017, the Conference joined an *amicus curiae* brief in support of Chicago's motion. (Dkt. 51.)

5. On September 15, 2017, the Court granted Chicago's motion for a preliminary injunction as to two of the three challenged conditions (the "notice" and "access" conditions), finding that Defendant lacked statutory authority to impose them on grant applicants. (Dkt. 78.) The Court expressly ordered: "This injunction against imposition of the notice and access conditions is nationwide in scope, there being no reason to think that the legal issues present in this case are restricted to Chicago or that the statutory authority given to the Attorney General would differ in another jurisdiction." (*Id.* at 41.)

6. However, the Court denied Chicago's motion as to the third condition on the basis that, while 8 U.S.C. § 1373 restricts the ability of localities to *prohibit* officials from assisting in

a federal program, “it does not *require* officials to assist in the enforcement of a federal program.” (Dkt. 78 at 33 (Court’s emphasis).) The Court acknowledged that as a practical matter, Section 1373 “may effectively thwart policymakers’ ability to extricate their state or municipality from involvement in a federal program,” but concluded that under current precedent, a literal reading of Section 1373 did not run afoul of the Constitution because “only affirmative demands on states [or municipalities] constitute a violation of the Tenth Amendment.” (*Id.* at 34-35.)

7. On September 26, 2017, Defendant filed a motion to stay the nationwide application of the preliminary injunction. (Dkt. 80, 81.) Defendant argued, for the first time, that the Court lacked jurisdiction under Article III of the United States Constitution to provide relief from the unlawful conditions to any jurisdiction other than Chicago. (Dkt. 81 at 4-6.) Had Defendant made that argument in his opposition to Chicago’s motion for preliminary injunction, the Conference could have come forward at that time, joined in Chicago’s motion, and avoided the need for this separate motion.

8. Because of Defendant’s new objection to Chicago’s Constitutional standing and the Court’s authority, the Conference appeared before this Court on September 28, 2017, to advise the Court of its intention to seek leave to intervene. On October 6, 2017, the Conference filed a motion to intervene as a co-plaintiff in this action, together with a complaint against Defendant.¹

¹ The Court has not ruled on the Conference’s motion to intervene. At the October 11, 2017 presentment of that motion, however, the Conference sought and obtained leave to file this motion prior to the Court granting intervention, so as not to further delay relief to the Conference’s members. Defendant did not object to the filing of this motion prior to intervention.

9. On October 11, 2017, the Attorney General issued letters to Chicago, New York, New Orleans and Philadelphia, all of which are Conference members. (See Ex. 1, Cochran Declaration (“Decl.”) at ¶¶ 16, 21, 40.) In the letters, the Attorney General makes clear that he *will require* cities and their officers to affirmatively assist in federal immigration enforcement as a condition of receiving Byrne JAG funds. (*Id.* at ¶ 40, Ex. F.) Specifically, the Attorney General makes clear that, notwithstanding this Court’s injunction order, he interprets Section 1373 to require (1) that officers be permitted to share not just information regarding “citizenship and immigration status,” as is required by Section 1373 itself, but also to give advance notice of an alien, or suspected alien’s, release from custody, and (2) that cities affirmatively commit their time and resources to communicating DOJ’s interpretation of Section 1373 to each of its officers, and certify to DOJ that it has done so. (*Id.*)

10. Because the Attorney General’s October 11 letters make plain that, contrary to his own prior representations and this Court’s ruling, he will require localities to affirmatively aid in federal civil immigration enforcement, on October 13, 2017, Chicago moved for partial reconsideration of the Court’s prior ruling as it relates to Section 1373. (Dkt. 99, 101.)

11. On October 13, 2017, this Court denied Defendant’s motion to stay the nationwide scope of the Court’s preliminary injunction order. (Dkt. 97, 98.) Thereafter, Defendant filed a similar stay motion before the United States Court of Appeals for the Seventh Circuit. On October 20, 2017, the Court of Appeals suspended all proceedings on appeal, including any ruling on the Attorney General’s stay motion, because Chicago’s motion for partial reconsideration in this Court divested the appellate court of jurisdiction.

12. The Conference now files this motion for a preliminary injunction to obtain for its members the same injunctive relief that Chicago already has established is necessary and proper.

ARGUMENT

13. The Conference's complaint asserts the same claims on behalf of the Conference and its members that this Court relied upon in granting Chicago's motion for a preliminary injunction. The Conference now adopts the same arguments that Chicago made in its motion for preliminary injunction, and in its separate motion for partial reconsideration.

14. Specifically, the Conference hereby joins in Chicago's motion for a preliminary injunction (Dkt. 21), adopts by reference here the arguments raised by Chicago in support of its injunction motion (Dkt. 22, 69), and asks that, at a minimum, this Court grant the Conference the same nationwide injunction granted to Chicago (Dkt. 78) and rule that the order will issue in favor of the Conference as intervening co-plaintiff in this action. Additionally, the Conference joins in the City's motion for partial reconsideration (Dkt. 99), adopts by reference the arguments raised by Chicago in support thereof (Dkt. 101), and asks that this Court enjoin Defendant from imposing the condition that Fiscal Year 2017 Byrne JAG recipients must certify their compliance with 8 U.S.C. § 1373, pending resolution of this action on the merits.

15. In short, for the reasons set forth in these supporting briefs and below, the Conference is entitled to the same injunctive relief granted to Chicago in this action.

16. In ruling on the City's motion, this Court specifically found that Chicago was likely to succeed on its claims against the notice and access conditions (Dkt. 78 at 11-24), that it would suffer irreparable harm in the absence of injunctive relief (*id.* at 35-39), and that the balance of harms and public interest weighed in favor of an injunction (*id.* at 39-41).

17. The same is true of the Conference's other members, whose likelihood of success, risk of irreparable harm, need for relief, and the related public interest likewise call for an injunction. (*See* Ex. 1, Cochran Decl. at ¶¶ 18-42.) Indeed, in seeking a stay of the injunction

this Court issued, Defendant did not challenge Chicago's right to this relief in any way, and thus the Conference does not exhaustively address each of these elements here.

18. Rather, in seeking a stay, Defendant has argued that nationwide injunctive relief should not have been entered in a case in which Chicago was the only interested plaintiff. Although, as the Court already ruled (*see* Dkt. 97, 98), Defendant is incorrect to argue that the Court lacked authority to grant Chicago nationwide injunctive relief, Defendant cannot make this claim with respect to the injunction the Conference now seeks. That is because the Conference represents the interests of over 1,400 cities across the United States. (Ex. 1, Cochran Decl. at ¶5.) Its currently active members, the majority of which are applicants for, and recipients of, Byrne JAG funds, are located across the country. (*Id.* at ¶¶ 5, 11-16, Ex. A.) Among the 82 cities whose mayors currently serve in a leadership role at the Conference, 71 member cities have been directly allocated over \$21.5 million in funds for the Fiscal Year 2017 Byrne JAG program. (*Id.* at ¶ 11, Ex. A.) These cities alone are found in 31 states and the District of Columbia, and they rely upon the allocated funds for a variety of critical law enforcement programs. (*Id.* at ¶¶ 11, 15.) Given the Conference's participation in this action, there can be no question as to the need for nationwide injunctive relief.

19. Moreover, like Chicago, the Conference's other members rely upon Byrne JAG funds to fund the purchase and operation of critical, life-saving equipment, training and programming. (*Id.* at ¶ 15.) Yet the Conference and its members also recognize that the conditions imposed upon them this year by the Attorney General threaten to undermine the relationship between local law enforcement and immigrants in their communities that local law enforcement deems necessary to the successful prevention and prosecution of crime, and to the overall safety of their cities. (*Id.* at ¶¶ 19-43.) The Attorney General's unauthorized and

unlawful conditions thus leave the Conference and its members with the same “Hobson’s choice” this Court held constituted irreparable harm for Chicago (see Dkt. 78 at 35-39): forego funding needed to save lives or risk losing the trust of their immigrant communities, which itself saves lives. (*Id.* at ¶¶ 42-43.) As the Conference’s CEO and Executive Director testified, “No Conference member should have to make that choice.” (*Id.* at ¶ 43.) Indeed, under well-established law, the pressure to accept the Attorney General’s unauthorized conditions itself infringes on the sovereignty of the Conference’s members and therefore constitutes irreparable injury, regardless of their individual policy choices. (See Dkt. 23 at 21-22 (citing cases).)

20. Under the circumstances, there is no just reason for the Court to deny this motion by the Conference for the same preliminary injunctive relief issued by the Court in favor of Chicago and against Defendant, see Dkt. 78, or to deny the Conference any further relief granted in response to Chicago’s motion for partial reconsideration.

WHEREFORE, The United States Conference of Mayors prays that this Court grant it a preliminary injunction against Defendant in the form of the proposed order attached to this motion as Exhibit 2.

Dated: October 23, 2017

Respectfully submitted,

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THE UNITED STATES CONFERENCE
OF MAYORS

By: /s/ Brian C. Haussmann
One of Its Attorneys

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 23, 2017, I electronically filed the foregoing **The United States Conference of Mayors' Motion for Preliminary Injunction** with the Clerk of the Court for the United States District Court, Northern District of Illinois, Eastern Division, by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

_____/s/ Brian C. Haussmann

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
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THE UNITED STATES CONFERENCE	)	
OF MAYORS; CITY OF CHICAGO,	)	
	)	
Plaintiffs,	)	Case No. 17-CV-5720
v.	)	
	)	Honorable Harry D. Leinenweber
JEFFERSON BEAUREGARD SESSIONS	)	
III,	)	
	)	
Defendant.	)	

DECLARATION OF TOM COCHRAN

I, Tom Cochran, declare as follows:

1. I am the Chief Executive Officer and Executive Director of the United States Conference of Mayors (the “Conference”). In that role, I serve as the chief administrative officer of the Conference, oversee the day-to-day operations of the Conference, and direct its staff. I have served the Conference in that capacity since 1987.

2. I submit this declaration in support of the Conference’s motion for a preliminary injunction. I have personal knowledge of each of the matters stated herein, and if called to testify would testify consistent with this declaration.

The Conference and Its Members

3. The Conference is a non-profit association organized under the laws of Illinois and with its offices in the District of Columbia.

4. The Conference was formed in 1932, during the midst of the Great Depression, when the nation’s cities were close to bankruptcy and their residents were largely unemployed and without access to sufficient food, housing, law enforcement and other necessities. In response to

the appeals of mayors across the country, Congress created a \$300 million federal assistance program for cities, marking the first time in the nation's history that federal relief was provided directly to cities. A few weeks later, the Conference was founded to coordinate cities' interactions with the federal government.

5. Today the Conference is the official non-partisan organization of United States cities with populations of 30,000 or more. As such, the Conference represents the interests of over 1,400 cities in the United States, including cities in the Northern District of Illinois and in almost every other jurisdiction in the country. Over 150 million Americans reside in these cities.

6. The primary roles of the Conference are to promote the development of an effective national city and metro-area-focused policy, to strengthen federal-city relationships, to ensure that federal policy meets urban needs, to provide mayors with leadership and management tools that allow them to do their jobs better, and to create a forum in which mayors can share ideas, information and best practices, and through which cities can coordinate on shared policy goals.

7. Conference members speak with a united voice on organizational policies and goals. Mayors contribute to the development of national urban policy by serving on one or more of the conference's standing committees or in another leadership role.

8. A true and correct list of member cities whose mayors are currently serving in leadership roles is attached as Exhibit A to this declaration. As reflected on Exhibit A, member cities whose mayors are currently serving in a leadership role are located across the country, in 34 states and the District of Columbia.

The Conference's Members Rely Upon Byrne JAG Funding.

9. The Edward Byrne Memorial Justice Assistance Grant ("Byrne JAG") program is a federal formula grant program that was established in 2006 to provide federal funding directly

to states and municipalities to help those local jurisdictions with important local law enforcement objectives. *See* Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162.

10. Since 2006, most of the Conference's members have applied for and received Byrne JAG grant funds. Indeed, many Conference members have applied for and received funds in each of the program's 11 years of operation.

11. For example, of the 82 member cities (including the District of Columbia) whose mayors are currently serving in a Conference leadership role, 71 cities have been directly allocated funds for the Fiscal Year 2017 Byrne JAG program. (*See* Ex. A.) These include small cities such as Lima, Ohio, a city of approximately 38,000 residents that has been allocated \$35,866 in funds, and Beaverton, Oregon, a city of approximately 89,000 residents that has been allocated \$13,700 in funds.¹ (*Id.*) It also includes large cities, such as Houston, Texas, a city of over 2 million residents that has been allocated \$1,668,542 in funds; Los Angeles, California, a city of almost 3.8 million residents that has been allocated \$1,555,265 in funds; and New York, New York, a city of over 8.1 million residents that has been allocated \$4,120,447 in funds. Together, these 71 Conference member cities have been directly allocated over \$21.5 million in Byrne JAG funds for the Fiscal Year 2017. (*Id.*)

12. Still other Conference members receive Byrne JAG funds indirectly through grants made to the states. These are typically smaller cities that receive a small share of the total Byrne JAG funds allocated. In Fiscal Year 2017, for example, the Office of Justice Programs will not make direct grants to cities that, under the Byrne JAG formula, would receive less than \$10,000. (*See* <https://www.bja.gov/funding/JAGLocal16.pdf>, at p. 9 (last visited October 18, 2017).) This

¹ Fund allocations are posted by the Department of Justice, Office of Justice Programs, and are available at <https://www.bja.gov/Programs/jag/17jagallocations.html> (last visited October 17, 2017.)

includes numerous of the Conference's member cities. For example, Conference member Piscataway, New Jersey receives funds through a grant made directly to the State of New Jersey that is then shared among its municipalities.

13. Still other Conference members receive Byrne JAG funds indirectly through grants made to counties or other subdivisions of state and local governments.

14. Most of the Conference's members are allocated Byrne JAG funds, either directly or indirectly through a state or countywide grant.

15. In my role for the Conference, my staff and I work closely with our member mayors on policy matters relating to the Byrne JAG program. In that role, I am privy to the many and diverse uses to which Conference members put Byrne JAG funds. These include, for example, the following Conference members:

- a. Chicago, Illinois has used Byrne JAG funds to support projects ranging from critical law enforcement equipment and overtime to community policing outreach and engagement.
- b. Iowa City, Iowa uses Byrne JAG funds to promote traffic safety, to establish a search and rescue program aimed at individuals at risk for wandering, to partially fund a drug task force, and to purchase equipment.
- c. Los Angeles, California uses Byrne JAG funds for its Community Law Enforcement and Recovery (CLEAR) program, which aims to reduce gang violence in the city and rehabilitate communities that have experienced significant crime. The program promotes and funds special criminal investigative units, an aggressive vertical prosecutorial program, probation and parole officers, youth intervention organizations, and schools.
- d. New Orleans, Louisiana has used Byrne JAG funds on gun violence reduction initiatives, alternatives to incarceration for municipal court, diversion programs for eligible defendants with mental illness, pre-trial and probation advocacy, domestic violence monitoring court, and technology upgrades including body cameras and audio surveillance equipment for its police force.
- e. New York, New York uses Byrne JAG funds to support a wide range of programs, including efforts to improve the collection, organization and evaluation of criminal justice data, a specialized unit that investigates illegal

hotels, building violations and illegal adult establishments, initiatives to reduce the number of people with mental and behavioral needs who cycle through the criminal justice system by connecting them with interventions and services, special programs to support the prosecution of drug sellers who traffic large quantities of narcotics, and initiatives to ensure the safety of students and reduce crime in schools. In addition, the City's five District Attorneys use Byrne JAG funds to support many programs, including the Kings County Drug Treatment Alternative-to-Prison program, which diverts hundreds of nonviolent offenders to community-based residential drug treatment programs, and the New York County Cybercrime and Identity Theft Bureau, which protects the public and institutions from organized cybercrime and identity theft schemes.

- f. Piscataway, New Jersey has used Byrne JAG funds for a variety of technology equipment, including outfitting patrol cars with mobile video recorders, a license plate recognitions system, traffic radar systems and body cameras.
- g. Portland, Oregon has used Byrne JAG funds to support its New Options for Women (NOW) program, which provides services to women who have experienced sexual exploitation while working in the commercial sex industry.
- h. Providence, Rhode Island uses Byrne JAG funds to pay personnel to conduct targeted enforcement patrols and to contract with Family Service of Rhode Island for the services of a part-time Bilingual Police Liaison.
- i. Sacramento, California uses Byrne JAG funds to support the ongoing maintenance and operations of its Police Department's helicopter program.

16. Many other Conference members receive Byrne JAG funds and use them for still different, but no less critical, law enforcement purposes. These members include, as further examples, cities as diverse as Cambridge, MA; Washington, D.C.; Denver, CO; Houston, TX; Iowa City, IA; Menlo Park, CA; Ithaca, NY; Madison, WI; Oakland, CA; Rochester, NY; Salinas, CA; San Jose, CA; Philadelphia, PA; Pittsburgh, PA; Santa Ana, CA; Seattle, WA; Santa Fe, NM; Sommerville, MA; Syracuse, NY; and Tucson, AZ. They also include those member cities listed separately on Exhibit A, and many other cities like them.²

² The Office of Justice Programs has published additional examples of program successes in varied jurisdictions, including in additional Conference member cities. See <https://www.bja.gov/SuccessStoryList.aspx> (last visited October 17, 2017).

17. Without Byrne JAG funds, the Conference's members would have to shut down some, or all, of these programs, change their staffing, scope, or goals, or divert funds from other policing objectives to sustain them.

The Conference and Its Members Have Long Promoted a Policy of Cooperation Between Local Law Enforcement and Immigrants in Their Cities.

18. The Conference's member cities are home to immigrant populations that are both recent arrivals and multigenerational families. The Conference proudly recognizes that cities are diverse, multicultural centers, and that their diversity reflects core American values, fosters economic prosperity and opportunity, enriches cities' cultures, and keeps our nation competitive and strong.

19. In addition, the Conference and its members recognize that immigrant populations are necessary and critical to effective local law enforcement, over which the Conference believes each individual city should have discretion and control.

20. For example, in exercising its discretion over local law enforcement policy, Conference member Chicago has made the considered judgment that devoting local resources to civil immigration enforcement would be detrimental to community safety, and that concerns for safety are best addressed by promoting a policy of cooperation between local law enforcement and immigrants. This policy judgment is codified in Chicago's "Welcoming City Ordinance." See Chicago Municipal Code § 2-173.

21. Many of the Conference's other members have adopted similar policies. These include, for example, Gary, Indiana; Los Angeles, California; New York, New York; Philadelphia, Pennsylvania; and Providence, Rhode Island.³

³ Gary -- Ordinance No. 9100;
Los Angeles -- LAPD Intradepartmental Correspondence Dated July 3, 2014 (available at <https://www.ilrc.org/detainer-policies>);

22. These policies are rooted in the considered judgment of each city that restricting entanglement with federal immigration enforcement will secure and enhance the community's trust in local law enforcement, which is vital to the work of public safety in these cities. Local law enforcement relies upon all community members – regardless of immigration status – to report crimes, serve as witnesses, and assist in investigations and prosecutions. Indeed, in the experience of the Conference and many of its members, even the *perception* that local law enforcement is assisting in immigration enforcement can erode trust, disrupt lines of communication, and make law enforcement's job much more difficult.

The Conference Opposes Punitive “Sanctuary Jurisdiction” Policies Such as Those Challenged in this Action.

23. The Conference has for years opposed attempts by the federal government to penalize cities that adopt policies such as those cited above. In 2015, for example, the Conference opposed Senate Bill 2146, the “Stop Sanctuary Policies and Protect Americans Act,” which proposed to deny Community Development Block Grants and other federal aid to cities that adopted policies like those identified above. The Conference did so because in its estimation, shifting the federal responsibility of enforcing civil immigration law to local governments diverts critical resources from their law enforcement agencies, compromises public safety, and hinders local police department policies designed to encourage all police to work with immigrant communities to prevent and solve crimes. The Conference has continued to oppose similar legislation, none of which has passed Congress.

New York – Admin. Law N.Y. § 14-154 (available at <https://www.ilrc.org/sites/default/files/resources/nyc.pdf>);
Philadelphia – Executive Order No. 16 (available at <https://www.ilrc.org/detainer-policies>);
Providence – Resolution of the City Council (available at https://www.ilrc.org/sites/default/files/resources/providence_resolution.pdf).

24. More recently, Conference members met from June 23-26, 2017 for this year's annual meeting. The annual meeting was attended by over 250 mayors from cities across the country, including those from nearly every state and the Commonwealth of Puerto Rico. A true and correct copy of a list of mayors registered to attend the annual meeting is attached as Exhibit B to this declaration.

25. At the annual meeting, the Conference's members adopted three resolutions recognizing the importance of immigrants to their communities, supporting immigrant rights, standing against policies that target immigrant communities and opposing the current Administration's punitive sanctuary city policies.

26. The adoption of a resolution is the principal means by which the Conference speaks on matters of policy. Each year, the Conference shares its adopted resolutions with Congress and the President of the United States.

27. The Conference passes resolutions only after careful study and consideration. Each resolution must first be adopted by a standing committee of members devoted to considering similar issues and then be presented to the full membership in attendance at the annual meeting for consideration, debate and a vote.

28. On May 25, 2017, the mayor of Austin, Texas proposed one of three resolutions devoted to immigration matters, titled "Opposing Punitive Sanctuary Jurisdiction Policies." This resolution was advanced by the standing committee on Criminal and Social Justice, and it was passed by the membership on June 26, 2017. A true and correct copy of this resolution is attached as Exhibit C to this declaration.

29. This resolution reflected the Conference members' considered judgment that, among other things:

- a. Many local jurisdictions have made the determination that their local law enforcement efforts and personnel have neither the authority, the priority, nor the resources to serve as immigration enforcement officers;
- b. Trust between local law enforcement and the communities they serve is critical to preventing, solving, and prosecuting crimes, and many jurisdictions have made the determination that having local law enforcement officers serve as immigration officers would break that trust;
- c. Many local jurisdictions and authorities do not have the law enforcement resources to act as immigration officers at the expense of their local and state law enforcement priorities; and
- d. Cities and other local government entities need to have the discretion to make individualized determinations relative to local values, expenditure of resources, priorities, and liabilities assumed, all taking into account:
 - i. Immigrants residing in our nation's cities must be able to trust the police and all of city government and that their 4th Amendment rights will be guaranteed; and
 - ii. The efforts of local law enforcement to build trust and supportive relationships with all communities, including immigrant communities, is essential to preventing and prosecuting crime and helping victims.

(Exhibit C at 1-2.)

30. Accordingly, the Conference resolved to:

- a. Urge the Administration to repeal Executive Order 13768 and its overly broad and uncertain definition of what constitutes a “sanctuary jurisdiction”;
- b. Oppose punitive “sanctuary jurisdiction” policies that limit local control and discretion;
- c. Urge Congress, the Administration, and states to pursue immigration enforcement policies that recognize that local law enforcement has limited resources and community trust is critical to local law enforcement and the safety of our communities;
- d. Oppose federal and state policies that commandeer local law enforcement or require local authorities to (i) violate, or be placed at risk of violating, a person's 4th Amendment rights, or (ii) Otherwise assist federal immigration authorities beyond what is determined by local policy.

(Exhibit C at 2.)

31. The Conference and its members passed two additional resolutions urging the Administration to respect local law enforcement choices and the policy choices of cities in interacting with their immigrant communities.

32. First, on June 26, 2017, the Conference passed a resolution “Supporting Immigrants, Refugees, and Asylum Seekers and Standing Against Discriminatory or Harmful Policies that Target These Vulnerable Communities.” A true and correct copy of this resolution is attached as Exhibit D to this declaration.

33. This resolution recognized that cities across America are home to immigrant populations that are both recent arrivals and multigenerational families, that those immigrants contribute to their cities in important ways, and that the administration has nonetheless antagonized and intimidated those communities through executive orders and by threatening punitive actions against so-called “sanctuary cities” like those challenged in this action. (Ex. D at 1.) The Conference thus resolved to call on Congress to act against policies that discriminate against and target immigrants, and to oppose “the administration’s efforts to hold immigrants hostage as bargaining chips to threaten withholding federal funding from cities across the nation.” (*Id.*)

34. Second, on June 26, 2017, the Conference passed a resolution “Supporting Immigrant Rights.” A true and correct copy of this resolution is attached as Exhibit E to this declaration.

35. This resolution recognized that the United States has always been a nation of immigrants, that it is enriched by the diversity of immigrants, that our cities are diverse, multicultural centers that reflect core American values and that foster economic prosperity, and that data has shown that so-called “sanctuary cities” are both stronger economically and safer than other cities. (Ex. E at 1.) In addition, the resolution recognized that the federal government has

recently sought to restrict funding to sanctuary jurisdictions, coerce and compel cities and their employees to comply with federal immigration detainer requests and to prolong the detention of suspected aliens in the custody of local law enforcement officials, and that this undermines mayors' ability to ensure the safety of their communities by eroding trust between local law enforcement and city residents. (*Id.* at 1-2.) The Conference thus resolved to "call[] for an end to unconstitutional federal funding threats to states and local governments in an effort to coerce and compel them into implementing federal immigration law," and to "urge members of Congress to withdraw legislation that attempts to cut local law enforcement funding necessary to ensure the safety of our communities." (*Id.*)

36. Each of these resolutions passed with a wide majority of the Conference members present for the annual meeting. In fact, after conclusion of a vote on a proposed resolution that passes, a member mayor who attended the vote may request to be recorded as having voted "No" on that specific resolution. Only five mayors of the over 250 mayors in attendance at the annual meeting recorded such a vote as to any of these three resolutions.

37. These policies reflect the considered, collective judgment of the Conference and its members that local law enforcement should not be coerced, through the threat of defunding critical law enforcement programs, into engaging in federal civil immigration enforcement, particularly at the cost of alienating city residents and hindering the prevention and prosecution of serious, often violent, crimes. To put it simply, doing so will make cities across the country less safe.

The Attorney General's Conditions are Inconsistent with Conference Policy and the Law Enforcement Priorities of the Conference's Members.

38. Notwithstanding the Conference and its members' policy judgment on these critical matters affecting local law enforcement and community safety, the Department of Justice ("DOJ") and the Attorney General have attempted to coerce the Conference's members into agreeing to

three conditions of receiving Byrne JAG funds for the fiscal year 2017. Under these conditions, Conference members must agree to (1) “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;” (2) “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;” and (3) certify compliance with 8 U.S.C. § 1373, which prohibits localities from restricting officers from sharing information regarding “citizenship or immigration status” with federal authorities. (See Conference Complaint, ¶¶ 46-57, Ex. E at 30.)

39. Even after the Court granted a preliminary injunction against the first two of these three conditions, the DOJ and Attorney General have continued their attempts to coerce the Conference’s members into assisting in federal immigration enforcement. On September 15, 2017, the Court granted Chicago’s motion for a preliminary injunction as to the first two of these three challenged conditions (the “notice” and “access” conditions), finding that the Attorney General lacked statutory authority to impose them on grant applicants. (See Docket (“Dkt.”) 78.) The Court denied Chicago’s motion as to the third condition (regarding Section 1373) on the basis that, while Section 1373 restricts the ability of localities to prohibit officials from assisting in a federal program, “it does not *require* officials to assist in the enforcement of a federal program.” (Dkt. 78 at 33 (Court’s emphasis).)

40. On October 11, 2017, the DOJ sent letters to four of the Conference’s member cities including, in addition to Chicago, New Orleans, New York and Philadelphia. True and correct copies of these letters are attached as group Exhibit F to this declaration. In the letters, DOJ makes

clear that it *will require* cities and their officers to affirmatively assist in federal immigration enforcement as a condition of receiving Byrne JAG funds. DOJ does so by (1) interpreting Section 1373 to require that officers be permitted to share not just information regarding “immigration status,” but also to give advance notice of an alien, or suspected alien’s, release from custody, and (2) requiring these cities to affirmatively communicate DOJ’s interpretation of Section 1373 to each of its officers, and to certify to DOJ that it has done so.

41. By attempting to force cities to provide notice to federal immigration authorities of any suspected alien with whom local law enforcement comes into contact and unlimited access to local law enforcement facilities to conduct custodial interrogations of suspected aliens, and to affirmatively require local law enforcement officers to communicate immigration status, custody status and release dates to federal officers, the Conference submits that the Attorney General has overstepped his statutory and Constitutional authority. If permitted to continue insisting upon such conditions, the Attorney General will leave the Conference’s members with an unacceptable choice: forego federal law enforcement funds allocated to them by Congress and needed for critical local equipment, training and programming, or submit to the Attorney General’s conditions and, in doing so, jeopardize their residents’ and officers’ safety.

42. No Conference member should have to make that choice. Accordingly, I submit this declaration in support of the Conference’s motion to preliminarily enjoin the Attorney

General from imposing these unauthorized and unlawful conditions on the Conference's members.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on October 19 2017.

By: 
Tom Cochran

EXHIBIT A



THE UNITED STATES CONFERENCE OF MAYORS

1620 EYE STREET, NORTHWEST
 WASHINGTON, D.C. 20006
 TELEPHONE (202) 293-7330
 FAX (202) 293-2352
 TDD (202) 293-9445
 URL: www.usmayors.org/uscm

2017 ELECTED AND APPOINTED LEADERSHIP

Mayor	City	State	Population	Received 2017 Byrne JAG Grant Allocation?	Amount of 2017 Byrne JAG Grant Allocation
William A. Bell, Sr.	Birmingham	AL	212,237	Yes	\$285,149
Mark Stodola	Little Rock	AR	193,524	Yes	\$249,719
John Giles	Mesa	AZ	457,587	Yes	\$161,037
Greg Stanton	Phoenix	AZ	1,445,632	Yes	\$750,906
Mark W. Mitchell	Tempe	AZ	175,826	Yes	\$64,191
Tom Tait	Anaheim	CA	336,265	Yes	\$89,506
Acquanetta Warren	Fontana	CA	196,069	Yes	\$57,226
Robert Garcia	Long Beach	CA	462,257	Yes	\$189,542
Eric Garcetti	Los Angeles	CA	3,792,621	Yes	\$1,555,265
Jill Techel	Napa	CA	76,915	Yes	\$20,498
Edwin M. Lee	San Francisco	CA	805,235	Yes	\$524,845
Sam Liccardo	San Jose	CA	945,942	Yes	\$251,931
Miguel A. Pulido	Santa Ana	CA	324,528	Yes	\$102,413
Helene Schneider	Santa Barbara	CA	88,410	Yes	\$21,367
Christopher L. Cabaldon	West Sacramento	CA	48,744	Yes	\$19,885
Michael B. Hancock	Denver	CO	600,158	Yes	\$423,861
Joe Ganim	Bridgeport	CT	144,229	Yes	\$165,793
Neil M. O'Leary	Waterbury	CT	110,366	Yes	\$57,101
Muriel Bowser	Washington	DC	646,449	Yes	\$1,444,081
Juan Carlos Bermudez	Doral	FL	45,704	No	\$0
Joy Cooper	Hallandale Beach	FL	38,712	Yes	\$17,501
Philip Levine	Miami Beach	FL	87,779	Yes	\$68,114
Oliver G. Gilbert, III	Miami Gardens	FL	109,680	Yes	\$57,303
Buddy Dyer	Orlando	FL	238,300	Yes	\$174,067
Frank C. Ortis	Pembroke Pines	FL	154,750	Yes	\$22,349
Rick Kriseman	St. Petersburg	FL	244,769	Yes	\$156,275
Bob Buckhorn	Tampa	FL	335,709	Yes	\$156,954
Kasim Reed	Atlanta	GA	420,003	Yes	\$476,147
Hardie Davis, Jr.	Augusta	GA	200,549	Yes	\$30,095
Michael Bodker	Johns Creek	GA	76,728	No	\$0

Mayor	City	State	Population	Received 2017 Byrne JAG Grant Allocation?	Amount of 2017 Byrne JAG Grant Allocation
Kirk Caldwell	Honolulu	HI	991,788	Yes	\$345,893
T.M. Franklin 'Frank' Cownie	Des Moines	IA	203,433	Yes	\$142,719
Roy D. Buol	Dubuque	IA	57,637	Yes	\$18,782
Chris Koos	Normal	IL	52,497	No	\$0
James Brainard	Carmel	IN	79,191	No	\$0
Karen M. Freeman-Wilson	Gary	IN	80,294	Yes	\$64,612
Pete Buttigieg	South Bend	IN	101,168	Yes	\$65,145
Greg Fischer	Louisville	KY	741,096	Yes	\$587,515
Mitchell J. Landrieu	New Orleans	LA	343,829	Yes	\$269,516
Martin J. Walsh	Boston	MA	617,594	Yes	\$417,809
Jon Mitchell	New Bedford	MA	95,072	Yes	\$94,820
Setti D. Warren	Newton	MA	85,146	No	\$0
Virgil 'Virg' Bernero	Lansing	MI	114,297	Yes	\$101,260
Bryan K. Barnett	Rochester Hills	MI	70,995	No	\$0
Elizabeth B. Kautz	Burnsville	MN	61,747	No	\$0
Betsy Hodges	Minneapolis	MN	382,578	Yes	\$497,392
Ardell F. Brede	Rochester	MN	106,769	Yes	\$24,500
Sylvester 'Sly' James, Jr.	Kansas City	MO	459,787	Yes	\$486,100
Miles Atkins	Mooresville	NC	32,711	No	\$0
J. Christian Bollwage	Elizabeth	NJ	124,969	Yes	\$116,700
Ras J. Baraka	Newark	NJ	277,140	Yes	\$327,993
Brian C. Wahler	Piscataway	NJ	56,044	No	\$0
Richard J. Berry	Albuquerque	NM	545,852	Yes	\$438,097
Kenneth D. Miyagishima	Las Cruces	NM	97,618	Yes	\$26,737
Javier Gonzales	Santa Fe	NM	67,947	Yes	\$18,313
Carolyn G. Goodman	Las Vegas	NV	583,756	Yes	\$985,128
Hillary Schieve	Reno	NV	225,221	Yes	\$94,859
Bill de Blasio	New York	NY	8,175,133	Yes	\$4,120,447
Stephanie A. Miner	Syracuse	NY	145,170	Yes	\$94,398
Nan Whaley	Dayton	OH	141,359	Yes	\$128,391
Lydia L. Mihalik	Findlay	OH	41,202	No	\$0
David J. Berger	Lima	OH	38,771	Yes	\$35,886
Mick Cornett	Oklahoma City	OK	579,999	Yes	\$429,823
Denny Doyle	Beaverton	OR	89,803	Yes	\$13,700
Shane T. Bemis	Gresham	OR	105,594	Yes	\$63,620
Ed Pawlowski	Allentown	PA	118,032	Yes	\$57,398
William Peduto	Pittsburgh	PA	305,704	Yes	\$223,896
Jorge O. Elorza	Providence	RI	178,042	Yes	\$212,112

Mayor	City	State	Population	Received 2017 Byrne JAG Grant Allocation?	Amount of 2017 Byrne JAG Grant Allocation
Steve Benjamin	Columbia	SC	129,272	Yes	\$79,773
Joseph T. McElveen, Jr.	Sumter	SC	40,524	No	\$0
Kim McMillan	Clarksville	TN	132,929	Yes	\$60,049
Madeline Anne Rogero	Knoxville	TN	178,874	Yes	\$111,480
Steve Adler	Austin	TX	790,390	Yes	\$261,879
Mike Rawlings	Dallas	TX	1,197,816	Yes	\$662,975
Chris Watts	Denton	TX	113,383	Yes	\$25,004
Sylvester Turner	Houston	TX	2,099,451	Yes	\$1,668,542
Harry LaRosiliere	Plano	TX	259,841	Yes	\$33,450
Jackie Biskupski	Salt Lake City	UT	186,440	Yes	\$212,841
Marilyn Strickland	Tacoma	WA	198,397	Yes	\$175,075
James J. Schmitt	Green Bay	WI	104,057	Yes	\$50,944
Paul R. Soglin	Madison	WI	233,209	Yes	\$91,240
Total					\$21,529,934

EXHIBIT B



THE UNITED STATES CONFERENCE OF MAYORS



THE UNITED STATES CONFERENCE OF MAYORS
85TH ANNUAL MEETING

June 23-26, 2017 in Miami Beach, FL

Attending Mayors*254 mayors have registered.***Alabama**

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David Mejia

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EXHIBIT C



THE UNITED STATES CONFERENCE OF MAYORS

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WASHINGTON, D.C. 20006
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FAX (202) 293-2352
TDD (202) 293-9445
URL: www.usmayors.org/uscm

Adopted June 26, 2017

OPPOSING PUNITIVE SANCTUARY JURISDICTION POLICIES

WHEREAS, many local jurisdictions have made the determination that their local law enforcement efforts and personnel have neither the authority, the priority, nor the resources to serve as immigration enforcement officers; and

WHEREAS, trust between local law enforcement and the communities they serve is critical to preventing, solving, and prosecuting crimes, and many jurisdictions have made the determination that having local law enforcement officers serve as immigration officers would break that trust; and

WHEREAS, local authorities cannot detain a person on the basis of an ICE warrantless or other civil detainer without exposing themselves to lawsuits under the 4th Amendment to the Constitution; and

WHEREAS, many local jurisdictions and authorities do not have the law enforcement resources to act as immigration officers at the expense of their local and state law enforcement priorities; and

WHEREAS, the 10th Amendment to the Constitution puts limits on the federal commandeering of state and local law enforcement personnel and resources; and

WHEREAS, President Trump issued Executive Order 13768, *Enhancing Public Safety in the Interior of the United States*, on January 25, 2017; and

WHEREAS, the Executive Order defines a sanctuary jurisdiction as one that does not comply with 8 U.S.C. 1373 or which has in effect a statute, policy, or practice that prevents or hinders the enforcement of unspecified federal laws; and

WHEREAS, this definition for what constitutes a sanctuary jurisdiction,' subject to potential sanctions, is imprecise and susceptible to an ever increasingly broad definition; and

WHEREAS, Attorney General Jeff Sessions has recently issued a memorandum that indicates that while this definition of sanctuary jurisdiction currently only relates to willful violations of 8 USC §1373, but that the Administration also reserves the ability to broaden the definition and application of such jurisdictions; and

WHEREAS, the Appendix to the President's recently submitted FY18 Budget contains proposed legislation that would explicitly and statutorily broaden the application of the definition of sanctuary jurisdictions to include jurisdictions that did not comply with warrantless and civil detainer requests among other presently voluntary activity related to immigration enforcement; and

WHEREAS, several bills have been introduced in Congress that call for a punitive, sanctuary jurisdiction approach to local governments that do not act as immigration agents; and

WHEREAS, states, including Texas, have passed or are considering legislation that would compel cities and other local entities to act as immigration agents; and

WHEREAS, courts have ruled that immigration policy is a federal matter and that the states should refrain from setting immigration enforcement policy; and

WHEREAS, state lawmaking regarding immigration enforcement has and could lead to conflicting mandates for cities and local officials; and

WHEREAS, The United States Conference of Mayors recognizes that immigrants bring significant social, economic, and cultural benefits to communities nationwide, and mayors in cities big and small foster welcoming and secure cities for all residents, regardless of who they are or where they come from; and

WHEREAS, cities and other local government entities need to have the discretion to make individualized determinations relative to local values, expenditure of resources, priorities, and liabilities assumed, all taking into account that:

- Immigrants residing in our nation's cities must be able to trust the police and all of city government and that their 4th Amendment rights will be guaranteed; and
- The efforts of local law enforcement to build trust and supportive relationships with all communities, including immigrant communities, is essential to preventing and prosecuting crime and helping victims;

NOW, THEREFORE, BE IT RESOLVED that The United States Conference of Mayors:

- Urges the Administration to repeal Executive Order 13768 and its overly broad and uncertain definition of what constitutes a sanctuary jurisdiction; and
- Opposes punitive sanctuary jurisdiction' policies that limit local control and discretion, and
- Urges Congress, the Administration, and the states to pursue immigration enforcement policies that recognize that local law enforcement has limited resources and community trust is critical to local law enforcement and the safety of our communities; and

BE IT FURTHER RESOLVED that The United States Conference of Mayors opposes federal and state policies that commandeer local law enforcement or require local authorities to:

- Violate, or be placed at risk of violating, a person's 4th Amendment rights;
- Expend limited resources to act as immigration agents; or
- Otherwise assist federal immigration authorities beyond what is determined by local policy; and

BE IT FURTHER RESOLVED that The United States Conference of Mayors opposes state legislation and policies regarding immigration enforcement that are more harsh than federal law, especially those that place conflicting mandates on local government.

EXHIBIT D



THE UNITED STATES CONFERENCE OF MAYORS

1620 EYE STREET, NORTHWEST
WASHINGTON, D.C. 20006
TELEPHONE (202) 293-7330
FAX (202) 293-2352
TDD (202) 293-9445
URL: www.usmayors.org/uscm

Adopted June 26, 2017

SUPPORTING IMMIGRANTS, REFUGEES AND ASYLUM SEEKERS AND STANDING AGAINST DISCRIMINATORY AND HARMFUL POLICIES THAT TARGET THESE VULNERABLE COMMUNITIES

WHEREAS, America is recognized as a nation of immigrants; and

WHEREAS, as of 2015 America's immigrant population numbered 43.3 million people, or 13.5 percent of the total population; and

WHEREAS, in 2016 immigrants and their U.S. born children were estimated to number approximately 84.3 million people, or 27 percent of the overall U.S. population; and

WHEREAS, New York City, home to one of the nation's largest and most diverse immigrant communities, has an almost 40 percent foreign born population; increasing to an estimated 60 percent when including children of immigrants; and

WHEREAS, cities across America are home to immigrant populations that are both recent arrivals and multigenerational families who contribute to the local economy as consumers, business owners, laborers and job producers; and

WHEREAS, the Administration has demonstrated an ongoing antagonistic and intimidating temperament towards immigrant, refugee and asylum seeking communities; and

WHEREAS, this posture has been asserted through the issuing of executive orders seeking to impose stricter requirements on immigrant populations and hindering or blocking entirely the entry of immigrants from certain countries; and

WHEREAS, the Administration has further affirmed this position through the threatening of punitive actions against so called 'sanctuary cities; and

WHEREAS, the moniker "sanctuary cities" is an arbitrary term which has been utilized to demonize cities and threaten their critically needed federal funding streams,

NOW, THEREFORE, BE IT RESOLVED, The United States Conference of Mayors calls on Congress to take action to stand against policies that discriminate against and target immigrants, refugees and asylum seekers; and

BE IT FURTHER RESOLVED, that the Conference of Mayors opposes the Administration's efforts to hold immigrants hostage as bargaining chips to threaten withholding federal funding from cities across the nation.

EXHIBIT E



THE UNITED STATES CONFERENCE OF MAYORS

1620 EYE STREET, NORTHWEST
WASHINGTON, D.C. 20006
TELEPHONE (202) 293-7330
FAX (202) 293-2352
TDD (202) 293-9445
URL: www.usmayors.org/uscm

Adopted June 26, 2017

SUPPORTING IMMIGRANT RIGHTS

WHEREAS, the United States has always been a country of immigrants, founded by immigrants, and enriched by a diversity of immigrants -- many of whom have come to the United States to escape religious persecution, war, genocide, and tyranny in hopes of sharing in freedom and prosperity through hard work; and

WHEREAS, The United States Conference of Mayors proudly recognizes our cities are diverse, multicultural centers that reflect core American values that foster economic prosperity and opportunity, and that our diversity keeps us competitive and makes America strong; and

WHEREAS, data have shown that economies are stronger in sanctuary cities from higher median household income, less poverty, and less reliance on public assistance to higher labor force participation, higher employment-to-population ratios, and lower unemployment; and

WHEREAS, data also show that sanctuary cities are safer cities - data indicate that crime is statistically significantly lower in sanctuary counties in large central metro counties, small metro counties, micropolitan counties, and noncore, rural counties; and

WHEREAS, legislation has been introduced to restrict economic development, transportation, and law enforcement funding to local governments; to indemnify unconstitutional detentions; and to further criminalize immigration and restrict immigrant's rights; and

WHEREAS, the Administration has enacted Executive Orders that ban travel and refugee programs from certain countries, that restrict federal funding to sanctuary jurisdictions, and that increase immigrant raids, detentions, and deportations; and

WHEREAS, our country was founded on the principle of federalism, where the federal government cannot compel or commandeer states and local governments into implementing or enforcing federal laws, including federal immigration law; and

WHEREAS, the federal government cannot compel states, counties, cities, or their employees to comply with federal immigration detainer requests, which have been repeatedly held, by both federal courts and executive agencies, to be voluntary and non-binding; and

WHEREAS, prolonged detention after an otherwise authorized release order, constitutes another arrest, and consequently a violation of the Fourth Amendment if not done pursuant to a probable cause or a valid warrant; and

WHEREAS, prolonged detentions in violation of the Fourth Amendment have repeatedly resulted in the detention and eventual deportation of both United States citizens and lawful immigrants; and

WHEREAS, mayors must ensure the safety of our communities, and consequently operate in a way that allows law enforcement to do its job; and

WHEREAS, immigration is a federal responsibility and cities should not be coerced or compelled into becoming the deportation arm of the federal government; and

WHEREAS, The United States Conference of Mayors recognizes that effective policing requires the cooperation and trust of all members of the community; when state and local officials are viewed as a threat or confused with federal immigration officers, that trust is undermined; and that by withholding critical funding and penalizing local jurisdictions for doing what we know will better protect our communities will only make these communities less safe,

NOW, THEREFORE, BE IT RESOLVED, mayors call for an end to unconstitutional federal funding threats to states and local governments in an effort to coerce and compel them into implementing federal immigration law and for the unlawful issuance of immigration detainer requests without probable cause and a warrant; and

BE IT FURTHER RESOLVED, mayors urge members of Congress to withdraw legislation that attempts to cut local law enforcement funding necessary to ensure the safety of our communities, indemnify conduct that violates the constitutional rights afforded to both United States citizens and immigrant populations, and further criminalizes immigration and infringes on the rights of immigrants; and

BE IT FURTHER RESOLVED, mayors urge Democratic and Republican leaders in Congress to pass comprehensive bipartisan immigration reform, including create a pathway to citizenship for undocumented immigrants.

EXHIBIT F



U.S. Department of Justice

Office of Justice Programs

Washington, D.C. 20531

October 11, 2017

The Honorable Jim Kenney
City of Philadelphia
1401 JFK Blvd., Room 1430
Philadelphia, PA 19102-1687

Dear Mayor Kenney,

Your FY 2016 Byrne JAG grant award, required you to comply with 8 U.S.C. § 1373; to undertake a review to validate your jurisdiction's compliance with 8 U.S.C. § 1373; and to submit documentation, including an official legal opinion from counsel, adequately supporting the validation. Thank you for your recent submission. The Department of Justice has reviewed your submission, all attached documentation, and your jurisdiction's laws, policies, and practices relating to compliance with section 1373, to the extent they were provided or are readily available.

This letter is to inform you that, based on a preliminary review, the Department has determined that your jurisdiction appears to have laws, policies, or practices that violate 8 U.S.C. § 1373. These laws, policies, or practices include, but may not be limited to:

- Executive Order No. 5-16. Section 1 of the Executive Order states that notice of a person's release from custody shall not be provided, "unless such person is being released after conviction for a first or second degree felony involving violence and the detainer is supported by a judicial warrant."¹ The Department has determined that this section restricts the sharing of information regarding immigration status in violation of 8 U.S.C. § 1373(a).
- Police Commissioner Memorandum No. 01-06. Section III.C of the Memorandum states that "immigrants who are victims of crimes will not have their status as an immigrant transmitted in any manner." The Department has determined that this Memorandum restricts the sharing of information regarding immigration status in violation of 8 U.S.C.

¹An ICE detainer form ordinarily requests that a jurisdiction (1) provide advance notice of the alien's release; and (2) maintain custody of the alien for up to 48 hours beyond the scheduled time of release. The Department is not relying on Philadelphia's restriction of the latter form of cooperation in this preliminary assessment.

§ 1373(a). It is not the Department of Justice's nor the Department of Homeland Security's policy or practice to request information from state and local jurisdictions regarding the immigration status of victims. There are, however, instances where the Department finds that requesting this information could be appropriate, such as where a person is both a perpetrator and a victim.

Additionally, based on this preliminary review, the Department has noted that the following laws, policies or practices may violate 8 U.S.C. § 1373, depending on how your jurisdiction interprets and applies them. These laws, policies, or practices include, but may not be limited to:

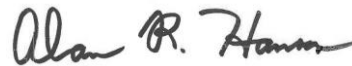
- Executive Order No. 8-09. Section 2(b) of the Executive Order states that police officers “shall not . . . inquire about a person’s immigration status,” unless certain limited exceptions apply. Under 8 U.S.C. § 1373(b)(1), however, Philadelphia may not “in any way restrict” the “requesting” of “information regarding . . . immigration status” from federal immigration officers. On its face, the Department has determined that the Executive Order appears to bar Philadelphia officers from requesting information regarding immigration status from federal immigration officers. In order to comply with 8 U.S.C. § 1373, the Department has determined that Philadelphia would need to certify that it interprets and applies this Executive Order to not restrict Philadelphia officers and employees from requesting information regarding immigration status from federal immigration officers. The Department is thus requesting Philadelphia to certify that it has communicated this interpretation to its officers and employees. If Philadelphia cannot provide this certification, the Department has determined that this provision violates section 1373(b).
- Executive Order No. 8-09. Section 3 of the Executive Order states that Philadelphia officers and employees “shall [not] disclose” information “relating to an individual’s immigration status.” Section 3(b)(2), however, allows disclosure when “required by law.” In order to comply with 8 U.S.C. § 1373, the Department has determined that Philadelphia would need to certify that it interprets and applies this Executive Order to not restrict Philadelphia officers from sharing information regarding immigration status with federal immigration officers. The Department has also determined that Philadelphia would need to certify that it has communicated this interpretation to its officers and employees. If Philadelphia cannot provide this certification, the Department has determined that this provision violates section 1373(a).
- Police Commissioner Memorandum No. 01-06. Section III.A of the Memorandum states that officers shall not transmit “information relating to an immigrant” unless “required by law” or certain other exceptions apply. In order to comply with 8 U.S.C. § 1373, the Department has determined that Philadelphia would need to certify that it interprets and applies this policy to not restrict Philadelphia officers and employees from sharing

information regarding immigration status with federal immigration officers. The Department has also determined that Philadelphia would need to certify that it has communicated this interpretation to its officers and employees. If Philadelphia cannot provide this certification, the Department has determined that this provision violates section 1373(a).

Your jurisdiction may submit a response to this preliminary assessment, as well as any additional evidence you would like the Department to consider, before it reaches its final determination. Please submit all additional documentation by October 27, 2017. Once the Department has had an opportunity to review your submission, the Department will notify you of its final determination.

This letter reflects the Department's preliminary assessment of your jurisdiction's compliance with 8 U.S.C. § 1373. This letter does not constitute final agency action and nothing in this letter creates any right or benefit enforceable at law against the United States. Additionally, as the United States continues to collect information about your jurisdiction, it reserves the right to identify additional bases of potential violations of 8 U.S.C. § 1373.

Sincerely,

A handwritten signature in black ink that reads "Alan R. Hanson". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Alan Hanson
Acting Assistant Attorney General



U.S. Department of Justice

Office of Justice Programs

Washington, D.C. 20531

October 11, 2017

Elizabeth Glazer
Director
New York City Mayor's Office of Criminal Justice
1 Centre Street, Room 1012N
New York, NY 10007-1602

Dear Ms. Glazer,

Your FY 2016 Byrne JAG grant award required you to comply with 8 U.S.C. § 1373; to undertake a review to validate your jurisdiction's compliance with 8 U.S.C. § 1373; and to submit documentation, including an official legal opinion from counsel, adequately supporting the validation. Thank you for your recent submission. The Department of Justice has reviewed your submission, all attached documentation, and your jurisdiction's laws, policies, and practices relating to compliance with section 1373, to the extent they were provided or are readily available.

This letter is to inform you that, based on a preliminary review, the Department has determined that your jurisdiction appears to have laws, policies, or practices that violate 8 U.S.C. § 1373. These laws, policies, or practices include, but may not be limited to:

- Executive Order No. 41. Section 4 of the Executive Order states that police officers "shall not inquire about a person's immigration status unless investigating illegal activity other than mere status as an undocumented alien." Under 8 U.S.C. § 1373(b)(1), however, New York may not "in any way restrict" the "requesting" of "information regarding . . . immigration status" from federal immigration officers. On its face, the Department has determined that the Executive Order appears to bar New York officers from requesting information regarding immigration status from federal immigration officers. In order to comply with 8 U.S.C. § 1373, the Department has determined that New York would need to certify that it interprets and applies this section to not restrict New York officers and employees from requesting information regarding immigration status from federal immigration officers. The Department has also determined that New York would need to certify that it has communicated this interpretation to its officers and employees. If New York cannot provide this certification, the Department has determined that this provision violates section 1373(b).

- Executive Order No. 41. Section 2 of the Executive Order states that New York officers and employees “shall [not] disclose confidential information,” which is defined to include “immigration status.” Section 2(b) and (e) contain a few exceptions, including when “disclosure is required by law.” In order to comply with 8 U.S.C. § 1373, the Department has determined that New York would need to certify that it interprets and applies this Order to not restrict New York officers and employees from sharing information regarding immigration status with federal immigration officers. The Department has also determined that New York would need to certify that it has communicated this interpretation to its officers and employees. If New York cannot provide this certification, the Department has determined that this provision violates section 1373(a).
- New York Administrative Code § 9-131. Section 9-131(b) states that New York City Department of Corrections may not “honor a civil immigration detainer . . . by notifying federal immigration authorities of [a] person’s release,” except in certain limited circumstances.¹ Section 9-131(d) states that this law shall not be construed to “prohibit any city agency from cooperating with federal immigration authorities when required under federal law.” It also states that this law shall not be construed to “create any . . . duty or obligation in conflict with any federal . . . law.” In order to comply with 8 U.S.C. § 1373, the Department has determined that New York would need to certify that it interprets and applies Section 9-131(b) and (d) to not restrict New York officers from sharing information regarding immigration status with federal immigration officers, including information regarding the date and time of an alien’s release from custody. The Department has also determined that New York would need to certify that it has communicated this interpretation to its officers and employees. If New York cannot provide this certification, the Department has determined that this provision violates section 1373(a).
- New York Administrative Code § 9-131. Section 9-131(h)(1) states that New York City Department of Corrections personnel shall not “expend time while on duty or department resources . . . in response to federal immigration inquiries or in communicating with federal immigration authorities regarding any person’s incarceration status, release dates, court appearance dates, or any other information related to persons in the department’s custody, other than information related to a person’s citizenship or immigration status,” except where certain exceptions apply. As discussed above, section 9-131(d) states that this law shall not be construed to “prohibit any city agency from cooperating with federal immigration authorities when required under federal law.” It also states that this law

¹ An ICE detainer form ordinarily requests that a jurisdiction (1) provide advance notice of the alien’s release; and (2) maintain custody of the alien for up to 48 hours beyond the scheduled time of release. The Department is not relying on New York’s restriction of the latter form of cooperation in this preliminary assessment.

shall not be construed to “create any . . . duty or obligation in conflict with any federal . . . law.” In order to comply with 8 U.S.C. § 1373, the Department has determined that New York would need to certify that it interprets and applies Section 9-131(h) and (d) to not restrict New York officers from sharing information regarding immigration status with federal immigration officers, including information regarding an alien’s incarceration status and release date and time. The Department has also determined that New York would need to certify that it has communicated this interpretation to its officers and employees. If New York cannot provide this certification, the Department has determined that this provision violates section 1373(a).

Your jurisdiction may submit a response to this preliminary assessment, as well as any additional evidence you would like the Department to consider, before it reaches its final determination. Please submit all additional documentation by October 27, 2017. Once the Department has had an opportunity to review your submission, the Department will notify you of its final determination.

This letter reflects the Department’s preliminary assessment of your jurisdiction’s compliance with 8 U.S.C. § 1373. This letter does not constitute final agency action and nothing in this letter creates any right or benefit enforceable at law against the United States. Additionally, as the United States continues to collect information about your jurisdiction, it reserves the right to identify additional bases of potential violations of 8 U.S.C. § 1373.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan R. Hanson". The signature is fluid and cursive, with the first name "Alan" being the most prominent part.

Alan Hanson
Acting Assistant Attorney General



U.S. Department of Justice

Office of Justice Programs

Washington, D.C. 20531

October 11, 2017

The Honorable Mitchell Landrieu
City of New Orleans
Criminal Justice Coordination
1300 Perdido Street, Room 8E15
New Orleans, LA 70112-2112

Dear Mayor Mitchell Landrieu,

Your FY 2016 Byrne JAG grant award required you to comply with 8 U.S.C. § 1373; to undertake a review to validate your jurisdiction's compliance with 8 U.S.C. § 1373; and to submit documentation, including an official legal opinion from counsel, adequately supporting the validation. Thank you for your recent submission. The Department of Justice has reviewed your submission, all attached documentation, and your jurisdiction's laws, policies, and practices relating to compliance with section 1373, to the extent they were provided or are readily available.

This letter is to inform you that, based on a preliminary review, the Department has determined that the following laws policies, or practices may violate 8 U.S.C. § 1373, depending on how your jurisdiction interprets and applies them. These laws, policies, or practices include, but may not be limited to:

- New Orleans Police Department Operations Manual Chapter 41:6:1. Section 3 of the Operations Manual states that police officers "shall not make inquiries into an individual's immigration status, except as authorized by this Chapter." Under 8 U.S.C. § 1373(b)(1), however, New Orleans may not "in any way restrict" the "requesting" of "information regarding . . . immigration status" from federal immigration officers. On its face, the Department has determined that this section appears to bar New Orleans officers from requesting information regarding immigration status from federal immigration officers. In order to comply with 8 U.S.C. § 1373, the Department has determined that New Orleans would need to certify that it interprets and applies this section to not restrict New Orleans officers and employees from requesting information regarding immigration status from federal immigration officers. The Department has also determined that New Orleans would need to certify that it has

communicated this interpretation to its officers and employees. If New Orleans cannot provide this certification, the Department has determined that this provision violates section 1373(b).¹

Your jurisdiction may submit a response to this preliminary assessment, as well as any additional evidence you would like the Department to consider, before it reaches its final determination. Please submit all additional documentation by October 27, 2017. Once the Department has had an opportunity to review your submission, the Department will notify you of its final determination.

This letter reflects the Department's preliminary assessment of your jurisdiction's compliance with 8 U.S.C. § 1373. This letter does not constitute final agency action and nothing in this letter creates any right or benefit enforceable at law against the United States. Additionally, as the United States continues to collect information about your jurisdiction, it reserves the right to identify additional bases of potential violations of 8 U.S.C. § 1373.

Sincerely,

A handwritten signature in black ink that reads "Alan R. Hanson". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Alan Hanson
Acting Assistant Attorney General

¹ To the extent this policy was adopted in response to the consent decree entered into between the United States and the City of New Orleans, the consent decree should not be read to require any policy not in compliance with 8 U.S.C. § 1373 or any other federal law. *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 388 (1992); *United States v. International Broth. of Teamsters*, 931 F.2d 177, 189 (2d Cir. 1991).

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES CONFERENCE OF	)	
MAYORS; CITY OF CHICAGO,	)	
	)	
Plaintiffs,	)	Case No. 17-CV-5720
v.	)	
	)	Honorable Harry D. Leinenweber
JEFFERSON BEAUREGARD SESSIONS	)	
III,	)	
	)	
Defendant.	)	

**[PROPOSED] ORDER GRANTING THE UNITED STATES CONFERENCE
OF MAYORS' MOTION FOR PRELIMINARY INJUNCTION**

It is hereby ORDERED that the United States Conference of Mayors' Motion for a Preliminary Injunction is GRANTED.

The United States Conference of Mayors (the "Conference") has demonstrated that it is likely to succeed on the merits of its claims, that it will suffer irreparable harm in the absence of preliminary relief, that the balance of equities weighs in favor of an injunction, and that a preliminary injunction would serve the public interest.

Defendant Jefferson Beauregard Sessions III, the Attorney General of the United States, is hereby enjoined, on a nationwide basis, from imposing the following conditions on FY 2017 Byrne JAG funds, pending resolution of this litigation on the merits:

1. The condition that FY 2017 Byrne JAG recipients must provide at least 48 hours' advance notice to the Department of Homeland Security ("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;

2. The condition that FY 2017 Byrne JAG recipients must 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) and inquire as to his or her right to be or remain in the United States; and

3. The condition that FY 2017 Byrne JAG recipients must certify their compliance with 8 U.S.C. § 1373.

Entered on _____, 2017

Hon. Harry D. Leinenweber