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13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 CITY AND COUNTY OF SAN
17 FRANCISCO,

18 Plaintiff,

19 v.

20 JEFFERSON B. SESSIONS III, Attorney
21 General of the United States, *et al.*,

22 Defendants.

No. 3:17-cv-04642-WHO

**DEFENDANTS' NOTICE OF MOTION
AND MOTION FOR SUMMARY
JUDGMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: December 6, 2017
Time: 2:00 p.m.

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1 **NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

2 PLEASE TAKE NOTICE that on Wednesday, December 6, 2017, at 2:00 p.m., or as soon
 3 thereafter as counsel may be heard, before The Honorable William H. Orrick, in Courtroom 2,
 4 17th Floor, of the United States Courthouse, 450 Golden Gate Avenue, San Francisco, California,
 5 the defendants will move, and hereby do move, for summary judgment in this action under Rule
 6 56 of the Federal Rules of Civil Procedure. This motion is based on the following Memorandum
 7 of Points and Authorities, the evidence and records on file in this action, and any other written or
 8 oral evidence or argument that may be presented at or before the time this motion is heard by the
 9 Court.¹

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **INTRODUCTION**

12 The Department of Justice (“DOJ” or “Department”) distributes federal grant funds to aid
 13 law enforcement in jurisdictions throughout the country. These funds serve to advance both local
 14 and cooperative law enforcement priorities. Consistent with federal prerogatives, the Department
 15 has long imposed conditions on these grants, including in the Edward Byrne Memorial Justice
 16 Assistance Grant Program (“Byrne JAG Program”) involved here. If plaintiff’s theories in this
 17 action were correct, however, long-standing and never-before-challenged conditions would be in
 18 jeopardy.

19 One cooperative priority for DOJ is the enforcement of a lawful system of immigration,
 20 especially the removal of non-citizens who have committed crimes in the United States.
 21 Accordingly, the Department notified applicants that Fiscal Year (“FY”) 2017 Byrne JAG grants
 22 would include conditions that require modest cooperation with federal law enforcement
 23 prerogatives in the immigration setting. Those conditions will require grant recipients, among
 24 other things, (1) to ensure that certain federal officials are permitted access to the grantee’s
 25

26 ¹ Plaintiff names “DOES 1-100” as defendants in this matter but does not identify those
 27 individuals or specify the capacity in which they are being sued (Dkt. No. 1 ¶ 18). Undersigned
 28 counsel does not purport to represent those individuals, and claims against them are not at issue in
 this motion for summary judgment. Moreover, because those individuals have not been named or
 served, granting this motion would resolve this litigation in its entirety.

1 correctional facilities for certain immigration enforcement purposes (“access condition”), and
2 (2) to ensure that certain federal officials are provided advance notice of the scheduled release of
3 certain individuals held in state or local correctional facilities (“notice condition”). See
4 Declaration of Alan R. Hanson (“Hanson Decl.”) ¶ 5 & Ex. B at 18-19 (Attachment 1 hereto).

5 Plaintiff, the City and County of San Francisco, has adopted policies that frustrate the
6 federal government’s ability to locate criminal aliens and remove them from the country. In
7 addition to avoiding cooperative efforts through its own, local policies, San Francisco now seeks
8 to do the same with respect to federal prerogatives, asking the Court to enjoin the Department of
9 Justice from imposing immigration-related law enforcement conditions on the receipt of *federal*
10 *funds*. Plaintiff’s position would, in essence, allow San Francisco, rather than the Department, to
11 determine the conditions associated with federal grants that Congress has authorized DOJ to
12 award. The City’s position contravenes clear statutory language authorizing DOJ to condition
13 Byrne JAG funding, and ignores the close relationship among the federally-imposed conditions,
14 federal law enforcement prerogatives, and the purposes of the Byrne JAG Program. For these
15 reasons and others, the Court should enter summary judgment in defendants’ favor and dismiss
16 plaintiff’s claims.

17 San Francisco challenges the access and notice conditions under the constitutional
18 Separation of Powers and the Spending Clause. Both claims are without merit. Congress has
19 expressly authorized the Assistant Attorney General (“AAG”) for DOJ’s Office of Justice
20 Programs (“OJP”) to impose the challenged conditions. In the very same enactment that created
21 the Byrne JAG Program in 2006, Congress delegated to the AAG the authority to “plac[e] special
22 conditions on all grants,” and to “determin[e] priority purposes for formula grants.” 34 U.S.C.
23 § 10102(a)(6). The Department thus has ample authority to impose the challenged conditions,
24 and their imposition does not violate the constitutional separation of powers. See *DKT Mem’l*
25 *Fund Ltd. v. AID*, 887 F.2d 275, 280-81 (D.C. Cir. 1989) (upholding statutory delegation to the
26 Executive to impose terms and conditions on federal spending programs).

27 In relation to plaintiff’s Spending Clause challenge, the challenged conditions bear much
28 more than “some relationship” to the purposes of the Byrne JAG Program, and thus meet the

relatedness element of the Spending Clause. *See Mayweathers v. Newland*, 314 F.3d 1062, 1067 (9th Cir. 2002). OJP and the grant programs it administers are designed to strengthen law enforcement and to “maintain liaison” among the various branches of government “in matters relating to criminal justice.” 34 U.S.C. § 10102(a)(2). The challenged conditions emanate from “the Department of Justice’s top priority of reducing violent crime” and the “long-established cooperative principles among law enforcement agencies.” *See, e.g., DOJ Press Release No. 17-826, Attorney General Sessions Announces Immigration Compliance Requirements for Edward Byrne Memorial Justice Assistance Grant Programs* (July 25, 2017).² The conditions are also very clear and unambiguous, and they raise no issue under the Fourth Amendment or any other “independent constitutional bar.” *See S. Dakota v. Dole*, 483 U.S. 203, 210 (1987).

Accordingly, the Court should enter summary judgment for the defendants and dismiss plaintiff’s Complaint with prejudice.

ISSUES PRESENTED

1. Whether the constitutional Separation of Powers is violated by the access condition described below.

2. Whether the constitutional Separation of Powers is violated by the notice condition described below.

3. Whether the Spending Clause is violated by the access condition described below.

4. Whether the Spending Clause is violated by the notice condition described below

STATUTORY AND ADMINISTRATIVE BACKGROUND

I. The Immigration and Nationality Act

“The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.” *Arizona v. United States*, 567 U.S. 387, 394 (2012).

Through the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et seq.*, Congress granted the Executive Branch significant authority to control the entry, movement, and other conduct of foreign nationals in the United States. The INA authorizes the Department of Homeland Security

² The cited press release is available at <https://www.justice.gov/opa/pr/attorney-general-sessions-announces-immigration-compliance-requirements-edward-byrne-memorial>.

1 (“DHS”), the Department of Justice, and other Executive Branch agencies to administer and
 2 enforce the immigration laws. Likewise, the INA accords the Executive Branch considerable
 3 discretion to direct enforcement pursuant to federal policy objectives. *See Arizona Dream Act*
 4 *Coal. v. Brewer*, 855 F.3d 957, 967 (9th Cir. Feb. 2, 2017) (“By necessity, the federal statutory
 5 and regulatory scheme, as well as federal case law, vest the Executive with very broad discretion
 6 to determine enforcement priorities.”).

7 The INA includes several provisions that protect the ability of federal officials to
 8 investigate the status of non-citizens in the United States and otherwise enforce the immigration
 9 laws. For example, the statute provides that a federal immigration officer “shall have power
 10 without warrant . . . to interrogate any alien or person believed to be an alien as to his right to be
 11 or to remain in the United States.” 8 U.S.C. § 1357(a)(1). Separately, pursuant to 8 U.S.C.
 12 § 1373, “a Federal, State, or local government entity or official may not prohibit, or in any way
 13 restrict, any government entity or official from sending to, or receiving from, [federal immigra-
 14 tion authorities] information regarding the citizenship or immigration status, lawful or unlawful,
 15 of any individual.” *Id.* § 1373(a).³ The INA provides that certain classes of non-citizens,
 16 including certain criminal aliens, shall be removed from the United States upon the order of the
 17 Attorney General or the Secretary of Homeland Security. *See, e.g., id.* §§ 1227(a), 1228.
 18 The INA also establishes immigration enforcement as a cooperative endeavor among federal,
 19 state, and local law enforcement agencies. *See, e.g., id.* § 1357(g) (providing that DHS may enter
 20 into formal cooperative agreements with States and localities under which appropriately trained
 21 and qualified state and local officers may perform specified functions of a federal immigration
 22 officer in relation to the investigation, apprehension, or detention of aliens); *id.* § 1324(c)
 23 (authorizing state and local law enforcement officers to make arrests for violations of the INA’s
 24

25 ³ Additionally, 8 U.S.C. § 1373(b) provides that “[n]otwithstanding any other provision
 26 of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal,
 27 State, or local government entity from doing any of the following with respect to information
 28 regarding the immigration status, lawful or unlawful, of any individual: (1) Sending such infor-
 mation to, or requesting or receiving such information from, [federal immigration authorities]. (2)
 Maintaining such information. (3) Exchanging such information with any other Federal, State, or
 local government entity.”

prohibition against smuggling, transporting, or harboring aliens); *id.* § 1252c (authorizing state and local officers to arrest certain felons who have unlawfully returned to the United States); *id.* § 1231(i) (establishing State Criminal Alien Assistance Program, under which federal government compensates States and localities for their incarceration of certain criminal aliens).

II. The Office of Justice Programs and the Byrne JAG Program

Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, established the Office of Justice Programs within the Department of Justice, and provides for OJP to be headed by an Assistant Attorney General. *See* Pub. L. No. 90-351, 82 Stat. 197 (1968), *codified as amended at* 34 U.S.C. § 10101 *et seq.* Congress gave the AAG certain “[s]pecific, general and delegated powers,” including the power to “publish and disseminate information on the conditions and progress of the criminal justice systems” and to “maintain liaison with the executive and judicial branches of the Federal and State governments in matters relating to criminal justice.” 34 U.S.C. § 10102(a)(1), (2). Most notably for this case, the statute also authorizes the AAG to “exercise such other powers and functions as may be vested in [him] 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.*” *Id.* § 10102(a)(6) (emphasis added).

The same title of the Omnibus Crime Control and Safe Streets Act also established the Byrne JAG Program. *See generally* 34 U.S.C. §§ 10151-58. Under this program, OJP is authorized to “make grants to States and units 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 [certain enumerated] programs. *Id.* § 10152(a)(1). In the same chapter, “criminal justice” is defined broadly to include various activities of the police, the courts, and “related agencies.” *Id.* § 10251(a)(1). Various other provisions of the Omnibus Crime Control Act also apply to OJP and the Byrne JAG Program. *See, e.g., id.* § 10108 (period of availability of grant funds); §§ 10221-10238 (administrative provisions); § 10263 (audit requirements and other provisions).

1 To request funds under the Byrne JAG Program, applicants must “submit an application to
 2 the Attorney General . . . in such form as the Attorney General may require.” *Id.* § 10153(a).
 3 Congress provided that these applications must include, among other things, an “assurance that,
 4 for each fiscal year covered by an application, the applicant shall maintain and report such data,
 5 records, and information (programmatic and financial) as the Attorney General may reasonably
 6 require”; “[a] certification, made in a form acceptable to the Attorney General . . . that . . . there
 7 has been appropriate coordination with affected agencies;” and “[a] certification, made in a form
 8 acceptable to the Attorney General . . . that . . . the applicant will comply with all provisions of
 9 this part and all other applicable Federal laws.” *Id.* § 10153(a)(4), (a)(5)(C), (a)(5)(D). Before
 10 issuing a final disapproval of any application under the Byrne JAG Program, the Attorney
 11 General must “afford[] the applicant reasonable notice of any deficiencies in the application and
 12 opportunity for correction and reconsideration.” *Id.* § 10154.

13 The Byrne JAG Program provides “formula grants” – that is, grants that, when awarded,
 14 must follow a statutory formula based on population, the rate of violent crime, and other factors.
 15 *Id.* §§ 10152(a)(1), 10156. Funding under the Program is subject to annual appropriations. For
 16 FY 2017, Congress appropriated \$396,000,000 for the Byrne JAG Program, with certain carve-
 17 outs from that amount obligated to specific initiatives. *See Consolidated Appropriations Act,*
 18 *2017, Pub. L. No. 115-31, Div. B, Title II, 131 Stat. 135, 203 (2017).*

19 **III. The Byrne JAG Grant-Making Process**

20 The federal grant-making process, including the issuance of Byrne JAG grants, contains
 21 several steps. The awarding agency typically issues a solicitation that contains “sufficient infor-
 22 mation to help an applicant make an informed decision about whether to submit an application.”
 23 *See generally* Office of Management and Budget, Uniform Administrative Requirements, Cost
 24 Principles, and Audit Requirements for Federal Awards (“OMB Uniform Guidance”), 2 C.F.R.
 25 § 200.203(c)(2);⁴ *see also* OJP Grant Process Overview, *available at* [https://ojp.gov/funding/](https://ojp.gov/funding/Apply/GrantProcess.htm)
 26 *Apply/ GrantProcess.htm*. Applicants respond to the solicitation by submitting an application in

27 ⁴ The Department of Justice has adopted the OMB Uniform Guidance by regulation, with
 28 limited exceptions. *See* 2 C.F.R. § 2800.101.

1 the form specified and with the relevant information requested. *See generally* OJP Grant Process
2 Overview. The deadline for local units of government to submit Byrne JAG applications for
3 Fiscal Year 2017 was September 5, 2017.⁵ *See* Hanson Decl. ¶ 4.

4 For grants administered by OJP and its subcomponents, the Office engages in a multi-
5 factored review of each application and, for those applications that are approved, OJP generates
6 an award package that is transmitted to the applicant. *See generally* OJP Grant Process
7 Overview. Applicants typically have forty-five calendar days to accept the award documents,
8 during which time the applicant has an opportunity to “[r]eview the special conditions on the
9 award document.” *Id.* Throughout the course of the grant period, OJP monitors compliance with
10 the terms and conditions of the award and, ultimately, the grantee and OJP engage in certain
11 activities to complete relevant closeout requirements for each award, such as preparation of final
12 reports. *Id.*

13 **IV. Conditions on Byrne JAG Awards**

14 OJP has historically included a variety of conditions in Byrne JAG award documents,
15 including, for example, conditions requiring the grantee to comply with regulations pertaining to
16 civil rights and nondiscrimination, conditions requiring that body armor purchased with grant
17 funding meet certain minimum quality standards, and conditions designed to encourage grantees
18 to adopt policies banning employees from text messaging while driving on duty. These condi-
19 tions have varied over time, depending on national law enforcement necessities and Department
20 priorities. For FY 2016, San Francisco’s Byrne JAG award included fifty-one conditions, all of
21 which the plaintiff accepted without objection or legal challenge. *See* Hanson Decl. ¶ 3 & Ex. A.

22 Additionally, the FY 2016 solicitation for the Byrne JAG Program included an explicit
23 recognition that 8 U.S.C. § 1373 was one of the “applicable Federal laws” with which grantees
24 are expected to comply. *See* Edward Byrne Memorial Justice Assistance Grant (JAG) Program,
25 Fiscal Year (FY) 2016 Local Solicitation at 12, *available at* [https://www.bja.gov/funding/](https://www.bja.gov/funding/JAGLocal16.pdf)
26 [JAGLocal16.pdf](https://www.bja.gov/funding/JAGLocal16.pdf); *see also* 34 U.S.C. § 10153(a)(5)(D). That recognition was prompted by a

27
28 ⁵ Some exceptions to that deadline were made relating to jurisdictions affected by
Hurricane Harvey.
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1 memorandum issued by the Department of Justice’s Inspector General on May 31, 2016,
2 expressing concern that several state and local governments receiving federal grants may not be
3 complying with Section 1373. See Mem. from Michael E. Horowitz, Inspector Gen., to Karol V.
4 Mason, Assistant Att’y Gen., Office of Justice Programs, *Department of Justice Referral of*
5 *Allegations of Potential Violations of 8 U.S.C. § 1373 by Grant Recipients* (May 31, 2016)
6 (Attachment 2 hereto). Although the Inspector General observed that applications of certain local
7 ordinances might be inconsistent with Section 1373, *id.* at 4-8, the report made clear that “no one
8 at DHS . . . has made a formal legal determination whether certain state and local laws or policies
9 violate Section 1373, and we are unaware of any Department of Justice decision in that regard.”
10 *Id.* at 8 n.12.

11 **V. Additional Conditions for FY 2017 Byrne JAG Awards**

12 In August 2017, OJP published a solicitation seeking applications from local governments
13 for participation in the FY 2017 Byrne JAG Program. See Hanson Decl. ¶ 4. Among other
14 things, that solicitation notified potential applicants that the grant award documents for FY 2017
15 would contain two new special conditions, in addition to the requirement to certify compliance
16 with 8 U.S.C. § 1373 (Dkt. No. 1, Ex. B at 30). Specifically, one condition would be designed to
17 ensure that Byrne JAG grantees would “permit personnel of [DHS] to access any correctional or
18 detention facility in order to meet with an alien . . . and inquire as to his or her right to be or
19 remain in the United States,” and another condition would be designed to ensure that grantees
20 would “provide at least 48 hours’ advance notice to DHS regarding the scheduled release date and
21 time of an alien in the jurisdiction’s custody when DHS requests such notice in order to take
22 custody of the alien pursuant to the [INA]” (*id.*). The notification contained in the FY 2017
23 solicitation was not itself a grant condition, akin to those contained in the grant award documents;
24 rather, it was merely a notification designed to “help an applicant make an informed decision
25 about whether to submit an application.” 2 C.F.R. § 200.203.

26 The actual new conditions that OJP intends to attach to FY 2017 Byrne JAG awards
27 appear in the FY 2017 award documents that OJP has already issued to two jurisdictions – the
28

County of Greenville, South Carolina, and the City of Binghamton, New York. See Hanson Decl.

¶ 5 & Ex. B. Specifically, Conditions 55 and 56 provide:

With respect to the “program or activity” that is funded (in whole or in part) by this award, as of the date the recipient accepts this award, and throughout the remainder of the period of performance for the award--

A. A local ordinance, -rule, -regulation, -policy, or -practice (or an applicable State statute, -rule, -regulation, -policy, or -practice) must be in place that is designed to ensure that agents of the United States acting under color of federal law in fact are given access a local-government (or local-government-contracted) correctional facility for the purpose of permitting such agents to meet with individuals who are (or are believed by such agents to be) aliens and to inquire as to such individuals’ right to be or remain in the United States.

B. A local ordinance, -rule, -regulation, -policy, or -practice (or an applicable State statute, -rule, -regulation, -policy, or -practice) must be in place that is designed to ensure that, when a local-government (or local-government-contracted) correctional facility receives from DHS a formal written request authorized by the Immigration and Nationality Act that seeks advance notice of the scheduled release date and time for a particular alien in such facility, then such facility will honor such request and -- as early as practicable . . . provide the requested notice to DHS.

Id., Ex. B at 19. Under “Rules of Construction” within those grant conditions, the award documents make clear that nothing in these conditions requires a grantee to detain “any individual in custody beyond the date and time the individual would have been released in the absence of this condition.” *Id.* at 18, 19. The documents also make clear that these conditions impose no requirements in relation to any requests by federal immigration authorities to detain non-citizens, and that the notice condition requires “only as much advance notice as practicable” before the release of a non-citizen. *Id.* Finally, the conditions apply only to the “program or activity” to be funded under the award (as stated above), and they allow awarded funds to be used for costs incurred in implementing the conditions. See *id.*

VI. Recent Developments

In a challenge brought by the City of Chicago, a federal district court issued a nationwide preliminary injunction on September 15, 2017, against imposition of the access and notice conditions. See *City of Chicago v. Sessions*, ___ F. Supp. 3d ___, 2017 WL 4081821, at *14

(N.D. Ill. Sept. 15, 2017).⁶ Defendants have appealed that decision, but the appeal has been stayed pending other proceedings in district court.

San Francisco submitted its application for a Fiscal Year 2017 Byrne JAG award on September 5, 2017. *See* Hanson Decl. ¶ 4. OJP has not made a decision on that application, and at this time is not issuing FY 2017 Byrne JAG award documents to any applicants while awaiting developments in the *Chicago* litigation. *Id.* ¶¶ 7-8.

ARGUMENT

A party may file a motion for summary judgment “at any time” until after the close of discovery. *See* Fed. R. Civ. P. 56(b). “The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A party may file a motion for summary judgment without having filed an answer, and the filing of such a motion tolls the time to answer. *See Mann v. Lee*, No. C 07-00781 MMC (PR), 2009 WL 5178095, at *2 (N.D. Cal. Dec. 22, 2009).

In light of the governing statutes and the language of the challenged grant conditions, “there is no genuine dispute as to any material fact and the [defendants in this action are] entitled to judgment as a matter of law.”

I. Judgment Should Be Entered for the Defendants on Plaintiff’s Separation of Powers Claim

Plaintiff alleges that the access and notice conditions violate the constitutional Separation of Powers by “unilaterally imposing [those] Requirements, without authorization from Congress” (Dkt. No. 1 ¶ 96). Article I of the Constitution confers on Congress the authority to “lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States.” U.S. Const. art. I, § 8, cl. 1. As this Court has said in another case, Congress may, “[i]ncident to” its spending power, “attach conditions on the receipt of federal funds,” *Cty. of Santa Clara v. Trump*, 250 F. Supp. 3d 497, 530 (N.D. Cal.

⁶ Although Chicago had also challenged the Section 1373 compliance condition, the *Chicago* court granted no relief on that claim “because the City has failed to establish a likelihood of success on the merits” as to that condition. 2017 WL 4081821, at *14.

1 2017) (quoting *Dole*, 483 U.S. at 206), and “Congress can delegate some discretion to the
2 President to decide how to spend appropriated funds” so long as “any delegation and discretion is
3 cabined by [relevant] constitutional boundaries.” 250 F. Supp. 3d at 531; see *DKT Mem’l Fund*
4 *Ltd. v. AID*, 887 F.2d 275, 280-81 (D.C. Cir. 1989) (upholding conditions on spending imposed
5 by President where statute authorized President to set certain “terms and conditions as he may
6 determine”). As discussed below, both the access condition and the notice condition in the Byrne
7 JAG Program are consistent with these principles.

8 As noted earlier, the AAG for the Office of Justice Programs, who administers the Byrne
9 JAG Program, is empowered to “plac[e] special conditions on all grants, and [to] determin[e]
10 priority purposes for formula grants.” 34 U.S.C. § 10102(a)(6). Congress added this language to
11 the AAG’s statutory responsibilities in 2006, as part of the same legislation that created the Byrne
12 JAG Program. See Violence Against Women and Department of Justice Reauthorization Act of
13 2005, Pub. L. No. 109-162, 119 Stat. 2960 (2006), § 1152(b) (adding language to subsection
14 (a)(6)); *id.* § 1111 (creating Byrne JAG Program). Before that 2006 amendment, Section 10102
15 stated only that the AAG “exercise[s] such other powers and functions as may be vested in the
16 Assistant Attorney General pursuant to this title or by delegation of the Attorney General.” See
17 Joint Resolution Making Continuing Appropriations for FY 1985, Pub. L. No. 98-473, § 603, 98
18 Stat. 1837 (1984). Further, by contrast, the organic statute for the head of a different grant-
19 making component of the Department of Justice, which statute was enacted in 2002, continues to
20 use the more limited language that Section 10102 formerly contained, without the additional
21 authority to place “special conditions” and to determine “priority purposes” that Congress chose
22 to bestow on OJP. See 34 U.S.C. § 10444(7) (providing that Director of Violence Against
23 Women Office “[e]xercis[es] such other powers and functions as may be vested in the Director
24 pursuant to this subchapter or by delegation of the Attorney General”). Thus, as stated in the
25 House committee report on the bill that became the 2006 amendment, 34 U.S.C. § 10102(a)(6)
26 “allows the Assistant Attorney General to place special conditions on all grants and to determine
27 priority purposes for formula grants.” H.R. Rep. No. 109-233, at 101 (2005).

1 Section 10102(a)(6) necessarily confers authority not conferred elsewhere. As the
 2 Supreme Court has said, “[w]hen Congress acts to amend a statute, [courts] presume it intends its
 3 amendment to have real and substantial effect.” *Stone v. INS*, 514 U.S. 386, 397 (1995). Any
 4 contrary interpretation would violate the “fundamental canon of statutory construction that a
 5 statute should not be construed so as to render any of its provisions mere surplusage.” *United*
 6 *States v. Wenner*, 351 F.3d 969, 975 (9th Cir. 2003). The AAG’s statutory authorities must be
 7 interpreted “as a whole” and not in a manner that renders certain provisions “inconsistent,
 8 meaningless or superfluous.” *Boise Cascade Corp. v. EPA*, 942 F.2d 1427, 1432 (9th Cir. 1991).
 9 Faced with a choice between plaintiff’s interpretation, which would render Section 10102(a)(6)
 10 superfluous, and defendants’ interpretation, which gives it effect, the Court should choose the
 11 latter. *See Disabled in Action of Pa. v. Se. Pa. Transp. Auth.*, 539 F.3d 199, 211 (3d Cir. 2008).

12 Consistent with the AAG’s statutory authority, Byrne JAG awards have historically
 13 contained various discretionary conditions that are not compelled by any federal statute, but
 14 promote the Department of Justice’s law enforcement and public safety goals. These conditions
 15 were contained in San Francisco’s FY 2016 Byrne JAG award documents. For example, the
 16 Department has imposed a condition that requires complying with certain guidelines and recom-
 17 mendations enumerated by DOJ to “promote information sharing and enable interoperability
 18 among disparate systems across the justice and public safety community.” *See Hanson Decl.*, Ex.
 19 A at 9 (Condition 26). Another condition has prohibited the use of award funds to purchase
 20 various types of equipment and weapons on a “Prohibited Expenditure List,”⁷ which list in turn
 21 traces back in significant part not to any statute or regulation but to an Executive Order. *Id.* at 12
 22 (Condition 49). Multiple conditions have also imposed training mandates: certain training must
 23 be completed for law enforcement task forces, *id.* at 9 (Condition 32); a grantee must agree to
 24 participate, upon request, in various training events, technical assistance events, or
 25 conferences, *id.* (Condition 33); and quarterly data must be submitted regarding certain kinds of
 26 training that law enforcement officers have received, *id.* at 11 (Condition 43). Grantees have also

27
 28 ⁷ The Prohibited Expenditure List is available at <https://www.bja.gov/funding/JAGControlledPurchaselist.pdf>.
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1 been encouraged to adopt policies banning employees from text messaging while driving on duty,
2 *id.* at 8 (Condition 22), and to submit “JAG success stories,” *id.* at 11 (Condition 44). Also, for
3 FY 2017, the Department is requiring that when award funds are used for DNA testing, any
4 resulting eligible DNA profiles must be uploaded to the Combined DNA Index System
5 (“CODIS”) maintained by the Federal Bureau of Investigation. *See* Hanson Decl., Ex. B at 20
6 (Condition 57). The particular conditions that the plaintiff challenges here are not different in
7 kind from these many other Byrne JAG grant conditions.

8 This authority is not unlimited, however. An obvious limitation on the Department’s
9 discretion is the Constitution. Under the Supreme Court’s jurisprudence regarding requirements
10 for use of the spending power to condition federal grants, a grant condition must, for example, be
11 germane and non-coercive. *See Dole*, 483 U.S. at 207. A grant condition must also comport with
12 all “other constitutional provisions” apart from the Spending Clause. *Id.* at 208. Moreover, the
13 Department’s conditioning power is self-limiting in practice, because extremism in imposing
14 conditions will cause prospective recipients to reject the grant rather than accept the condition.

15 In light of the foregoing, the conditions challenged here fit comfortably within the
16 Assistant Attorney General’s delegated authority. *See Cty. of Santa Clara*, 250 F. Supp. 3d at 531
17 (noting that “Congress can delegate some discretion to the President to decide how to spend
18 appropriated funds” so long as “any delegation and discretion is cabined by [relevant]
19 constitutional boundaries”). Pursuant to this authority, the AAG may prioritize formula grants,
20 like the Byrne JAG Program, for jurisdictions that assist federal authorities in achieving federal
21 law enforcement priorities, including removal of criminal aliens under immigration law. Further,
22 the access and notice conditions challenged here are “special conditions” under 34 U.S.C.
23 § 10102(a)(6).

24 **II. Judgment Should Be Entered for the Defendants on Plaintiff’s** 25 **Spending Clause Claim**

26 Plaintiff alleges that the access and notice conditions violate the Spending Clause by
27 imposing grant conditions that are purportedly ambiguous and “not germane” to the purposes of
28 the Byrne JAG Program, and would require grantees to “engage in unconstitutional activity”

(Dkt. No. 1 ¶ 100). The Spending Clause provides that Congress may “lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States.” U.S. Const. art. I, § 8, cl. 1. As the Supreme Court has held, “Congress may attach conditions on the receipt of federal funds, and has repeatedly employed the power to further broad policy objectives by conditioning receipt of federal moneys upon compliance by the recipient with federal statutory and administrative directives.” *Dole*, 483 U.S. at 206 (internal quotation marks omitted).

The Supreme Court in *South Dakota v. Dole* described certain limitations or potential limitations on the spending power. Most basically, conditions on the receipt of federal funds must be stated “unambiguously” so that recipients can “exercise their choice knowingly, cognizant of the consequences of their participation.” *Id.* (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981) (“The legitimacy of Congress’ power to legislate under the spending power thus rests on whether the State voluntarily and knowingly accepts the terms of the ‘contract.’ There can, of course, be no knowing acceptance if a State is unaware of the conditions or is unable to ascertain what is expected of it.”) (citations omitted) (hereinafter *Pennhurst*). Additionally, the Court observed in *Dole*, “our cases have suggested (without significant elaboration) that conditions on federal grants might be illegitimate if they are unrelated to the federal interest in particular national projects or programs.” 483 U.S. at 207-08 (internal quotation marks omitted). And finally, the Court said that “other constitutional provisions may provide an independent bar to the conditional grant of federal funds.” *Id.* at 207-08.

The access and notice conditions are consistent with all of these principles.⁸ First, these conditions clearly state what conduct is required, so that Byrne JAG grantees can “exercise their choice knowingly, cognizant of the consequences of their participation.” *Dole*, 483 U.S. at 206. They require grantees (1) to give “agents of the United States acting under color of federal law” access to correctional facilities “to meet with individuals who are (or are believed by such agents

⁸ The Court in *Dole* described limitations on congressional power, whereas the plaintiff here alleges that certain Executive actions exceed the spending power. Obviously, these principles – including the relatedness concept discussed below – apply equally to Executive actions as to congressional actions.

1 to be) aliens and to inquire as to such individuals’ right to be or remain in the United States,” and
 2 (2) to notify DHS, upon “formal written request” and “as early as practicable,” before “the
 3 scheduled release date and time for a particular alien in such facility.” See Hanson Decl., Ex. B at
 4 19. The award documents specify that nothing in these conditions requires a grantee to detain
 5 “any individual in custody beyond the date and time the individual would have been released in
 6 the absence of this condition”; that the conditions impose no requirements regarding any requests
 7 by federal immigration authorities to detain non-citizens; and that the notice condition requires
 8 “only as much advance notice as practicable.” *Id.* at 18, 19. Moreover, to the extent any uncer-
 9 tainty may remain, the FY 2017 Byrne JAG solicitation invited any prospective grantee with a
 10 question about “any . . . requirement of this solicitation” to contact OJP’s Response Center
 11 (customer service center) by telephone, email, or Internet chat (Dkt. No. 1, Ex. B at 2). A
 12 prospective grantee could also contact the appropriate “State Policy Advisor” – that is, a specific,
 13 named OJP employee assigned to work with jurisdictions within a specified geographical area.
 14 *Id.*; BJA Programs Office Contact Information, *available at* [https://www.bja.gov/ About/](https://www.bja.gov/About/Contacts/ProgramsOffice.html)
 15 [Contacts/ ProgramsOffice.html](https://www.bja.gov/About/Contacts/ProgramsOffice.html).⁹

16 Second, plaintiff alleges that the access and notice conditions are “not germane to the
 17 stated purposes of the Byrne JAG funds” (Dkt. No. 1 ¶ 100). As the Court of Appeals has
 18 observed, however, this aspect of *Dole* suggests only a “possible ground” for invalidating an
 19 enactment, and does not impose an “exacting standard”:

20 The Supreme Court has suggested that federal grants conditioned on compliance
 21 with federal directives *might* be illegitimate if the conditions share no relationship
 22 to the federal interest in particular national projects or programs. This possible
 23 ground for invalidating a Spending Clause statute, which only suggests that the
 24 legislation *might* be illegitimate without demonstrating a nexus between the
 conditions and a specified national interest, is a far cry from imposing an exacting
 standard for relatedness.

25 *Mayweathers v. Newland*, 314 F.3d 1062, 1067 (9th Cir. 2002) (citing *Dole*, 483 U.S. at 207).

27
 28 ⁹ “BJA” refers to the Bureau of Justice Assistance, the OJP component that administers
 the Byrne JAG Program.
 Motion for Summ. Judgment; Memo. 15
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1 Thus, conditions on federal funding must only “bear some relationship to the purpose of the
2 federal spending.” 314 F.3d at 1067 (quoting *New York v. United States*, 505 U.S. 144, 167
3 (1992)); see *Barbour v. Washington Metro. Area Transit Auth.*, 374 F.3d 1161, 1168 (D.C. Cir.
4 2004) (noting that Supreme Court has never “overturned Spending Clause legislation on
5 relatedness grounds”).

6 The access and notice conditions easily meet this standard. The Byrne JAG Program’s
7 organic statute specifies that grant funds are designed to provide resources “for criminal justice,”
8 to support programs including law enforcement, prosecution, crime prevention, and corrections.
9 34 U.S.C. § 10152(a)(1). These goals are also reflected in the responsibilities of the AAG, which
10 include disseminating information on “criminal justice systems” and “maintain[ing] liaison with
11 the executive and judicial branches of the Federal and State governments in matters relating to
12 criminal justice.” *Id.* § 10102(a)(1), (2). Thus, the overall goal of the Program is to support and
13 strengthen law enforcement and criminal justice and to encourage intergovernmental “liaison.”

14 Similarly, the access and notice conditions are meant to strengthen law enforcement and
15 public safety and to promote cooperation between federal and local authorities. Numerous
16 federal statutes expressly link immigration enforcement with public safety, criminal justice, and
17 intergovernmental cooperation. For example, as discussed above, a conviction for any of a wide
18 variety of criminal offenses renders an alien removable from this country. See 8 U.S.C.
19 § 1227(a)(2). The INA also repeatedly contemplates cooperation among state and local officers
20 and federal officials on immigration enforcement. See, e.g., *id.* § 1357(g) (providing that DHS
21 may enter into formal cooperative agreements with states and localities under which appropriately
22 trained and qualified state and local officers may perform specified functions of a federal immi-
23 gration officer in relation to the investigation, apprehension, or detention of aliens); *id.* § 1324(c)
24 (authorizing state and local law-enforcement officers to make arrests for violations of the INA’s
25 prohibition against smuggling, transporting, or harboring aliens); *id.* § 1252c (authorizing state
26 and local officers to arrest certain felons who have unlawfully returned to the United States).
27 Congress also contemplates the federal detention of certain aliens upon their release from state or
28 local custody, see *id.* § 1226(c), further illustrating the sort of cooperation among federal, state,

1 and local law enforcement that the Byrne JAG conditions are designed to foster. Thus, the access
 2 and notice conditions bear much more than “some relationship” to the purposes of the Byrne JAG
 3 Program. See *Mayweathers*, 314 F.3d at 1067.¹⁰

4 Third, plaintiff alleges that these conditions exceed the spending power by requiring the
 5 City “to engage in unconstitutional activity such as detaining individuals without probable cause
 6 in violation of the Fourth Amendment” (Dkt. No. 1 ¶ 100). The Court in *Dole* emphasized the
 7 narrowness on this limitation on the federal spending power, noting that “the ‘independent
 8 constitutional bar’ limitation . . . is not . . . a prohibition on the indirect achievement of objectives
 9 which Congress is not empowered to achieve directly.” 483 U.S. at 210. Rather, the Court said,
 10 this limitation “stands for the unexceptionable proposition that the power may not be used to
 11 induce the States to engage in activities that would themselves be unconstitutional. Thus, for
 12 example, a grant of federal funds conditioned on invidiously discriminatory state action or the
 13 infliction of cruel and unusual punishment would be an illegitimate exercise of the Congress’
 14 broad spending power.” *Id.* at 210-11.

15 The access and notice conditions do not “induce” San Francisco to violate any such
 16 constitutional prohibition. As explained already, the conditions have no effect on the detention of
 17 non-citizens. The FY 2017 award documents state categorically that nothing in the conditions
 18 “shall be understood to authorize or require any recipient, any subrecipient at any tier, any State
 19 or local government, or any other entity or individual to maintain (or detain) any individual in
 20 custody beyond the date and time the individual would have been released in the absence of this
 21 condition.” See Hanson Decl., Ex. B at 18, 19. The conditions only require, where a jurisdiction
 22

23 ¹⁰ Plaintiff argues that Congress’s elimination, during a reorganization of the Byrne JAG
 24 statute, of a requirement to send information on the criminal conviction of non-citizens to federal
 25 immigration authorities suggests an intent to divorce the Program from immigration enforcement
 26 (Dkt. No. 1 ¶ 39). Absent any indication of such intent in the legislative history, however, the
 27 more reasonable assumption is that Congress simply found the provision to be unnecessary.
 28 Indeed, at the same time Congress eliminated that language, it added the AAG’s discretionary
 authority to “plac[e] special conditions on all grants, and [to] determin[e] priority purposes for
 formula grants.” 34 U.S.C. § 10102(a)(6); see Violence Against Women and Department of
 Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960 (2006), § 1152(b)
 (adding language to subsection (a)(6)); *id.* § 1111(a)(2)(C) (amending 42 U.S.C. § 3753).

1 chooses to accept Byrne JAG funds, that the grantee give federal authorities (1) access to correc-
 2 tional facilities to question non-citizens who are in the jurisdiction's custody and (2) "as much
 3 advance notice as practicable" before ending such custody. Thus, the challenged conditions raise
 4 no issue under the Fourth Amendment or any other "independent constitutional bar." *See Dole*,
 5 483 U.S. at 210.

6 In short, the access and notice conditions in the Byrne JAG Program constitute only a
 7 "relatively mild encouragement" to assist in the enforcement of immigration law. *Dole*, 483 U.S.
 8 at 211.

9 CONCLUSION

10 For the reasons discussed above, summary judgment should be entered for the defendants
 11 on all of plaintiff's claims, which should be dismissed with prejudice.

12 Dated: October 31, 2017

13 Respectfully submitted,

14 CHAD A. READLER
 15 Acting Assistant Attorney General

16 JOHN R. TYLER
 17 Assistant Director

18 /s/ W. Scott Simpson

19

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JEFFERSON B. SESSIONS III, Attorney
General of the United States; ALAN R.
HANSON, Acting Assistant Attorney General;
and U.S. DEPARTMENT OF JUSTICE

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City & County of San Francisco v. Jefferson B. Sessions,
et al.,
No. 3:17-cv-04642-WHO (N.D. Cal.)

Defendants' Motion for Summary Judgment

Attachment 1

Declaration of Alan R. Hanson
Acting Assistant Attorney General
Office of Justice Programs
U.S. Department of Justice

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CITY AND COUNTY OF SAN
FRANCISCO,

Plaintiff,

v.

JEFFERSON B. SESSIONS III, Attorney
General of the United States, *et al.*,

Defendants.

No. 3:17-cv-04642-WHO

**DECLARATION OF ALAN R. HANSON
IN SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

1. I am the Acting Assistant Attorney General for the Office of Justice Programs (“OJP” or “Office”) in the U.S. Department of Justice. I have held this position since January 30, 2017. As Acting Assistant Attorney General, I am the head of OJP. This declaration is based on personal knowledge and information obtained by me in the performance of my official duties.

2. OJP administers the Edward Byrne Memorial Justice Assistance Grant (“Byrne JAG”) Program.

3. San Francisco, California, applied for and received an award under the Byrne JAG Program for Fiscal Year (“FY”) 2016. OJP issued an award package to San Francisco setting out the conditions that applied to the City’s FY 2016 Byrne JAG award; that award document is Exhibit A to this declaration. San Francisco accepted all of those conditions without objection or challenge.

4. OJP issued its Byrne JAG Local Solicitation for FY 2017 on August 3, 2017, and applications were due September 5, 2017. The Office received nearly one thousand applications

1 under that solicitation, including an application that San Francisco submitted on September 5,
2 2017.

3 5. On August 23, 2017, OJP issued award packages to two local jurisdictions that applied
4 for FY 2017 Byrne JAG funds: the County of Greenville, South Carolina, and the City of
5 Binghamton, New York. The award document transmitted to the County of Greenville at that
6 time is Exhibit B to this declaration. That award document sets out the various conditions that
7 will apply to the FY 2017 Byrne JAG award, if the prospective recipient chooses to accept the
8 award.

9 6. I understand that in this lawsuit, San Francisco challenges the conditions that appear as
10 numbers 55 and 56 in the award document issued to the County of Greenville. The award
11 document issued to the City of Binghamton contained identical conditions 55 and 56, and, in
12 absence of any applicable court injunction, identical language for those conditions will appear in
13 all award documents issued under the FY 2017 Byrne JAG - Local Solicitation, including any
14 such award document that may be issued to San Francisco.

15 7. Other than the award notifications to the County of Greenville and the City of
16 Binghamton, all other FY 2017 Byrne JAG applications currently remain pending, including the
17 application submitted by San Francisco.

18 8. As of the execution of this declaration, the imposition of conditions 55 and 56 is
19 preliminarily enjoined nationwide by the federal district court in *City of Chicago v. Sessions*, No.
20 17-cv-5720 (N.D. Ill.). OJP is awaiting further developments regarding the nationwide
21 preliminary injunction in *City of Chicago*, and is not at this time issuing FY 2017 Byrne JAG
22 award documents.

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

3 Dated this 31st day of October, 2017.

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6 ALAN R. HANSON
7 Acting Assistant Attorney General
8 Office of Justice Programs
9 U.S. Department of Justice
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U.S. Department of Justice

Office of Justice Programs

Bureau of Justice Assistance

Office of Justice Programs

Washington, D.C. 20531

August 26, 2016

The Honorable Edwin Lee
City and County of San Francisco
1 Dr. Carlton Goodlett Place
Suite 496– City Hall
San Francisco, CA 94102-4676

Dear Mayor Lee:

On behalf of Attorney General Loretta Lynch, it is my pleasure to inform you that the Office of Justice Programs has approved your application for funding under the FY 16 Edward Byrne Memorial Justice Assistance Grant (JAG) Program - Local Solicitation in the amount of \$522,943 for City and County of San Francisco.

Enclosed you will find the Grant Award and Special Conditions documents. This award is subject to all administrative and financial requirements, including the timely submission of all financial and programmatic reports, resolution of all interim audit findings, and the maintenance of a minimum level of cash-on-hand. Should you not adhere to these requirements, you will be in violation of the terms of this agreement and the award will be subject to termination for cause or other administrative action as appropriate.

If you have questions regarding this award, please contact:

- Program Questions, Gale Farquhar, Program Manager at (202) 598-9522; and
- Financial Questions, the Office of the Chief Financial Officer, Customer Service Center (CSC) at (800) 458-0786, or you may contact the CSC at ask.ocfo@usdoj.gov.

Congratulations, and we look forward to working with you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Denise O'Donnell".

Denise O'Donnell
Director

Enclosures



OFFICE FOR CIVIL RIGHTS

Office of Justice Programs

U.S. Department of Justice

810 7th Street, NW
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E-mail: askOCR@usdoj.gov

Website: www.ojp.usdoj.gov/ocr

August 26, 2016

The Honorable Edwin Lee
City and County of San Francisco
1 Dr. Carlton Goodlett Place
Suite 496– City Hall
San Francisco, CA 94102-4676

Dear Mayor Lee:

Congratulations on your recent award. In establishing financial assistance programs, Congress linked the receipt of federal funding to compliance with federal civil rights laws. The Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) is responsible for ensuring that recipients of financial assistance from the OJP, the Office of Community Oriented Policing Services (COPS), and the Office on Violence Against Women (OVW) comply with the applicable federal civil rights laws. We at the OCR are available to help you and your organization meet the civil rights requirements that come with DOJ funding.

Ensuring Access to Federally Assisted Programs

Federal laws that apply to recipients of financial assistance from the DOJ prohibit discrimination on the basis of race, color, national origin, religion, sex, or disability in funded programs or activities, not only in employment but also in the delivery of services or benefits. A federal law also prohibits recipients from discriminating on the basis of age in the delivery of services or benefits.

In March of 2013, President Obama signed the Violence Against Women Reauthorization Act of 2013. The statute amends the Violence Against Women Act of 1994 (VAWA) by including a nondiscrimination grant condition that prohibits discrimination based on actual or perceived race, color, national origin, religion, sex, disability, sexual orientation, or gender identity. The new nondiscrimination grant condition applies to certain programs funded after October 1, 2013. The OCR and the OVW have developed answers to some frequently asked questions about this provision to assist recipients of VAWA funds to understand their obligations. The Frequently Asked Questions are available at <http://ojp.gov/about/ocr/vawafaqs.htm>.

Enforcing Civil Rights Laws

All recipients of federal financial assistance, regardless of the particular funding source, the amount of the grant award, or the number of employees in the workforce, are subject to prohibitions against unlawful discrimination. Accordingly, the OCR investigates recipients that are the subject of discrimination complaints from both individuals and groups. In addition, based on regulatory criteria, the OCR selects a number of recipients each year for compliance reviews, audits that require recipients to submit data showing that they are providing services equitably to all segments of their service population and that their employment practices meet equal opportunity standards.

Providing Services to Limited English Proficiency (LEP) Individuals

In accordance with DOJ guidance pertaining to Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, recipients of federal financial assistance must take reasonable steps to provide meaningful access to their programs and activities for persons with limited English proficiency (LEP). See U.S. Department of Justice, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455 (2002). For more information on the civil rights responsibilities that recipients have in providing language services to LEP individuals, please see the website <http://www.lep.gov>.

Ensuring Equal Treatment for Faith-Based Organizations

The DOJ regulation, Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 38, requires State Administering Agencies (SAAs) to treat faith-based organizations the same as any other applicant or recipient. The regulation prohibits SAAs from making awards or grant administration decisions on the basis of an organization's religious character or affiliation, religious name, or the religious composition of its board of directors.

The regulation also prohibits faith-based organizations from using financial assistance from the DOJ to fund inherently (or explicitly) religious activities. While faith-based organizations can engage in non-funded inherently religious activities, they must hold them separately from the program funded by the DOJ, and recipients cannot compel beneficiaries to participate in them. The Equal Treatment Regulation also makes clear that organizations participating in programs funded by the DOJ are not permitted to discriminate in the provision of services on the basis of a beneficiary's religion. For more information on the regulation, please see the OCR's website at http://www.ojp.usdoj.gov/about/ocr/equal_fbo.htm.

SAAs and faith-based organizations should also note that the Omnibus Crime Control and Safe Streets Act (Safe Streets Act) of 1968, as amended, 42 U.S.C. § 3789d(c); the Victims of Crime Act of 1984, as amended, 42 U.S.C. § 10604(e); the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. § 5672(b); and VAWA, Pub. L. No. 113-4, sec. 3(b)(4), 127 Stat. 54, 61-62 (to be codified at 42 U.S.C. § 13925(b)(13)) contain prohibitions against discrimination on the basis of religion in employment. Despite these nondiscrimination provisions, the DOJ has concluded that it may construe the Religious Freedom Restoration Act (RFRA) on a case-by-case basis to permit some faith-based organizations to receive DOJ funds while taking into account religion when hiring staff, even if the statute that authorizes the funding program generally forbids recipients from considering religion in employment decisions. Please consult with the OCR if you have any questions about the regulation or the application of RFRA to the statutes that prohibit discrimination in employment.

Using Arrest and Conviction Records in Making Employment Decisions

The OCR issued an advisory document for recipients on the proper use of arrest and conviction records in making hiring decisions. See Advisory for Recipients of Financial Assistance from the U.S. Department of Justice on the U.S. Equal Employment Opportunity Commission's Enforcement Guidance: Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964 (June 2013), available at http://www.ojp.usdoj.gov/about/ocr/pdfs/UseofConviction_Advisory.pdf. Recipients should be mindful that the misuse of arrest or conviction records to screen either applicants for employment or employees for retention or promotion may have a disparate impact based on race or national origin, resulting in unlawful employment discrimination. In light of the Advisory, recipients should consult local counsel in reviewing their employment practices. If warranted, recipients should also incorporate an analysis of the use of arrest and conviction records in their Equal Employment Opportunity Plans (EEOs) (see below).

Complying with the Safe Streets Act

An organization that is a recipient of financial assistance subject to the nondiscrimination provisions of the Safe Streets Act, must meet two obligations: (1) complying with the federal regulation pertaining to the development of an EEO (see 28 C.F.R. pt. 42, subpt. E) and (2) submitting to the OCR findings of discrimination (see 28 C.F.R. §§ 42.204(c), .205(c)(5)).

Meeting the EEOP Requirement

If your organization has less than fifty employees or receives an award of less than \$25,000 or is a nonprofit organization, a medical institution, an educational institution, or an Indian tribe, then it is exempt from the EEOP requirement. To claim the exemption, your organization must complete and submit Section A of the Certification Form, which is available online at <http://www.ojp.usdoj.gov/about/ocr/pdfs/cert.pdf>.

If your organization is a government agency or private business and receives an award of \$25,000 or more, but less than \$500,000, and has fifty or more employees (counting both full- and part-time employees but excluding political appointees), then it has to prepare a Utilization Report (formerly called an EEOP Short Form), but it does not have to submit the report to the OCR for review. Instead, your organization has to maintain the Utilization Report on file and make it available for review on request. In addition, your organization has to complete Section B of the Certification Form and return it to the OCR. The Certification Form is available at <http://www.ojp.usdoj.gov/about/ocr/pdfs/cert.pdf>.

If your organization is a government agency or private business and has received an award for \$500,000 or more and has fifty or more employees (counting both full- and part-time employees but excluding political appointees), then it has to prepare a Utilization Report (formerly called an EEOP Short Form) and submit it to the OCR for review within sixty days from the date of this letter. For assistance in developing a Utilization Report, please consult the OCR's website at <http://www.ojp.usdoj.gov/about/ocr/eeop.htm>. In addition, your organization has to complete Section C of the Certification Form and return it to the OCR. The Certification Form is available at <http://www.ojp.usdoj.gov/about/ocr/pdfs/cert.pdf>.

To comply with the EEOP requirements, you may request technical assistance from an EEOP specialist at the OCR by telephone at (202) 307-0690, by TTY at (202) 307-2027, or by e-mail at EEOSubmission@usdoj.gov.

Meeting the Requirement to Submit Findings of Discrimination

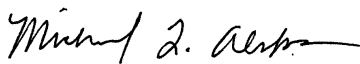
If in the three years prior to the date of the grant award, your organization has received an adverse finding of discrimination based on race, color, national origin, religion, or sex, after a due-process hearing, from a state or federal court or from a state or federal administrative agency, your organization must send a copy of the finding to the OCR.

Ensuring the Compliance of Subrecipients

SAs must have standard assurances to notify subrecipients of their civil rights obligations, written procedures to address discrimination complaints filed against subrecipients, methods to monitor subrecipients' compliance with civil rights requirements, and a program to train subrecipients on applicable civil rights laws. In addition, SAs must submit to the OCR every three years written Methods of Administration (MOA) that summarize the policies and procedures that they have implemented to ensure the civil rights compliance of subrecipients. For more information on the MOA requirement, see http://www.ojp.usdoj.gov/funding/other_requirements.htm.

If the OCR can assist you in any way in fulfilling your organization's civil rights responsibilities as a recipient of federal financial assistance, please contact us.

Sincerely,



Michael L. Alston
Director

cc: Grant Manager
Financial Analyst

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1. RECIPIENT NAME AND ADDRESS (Including Zip Code) City and County of San Francisco 1 Dr. Carlton Goodlett Place Suite 496-- City Hall San Francisco, CA 94102-4676		4. AWARD NUMBER: 2016-DJ-BX-0898																			
		5. PROJECT PERIOD: FROM 10/01/2015 TO 09/30/2019 BUDGET PERIOD: FROM 10/01/2015 TO 09/30/2019																			
		6. AWARD DATE 08/26/2016		7. ACTION Initial																	
2a. GRANTEE IRS/VENDOR NO.		8. SUPPLEMENT NUMBER 00																			
2b. GRANTEE DUNS NO.		9. PREVIOUS AWARD AMOUNT \$ 0																			
3. PROJECT TITLE FY 16 JAG Program		10. AMOUNT OF THIS AWARD \$ 522,943																			
		11. TOTAL AWARD \$ 522,943																			
12. SPECIAL CONDITIONS THE ABOVE GRANT PROJECT IS APPROVED SUBJECT TO SUCH CONDITIONS OR LIMITATIONS AS ARE SET FORTH ON THE ATTACHED PAGE(S).																					
13. STATUTORY AUTHORITY FOR GRANT This project is supported under FY16(BJA - JAG) 42 USC 3750, et seq.																					
14. CATALOG OF DOMESTIC FEDERAL ASSISTANCE (CFDA Number) 16.738 - Edward Byrne Memorial Justice Assistance Grant Program																					
15. METHOD OF PAYMENT GPRS																					
[REDACTED] AGENCY APPROVAL [REDACTED]		[REDACTED] GRANTEE ACCEPTANCE [REDACTED]																			
16. TYPED NAME AND TITLE OF APPROVING OFFICIAL Denise O'Donnell Director		18. TYPED NAME AND TITLE OF AUTHORIZED GRANTEE OFFICIAL Edwin Lee Mayor																			
17. SIGNATURE OF APPROVING OFFICIAL 		19. SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL		19A. DATE																	
[REDACTED] AGENCY USE ONLY [REDACTED]																					
20. ACCOUNTING CLASSIFICATION CODES		21. RDJUGT0505																			
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OJP FORM 4000/2 (REV. 5-87) PREVIOUS EDITIONS ARE OBSOLETE.

OJP FORM 4000/2 (REV. 4-88)



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SPECIAL CONDITIONS

1. Applicability of Part 200 Uniform Requirements

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, as adopted and supplemented by the Department of Justice (DOJ) in 2 C.F.R. Part 2800 (together, the "Part 200 Uniform Requirements") apply to this 2016 award from the Office of Justice Programs (OJP).

The Part 200 Uniform Requirements were first adopted by DOJ on December 26, 2014. If this 2016 award supplements funds previously awarded by OJP under the same award number (e.g., funds awarded in 2014 or earlier years), the Part 200 Uniform Requirements apply with respect to all funds under that award number (regardless of the award date, and regardless of whether derived from the initial award or a supplemental award) that are obligated on or after the acceptance date of this 2016 award.

For more information and resources on the Part 200 Uniform Requirements as they relate to OJP awards and subawards ("subgrants"), see the Office of Justice Programs (OJP) website at <http://ojp.gov/funding/Part200UniformRequirements.htm>.

In the event that an award-related question arises from documents or other materials prepared or distributed by OJP that may appear to conflict with, or differ in some way from, the provisions of the Part 200 Uniform Requirements, the recipient is to contact OJP promptly for clarification.

2. Compliance with DOJ Grants Financial Guide

The recipient agrees to comply with the Department of Justice Grants Financial Guide as posted on the OJP website (currently, the "2015 DOJ Grants Financial Guide"), including any updated version that may be posted during the period of performance.

3. Required training for Point of Contact and all Financial Points of Contact

Both the Point of Contact (POC) and all Financial Points of Contact (FPOCs) for this award must have successfully completed an "OJP financial management and grant administration training" by 120 days after the date of the recipient's acceptance of the award. Successful completion of such a training on or after January 1, 2015, will satisfy this condition.

In the event that either the POC or an FPOC for this award changes during the period of performance, the new POC or FPOC must have successfully completed an "OJP financial management and grant administration training" by 120 calendar days after -- (1) the date of OJP's approval of the "Change Grantee Contact" GAN (in the case of a new POC), or (2) the date the POC enters information on the new FPOC in GMS (in the case of a new FPOC). Successful completion of such a training on or after January 1, 2015, will satisfy this condition.

A list of OJP trainings that OJP will consider "OJP financial management and grant administration training" for purposes of this condition is available at <http://www.ojp.gov/training/fmts.htm>. All trainings that satisfy this condition include a session on grant fraud prevention and detection

The recipient should anticipate that OJP will immediately withhold ("freeze") award funds if the recipient fails to comply with this condition. The recipient's failure to comply also may lead OJP to impose additional appropriate conditions on this award.



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4. Requirements related to "de minimis" indirect cost rate

A recipient that is eligible under the Part 200 Uniform Requirements and other applicable law to use the "de minimis" indirect cost rate described in 2 C.F.R. 200.414(f), and that elects to use the "de minimis" indirect cost rate, must advise OJP in writing of both its eligibility and its election, and must comply with all associated requirements in the Part 200 Uniform Requirements. The "de minimis" rate may be applied only to modified total direct costs (MTDC) as defined by the Part 200 Uniform Requirements.

5. Requirement to report potentially duplicative funding

If the recipient currently has other active awards of federal funds, or if the recipient receives any other award of federal funds during the period of performance for this award, the recipient promptly must determine whether funds from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items for which funds are provided under this award. If so, the recipient must promptly notify the DOJ awarding agency (OJP or OVW, as appropriate) in writing of the potential duplication, and, if so requested by DOJ awarding agency, must seek a budget-modification or change-of-project-scope grant adjustment notice (GAN) to eliminate any inappropriate duplication of funding.

6. Requirements related to System for Award Management and Unique Entity Identifiers

The recipient must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at <http://www.sam.gov>. This includes applicable requirements regarding registration with SAM, as well as maintaining the currency of information in SAM.

The recipient also must comply with applicable restrictions on subawards ("subgrants") to first-tier subrecipients (first-tier "subgrantees"), including restrictions on subawards to entities that do not acquire and provide (to the recipient) the unique entity identifier required for SAM registration.

The details of the recipient's obligations related to SAM and to unique entity identifiers are posted on the OJP web site at <http://ojp.gov/funding/Explore/SAM.htm> (Award condition: System for Award Management (SAM) and Universal Identifier Requirements), and are incorporated by reference here.

This special condition does not apply to an award to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

7. All subawards ("subgrants") must have specific federal authorization

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements for authorization of any subaward. This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a "subaward" (and therefore does not consider a procurement "contract").

The details of the requirement for authorization of any subaward are posted on the OJP web site at <http://ojp.gov/funding/Explore/SubawardAuthorization.htm> (Award condition: Award Condition: All subawards ("subgrants") must have specific federal authorization), and are incorporated by reference here.

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8. Specific post-award approval required to use a noncompetitive approach in any procurement contract that would exceed \$150,000

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements to obtain specific advance approval to use a noncompetitive approach in any procurement contract that would exceed the Simplified Acquisition Threshold (currently, \$150,000). This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a procurement "contract" (and therefore does not consider a subaward).

The details of the requirement for advance approval to use a noncompetitive approach in a procurement contract under an OJP award are posted on the OJP web site at <http://ojp.gov/funding/Explore/NoncompetitiveProcurement.htm> (Award condition: Specific post-award approval required to use a noncompetitive approach in a procurement contract (if contract would exceed \$150,000)), and are incorporated by reference here.

9. Requirements pertaining to prohibited conduct related to trafficking in persons (including reporting requirements and OJP authority to terminate award)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of recipients, subrecipients ("subgrantees"), or individuals defined (for purposes of this condition) as "employees" of the recipient or of any subrecipient.

The details of the recipient's obligations related to prohibited conduct related to trafficking in persons are posted on the OJP web site at <http://ojp.gov/funding/Explore/ProhibitedConduct-Trafficking.htm> (Award condition: Prohibited conduct by recipients and subrecipients related to trafficking in persons (including reporting requirements and OJP authority to terminate award)), and are incorporated by reference here.

10. Compliance with applicable rules regarding approval, planning, and reporting of conferences, meetings, trainings, and other events

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable laws, regulations, policies, and official DOJ guidance (including specific cost limits, prior approval and reporting requirements, where applicable) governing the use of federal funds for expenses related to conferences (as that term is defined by DOJ), including the provision of food and/or beverages at such conferences, and costs of attendance at such conferences.

Information on the pertinent DOJ definition of conferences and the rules applicable to this award appears in the DOJ Grants Financial Guide (currently, as section 3.10 of "Postaward Requirements" in the "2015 DOJ Grants Financial Guide").

11. Requirement for data on performance and effectiveness under the award

The recipient must collect and maintain data that measure the performance and effectiveness of activities under this award. The data must be provided to OJP in the manner (including within the timeframes) specified by OJP in the program solicitation or other applicable written guidance. Data collection supports compliance with the Government Performance and Results Act (GPRA) and the GPRA Modernization Act, and other applicable laws.

12. OJP Training Guiding Principles

Any training or training materials that the recipient -- or any subrecipient ("subgrantee") at any tier -- develops or delivers with OJP award funds must adhere to the OJP Training Guiding Principles for Grantees and Subgrantees, available at <http://ojp.gov/funding/ojptrainingguidingprinciples.htm>.



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13. Effect of failure to address audit issues

The recipient understands and agrees that the DOJ awarding agency (OJP or OVW, as appropriate) may withhold award funds, or may impose other related requirements, if (as determined by the DOJ awarding agency) the recipient does not satisfactorily and promptly address outstanding issues from audits required by the Part 200 Uniform Requirements (or by the terms of this award), or other outstanding issues that arise in connection with audits, investigations, or reviews of DOJ awards.

14. The recipient agrees to comply with any additional requirements that may be imposed by the DOJ awarding agency (OJP or OVW, as appropriate) during the period of performance for this award, if the recipient is designated as "high-risk" for purposes of the DOJ high-risk grantee list.

15. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 42

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 42, specifically including any applicable requirements in Subpart E of 28 C.F.R. Part 42 that relate to an equal employment opportunity program.

16. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 38

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 38, specifically including any applicable requirements regarding written notice to program beneficiaries and prospective program beneficiaries. Part 38 of 28 C.F.R., a DOJ regulation, was amended effective May 4, 2016.

Among other things, 28 C.F.R. Part 38 includes rules that prohibit specific forms of discrimination on the basis of religion, a religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. Part 38 also sets out rules and requirements that pertain to recipient and subrecipient ("subgrantee") organizations that engage in or conduct explicitly religious activities, as well as rules and requirements that pertain to recipients and subrecipients that are faith-based or religious organizations.

The text of the regulation, now entitled "Partnerships with Faith-Based and Other Neighborhood Organizations," is available via the Electronic Code of Federal Regulations (currently accessible at <http://www.ecfr.gov/cgi-bin/ECFR?page=browse>), by browsing to Title 28-Judicial Administration, Chapter 1, Part 38, under e-CFR "current" data.

17. Restrictions on "lobbying"

Federal funds may not be used by the recipient, or any subrecipient ("subgrantee") at any tier, either directly or indirectly, to support or oppose the enactment, repeal, modification or adoption of any law, regulation, or policy, at any level of government.

Should any question arise as to whether a particular use of Federal funds by a recipient (or subrecipient) would or might fall within the scope of this prohibition, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.



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18. Compliance with general appropriations-law restrictions on the use of federal funds (FY 2016)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable restrictions on the use of federal funds set out in federal appropriations statutes. Pertinent restrictions, including from various "general provisions" in the Consolidated Appropriations Act, 2016, are set out at <http://ojp.gov/funding/Explore/FY2016-AppropriationsLawRestrictions.htm>, and are incorporated by reference here.

Should a question arise as to whether a particular use of federal funds by a recipient (or a subrecipient) would or might fall within the scope of an appropriations-law restriction, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

19. Reporting Potential Fraud, Waste, and Abuse, and Similar Misconduct

The recipient and any subrecipients ("subgrantees") must promptly refer to the DOJ Office of the Inspector General (OIG) any credible evidence that a principal, employee, agent, subrecipient, contractor, subcontractor, or other person has, in connection with funds under this award -- (1) submitted a claim that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct.

Potential fraud, waste, abuse, or misconduct involving or relating to funds under this award should be reported to the OIG by-- (1) mail directed to: Office of the Inspector General, U.S. Department of Justice, Investigations Division, 950 Pennsylvania Avenue, N.W. Room 4706, Washington, DC 20530; (2) e-mail to: oig.hotline@usdoj.gov; and/or (3) the DOJ OIG hotline: (contact information in English and Spanish) at (800) 869-4499 (phone) or (202) 616-9881 (fax).

Additional information is available from the DOJ OIG website at <http://www.usdoj.gov/oig>.



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20. Restrictions and certifications regarding non-disclosure agreements and related matters

No recipient or subrecipient ("subgrantee") under this award, or entity that receives a procurement contract or subcontract with any funds under this award, may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information.

The foregoing is not intended, and shall not be understood by the agency making this award, to contravene requirements applicable to Standard Form 312 (which relates to classified information), Form 4414 (which relates to sensitive compartmented information), or any other form issued by a federal department or agency governing the nondisclosure of classified information.

1. In accepting this award, the recipient--

a. represents that it neither requires nor has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

b. certifies that, if it learns or is notified that it is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

2. If the recipient does or is authorized under this award to make subawards ("subgrants"), procurement contracts, or both--

a. it represents that--

(1) it has determined that no other entity that the recipient's application proposes may or will receive award funds (whether through a subaward ("subgrant"), procurement contract, or subcontract under a procurement contract) either requires or has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

(2) it has made appropriate inquiry, or otherwise has an adequate factual basis, to support this representation; and

b. it certifies that, if it learns or is notified that any subrecipient, contractor, or subcontractor entity that receives funds under this award is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds to or by that entity, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.



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21. Compliance with 41 U.S.C. 4712 (including prohibitions on reprisal; notice to employees)

The recipient must comply with, and is subject to, all applicable provisions of 41 U.S.C. 4712, including all applicable provisions that prohibit, under specified circumstances, discrimination against an employee as reprisal for the employee's disclosure of information related to gross mismanagement of a federal grant, a gross waste of federal funds, an abuse of authority relating to a federal grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal grant.

The recipient also must inform its employees, in writing (and in the predominant native language of the workforce), of employee rights and remedies under 41 U.S.C. 4712.

Should a question arise as to the applicability of the provisions of 41 U.S.C. 4712 to this award, the recipient is to contact the DOJ awarding agency (OJP or OVW, as appropriate) for guidance.

22. Encouragement of policies to ban text messaging while driving

Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), DOJ encourages recipients and subrecipients ("subgrantees") to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this award, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

23. The recipient agrees to comply with OJP grant monitoring guidelines, protocols, and procedures, and to cooperate with BJA and OCFO on all grant monitoring requests, including requests related to desk reviews, enhanced programmatic desk reviews, and/or site visits. The recipient agrees to provide to BJA and OCFO all documentation necessary to complete monitoring tasks, including documentation related to any subawards made under this award. Further, the recipient agrees to abide by reasonable deadlines set by BJA and OCFO for providing the requested documents. Failure to cooperate with BJA's/OCFO's grant monitoring activities may result in sanctions affecting the recipient's DOJ awards, including, but not limited to: withholdings and/or other restrictions on the recipient's access to grant funds; referral to the Office of the Inspector General for audit review; designation of the recipient as a DOJ High Risk grantee; or termination of an award(s).

24. The recipient agrees to comply with applicable requirements to report first-tier subawards of \$25,000 or more and, in certain circumstances, to report the names and total compensation of the five most highly compensated executives of the recipient and first-tier subrecipients of award funds. Such data will be submitted to the FFATA Subaward Reporting System (FSRS). The details of recipient obligations, which derive from the Federal Funding Accountability and Transparency Act of 2006 (FFATA), are posted on the Office of Justice Programs web site at <http://ojp.gov/funding/Explore/FFATA.htm> (Award condition: Reporting Subawards and Executive Compensation), and are incorporated by reference here. This condition, and its reporting requirement, does not apply to grant awards made to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

25. Program income (as defined in the Part 200 Uniform Requirements) must be used in accordance with the provisions of the Part 200 Uniform Requirements. Program income earnings and expenditures both must be reported on the quarterly Federal Financial Report, SF 425.



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26. In order to promote information sharing and enable interoperability among disparate systems across the justice and public safety community, OJP requires the grantee to comply with DOJ's Global Justice Information Sharing Initiative (DOJ's Global) guidelines and recommendations for this particular grant. Grantee shall conform to the Global Standards Package (GSP) and all constituent elements, where applicable, as described at: http://www.it.ojp.gov/gsp_grantcondition. Grantee shall document planned approaches to information sharing and describe compliance to the GSP and appropriate privacy policy that protects shared information, or provide detailed justification for why an alternative approach is recommended.
27. To avoid duplicating existing networks or IT systems in any initiatives funded by BJA for law enforcement information sharing systems which involve interstate connectivity between jurisdictions, such systems shall employ, to the extent possible, existing networks as the communication backbone to achieve interstate connectivity, unless the grantee can demonstrate to the satisfaction of BJA that this requirement would not be cost effective or would impair the functionality of an existing or proposed IT system.
28. The recipient agrees that any information technology system funded or supported by OJP funds will comply with 28 C.F.R. Part 23, Criminal Intelligence Systems Operating Policies, if OJP determines this regulation to be applicable. Should OJP determine 28 C.F.R. Part 23 to be applicable, OJP may, at its discretion, perform audits of the system, as per the regulation. Should any violation of 28 C.F.R. Part 23 occur, the recipient may be fined as per 42 U.S.C. 3789g(c)-(d). Recipient may not satisfy such a fine with federal funds.
29. Grantee agrees to comply with the requirements of 28 C.F.R. Part 46 and all Office of Justice Programs policies and procedures regarding the protection of human research subjects, including obtainment of Institutional Review Board approval, if appropriate, and subject informed consent.
30. Grantee agrees to comply with all confidentiality requirements of 42 U.S.C. section 3789g and 28 C.F.R. Part 22 that are applicable to collection, use, and revelation of data or information. Grantee further agrees, as a condition of grant approval, to submit a Privacy Certificate that is in accord with requirements of 28 C.F.R. Part 22 and, in particular, section 22.23.
31. Award recipients must verify Point of Contact(POC), Financial Point of Contact (FPOC), and Authorized Representative contact information in GMS, including telephone number and e-mail address. If any information is incorrect or has changed, a Grant Adjustment Notice (GAN) must be submitted via the Grants Management System (GMS) to document changes.
32. The grantee agrees that within 120 days of award acceptance, each current member of a law enforcement task force funded with these funds who is a task force commander, agency executive, task force officer, or other task force member of equivalent rank, will complete required online (internet-based) task force training. Additionally, all future task force members are required to complete this training once during the life of this award, or once every four years if multiple awards include this requirement. The training is provided free of charge online through BJA's Center for Task Force Integrity and Leadership (www.ctfli.org). This training addresses task force effectiveness as well as other key issues including privacy and civil liberties/rights, task force performance measurement, personnel selection, and task force oversight and accountability. When BJA funding supports a task force, a task force personnel roster should be compiled and maintained, along with course completion certificates, by the grant recipient. Additional information is available regarding this required training and access methods via BJA's web site and the Center for Task Force Integrity and Leadership (www.ctfli.org).
33. The recipient agrees to participate in BJA-sponsored training events, technical assistance events, or conferences held by BJA or its designees, upon BJA's request.



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SPECIAL CONDITIONS

34. Approval of this award does not indicate approval of any consultant rate in excess of \$650 per day. A detailed justification must be submitted to and approved by the Office of Justice Programs (OJP) program office prior to obligation or expenditure of such funds.
35. The grantee agrees to assist BJA in complying with the National Environmental Policy Act (NEPA), the National Historic Preservation Act, and other related federal environmental impact analyses requirements in the use of these grant funds, either directly by the grantee or by a subgrantee. Accordingly, the grantee agrees to first determine if any of the following activities will be funded by the grant, prior to obligating funds for any of these purposes. If it is determined that any of the following activities will be funded by the grant, the grantee agrees to contact BJA.

The grantee understands that this special condition applies to its following new activities whether or not they are being specifically funded with these grant funds. That is, as long as the activity is being conducted by the grantee, a subgrantee, or any third party and the activity needs to be undertaken in order to use these grant funds, this special condition must first be met. The activities covered by this special condition are:

- New construction;
- Minor renovation or remodeling of a property located in an environmentally or historically sensitive area, including properties located within a 100-year flood plain, a wetland, or habitat for endangered species, or a property listed on or eligible for listing on the National Register of Historic Places;
- A renovation, lease, or any proposed use of a building or facility that will either (a) result in a change in its basic prior use or (b) significantly change its size;
- Implementation of a new program involving the use of chemicals other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or education environments; and
- Implementation of a program relating to clandestine methamphetamine laboratory operations, including the identification, seizure, or closure of clandestine methamphetamine laboratories.

The grantee understands and agrees that complying with NEPA may require the preparation of an Environmental Assessment and/or an Environmental Impact Statement, as directed by BJA. The grantee further understands and agrees to the requirements for implementation of a Mitigation Plan, as detailed at <http://www.ojp.usdoj.gov/BJA/resource/nepa.html>, for programs relating to methamphetamine laboratory operations.

Application of This Special Condition to Grantee's Existing Programs or Activities: For any of the grantee's or its subgrantees' existing programs or activities that will be funded by these grant funds, the grantee, upon specific request from BJA, agrees to cooperate with BJA in any preparation by BJA of a national or program environmental assessment of that funded program or activity.

36. The recipient is required to establish a trust fund account. (The trust fund may or may not be an interest-bearing account.) The fund, including any interest, may not be used to pay debts or expenses incurred by other activities beyond the scope of the Edward Byrne Memorial Justice Assistance Grant Program (JAG). The recipient also agrees to obligate the grant funds in the trust fund (including any interest earned) during the period of the grant and expend within 90 days thereafter. Any unobligated or unexpended funds, including interest earned, must be returned to the Office of Justice Programs at the time of closeout.
37. JAG funds may be used to purchase vests for an agency, but they may not be used as the 50% match for purposes of the Bulletproof Vest Partnership (BVP) program.

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38. Ballistic-resistant and stab-resistant body armor purchased with JAG funds may be purchased at any threat level, make or model, from any distributor or manufacturer, as long as the vests have been tested and found to comply with applicable National Institute of Justice ballistic or stab standards and are listed on the NIJ Compliant Body Armor Model List (<http://nij.gov>). In addition, ballistic-resistant and stab-resistant body armor purchased must be American-made. The latest NIJ standard information can be found here: <http://www.nij.gov/topics/technology/body-armor/safety-initiative.htm>.
39. The recipient agrees to submit a signed certification that all law enforcement agencies receiving vests purchased with JAG funds have a written "mandatory wear" policy in effect. Fiscal agents and state agencies must keep signed certifications on file for any subrecipients planning to utilize JAG funds for ballistic-resistant and stab-resistant body armor purchases. This policy must be in place for at least all uniformed officers before any JAG funding can be used by the agency for body armor. There are no requirements regarding the nature of the policy other than it be a mandatory wear policy for all uniformed officers while on duty.
40. The recipient agrees to monitor subawards under this JAG award in accordance with all applicable statutes, regulations, OMB circulars, and guidelines, including the DOJ Financial Guide, and to include the applicable conditions of this award in any subaward. The recipient is responsible for oversight of subrecipient spending and monitoring of specific outcomes and benefits attributable to use of JAG funds by subrecipients. The recipient agrees to submit, upon request, documentation of its policies and procedures for monitoring of subawards under this award.
41. The recipient agrees that funds received under this award 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.
42. Award recipients must submit quarterly Federal Financial Reports (SF-425) and semi-annual performance reports through GMS (<https://grants.ojp.usdoj.gov>). Consistent with the Department's responsibilities under the Government Performance and Results Act (GPRA), P.L. 103-62, applicants who receive funding under this solicitation must provide data that measure the results of their work. Therefore, quarterly performance metrics reports must be submitted through BJA's Performance Measurement Tool (PMT) website (www.bjaperformancetools.org). For more detailed information on reporting and other JAG requirements, refer to the JAG reporting requirements webpage. Failure to submit required JAG reports by established deadlines may result in the freezing of grant funds and future High Risk designation.
43. Any law enforcement agency receiving direct or sub-awarded JAG funding must submit quarterly accountability metrics data related to training that officers have received on the use of force, racial and ethnic bias, de-escalation of conflict, and constructive engagement with the public.
44. BJA strongly encourages the recipient to submit annual (or more frequent) JAG success stories. To submit a success story, sign in to your My BJA account at <https://www.bja.gov/Login.aspx> to access the Success Story Submission form. If you do not yet have a My BJA account, please register at <https://www.bja.gov/profile.aspx>. Once you register, one of the available areas on your My BJA page will be "My Success Stories". Within this box, you will see an option to add a Success Story. Once reviewed and approved by BJA, all success stories will appear on the new BJA Success Story web page at <https://www.bja.gov/SuccessStoryList.aspx>.
45. Recipient understands and agrees that award funds may not be used for items that are listed on the Controlled Expenditure List at the time of purchase or acquisition, including as the list may be amended from time to time, without explicit written prior approval from BJA. The Controlled Expenditure List, and instructions on how to request approval for purchase or acquisitions may be accessed here: <https://www.bja.gov/funding/JAGControlledPurchaseList.pdf>



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46. The recipient understands that, pursuant to recommendation 2.1 of Executive Order 13688, law enforcement agencies that acquire controlled equipment through Federal programs must adopt robust and specific written policies and protocols governing General Policing Standards and Specific Controlled Equipment Standards. General Policing Standards includes policies on (a) Community Policing; (b) Constitutional Policing; and (c) Community Input and Impact Considerations. Specific Controlled Equipment Standards includes policies specifically related to (a) Appropriate Use of Controlled Equipment; (b) Supervision of Use; (c) Effectiveness Evaluation; (d) Auditing and Accountability; and (e) Transparency and Notice Considerations. Upon OJP's request, the recipient agrees to provide a copy of the General Policing Standards and Specific Controlled Equipment Standards, and any related policies and protocols.
47. Recipient understands and agrees that the purchase or acquisition of any item on the Controlled Expenditure List at the time of purchase or acquisition, including as the list may be amended from time to time, with award funds by an agency will trigger a requirement that the agency collect and retain (for at least 3 years) certain information about the use of 1) any federally-acquired Controlled Equipment in the agency's inventory, and 2) any other controlled equipment in the same category as the federally-acquired controlled equipment in the agency's inventory, regardless of source; and make that information available to BJA upon request. Details about what information must be collected and retained may be accessed here: https://www.whitehouse.gov/sites/default/files/docs/le_equipment_wg_final_report_final.pdf
48. Recipient understands and agrees that failure to comply with conditions related to Prohibited or Controlled Expenditures may result in a prohibition from further Controlled Expenditure approval under this or other federal awards.
49. Recipient understands and agrees that award funds may not be used for items that are listed on the Prohibited Expenditure List at the time of purchase or acquisition, including as the list may be amended from time to time. The Prohibited Expenditure list may be accessed here: <https://www.bja.gov/funding/JAGControlledPurchaseList.pdf>.
50. Recipient understands and agrees that, notwithstanding 2 CFR § 200.313, no equipment listed on the Controlled Expenditure List that is purchased under this award may be transferred or sold to a third party, except as described below:
 - a. Agencies may transfer or sell any controlled equipment, except riot helmets and riot shields, to a Law Enforcement Agency (LEA) after obtaining prior written approval from BJA. As a condition of that approval, the acquiring LEA will be required to submit information and certifications to BJA as if it was requesting approval to use award fund for the initial purchase of items on the Controlled Expenditure List.
 - b. Agencies may not transfer or sell any riot helmets or riot shields purchased under this award.
 - c. Agencies may not transfer or sell any Controlled Equipment purchased under this award to non-LEAs, with the exception of fixed wing aircraft, rotary wing aircraft, and command and control vehicles. Before any such transfer or sale is finalized, the agency must obtain prior written approval from BJA. All law enforcement-related and other sensitive or potentially dangerous components, and all law enforcement insignias and identifying markings must be removed prior to transfer or sale.

Recipient further understands and agrees to notify BJA prior to the disposal of any items on the Controlled Expenditure List purchased under this award, and to abide by any applicable laws and regulations in such disposal.



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51. Recipient integrity and performance matters: Requirement to report information on certain civil, criminal, and administrative proceedings to SAM and FAPIIS

The recipient must comply with any and all applicable requirements regarding reporting of information on civil, criminal, and administrative proceedings connected with (or connected to the performance of) either this OJP award or any other grant, cooperative agreement, or procurement contract from the federal government. Under certain circumstances, recipients of OJP awards are required to report information about such proceedings, through the federal System for Award Management (known as "SAM"), to the designated federal integrity and performance system (currently, "FAPIIS").

The details of recipient obligations regarding the required reporting (and updating) of information on certain civil, criminal, and administrative proceedings to the federal designated integrity and performance system (currently, "FAPIIS") within SAM are posted on the OJP web site at <http://ojp.gov/funding/FAPIIS.htm> (Award condition: Recipient Integrity and Performance Matters, including Recipient Reporting to FAPIIS), and are incorporated by reference here.



U.S. Department of Justice

Office of Justice Programs

Bureau of Justice Assistance

Washington, D.C. 20531

Memorandum To: Official Grant File

From: Orbin Terry, NEPA Coordinator

Subject: Incorporates NEPA Compliance in Further Developmental Stages for City and County of San Francisco

The Edward Byrne Memorial Justice Assistance Grant Program (JAG) allows states and local governments to support a broad range of activities to prevent and control crime and to improve the criminal justice system, some of which could have environmental impacts. All recipients of JAG funding must assist BJA in complying with NEPA and other related federal environmental impact analyses requirements in the use of grant funds, whether the funds are used directly by the grantee or by a subgrantee or third party. Accordingly, prior to obligating funds for any of the specified activities, the grantee must first determine if any of the specified activities will be funded by the grant.

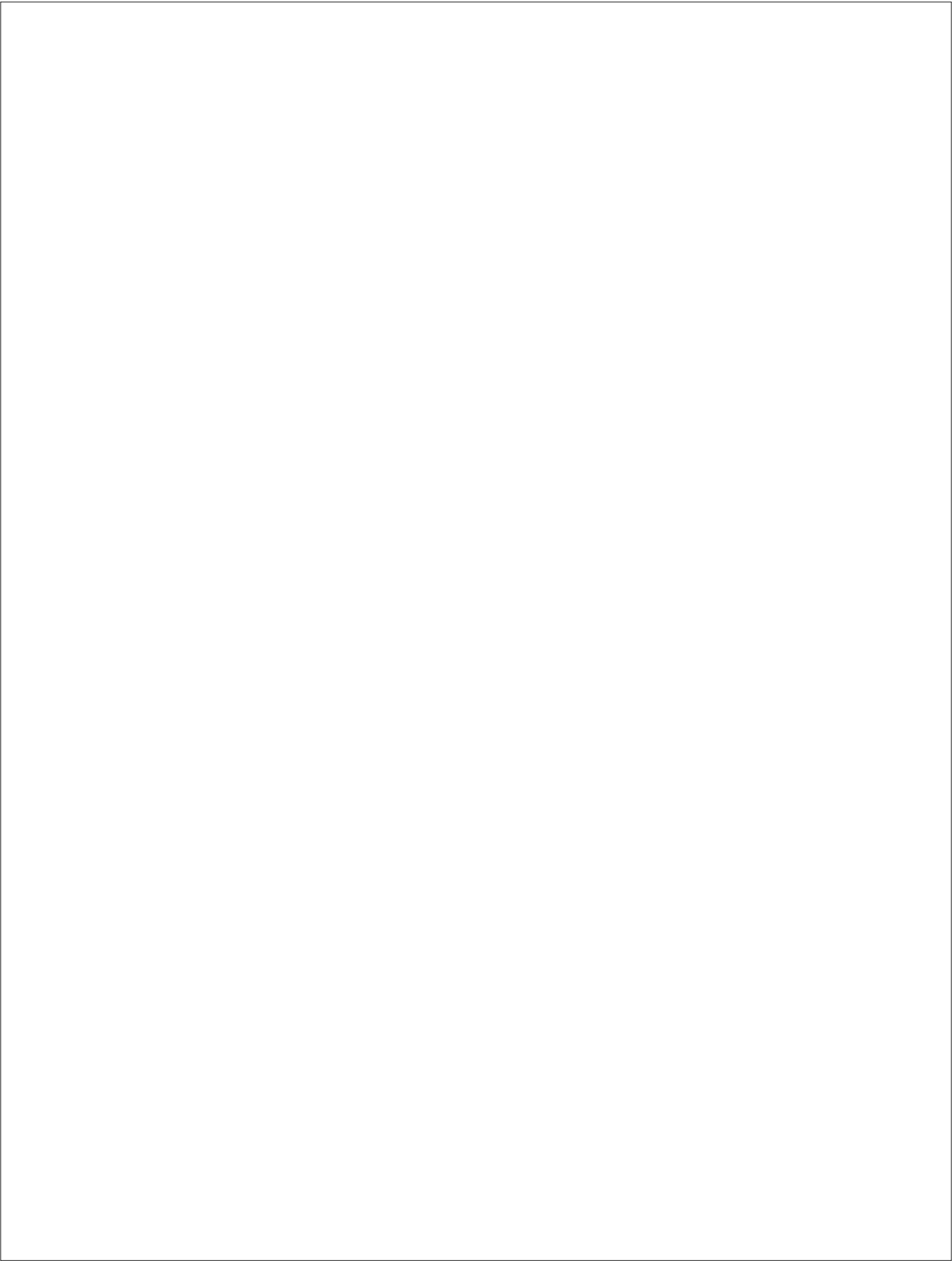
The specified activities requiring environmental analysis are:

- a. New construction;
- b. Any renovation or remodeling of a property located in an environmentally or historically sensitive area, including properties located within a 100-year flood plain, a wetland, or habitat for endangered species, or a property listed on or eligible for listing on the National Register of Historic Places;
- c. A renovation, lease, or any proposed use of a building or facility that will either (a) result in a change in its basic prior use or (b) significantly change its size;
- d. Implementation of a new program involving the use of chemicals other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or education environments; and
- e. Implementation of a program relating to clandestine methamphetamine laboratory operations, including the identification, seizure, or closure of clandestine methamphetamine laboratories.

Complying with NEPA may require the preparation of an Environmental Assessment and/or an Environmental Impact Statement, as directed by BJA. Further, for programs relating to methamphetamine laboratory operations, the preparation of a detailed Mitigation Plan will be required. For more information about Mitigation Plan requirements, please see <https://www.bja.gov/Funding/nepa.html>.

Please be sure to carefully review the grant conditions on your award document, as it may contain more specific information about environmental compliance.

 U.S. Department of Justice Office of Justice Programs Bureau of Justice Assistance	GRANT MANAGER'S MEMORANDUM, PT. I: PROJECT SUMMARY	
	Grant	
	PROJECT NUMBER 2016-DJ-BX-0898	PAGE 1 OF 1
This project is supported under FY16(BJA - JAG) 42 USC 3750, et seq.		
1. STAFF CONTACT (Name & telephone number) Gale Farquhar (202) 598-9522		2. PROJECT DIRECTOR (Name, address & telephone number) Maria Su Director 1390 Market Street Suite 900 San Francisco, CA 94102-5341 (415) 554-3547
3a. TITLE OF THE PROGRAM 2016 Edward Byrne Memorial Justice Assistance Grant Program		3b. POMS CODE (SEE INSTRUCTIONS ON REVERSE)
4. TITLE OF PROJECT FY 16 JAG Program		
5. NAME & ADDRESS OF GRANTEE City and County of San Francisco 1 Dr. Carlton Goodlett Place Suite 496– City Hall San Francisco, CA 94102-4676		6. NAME & ADDRESS OF SUBGRANTEE
7. PROGRAM PERIOD FROM: 10/01/2015 TO: 09/30/2019		8. BUDGET PERIOD FROM: 10/01/2015 TO: 09/30/2019
9. AMOUNT OF AWARD \$ 522,943		10. DATE OF AWARD 08/26/2016
11. SECOND YEAR'S BUDGET		12. SECOND YEAR'S BUDGET AMOUNT
13. THIRD YEAR'S BUDGET PERIOD		14. THIRD YEAR'S BUDGET AMOUNT
15. SUMMARY DESCRIPTION OF PROJECT (See instruction on reverse) The Edward Byrne Memorial Justice Assistance Grant Program (JAG) allows states and units of local government, including tribes, to support a broad range of activities to prevent and control crime based on their own state and local needs and conditions. Grant funds can be used for state and local initiatives, technical assistance, training, personnel, equipment, supplies, contractual support, and information systems for criminal justice, including for any one or more of the following program areas: 1) law enforcement programs; 2) prosecution and court programs; 3) prevention and education programs; 4) corrections and community corrections programs; 5) drug treatment and enforcement programs; 6) planning, evaluation, and technology improvement programs; and 7) crime victim and witness programs (other than compensation). The City and County of San Francisco will use the FY 16 JAG funds to hire personnel to fill critical positions in the criminal justice system and to provide training for executive leadership. NCA/NCF		



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1 RECIPIENT NAME AND ADDRESS (Including Zip Code) County of Greenville 301 University Ridge, Suite 600 Greenville, SC 29601		4 AWARD NUMBER: 2017-DJ-BX-0002			
		5 PROJECT PERIOD: FROM 10/01/2016 TO 09/30/2020 BUDGET PERIOD: FROM 10/01/2016 TO 09/30/2020			
		6 AWARD DATE 08/23/2017		7 ACTION Initial	
2a GRANTEE IRS/VENDOR NO [REDACTED]		8 SUPPLEMENT NUMBER 00			
2b GRANTEE DUNS NO [REDACTED]		9 PREVIOUS AWARD AMOUNT \$ 0			
3 PROJECT TITLE Judicial Support and Law Enforcement Enhancements 2017		10 AMOUNT OF THIS AWARD \$ 163,164			
		11 TOTAL AWARD \$ 163,164			
12 SPECIAL CONDITIONS THE ABOVE GRANT PROJECT IS APPROVED SUBJECT TO SUCH CONDITIONS OR LIMITATIONS AS ARE SET FORTH ON THE ATTACHED PAGE(S)					
13 STATUTORY AUTHORITY FOR GRANT This project is supported under FY17(BJA - JAG State and JAG Local) Title I of Pub L No 90-351 (generally codified at 42 U S C 3711 - 3797ff-5), including subpart 1 of part E (codified at 42 U S C 3750 - 3758); see also 28 U S C 530C(a)					
14 CATALOG OF DOMESTIC FEDERAL ASSISTANCE (CFDA Number) 16 738 - Edward Byrne Memorial Justice Assistance Grant Program					
15 METHOD OF PAYMENT GPRS					
AGENCY APPROVAL			GRANTEE ACCEPTANCE		
16 TYPED NAME AND TITLE OF APPROVING OFFICIAL Alan R Hanson Acting Assistant Attorney General			18 TYPED NAME AND TITLE OF AUTHORIZED GRANTEE OFFICIAL Joseph M Kernell County Administrator		
17 SIGNATURE OF APPROVING OFFICIAL 			19 SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL		19A DATE
AGENCY USE ONLY					
20 ACCOUNTING CLASSIFICATION CODES FISCAL FUND BUD DIV YEAR CODE ACT OFC REG SUB POMS AMOUNT X B DJ 80 00 00 163164			21 SDJUGT0339		

OJP FORM 4000/2 (REV 5-87) PREVIOUS EDITIONS ARE OBSOLETE

OJP FORM 4000/2 (REV 4-88)

Exhibit B



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PROJECT NUMBER 2017-DJ-BX-0002

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SPECIAL CONDITIONS

1. Requirements of the award; remedies for non-compliance or for materially false statements

The conditions of this award are material requirements of the award. Compliance with any certifications or assurances submitted by or on behalf of the recipient that relate to conduct during the period of performance also is a material requirement of this award.

Failure to comply with any one or more of these award requirements -- whether a condition set out in full below, a condition incorporated by reference below, or a certification or assurance related to conduct during the award period -- may result in the Office of Justice Programs ("OJP") taking appropriate action with respect to the recipient and the award. Among other things, the OJP may withhold award funds, disallow costs, or suspend or terminate the award. The Department of Justice ("DOJ"), including OJP, also may take other legal action as appropriate.

Any materially false, fictitious, or fraudulent statement to the federal government related to this award (or concealment or omission of a material fact) may be the subject of criminal prosecution (including under 18 U.S.C. 1001 and/or 1621, and/or 42 U.S.C. 3795a), and also may lead to imposition of civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. 3729-3730 and 3801-3812).

Should any provision of a requirement of this award be held to be invalid or unenforceable by its terms, that provision shall first be applied with a limited construction so as to give it the maximum effect permitted by law. Should it be held, instead, that the provision is utterly invalid or -unenforceable, such provision shall be deemed severable from this award.

2. Applicability of Part 200 Uniform Requirements

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, as adopted and supplemented by DOJ in 2 C.F.R. Part 2800 (together, the "Part 200 Uniform Requirements") apply to this FY 2017 award from OJP.

The Part 200 Uniform Requirements were first adopted by DOJ on December 26, 2014. If this FY 2017 award supplements funds previously awarded by OJP under the same award number (e.g., funds awarded during or before December 2014), the Part 200 Uniform Requirements apply with respect to all funds under that award number (regardless of the award date, and regardless of whether derived from the initial award or a supplemental award) that are obligated on or after the acceptance date of this FY 2017 award.

For more information and resources on the Part 200 Uniform Requirements as they relate to OJP awards and subawards ("subgrants"), see the OJP website at <https://ojp.gov/funding/Part200UniformRequirements.htm>.

In the event that an award-related question arises from documents or other materials prepared or distributed by OJP that may appear to conflict with, or differ in some way from, the provisions of the Part 200 Uniform Requirements, the recipient is to contact OJP promptly for clarification.

3. Compliance with DOJ Grants Financial Guide

The recipient agrees to comply with the DOJ Grants Financial Guide as posted on the OJP website (currently, the "2015 DOJ Grants Financial Guide" available at <https://ojp.gov/financialguide/DOJ/index.htm>), including any updated version that may be posted during the period of performance.



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SPECIAL CONDITIONS

4. Required training for Point of Contact and all Financial Points of Contact

Both the Point of Contact (POC) and all Financial Points of Contact (FPOCs) for this award must have successfully completed an "OJP financial management and grant administration training" by 120 days after the date of the recipient's acceptance of the award. Successful completion of such a training on or after January 1, 2015, will satisfy this condition.

In the event that either the POC or an FPOC for this award changes during the period of performance, the new POC or FPOC must have successfully completed an "OJP financial management and grant administration training" by 120 calendar days after-- (1) the date of OJP's approval of the "Change Grantee Contact" GAN (in the case of a new POC), or (2) the date the POC enters information on the new FPOC in GMS (in the case of a new FPOC). Successful completion of such a training on or after January 1, 2015, will satisfy this condition.

A list of OJP trainings that OJP will consider "OJP financial management and grant administration training" for purposes of this condition is available at <https://www.ojp.gov/training/fmts.htm>. All trainings that satisfy this condition include a session on grant fraud prevention and detection.

The recipient should anticipate that OJP will immediately withhold ("freeze") award funds if the recipient fails to comply with this condition. The recipient's failure to comply also may lead OJP to impose additional appropriate conditions on this award.

5. Requirements related to "de minimis" indirect cost rate

A recipient that is eligible under the Part 200 Uniform Requirements and other applicable law to use the "de minimis" indirect cost rate described in 2 C.F.R. 200.414(f), and that elects to use the "de minimis" indirect cost rate, must advise OJP in writing of both its eligibility and its election, and must comply with all associated requirements in the Part 200 Uniform Requirements. The "de minimis" rate may be applied only to modified total direct costs (MTDC) as defined by the Part 200 Uniform Requirements.

6. Requirement to report potentially duplicative funding

If the recipient currently has other active awards of federal funds, or if the recipient receives any other award of federal funds during the period of performance for this award, the recipient promptly must determine whether funds from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items for which funds are provided under this award. If so, the recipient must promptly notify the DOJ awarding agency (OJP or OVW, as appropriate) in writing of the potential duplication, and, if so requested by the DOJ awarding agency, must seek a budget-modification or change-of-project-scope grant adjustment notice (GAN) to eliminate any inappropriate duplication of funding.



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7. Requirements related to System for Award Management and Universal Identifier Requirements

The recipient must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at <https://www.sam.gov/>. This includes applicable requirements regarding registration with SAM, as well as maintaining the currency of information in SAM.

The recipient also must comply with applicable restrictions on subawards ("subgrants") to first-tier subrecipients (first-tier "subgrantees"), including restrictions on subawards to entities that do not acquire and provide (to the recipient) the unique entity identifier required for SAM registration.

The details of the recipient's obligations related to SAM and to unique entity identifiers are posted on the OJP web site at <https://ojp.gov/funding/Explore/SAM.htm> (Award condition: System for Award Management (SAM) and Universal Identifier Requirements), and are incorporated by reference here.

This condition does not apply to an award to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

8. All subawards ("subgrants") must have specific federal authorization

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements for authorization of any subaward. This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a "subaward" (and therefore does not consider a procurement "contract").

The details of the requirement for authorization of any subaward are posted on the OJP web site at <https://ojp.gov/funding/Explore/SubawardAuthorization.htm> (Award condition: All subawards ("subgrants") must have specific federal authorization), and are incorporated by reference here.

9. Specific post-award approval required to use a noncompetitive approach in any procurement contract that would exceed \$150,000

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements to obtain specific advance approval to use a noncompetitive approach in any procurement contract that would exceed the Simplified Acquisition Threshold (currently, \$150,000). This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a procurement "contract" (and therefore does not consider a subaward).

The details of the requirement for advance approval to use a noncompetitive approach in a procurement contract under an OJP award are posted on the OJP web site at <https://ojp.gov/funding/Explore/NoncompetitiveProcurement.htm> (Award condition: Specific post-award approval required to use a noncompetitive approach in a procurement contract (if contract would exceed \$150,000)), and are incorporated by reference here.



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10. Requirements pertaining to prohibited conduct related to trafficking in persons (including reporting requirements and OJP authority to terminate award)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of recipients, subrecipients ("subgrantees"), or individuals defined (for purposes of this condition) as "employees" of the recipient or of any subrecipient.

The details of the recipient's obligations related to prohibited conduct related to trafficking in persons are posted on the OJP web site at <https://ojp.gov/funding/Explore/ProhibitedConduct-Trafficking.htm> (Award condition: Prohibited conduct by recipients and subrecipients related to trafficking in persons (including reporting requirements and OJP authority to terminate award)), and are incorporated by reference here.

11. Compliance with applicable rules regarding approval, planning, and reporting of conferences, meetings, trainings, and other events

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable laws, regulations, policies, and official DOJ guidance (including specific cost limits, prior approval and reporting requirements, where applicable) governing the use of federal funds for expenses related to conferences (as that term is defined by DOJ), including the provision of food and/or beverages at such conferences, and costs of attendance at such conferences.

Information on the pertinent DOJ definition of conferences and the rules applicable to this award appears in the DOJ Grants Financial Guide (currently, as section 3.10 of "Postaward Requirements" in the "2015 DOJ Grants Financial Guide").

12. Requirement for data on performance and effectiveness under the award

The recipient must collect and maintain data that measure the performance and effectiveness of work under this award. The data must be provided to OJP in the manner (including within the timeframes) specified by OJP in the program solicitation or other applicable written guidance. Data collection supports compliance with the Government Performance and Results Act (GPRA) and the GPRA Modernization Act of 2010, and other applicable laws.

13. OJP Training Guiding Principles

Any training or training materials that the recipient -- or any subrecipient ("subgrantee") at any tier -- develops or delivers with OJP award funds must adhere to the OJP Training Guiding Principles for Grantees and Subgrantees, available at <https://ojp.gov/funding/ojptrainingguidingprinciples.htm>.

14. Effect of failure to address audit issues

The recipient understands and agrees that the DOJ awarding agency (OJP or OVW, as appropriate) may withhold award funds, or may impose other related requirements, if (as determined by the DOJ awarding agency) the recipient does not satisfactorily and promptly address outstanding issues from audits required by the Part 200 Uniform Requirements (or by the terms of this award), or other outstanding issues that arise in connection with audits, investigations, or reviews of DOJ awards.

15. Potential imposition of additional requirements

The recipient agrees to comply with any additional requirements that may be imposed by the DOJ awarding agency (OJP or OVW, as appropriate) during the period of performance for this award, if the recipient is designated as "high-risk" for purposes of the DOJ high-risk grantee list.



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16. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 42

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 42, specifically including any applicable requirements in Subpart E of 28 C.F.R. Part 42 that relate to an equal employment opportunity program.

17. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 54

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 54, which relates to nondiscrimination on the basis of sex in certain "education programs."

18. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 38

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 38, specifically including any applicable requirements regarding written notice to program beneficiaries and prospective program beneficiaries. Part 38 of 28 C.F.R., a DOJ regulation, was amended effective May 4, 2016.

Among other things, 28 C.F.R. Part 38 includes rules that prohibit specific forms of discrimination on the basis of religion, a religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. Part 38 also sets out rules and requirements that pertain to recipient and subrecipient ("subgrantee") organizations that engage in or conduct explicitly religious activities, as well as rules and requirements that pertain to recipients and subrecipients that are faith-based or religious organizations.

The text of the regulation, now entitled "Partnerships with Faith-Based and Other Neighborhood Organizations," is available via the Electronic Code of Federal Regulations (currently accessible at <https://www.ecfr.gov/cgi-bin/ECFR?page=browse>), by browsing to Title 28-Judicial Administration, Chapter 1, Part 38, under e-CFR "current" data.

19. Restrictions on "lobbying"

In general, as a matter of federal law, federal funds awarded by OJP may not be used by the recipient, or any subrecipient ("subgrantee") at any tier, either directly or indirectly, to support or oppose the enactment, repeal, modification, or adoption of any law, regulation, or policy, at any level of government. See 18 U.S.C. 1913. (There may be exceptions if an applicable federal statute specifically authorizes certain activities that otherwise would be barred by law.)

Another federal law generally prohibits federal funds awarded by OJP from being used by the recipient, or any subrecipient at any tier, to pay any person to influence (or attempt to influence) a federal agency, a Member of Congress, or Congress (or an official or employee of any of them) with respect to the awarding of a federal grant or cooperative agreement, subgrant, contract, subcontract, or loan, or with respect to actions such as renewing, extending, or modifying any such award. See 31 U.S.C. 1352. Certain exceptions to this law apply, including an exception that applies to Indian tribes and tribal organizations.

Should any question arise as to whether a particular use of federal funds by a recipient (or subrecipient) would or might fall within the scope of these prohibitions, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.



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20. Compliance with general appropriations-law restrictions on the use of federal funds (FY 2017)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable restrictions on the use of federal funds set out in federal appropriations statutes. Pertinent restrictions, including from various "general provisions" in the Consolidated Appropriations Act, 2017, are set out at <https://ojp.gov/funding/Explore/FY17AppropriationsRestrictions.htm>, and are incorporated by reference here.

Should a question arise as to whether a particular use of federal funds by a recipient (or a subrecipient) would or might fall within the scope of an appropriations-law restriction, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

21. Reporting potential fraud, waste, and abuse, and similar misconduct

The recipient, and any subrecipients ("subgrantees") at any tier, must promptly refer to the DOJ Office of the Inspector General (OIG) any credible evidence that a principal, employee, agent, subrecipient, contractor, subcontractor, or other person has, in connection with funds under this award-- (1) submitted a claim that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct.

Potential fraud, waste, abuse, or misconduct involving or relating to funds under this award should be reported to the OIG by-- (1) mail directed to: Office of the Inspector General, U.S. Department of Justice, Investigations Division, 950 Pennsylvania Avenue, N.W. Room 4706, Washington, DC 20530; (2) e-mail to: oig_hotline@usdoj.gov; and/or (3) the DOJ OIG hotline: (contact information in English and Spanish) at (800) 869-4499 (phone) or (202) 616-9881 (fax).

Additional information is available from the DOJ OIG website at <https://www.usdoj.gov/oig>.



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22. Restrictions and certifications regarding non-disclosure agreements and related matters

No recipient or subrecipient ("subgrantee") under this award, or entity that receives a procurement contract or subcontract with any funds under this award, may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information.

The foregoing is not intended, and shall not be understood by the agency making this award, to contravene requirements applicable to Standard Form 312 (which relates to classified information), Form 4414 (which relates to sensitive compartmented information), or any other form issued by a federal department or agency governing the nondisclosure of classified information.

1. In accepting this award, the recipient--

a. represents that it neither requires nor has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

b. certifies that, if it learns or is notified that it is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

2. If the recipient does or is authorized under this award to make subawards ("subgrants"), procurement contracts, or both--

a. it represents that--

(1) it has determined that no other entity that the recipient's application proposes may or will receive award funds (whether through a subaward ("subgrant"), procurement contract, or subcontract under a procurement contract) either requires or has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

(2) it has made appropriate inquiry, or otherwise has an adequate factual basis, to support this representation; and

b. it certifies that, if it learns or is notified that any subrecipient, contractor, or subcontractor entity that receives funds under this award is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds to or by that entity, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.



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23. Compliance with 41 U.S.C. 4712 (including prohibitions on reprisal; notice to employees)

The recipient (and any subrecipient at any tier) must comply with, and is subject to, all applicable provisions of 41 U.S.C. 4712, including all applicable provisions that prohibit, under specified circumstances, discrimination against an employee as reprisal for the employee's disclosure of information related to gross mismanagement of a federal grant, a gross waste of federal funds, an abuse of authority relating to a federal grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal grant.

The recipient also must inform its employees, in writing (and in the predominant native language of the workforce), of employee rights and remedies under 41 U.S.C. 4712.

Should a question arise as to the applicability of the provisions of 41 U.S.C. 4712 to this award, the recipient is to contact the DOJ awarding agency (OJP or OVW, as appropriate) for guidance.

24. Encouragement of policies to ban text messaging while driving

Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), DOJ encourages recipients and subrecipients ("subgrantees") to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this award, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

25. Cooperating with OJP Monitoring

The recipient agrees to cooperate with OJP monitoring of this award pursuant to OJP's guidelines, protocols, and procedures, and to cooperate with OJP (including the grant manager for this award and the Office of Chief Financial Officer (OCFO)) requests related to such monitoring, including requests related to desk reviews and/or site visits. The recipient agrees to provide to OJP all documentation necessary for OJP to complete its monitoring tasks, including documentation related to any subawards made under this award. Further, the recipient agrees to abide by reasonable deadlines set by OJP for providing the requested documents. Failure to cooperate with OJP's monitoring activities may result in actions that affect the recipient's DOJ awards, including, but not limited to: withholdings and/or other restrictions on the recipient's access to award funds; referral to the DOJ OIG for audit review; designation of the recipient as a DOJ High Risk grantee; or termination of an award(s).

26. FFATA reporting: Subawards and executive compensation

The recipient must comply with applicable requirements to report first-tier subawards ("subgrants") of \$25,000 or more and, in certain circumstances, to report the names and total compensation of the five most highly compensated executives of the recipient and first-tier subrecipients (first-tier "subgrantees") of award funds. The details of recipient obligations, which derive from the Federal Funding Accountability and Transparency Act of 2006 (FFATA), are posted on the OJP web site at <https://ojp.gov/funding/Explore/FFATA.htm> (Award condition: Reporting Subawards and Executive Compensation), and are incorporated by reference here.

This condition, including its reporting requirement, does not apply to-- (1) an award of less than \$25,000, or (2) an award made to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).



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27. Use of program income

Program income (as defined in the Part 200 Uniform Requirements) must be used in accordance with the provisions of the Part 200 Uniform Requirements. Program income earnings and expenditures both must be reported on the quarterly Federal Financial Report, SF 425.

28. Justice Information Sharing

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

29. Avoidance of duplication of networks

To avoid duplicating existing networks or IT systems in any initiatives funded by BJA for law enforcement information sharing systems which involve interstate connectivity between jurisdictions, such systems shall employ, to the extent possible, existing networks as the communication backbone to achieve interstate connectivity, unless the recipient can demonstrate to the satisfaction of BJA that this requirement would not be cost effective or would impair the functionality of an existing or proposed IT system.

30. Compliance with 28 C.F.R. Part 23

With respect to any information technology system funded or supported by funds under this award, the recipient (and any subrecipient at any tier) must comply with 28 C.F.R. Part 23, Criminal Intelligence Systems Operating Policies, if OJP determines this regulation to be applicable. Should OJP determine 28 C.F.R. Part 23 to be applicable, OJP may, at its discretion, perform audits of the system, as per the regulation. Should any violation of 28 C.F.R. Part 23 occur, the recipient may be fined as per 42 U.S.C. 3789g(c)-(d). The recipient may not satisfy such a fine with federal funds.

31. Protection of human research subjects

The recipient (and any subrecipient at any tier) must comply with the requirements of 28 C.F.R. Part 46 and all OJP policies and procedures regarding the protection of human research subjects, including obtainment of Institutional Review Board approval, if appropriate, and subject informed consent.

32. Confidentiality of data

The recipient (and any subrecipient at any tier) must comply with all confidentiality requirements of 42 U.S.C. 3789g and 28 C.F.R. Part 22 that are applicable to collection, use, and revelation of data or information. The recipient further agrees, as a condition of award approval, to submit a Privacy Certificate that is in accord with requirements of 28 C.F.R. Part 22 and, in particular, 28 C.F.R. 22.23.



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33. Verification and updating of recipient contact information

The recipient must verify its Point of Contact (POC), Financial Point of Contact (FPOC), and Authorized Representative contact information in GMS, including telephone number and e-mail address. If any information is incorrect or has changed, a Grant Adjustment Notice (GAN) must be submitted via the Grants Management System (GMS) to document changes.

34. Law enforcement task forces - required training

Within 120 days of award acceptance, each current member of a law enforcement task force funded with award funds who is a task force commander, agency executive, task force officer, or other task force member of equivalent rank, must complete required online (internet-based) task force training. Additionally, all future task force members must complete this training once during the period of performance for this award, or once every four years if multiple OJP awards include this requirement.

The required training is available free of charge online through the BJA-funded Center for Task Force Integrity and Leadership (www.ctfli.org). The training addresses task force effectiveness, as well as other key issues including privacy and civil liberties/rights, task force performance measurement, personnel selection, and task force oversight and accountability. If award funds are used to support a task force, the recipient must compile and maintain a task force personnel roster, along with course completion certificates.

Additional information regarding the training is available through BJA's web site and the Center for Task Force Integrity and Leadership (www.ctfli.org).

35. Required attendance at BJA-sponsored events

The recipient (and its subrecipients at any tier) must participate in BJA-sponsored training events, technical assistance events, or conferences held by BJA or its designees, upon BJA's request.

36. Justification of consultant rate

Approval of this award does not indicate approval of any consultant rate in excess of \$650 per day. A detailed justification must be submitted to and approved by the OJP program office prior to obligation or expenditure of such funds.



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37. Compliance with National Environmental Policy Act and related statutes

Upon request, the recipient (and any subrecipient at any tier) must assist BJA in complying with the National Environmental Policy Act (NEPA), the National Historic Preservation Act, and other related federal environmental impact analyses requirements in the use of these award funds, either directly by the recipient or by a subrecipient. Accordingly, the recipient agrees to first determine if any of the following activities will be funded by the grant, prior to obligating funds for any of these purposes. If it is determined that any of the following activities will be funded by the award, the recipient agrees to contact BJA.

The recipient understands that this condition applies to new activities as set out below, whether or not they are being specifically funded with these award funds. That is, as long as the activity is being conducted by the recipient, a subrecipient, or any third party, and the activity needs to be undertaken in order to use these award funds, this condition must first be met. The activities covered by this condition are:

a. New construction;

b. Minor renovation or remodeling of a property located in an environmentally or historically sensitive area, including properties located within a 100-year flood plain, a wetland, or habitat for endangered species, or a property listed on or eligible for listing on the National Register of Historic Places;

c. A renovation, lease, or any proposed use of a building or facility that will either (a) result in a change in its basic prior use or (b) significantly change its size;

d. Implementation of a new program involving the use of chemicals other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or education environments; and

e. Implementation of a program relating to clandestine methamphetamine laboratory operations, including the identification, seizure, or closure of clandestine methamphetamine laboratories.

The recipient understands and agrees that complying with NEPA may require the preparation of an Environmental Assessment and/or an Environmental Impact Statement, as directed by BJA. The recipient further understands and agrees to the requirements for implementation of a Mitigation Plan, as detailed at <https://bja.gov/Funding/nepa.html>, for programs relating to methamphetamine laboratory operations.

Application of This Condition to Recipient's Existing Programs or Activities: For any of the recipient's or its subrecipients' existing programs or activities that will be funded by these award funds, the recipient, upon specific request from BJA, agrees to cooperate with BJA in any preparation by BJA of a national or program environmental assessment of that funded program or activity.

38. Establishment of trust fund

If award funds are being drawn down in advance, the recipient (or a subrecipient, with respect to a subaward) is required to establish a trust fund account. (The trust fund may or may not be an interest-bearing account.) The fund, including any interest, may not be used to pay debts or expenses incurred by other activities beyond the scope of the Edward Byrne Memorial Justice Assistance Grant Program (JAG). The recipient also agrees to obligate the award funds in the trust fund (including any interest earned) during the period of performance for the award and expend within 90 days thereafter. Any unobligated or unexpended funds, including interest earned, must be returned to OJP at the time of closeout.



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39. Prohibition on use of award funds for match under BVP program

JAG funds may be used to purchase vests for an agency, but they may not be used as the 50% match for purposes of the DOJ Bulletproof Vest Partnership (BVP) program.

40. Certification of body armor "mandatory wear" policies

The recipient agrees to submit a signed certification that all law enforcement agencies receiving body armor purchased with funds from this award have a written "mandatory wear" policy in effect. The recipient must keep signed certifications on file for any subrecipients planning to utilize funds from this award for ballistic-resistant and stab-resistant body armor purchases. This policy must be in place for at least all uniformed officers before any funds from this award may be used by an agency for body armor. There are no requirements regarding the nature of the policy other than it be a mandatory wear policy for all uniformed officers while on duty.

41. Body armor - compliance with NIJ standards

Ballistic-resistant and stab-resistant body armor purchased with JAG award funds may be purchased at any threat level, make or model, from any distributor or manufacturer, as long as the body armor has been tested and found to comply with applicable National Institute of Justice ballistic or stab standards and is listed on the NIJ Compliant Body Armor Model List (<https://nij.gov/>). In addition, ballistic-resistant and stab-resistant body armor purchased must be American-made. The latest NIJ standard information can be found here: <https://nij.gov/topics/technology/body-armor/pages/safety-initiative.aspx>.

42. Required monitoring of subawards

The recipient must monitor subawards under this JAG award in accordance with all applicable statutes, regulations, award conditions, and the DOJ Grants Financial Guide, and must include the applicable conditions of this award in any subaward. Among other things, the recipient is responsible for oversight of subrecipient spending and monitoring of specific outcomes and benefits attributable to use of award funds by subrecipients. The recipient agrees to submit, upon request, documentation of its policies and procedures for monitoring of subawards under this award.

43. Reporting requirements

The recipient must submit quarterly Federal Financial Reports (SF-425) and semi-annual performance reports through OJP's GMS (<https://grants.ojp.usdoj.gov>). Consistent with the Department's responsibilities under the Government Performance and Results Act (GPRA) and the GPRA Modernization Act of 2010, the recipient must provide data that measure the results of its work. The recipient must submit quarterly performance metrics reports through BJA's Performance Measurement Tool (PMT) website (www.bjaperformancetools.org). For more detailed information on reporting and other JAG requirements, refer to the JAG reporting requirements webpage. Failure to submit required JAG reports by established deadlines may result in the freezing of grant funds and future High Risk designation.

44. Required data on law enforcement agency training

Any law enforcement agency receiving direct or sub-awarded funding from this JAG award must submit quarterly accountability metrics data related to training that officers have received on the use of force, racial and ethnic bias, de-escalation of conflict, and constructive engagement with the public.



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45. Prohibited Expenditures List

Award funds may not be used for items that are listed on the Prohibited Expenditure List at the time of purchase or acquisition, including as the list may be amended from time to time. The Prohibited Expenditure List may be accessed here: <https://www.bja.gov/funding/JAGControlledPurchaseList.pdf>

46. Controlled expenditures - prior written approval required

Award funds may not be used for items that are listed on the Controlled Expenditure List at the time of purchase or acquisition, including as the list may be amended from time to time, without explicit written prior approval from BJA. The Controlled Expenditure List, and instructions on how to request approval for purchase or acquisitions are set out at <https://www.bja.gov/funding/JAGControlledPurchaseList.pdf>

47. Controlled expenditures - incident reporting

If an agency uses award funds to purchase or acquire any item on the Controlled Expenditure List at the time of purchase or acquisition, including as the list may be amended from time to time, the agency must collect and retain (for at least 3 years) certain information about the use of-- (1) any federally-acquired Controlled Equipment in the agency's inventory, and (2) any other controlled equipment in the same category as the federally-acquired controlled equipment in the agency's inventory, regardless of source; and the agency must make that information available to BJA upon request. Details about what information must be collected and retained are set out at <https://ojp.gov/docs/LE-Equipment-WG-Final-Report.pdf>.

48. Sale of items on Controlled Expenditure List

Notwithstanding the provision of the Part 200 Uniform Requirements set out at 2 C.F.R. 200.313, no equipment listed on the Controlled Expenditure List that is purchased with award funds may be transferred or sold to a third party, except as described below:

a. Agencies may transfer or sell any controlled equipment, except riot helmets and riot shields, to a Law Enforcement Agency (LEA) after obtaining prior written approval from BJA. As a condition of that approval, the acquiring LEA will be required to submit information and certifications to BJA as if it were requesting approval to use award funds for the initial purchase of items on the Controlled Expenditure List.

b. Agencies may not transfer or sell any riot helmets or riot shields purchased under this award.

c. Agencies may not transfer or sell any Controlled Equipment purchased under this award to non-LEAs, with the exception of fixed wing aircraft, rotary wing aircraft, and command and control vehicles. Before any such transfer or sale is finalized, the agency must obtain prior written approval from BJA. All law enforcement-related and other sensitive or potentially dangerous components, and all law enforcement insignias and identifying markings must be removed prior to transfer or sale.

The recipient must notify BJA prior to the disposal of any items on the Controlled Expenditure List purchased with award funds, and must abide by any applicable laws (including regulations) in such disposal.

49. Prohibited or controlled expenditures - Effect of failure to comply

Failure to comply with an award condition related to prohibited or controlled expenditures may result in denial of any further approvals of controlled expenditures under this or other federal awards.



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50. Controlled expenditures - Standards

Consistent with recommendation 2.1 of Executive Order 13688, a law enforcement agency that acquires controlled equipment with award funds must adopt robust and specific written policies and protocols governing General Policing Standards and Specific Controlled Equipment Standards. General Policing Standards includes policies on (a) Community Policing; (b) Constitutional Policing; and (c) Community Input and Impact Considerations. Specific Controlled Equipment Standards includes policies specifically related to (a) Appropriate Use of Controlled Equipment; (b) Supervision of Use; (c) Effectiveness Evaluation; (d) Auditing and Accountability; and (e) Transparency and Notice Considerations. Upon OJP's request, the recipient must provide a copy of the General Policing Standards and Specific Controlled Equipment Standards, and any related policies and protocols.

51. Authorization to obligate (federal) award funds to reimburse certain project costs incurred on or after October 1, 2016

The recipient may obligate (federal) award funds only after the recipient makes a valid acceptance of the award. As of the first day of the period of performance for the award (October 1, 2016), however, the recipient may choose to incur project costs using non-federal funds, but any such project costs are incurred at the recipient's risk until, at a minimum-- (1) the recipient makes a valid acceptance of the award, and (2) all applicable withholding conditions are removed by OJP (via a Grant Adjustment Notice). (A withholding condition is a condition in the award document that precludes the recipient from obligating, expending, or drawing down all or a portion of the award funds until the condition is removed.)

Except to the extent (if any) that an award condition expressly precludes reimbursement of project costs incurred "at-risk," if and when the recipient makes a valid acceptance of this award and OJP removes each applicable withholding condition through a Grant Adjustment Notice, the recipient is authorized to obligate (federal) award funds to reimburse itself for project costs incurred "at-risk" earlier during the period of performance (such as project costs incurred prior to award acceptance or prior to removal of an applicable withholding condition), provided that those project costs otherwise are allowable costs under the award.

Nothing in this condition shall be understood to authorize the recipient (or any subrecipient at any tier) to use award funds to "supplant" State or local funds in violation of the recipient's certification (executed by the chief executive of the State or local government) that federal funds 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.

52. "Certification of Compliance with 8 U.S.C. 1373" required for valid award acceptance by a unit of local government

In order validly to accept this award, the applicant local government must submit the required "Certification of Compliance with 8 U.S.C. 1373" (executed by the chief legal officer of the local government). Unless that executed certification either-- (1) is submitted to OJP together with the fully-executed award document, or (2) is uploaded in OJP's GMS no later than the day the signed award document is submitted to OJP, any submission by a unit of local government that purports to accept the award is invalid.

If an initial award-acceptance submission by the recipient is invalid, once the unit of local government does submit the necessary certification regarding 8 U.S.C. 1373, it may submit a fully-executed award document executed by the unit of local government on or after the date of that certification.

For purposes of this condition, "local government" does not include any Indian tribes.



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53. Ongoing compliance with 8 U.S.C. 1373 is required

1. With respect to the "program or activity" funded in whole or part under this award (including any such "program or activity" of any subrecipient at any tier), throughout the period of performance for the award, no State or local government entity, -agency, or -official may prohibit or in any way restrict-- (1) any government entity or -official from sending or receiving information regarding citizenship or immigration status as described in 8 U.S.C. 1373(a); or (2) a government entity or -agency from sending, requesting or receiving, maintaining, or exchanging information regarding immigration status as described in 8 U.S.C. 1373(b). For purposes of this award, any prohibition (or restriction) that violates this condition is an "information-communication restriction."

2. Certifications from subrecipients. The recipient may not make a subaward to a State or local government or a "public" institution of higher education, unless it first obtains a certification of compliance with 8 U.S.C. 1373, properly executed by the chief legal officer of the jurisdiction or institution that would receive the subaward, using the appropriate form available at <https://ojp.gov/funding/Explore/SampleCertifications-8USC1373.htm>. Similarly, the recipient must require that no subrecipient (at any tier) may make a further subaward to a State or local government or a "public" institution of higher education, unless it first obtains a certification of compliance with 8 U.S.C. 1373, properly executed by the chief legal officer of the jurisdiction or institution that would receive the further subaward, using the appropriate OJP form.

3. The recipient's monitoring responsibilities include monitoring of subrecipient compliance with the requirements of this condition.

4. Allowable costs. Compliance with these requirements is an authorized and priority purpose of this award. To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated (including for authorized reimbursements) for the reasonable, necessary, and allocable costs (if any) that the recipient, or any subrecipient at any tier that is a State or local government or a "public" institution of higher education, incurs to implement this condition.

5. Rules of Construction

A. For purposes of this condition:

(1) "State" and "local government" include any agency or other entity thereof, but not any institution of higher education or any Indian tribe.

(2) A "public" institution of higher education is one that is owned, controlled, or directly funded by a State or local government.

(3) "Program or activity" means what it means under title VI of the Civil Rights Act of 1964 (see 42 U.S.C. 2000d-4a).

(4) "Immigration status" means what it means for purposes of 8 U.S.C. 1373 (Illegal Immigration Reform and Immigrant Responsibility Act of 1996); and terms that are defined in 8 U.S.C. 1101 (Immigration and Nationality Act) mean what they mean under that section 1101, except that the term "State" also shall include American Samoa (cf. 42 U.S.C. 901(a)(2)).

(5) Pursuant to the provisions set out at (or referenced in) 8 U.S.C. 1551 note ("Abolition ... and Transfer of Functions"), references to the "Immigration and Naturalization Service" in 8 U.S.C. 1373 are to be read as references to particular components of the Department of Homeland Security (DHS).

B. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, any State or local government, any "public" institution of higher education, or any other entity (or individual) to violate any federal law, including any applicable civil rights or nondiscrimination law.



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SPECIAL CONDITIONS

IMPORTANT NOTE: Any questions about the meaning or scope of this condition should be directed to OJP, before award acceptance.

54. Authority to obligate award funds contingent on compliance with 8 U.S.C. 1373; unallowable costs; obligation to notify

1. If the recipient is a State or local government--

A. The recipient may not obligate award funds if, at the time of the obligation, the "program or activity" of the recipient (or of any subrecipient at any tier that is either a State or unit of local government or a "public" institution of higher education) that is funded in whole or in part with award funds is subject to any "information-communication restriction."

B. In addition, with respect to any project costs it incurs "at risk," the recipient may not obligate award funds to reimburse itself if -- at the time it incurs such costs -- the "program or activity" of the recipient (or of any subrecipient at any tier that is either a State or unit of local government or a "public" institution of higher education) that would be reimbursed in whole or in part with award funds was subject to any "information-communication restriction."

C. Any drawdown of award funds by the recipient shall be considered, for all purposes, to be a material representation by the recipient to OJP that, as of the date the recipient requests the drawdown, the recipient and all subrecipients (regardless of tier) are in compliance with 8 U.S.C. 1373.

D. The recipient must promptly notify OJP (in writing) if the recipient, from its requisite monitoring of compliance with award conditions or otherwise, has credible evidence that indicates that the funded "program or activity" of the recipient, or of any subrecipient at any tier that is either a State or a local government or a "public" institution of higher education, may be subject to any "information-communication restriction." In addition, any subaward (at any tier) to a subrecipient that is either a State or a local government or a "public" institution of higher education must require prompt notification to the entity that made the subaward, should the subrecipient such credible evidence regarding an "information-communication restriction."

2. Any subaward (at any tier) to a subrecipient that is either a State or a local government or a "public" institution of higher education must provide that the subrecipient may not obligate award funds if, at the time of the obligation, the "program or activity" of the subrecipient (or of any further such subrecipient at any tier) that is funded in whole or in part with award funds is subject to any "information-communication restriction."

3. Absent an express written determination by DOJ to the contrary, based upon a finding by DOJ of compelling circumstances (e.g., a small amount of award funds obligated by the recipient at the time of a subrecipient's minor and transitory non-compliance, which was unknown to the recipient despite diligent monitoring), any obligations of award funds that, under this condition, may not be made shall be unallowable costs for purposes of this award. In making any such determination, DOJ will give great weight to evidence submitted by the recipient that demonstrates diligent monitoring of subrecipient compliance with the requirements set out in the award condition entitled "Ongoing compliance with 8 U.S.C. 1373 is required."

4. Rules of Construction

A. For purposes of this condition "information-communication restriction" has the meaning set out in the award condition entitled "Ongoing compliance with 8 U.S.C. 1373 is required."

B. Both the "Rules of Construction" and the "Important Note" set out in the award condition entitled "Ongoing compliance with 8 U.S.C. 1373 is required" are incorporated by reference as though set forth here in full.



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SPECIAL CONDITIONS

55. Required State-level rules or practices related to aliens; allowable costs

The following provisions apply to the recipient of this award, if the recipient is a State government, and also apply to any State-government subrecipient at any tier (whether or not the recipient is a State government).

1. Requirements

With respect to the "program or activity" that is funded (in whole or in part) by this award, as of the date the recipient accepts this award, and throughout the remainder of the period of performance for the award--

A. A State statute, or a State rule, -regulation, -policy, or -practice, must be in place that is designed to ensure that agents of the United States acting under color of federal law in fact are given to access any State (or State-contracted) correctional facility for the purpose of permitting such agents to meet with individuals who are (or are believed by such agents to be) aliens and to inquire as to such individuals' right to be or remain in the United States.

B. A State statute, or a State rule, -regulation, -policy, or -practice, must be in place that is designed to ensure that, when a State (or State-contracted) correctional facility receives from DHS a formal written request authorized by the Immigration and Nationality Act that seeks advance notice of the scheduled release date and time for a particular alien in such facility, then such facility will honor such request and -- as early as practicable (see para. 4.B. of this condition) -- provide the requested notice to DHS.

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with the requirements of this condition.

3. Allowable costs

Compliance with these requirements is an authorized and priority purpose of this award. To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated (including for authorized reimbursements) for the reasonable, necessary, and allocable costs (if any) of-- (1) developing and putting into place statutes, rules, regulations, policies, and practices to satisfy this condition, and (2) permitting access as described in para. 1.A. above, and (3) honoring any request from DHS that is encompassed by para. 1.B. above.

4. Rules of construction

A. For purposes of this condition--

(1) the term "alien" means what it means under section 101 of the Immigration and Nationality Act (see 8 U.S.C. 1101(a)(3)).

(2) the term "correctional facility" means what it means under the Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (see 42 U.S.C. 3791(a)(7)).

B. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, any State or local government, or any other entity or individual to maintain (or detain) any individual in custody beyond the date and time the individual would have been released in the absence of this condition.

Current DHS practice is ordinarily to request advance notice of scheduled release "as early as practicable (at least 48 hours, if possible)." (See DHS Form I-247A (3/17)). In the event that (e.g., in light of the date DHS made such request) the scheduled release date and time for an alien are such as not to permit the advance notice that DHS has requested, it shall not be a violation of this condition to provide only as much advance notice as practicable.



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NOTE: Current DHS practice is to use one form (DHS Form I-247A (3/17)) for two distinct purposes -- to request advance notice of scheduled release, and to request that an individual be detained for up to 48 hours AFTER the scheduled release. This condition imposes NO requirements as to such DHS requests for detention.

C. Both the "Rules of Construction" and the "Important Note" set out in the award condition entitled "Ongoing compliance with 8 U.S.C. 1373 is required" are incorporated by reference as though set forth here in full.

56. Required local-government-level rules or practices related to aliens; allowable costs

The following provisions apply to the recipient of this award, if the recipient is a unit of local government, and also apply to any local-government subrecipient of this award at any tier (whether or not the recipient itself is a unit of local government).

1. Requirements

With respect to the "program or activity" that is funded (in whole or in part) by this award, as of the date the recipient accepts this award, and throughout the remainder of the period of performance for the award--

A. A local ordinance, -rule, -regulation, -policy, or -practice (or an applicable State statute, -rule, -regulation, -policy, or -practice) must be in place that is designed to ensure that agents of the United States acting under color of federal law in fact are given access a local-government (or local-government-contracted) correctional facility for the purpose of permitting such agents to meet with individuals who are (or are believed by such agents to be) aliens and to inquire as to such individuals' right to be or remain in the United States.

B. A local ordinance, -rule, -regulation, -policy, or -practice (or an applicable State statute, -rule, -regulation, -policy, or -practice) must be in place that is designed to ensure that, when a local-government (or local-government-contracted) correctional facility receives from DHS a formal written request authorized by the Immigration and Nationality Act that seeks advance notice of the scheduled release date and time for a particular alien in such facility, then such facility will honor such request and -- as early as practicable (see "Rules of Construction" incorporated by para. 4.B. of this condition) -- provide the requested notice to DHS.

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with the requirements of this condition.

3. Allowable costs

Compliance with these requirements is an authorized and priority purpose of this award. To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated (including for authorized reimbursements) for the reasonable, necessary, and allocable costs (if any) of-- (1) developing and putting into place statutes, ordinances, rules, regulations, policies, and practices to satisfy this condition, (2) permitting access as described in para. 1.A. above, and (3) honoring any request from DHS that is encompassed by para. 1.B. above.

4. Rules of construction

A. The "Rules of Construction" and the "Important Note" set out in the award condition entitled "Ongoing compliance with 8 U.S.C. 1373 is required" are incorporated by reference as though set forth here in full.

B. The "Rules of Construction" set out in the award condition entitled "Required State-level rules or practices related to aliens; allowable costs" are incorporated by reference as though set forth here in full.



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SPECIAL CONDITIONS

57. Use of funds for DNA testing; upload of DNA profiles

If award funds are used for DNA testing of evidentiary materials, any resulting eligible DNA profiles must be uploaded to the Combined DNA Index System ("CODIS," the DNA database operated by the FBI) by a government DNA laboratory with access to CODIS.

No profiles generated under this award may be entered or uploaded into any non-governmental DNA database without prior express written approval from BJA.

Award funds may not be used for the purchase of DNA equipment and supplies unless the resulting DNA profiles may be accepted for entry into CODIS.

58. Encouragement of submission of "success stories"

BJA strongly encourages the recipient to submit annual (or more frequent) JAG success stories. To submit a success story, sign in to a My BJA account at <https://www.bja.gov/Login.aspx> to access the Success Story Submission form. If the recipient does not yet have a My BJA account, please register at <https://www.bja.gov/profile.aspx>. Once registered, one of the available areas on the My BJA page will be "My Success Stories." Within this box, there is an option to add a Success Story. Once reviewed and approved by BJA, all success stories will appear on the BJA Success Story web page at <https://www.bja.gov/SuccessStoryList.aspx>.

City & County of San Francisco v. Jefferson B. Sessions,
et al.,
No. 3:17-cv-04642-WHO (N.D. Cal.)

Defendants' Motion for Summary Judgment

Attachment 2

Mem. from Michael E. Horowitz, Inspector Gen., to
Karol V. Mason, Assistant Att'y Gen., Office of Justice
Programs, *Department of Justice Referral of Allegations*
of Potential Violations of 8 U.S.C. § 1373 by Grant
Recipients (May 31, 2016)



U.S. Department of Justice

Office of the Inspector General

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

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

MEMORANDUM FOR KAROL V. MASON

ASSISTANT ATTORNEY GENERAL

FOR THE OFFICE OF JUSTICE PROGRAMS

FROM:

MICHAEL E. HOROWITZ
INSPECTOR GENERAL

SUBJECT:

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

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

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

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

OIG Methodology

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

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

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

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

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

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

Section 1373 states in relevant part:

- (a) **In General.** Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.
- (b) **Additional authority of government entities.** Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:
 - (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.
 - (2) Maintaining such information.
 - (3) Exchanging such information with any other Federal, State, or local government entity.

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

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

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

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

State and Local Cooperation with ICE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Source: OJP

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

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

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

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

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

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

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

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

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