DENNIS J. HERRERA, State Bar #139669
City Attorney
JESSE C. SMITH, State Bar #122517
Chief Assistant City Attorney
RONALD P. FLYNN, State Bar #184186
Chief Deputy City Attorney
YVONNE R. MERÉ, State Bar #173594
Chief of Complex and Affirmative Litigation
CHRISTINE VAN AKEN, State Bar #241755
TARA M. STEELEY, State Bar #231775
MOLLIE M. LEE, State Bar #251404
SARA J. EISENBERG, State Bar #269303
AILEEN M. McGRATH, State Bar #280846
Deputy City Attorneys
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4602
Telephone: (415) 554-4748
Facsimile: (415) 554-4715
E-Mail: brittany.feitelberg@sfcityatty.org

Attorneys for Plaintiff
CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO, Plaintiff, vs. JEFFERSON B. SESSIONS III, Attorney General of the United States, ALAN R. HANSON, Acting Assist. Attorney General of the United States, UNITED STATES DEPARTMENT OF JUSTICE, DOES 1-100, Defendants.	Case No. 3:17-CV-04642-WHO **FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** Date Action Filed: August 11, 2017 Trial Date: December 10, 2018

INTRODUCTION

1. The City and County of San Francisco brings this action to challenge the Attorney General of the United States' attempt to use a longstanding federal grant program—the Edward Byrne Memorial Justice Assistance Grant ("Byrne JAG") Program—as a cudgel to force San Francisco to abandon its sanctuary city policies. The Attorney General and other members of the Trump Administration have threatened to withhold congressionally appropriated federal funds unless San Francisco—and other jurisdictions across the country—accede to the Administration's immigration-related policy demands. In doing so, the Defendants have grossly misinterpreted federal law and have seized for themselves power that belongs only to Congress. Defendants' behavior is unlawful and unconstitutional, and must be prohibited.

2. Like many cities, San Francisco has a vibrant immigrant community, many members of which are undocumented. San Francisco has long endeavored to foster cooperation and trust between its immigrant community and city employees and agencies by lawfully limiting when city employees and agencies may assist with the enforcement of federal immigration laws. San Francisco's laws ("Sanctuary City Laws") and policies generally prohibit city employees from using city funds or resources to assist in enforcing federal immigration law, unless required by federal or state law. They specifically prohibit local law enforcement officers from cooperating with Immigration and Customs Enforcement ("ICE") voluntary detainer requests, limit when local law enforcement officers may give the federal government advance notice of a person's release from jail, and do not allow ICE representatives conducting civil immigration enforcement free access to inmates in jail. But at the same time, San Francisco law expressly states that "[i]n all other respects, local law enforcement agencies may continue to collaborate with federal authorities to protect public safety."

3. San Francisco enacted its Sanctuary City Laws based on evidence showing that San Francisco is a safer, healthier, and stronger city when its officials do not enforce federal immigration laws. San Francisco is safer when all people, including undocumented immigrants, feel comfortable reporting crimes to authorities. San Francisco is healthier when all residents, including undocumented immigrants, access public health programs. San Francisco is economically and socially stronger when all children, including undocumented immigrants, attend school. And San Francisco

communities are strengthened when members of the public, including undocumented immigrants, can use public transit, visit libraries, or take their children to the playground without fear. For these reasons, among others, San Francisco has made the considered judgment not to comply with voluntary detainer requests, not to allow federal civil immigration authorities access to jails, and not to provide federal officials with information about the date and time of a person's release from local custody.

4. But San Francisco, and other jurisdictions, have found themselves targeted by Attorney General Sessions and other members of President Donald Trump's Administration, who make no secret of their intent to undo these considered policy choices, even in the absence of congressional action. The Attorney General has repeatedly condemned "sanctuary cities" that "refus[e] to detain known felons under federal detainer requests" or otherwise refuse to use local resources to carry out demands from federal immigration authorities.[1] Similarly, the acting Director of ICE told Congress in June that the federal government expects local governments "[to] allow us access to the jails."[2] Likewise, President Trump has criticized "[s]anctuary cities, like San Francisco, [that] block their jails from turning over criminal aliens to Federal authorities for deportation."[3]

5. Since taking office, the President, directly and through his Administration, has tried various coercive tactics to require local jurisdictions to abandon their sanctuary city policies. The President issued Executive Order 13,768, targeting sanctuary cities and commanding federal agencies to withhold federal funding from these cities unless they changed their policies to begin enforcing federal immigration law. Exec. Order No. 13,768, 82 Fed. Reg. 8799 at 8799 (Jan. 25, 2017) ("Executive Order"). The order was permanently enjoined by this Court for violating numerous constitutional provisions. *City and County of San Francisco v. Donald J. Trump*, --- F. Supp. 3d ---,

[1] Press Release, U.S. Dep't of Justice, Attorney General Jeff Sessions Delivers Remarks on Sanctuary Jurisdictions (Mar. 27, 2017), https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-sanctuary-jurisdictions ("March 27 Sessions remarks").

[2] H. Approps, Subcommittee on Homeland Security Hearing on the ICE and CBP F.Y. 2018 Budget (June 13, 2017), 2017 WLNR 18737622 (testimony of Acting ICE Director Thomas Homan).

[3] Press Release, The White House, Office of the Press Secretary, Statement on Sanctuary Cities Ruling (Apr. 25, 2017), https://www.whitehouse.gov/the-press-office/2017/04/25/statement-sanctuary-cities-ruling.

No. 3:17-cv-00485-WHO, 2017 WL 5569835, at *11-*16 (N.D. Cal. Nov. 20, 2017) ("*San Francisco v. Trump*").

6. The Attorney General has also tried to create a stigma surrounding sanctuary jurisdictions by falsely claiming that sanctuary city policies undermine public safety and by calling "a sanctuary city a trafficker, smuggler, or gang member's best friend."[4] The Attorney General has sent letters to San Francisco, as well as several other jurisdictions with sanctuary policies, threatening to withdraw or claw back federal funding if they do not certify that their laws comply with federal requirements.[5]

7. In the Administration's most recent effort to end sanctuary policies, the Office of Justice Programs ("OJP")—a Department of Justice ("DOJ") agency that oversees the administration of the Byrne JAG program—announced on July 25, 2017, that the FY 2017 Byrne JAG application would impose three immigration-related conditions on funding recipients.

8. The first condition relates to a federal statute, 8 U.S.C. Section 1373 ("Section 1373"). The FY 2017 Byrne JAG award requires San Francisco to certify that, with respect to the "program or activity" funded with Byrne JAG dollars, San Francisco does not have in effect, purport to have in effect, or is subject to or bound by "any prohibition or any restriction . . . that deals with either (1) a government entity or –official sending or receiving information regarding citizenship or immigration status as described in 8 U.S.C. § 1373(a); or (2) a government entity or –agency sending to, requesting

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[4] Press Release, U.S. Dep't of Justice, Attorney General Sessions Delivers Remarks to Federal Law Enforcement Authorities About Sanctuary Cities (Sept. 19, 2017), https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-federal-law-enforcement-authorities; *see also* Press Release, U.S. Dep't of Justice, Statement by Attorney General Sessions on the City of Chicago's Lawsuit Against the U.S. Department of Justice (Aug. 7, 2017), https://www.justice.gov/opa/pr/statement-attorney-general-sessions-city-chicago-s-lawsuit-against-us-department-justice (characterizing sanctuary city laws as "an official policy of protecting criminal aliens who prey on their own residents").

[5] Press Release, U.S. Dep't of Justice, Department of Justice Sends Letter to Nine Jurisdictions Requiring Proof of Compliance with 8 U.S.C. § 1373 (Apr. 21, 2017), https://www.justice.gov/opa/pr/department-justice-sends-letter-nine-jurisdictions-requiring-proof-compliance-8-usc-1373; Press Release, U.S. Dep't of Justice, Justice Department Sends Letters to 29 Jurisdictions Regarding Their Compliance with 8 U.S.C. 1373 (Nov. 15, 2017), https://www.justice.gov/opa/pr/justice-department-sends-letters-29-jurisdictions-regarding-their-compliance-8-usc-1373. The letter San Francisco received is attached to this Amended Complaint as Exhibit A.

or receiving from, maintaining, or exchanging information of the types (and with respect to the entities) described in 8 U.S.C. § 1373(b)" ("Section 1373 Requirement").

9. DOJ lacks the constitutional power to require San Francisco to certify that it complies with Section 1373 in order to receive Byrne JAG funds. Only Congress may attach requirements to federal grants—not DOJ. DOJ's attempt to use Byrne JAG as a weapon to require Section 1373 compliance exceeds what the Constitution allows.

10. But even if DOJ could impose the Section 1373 Requirement, DOJ may not deny San Francisco Byrne JAG funding because of purported non-compliance with Section 1373 because San Francisco fully conforms with Section 1373's mandate.

11. San Francisco does not prohibit or restrict its employees, or any departments or officials, from sharing information about the citizenship or immigration status of any individual with federal immigration officials. To the contrary, San Francisco has advised all of its employees that Section 1373 prohibits it from imposing any such restrictions. And in any case, San Francisco has a general policy of not collecting immigration status information in the first instance.

12. Nevertheless, the Attorney General has made clear that he believes San Francisco violates Section 1373, and has threatened to claw back FY 2016 Byrne JAG funding that San Francisco has already received. The Attorney General has also threatened to deny San Francisco's FY 2017 Byrne JAG funding. The Attorney General has further taken the incorrect position that Section 1373 applies not only to immigration status information—as its text provides—but also to vast swaths of other information like location, date of birth, and custody status.

13. The Attorney General's threats to withhold San Francisco's Byrne JAG funding, together with its erroneous interpretation of Section 1373, unlawfully attempt to force San Francisco to comply with the Trump Administration's political agenda. Declaratory relief from this Court is needed to put a stop to DOJ's coercion involving Section 1373.

14. The other two Byrne JAG conditions also unlawfully seek to interfere with San Francisco's considered policy judgments. The "Access Requirement" demands that San Francisco provide federal immigration officials unfettered access to local detention facilities to interrogate any suspected aliens held there. The "Notice Requirement" directs San Francisco to provide the

Department of Homeland Security ("DHS") with at least 48 hours' advance notice—or at least as much notice as is practicable—of the scheduled release date and time of an individual, where the federal government has requested notice to take that individual into custody for immigration reasons.

15. San Francisco does not comply with the Notice and Access Requirements, and for good reason: in practice, the Notice and Access Requirements could, and in many instances would, require San Francisco officials to unlawfully hold inmates longer than they otherwise would to ensure that DHS receives adequate advance notice. And they would compel San Francisco to abandon its longstanding laws and policies that deny federal immigration officials freewheeling access to local detention facilities.

16. The Notice and Access Requirements—like the Section 1373 Requirement—also violate the United States Constitution. The Constitution establishes a balance of power between the state and federal governments, as well as among the coordinate branches of federal government. This balance prevents the excessive accumulation of power in any single entity and reduces the risk of tyranny and abuse from any government office. Accordingly, an executive branch agency of the federal government may not seize for itself the power that the Constitution reserves for Congress. Nor may it intrude on authority that the Constitution has reserved for state and local governments. Yet the Notice and Access Requirements violate both of these precepts. DOJ is improperly attempting to wield powers that only Congress may invoke, and is seeking to compel San Francisco to cede its sovereign decision making to the federal government.

17. San Francisco faces the immediate prospect of losing over $1.4 million in this fiscal year if it does not receive FY 2017 Byrne JAG funds. Defendants have also made clear that they are contemplating clawing back up to $1.5 million in FY 2016 Byrne JAG monies from San Francisco. San Francisco uses these funds for a variety of important law enforcement purposes, including a pioneering Young Adult Court program that works to prevent at-risk youth from entering a "lifelong entanglement with the criminal justice system,"[6] and to fund other initiatives designed to reduce

[6] Tim Requarth, *A California Court for Young Adults Calls on Science*, N.Y. Times (Apr. 17, 2017), https://www.nytimes.com/2017/04/17/health/young-adult-court-san-francisco-california-neuroscience.html.

recidivism, deter drug use, provide services to at-risk youth, and supervise probationers with substance abuse and/or mental health issues.

18. San Francisco faces an unacceptable choice: either comply with DOJ's unconstitutional new grant conditions and abandon local policies that San Francisco has found to promote public safety and foster trust and cooperation between law enforcement and the public, or maintain these policies but forfeit critical funds that it relies on to provide essential services to San Francisco residents.

19. That choice is particularly stark with respect to the Section 1373 Requirement, which asks San Francisco to certify under penalty of perjury that its laws comply with Section 1373. While San Francisco firmly believes that it complies with Section 1373, DOJ's recent pronouncements and threats to San Francisco require San Francisco to make that certification under a cloud of uncertainty.

20. San Francisco accordingly seeks declaratory and injunctive relief to ensure that San Francisco and other sanctuary jurisdictions continue to be eligible for Byrne JAG funds—which serve a critical public safety purpose—instead of being coerced into enforcing federal immigration law, which it has no obligation to do.

San Francisco seeks a declaration that:

- San Francisco's Sanctuary City Laws—San Francisco Administrative Code Chapters 12H and 12I—comply with Section 1373;
- San Francisco does not have in place a prohibition or restriction that applies to the program or activity funded under the Byrne JAG program, and which deals with sending to, receiving from, requesting, or maintaining immigration status information with the federal government; and
- The Notice, Access, and Section 1373 Requirements are unconstitutional.

San Francisco further seeks an injunction that:

- Defendants cannot use the Notice, Access, and Section 1373 Requirements as funding restrictions for any Byrne JAG award;
- Defendants cannot withhold Byrne JAG funding from San Francisco on the basis of its compliance with Section 1373; and

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- Defendants cannot claw back Byrne JAG funding already awarded to San Francisco because of asserted non-compliance with Section 1373.

JURISDICTION AND VENUE

21. The Court has jurisdiction under 28 U.S.C. Sections 1331 and 1346. This Court has further remedial authority under the Declaratory Judgment Act, 28 U.S.C. Sections 2201 and 2202 *et seq*.

22. Venue properly lies within the Northern District of California because Plaintiff, San Francisco, resides in this judicial district and a substantial part of the events or omissions giving rise to this action occurred in this District. 28 U.S.C. §1391(e).

INTRADISTRICT ASSIGNMENT

23. Assignment to the San Francisco Division of this District is proper pursuant to Civil Local Rule 3-2(c)-(d) because a substantial part of the acts or omissions that give rise to this action occurred in the City and County of San Francisco.

PARTIES

24. Plaintiff San Francisco is a municipal corporation organized and existing under and by virtue of the laws of the State of California, and is a charter city and county.

25. Defendant Jefferson B. Sessions is the Attorney General of the United States. He is sued in his official capacity. The Attorney General is the federal official leading DOJ, which is responsible for the governmental actions at issue in this lawsuit.

26. Defendant Alan R. Hanson is Acting Assistant Attorney General of the United States in charge of OJP, which administers Byrne JAG funding. He is sued in his official capacity.

27. Defendant DOJ is an executive department of the United States of America that is responsible for administering the Byrne JAG program.

28. Doe 1 through Doe 100 are sued under fictitious names. Plaintiff San Francisco does not now know the true names or capacities of said Defendants, who were responsible for the alleged violations alleged, but pray that the same may be alleged in this complaint when ascertained.

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FACTUAL ALLEGATIONS

I. San Francisco's Sanctuary City Laws And Policies.

29. San Francisco has been a Sanctuary City since 1989, when it first enacted ordinances to protect Central American refugees who were escaping violent civil wars in their home countries and seeking legal protections in the United States. Since then, San Francisco's Sanctuary City Laws, codified in Chapters 12H and 12I of the San Francisco Administrative Code, have been amended to reflect San Francisco's broad dedication and commitment to promote public safety, public health, and community integrity.

30. San Francisco's Sanctuary City Laws do not protect criminals. They do not interfere with or hinder criminal prosecutions. They do not prohibit law enforcement in all other respects from collaborating with federal authorities to "protect public safety." *See* S.F. Admin. Code § 12I.4.

31. Instead, San Francisco's Sanctuary City Laws arise from San Francisco's commitment and responsibility to ensure public safety and welfare. The Board of Supervisors, as San Francisco's legislative body, found that public safety is "founded on trust and cooperation of community residents and local law enforcement." S.F. Admin Code § 12I.1. Citing a study by the University of Illinois, which found that at least 40 percent of Latinos surveyed were less likely to provide information to police because they feared exposing themselves, family, or friends to a risk of deportation, the Board of Supervisors stated that "civil immigration detainers and notifications regarding release undermine community trust of law enforcement by instilling fear in immigrant communities of coming forward to report crimes and cooperate with local law enforcement agencies." *Id.*; *see also id.* ("The City has enacted numerous laws and policies to strengthen communities and to build trust between communities and local law enforcement. Local cooperation and assistance with civil immigration enforcement undermines community policing strategies."). Indeed, a recent study shows that crime is statistically significantly lower in sanctuary counties compared to non-sanctuary counties. *See* Tom K. Wong, *The Effects of Sanctuary Policies on Crime and the Economy*, CTR. FOR AM. PROGRESS (Jan. 26, 2017), https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy/.

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32. The legislative findings set forth in Chapter 12I confirm the important purpose of San Francisco's Sanctuary City Laws. For example, the Board of Supervisors declared:

> Fostering a relationship of trust, respect, and open communication between City employees and City residents is essential to the City's core mission of ensuring public health, safety, and welfare, and serving the needs of everyone in the community, including immigrants. The purpose of this Chapter 12I, as well as of Administrative Code Chapter 12H, is to foster respect and trust between law enforcement and residents, to protect limited local resources, to encourage cooperation between residents and City officials, including especially law enforcement and public health officers and employees, and to ensure community security, and due process for all. (*See* Section 12I.2.)

33. San Francisco's Sanctuary City Laws perform several important functions. San Francisco Administrative Code Chapter 12H prohibits San Francisco departments, agencies, commissions, officers, and employees from using San Francisco funds or resources to assist in the enforcement of federal immigration law or to gather or disseminate information regarding the release status, or other confidential identifying information, of an individual unless such assistance is required by federal or state law.

34. Chapter 12H previously prohibited disseminating information regarding the immigration status of any individual, but the Board of Supervisors amended Chapter 12H in July 2016 to, *inter alia*, delete that prohibition to ensure compliance with Section 1373.

35. San Francisco Administrative Code Chapter 12I prohibits San Francisco law enforcement officials from detaining an individual who is otherwise eligible for release from custody on the basis of a civil immigration detainer request issued by the federal government. A detainer request is distinct from a criminal warrant, which San Francisco honors consistent with its Sanctuary City Laws. A detainer request is not issued by a judge based on a finding of probable cause. It is simply a request by ICE that a state or local law enforcement agency hold individuals after their release date to provide ICE agents extra time to decide whether to take those individuals into federal custody and then deport them.

36. Chapter 12I also prohibits San Francisco law enforcement officials from responding to a federal immigration officer's request for advance notification of the date and time an individual in San Francisco's custody is being released, unless the individual in question meets certain criteria. *See* S.F. Admin. Code § 12I.3(c)-(d).

37. Finally, as relevant here, Chapter 12I provides that "[l]aw enforcement officials shall not arrest or detain an individual, or provide any individual's personal information to a federal immigration officer, on the basis of an administrative warrant, prior deportation order, or other civil immigration document based solely on alleged violations of the civil provisions of immigration laws." *See* S.F. Admin. Code § 12I.3(e). "Personal information" is defined as "any confidential, identifying information about an individual, including, but not limited to, home or work contact information, and family or emergency contact information." *See* S.F. Admin. Code § 12I.2. Personal information does not include immigration status information.

38. Chapter 12I makes clear that its purpose and effect are limited to matters "relating to federal civil immigration detainers, notification of release of individuals, transmission of personal information, or civil immigration documents, based solely on alleged violations of the civil provisions of immigration laws." Chapter 12I expressly states that "[i]n all other respects, local law enforcement agencies may continue to collaborate with federal authorities to protect public safety." *See* S.F. Admin. Code § 12I.4.

39. San Francisco departments and agencies have adopted and implemented policies and practices consistent with Chapters 12H and 12I.

40. Specifically, the departments and agencies that administer Byrne JAG programs do not have in place any prohibitions or restrictions that apply to programs or activities funded under the Byrne JAG Program, and which deal with sending to, receiving from, requesting, or maintaining immigration status information with the federal government.

41. In addition, San Francisco has affirmatively instructed personnel regarding the substance of Section 1373 in a January 2017 memorandum sent to all San Francisco employees from the San Francisco Human Resources Director.

II. The Trump Administration Has Engaged In A Sustained Campaign To Eradicate Sanctuary City Policies.

42. San Francisco is far from the only jurisdiction to enact sanctuary policies that seek to promote public safety and build trusting and supportive relationships with immigrant communities. Numerous jurisdictions across the country have enacted similar policies. But despite the widespread

enactment of these policies, and the studies that justify their use (*see supra* ¶ 31), the Attorney General and other members of the Trump Administration have repeatedly criticized San Francisco, and other jurisdictions, for failing to allow ICE officials access to jails, provide notification of inmate release dates, or otherwise enforce federal immigration law.

43. For instance, in statements to the Daily Caller on July 7, 2015, then-Senator and now-Attorney General Sessions criticized San Francisco and other sanctuary jurisdictions for failing to carry out voluntary detainer requests. Sessions stated, "This disregarding of detainers and releasing persons that ICE has put a hold on—it goes against all traditions of law enforcement. Laws and courtesies within departments—if you have somebody charged with a crime in one city, you hold them until you complete your business with them . . . . So what was happening was, ICE authorities were filing detainers and sanctuary cities were saying, 'We're not gonna honor them. They finished paying for the crime they committed in our city—we've released them.'"[7]

44. After the President appointed him to office, the Attorney General continued to take the same position targeting sanctuary cities. On July 12, 2017, the Attorney General described sanctuary city "policies" as those requiring law enforcement officials to "refuse to cooperate with federal immigration authorities regarding illegal aliens who commit crimes."[8] And he has frequently suggested that he will use every means necessary to withhold federal funding from "sanctuary cities." *See* March 27 Sessions remarks.

45. The Trump Administration has incorporated these views into its political agenda. President Trump has frequently promised to "defund" sanctuary cities, and to use the threat of withholding federal funds as "a weapon" to coerce local jurisdictions to change their policies.[9] Then-

[7] Kerry Picket, *Sen. Sessions: City Officials Harboring Illegal Immigrant Felons Could Be Charged with Crime*, Daily Caller (July 7, 2015), http://dailycaller.com/2015/07/07/sen-sessions-city-officials-harboring-illegal-immigrant-felons-could-be-charged-with-crime/#ixzz4XE9I12Ux.

[8] Press Release, U.S. Dep't of Justice, Attorney General Jeff Sessions Delivers Remarks in Las Vegas to Federal, State and Local Law Enforcement About Sanctuary Cities and Efforts to Combat Violent Crime (July 12, 2017), https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-las-vegas-federal-state-and-local-law.

[9] Alexander Mallin and Lissette Rodriguez, *Trump Threatens Defunding Sanctuary Cities as 'Weapon'*, ABC News (Feb. 5, 2017), http://abcnews.go.com/Politics/trump-threatens-%20defunding-sanctuary-states-weapon/story?id=45286642.

White House Press Secretary Sean Spicer also confirmed that "[w]e are going to strip federal grant money from the sanctuary states and cities that harbor illegal immigrants. The American people are no longer going to have to be forced to subsidize this disregard for our laws."[10]

46. The Administration carried through on these threats during President Trump's first week in office. President Trump issued Executive Order 13,768, which threatened to deny all federal funding to sanctuary jurisdictions and to authorize the Attorney General to take unspecified enforcement action against sanctuary cities. The Executive Order declared that "[s]anctuary jurisdictions across the United States willfully violate Federal law in an attempt to shield aliens from removal from the United States. These jurisdictions have caused immeasurable harm to the American people and to the very fabric of our Republic." Executive Order at 8799.

47. To address that purported harm, the Executive Order established the policy that "jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law." Executive Order at 8799. In furtherance of this policy, the Executive Order provided that:

> [T]he Attorney General and the Secretary [of Homeland Security], in their discretion and to the extent consistent with law, shall ensure that jurisdictions that willfully refuse to comply with 8 U.S.C. 1373 (sanctuary jurisdictions) are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary.

Executive Order § 9(a).

48. The Executive Order also mandated enforcement action: "The Attorney General shall take appropriate enforcement action against any entity that violates 8 U.S.C. 1373, or which has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law." *Id.*

49. The Executive Order made clear that Section 1373 is the foundation for the Administration's efforts to deprive sanctuary cities of federal funds and to take unspecified punitive actions against them.

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[10] The White House, *1/25/17: White House Press Briefing*, YouTube (Jan. 25, 2017), https://www.youtube.com/watch?v=OaPriMVvtZA.

50. The Administration touted the Executive Order as a means for achieving the President's goal of "ending sanctuary cities . . . . [T]he President has been very clear through his executive order that federal funds, paid for by hardworking taxpayers, should not be used to help fund sanctuary cities."[11] The Administration vowed that "the President is going to do everything he can within the scope of the executive order to make sure that cities who don't comply with it—counties and other institutions that remain sanctuary cities don't get federal government funding in compliance with the executive order."[12]

51. The Administration's efforts were stopped by this Court, which permanently enjoined Section 9(a) of the Executive Order for violating the Constitution. *San Francisco v. Trump*, 2017 WL 5569835, at *17. The Court held, *inter alia*, that the President—and in turn, the Attorney General and the Secretary of DHS—lacked the authority "to place a new condition on federal funds . . . not authorized by Congress," and thus had violated the "fundamental constitutional structure" of the separation of powers. *Id.* at *11. And the Court further held that even if the executive branch could exercise that spending power, the Executive Order was unconstitutional because it (1) used vague language that left localities unclear how to comply with the funding conditions; (2) lacked any nexus between the funds at issue and immigration enforcement; and (3) sought to compel local governments to "adopt certain policies" that they had determined, in their considered judgment, to be unwise. *Id.* at *12-*13. The Court found these violations to warrant a nationwide injunction. *Id.* at *17.

III. The Administration Is Attempting To Use The Byrne JAG Program To Coerce Cities Like San Francisco To Abandon Their Sanctuary City Policies.

A. The Byrne JAG Program Is A Longstanding Federal Formula Grant Program.

52. With its efforts to more broadly withhold federal funds stymied by this Court, the Administration adopted a more targeted approach: it identified an existing congressional program, the

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[11] Press Release, The White House, Office of the Press Secretary, Press Briefing by Press Secretary Sean Spicer, 2/1/2017, #6 (Feb. 1, 2017), https://www.whitehouse.gov/the-press-office/2017/02/01/press-briefing-press-secretary-sean-spicer-212017-6.

[12] Press Release, The White House, Office of the Press Secretary, Press Briefing by Press Secretary Sean Spicer, 2/8/2017, #10 (Feb. 8, 2017), https://www.whitehouse.gov/the-press-office/2017/02/08/press-briefing-press-secretary-sean-spicer-282017-10.

Byrne JAG program, as another device to pressure cities, states, and other local governments to abandon their sanctuary city policies.

53. Byrne JAG's origins trace back over three decades to the Anti-Drug Abuse Act of 1988, H.R. 5210, 100th Cong. (1988), which created the Byrne Formula Grant program. In its original form, the Byrne Formula Grant program provided states with block grants based on population. *See* Anti-Drug Abuse Act § 6091(a), 42 U.S.C. § 3756 (1994). The program encouraged states to use those funds for very specific enumerated purposes, such as "disrupting illicit commerce in stolen goods and property," "developing and implementing programs which provide assistance to jurors and witnesses," and "addressing the problems of drug trafficking and the illegal manufacture of controlled substances in public housing." *See* 42 U.S.C. § 3751 (2000).

54. Several years after the Byrne Formula Grant program was enacted, Congress also authorized the creation of the Local Law Enforcement Block Grant ("LLEBG") program, through the FY 1996 law appropriating funding to DOJ. Omnibus Consolidated Rescissions and Appropriations Act of 1996, H.R. 3019, 194th Cong. (1996). The LLEBG program provided money to states and localities based on their crime rates.[13] Each year, the LLEBG and Byrne Formula Grant programs disbursed as much as $1 billion to states and local governments.

55. In 2006 Congress consolidated the LLEBG and Byrne Formula Grant programs as part of an effort to reduce duplication and streamline the programs. The consolidated program was renamed as today's Edward Byrne Memorial Justice Assistance Grant program. *See* Violence Against Women and Department of Justice Reauthorization Act of 2005, H.R. 3402, 109th Cong. (2006); U.S. House of Representatives, Committee on the Judiciary, *Department of Justice Appropriations Authorization Act, Fiscal Years 2006 Through 2009, Report to accompany H.R. 3402*, 109th Cong., 1st Sess., H.R. Rep. No. 109-233, at 89 (2005) ("Judiciary Committee Report").

56. Congress's core purpose in reformulating the existing grant programs was "to cover the same ground" as the previous grant programs while allowing recipients more freedom "to use the

[13] *See* Nathan James, *Edward Byrne Memorial Justice Assistance Grant Program: Legislative and Funding History*, Congressional Research Service at 2-3 (Feb. 1, 2008), http://research.policyarchive.org/18740.pdf.

grants constructively." Judiciary Committee Report at 89. The reforms would "lessen the administrative burden of applying for the grants." *Id.* And the resulting program would be streamlined and would ensure that "the same authorized funding levels and uses will be available." 150 Cong. Rec. S9,950 (daily ed. Sept. 29, 2004) (statement of Sen. Leahy) (discussing similar, precursor version of 2005 Act).

57. To that end, Byrne JAG is structured as a formula grant, awarding funds to all eligible grantees according to a prescribed metric. Unlike discretionary grants, which agencies award pursuant to agency discretion, "'formula' grants . . . are not awarded at the discretion of a state or federal agency, but are awarded pursuant to a statutory formula." *City of Los Angeles v. McLaughlin*, 865 F.2d 1084, 1088 (9th Cir. 1989). The Bureau of Justice Assistance ("BJA")—a department within OJP—awards Byrne JAG funds to all eligible grantees in amounts based on Bureau of Justice Statistics ("BJS") calculations derived from the Byrne JAG statutory formula. *See* 34 U.S.C. § 10156(d)(2)(A) (providing that the Attorney General "*shall* allocate to each unit of local government" funds consistent with the established formula) (emphasis added).

58. The formula for state allocations is a function of population and violent crime. *See id.* § 10156(a). For local governments, the allocation is a function of the state's allocation and the ratio of violent crime in the locality to violent crime in the state. *See id.* § 10156(d).

59. BJS first computes a preliminary allocation for each state and United States territory based on its share of violent crime and population (weighted equally). BJS then reviews that initial allocation amount to determine if it is less than the minimum amount defined in the statutory formula (0.25 percent of the total). U.S. Dep't of Justice, Office of Justice Programs, Bureau of Justice Statistics, Technical Report, *Justice Assistance Grant Program*, 2016 at 2 (Sept. 2016), https://www.bja.gov/jag/pdfs/JAG-Technical-Report.pdf. If this is the case, the state or territory is funded at the minimum level. *Id.* Each of the remaining states receives the minimum award plus an additional amount based on its share of violent crime and population. *Id.*

60. Once each state's final amount is determined, 60 percent is allocated to the state in the first instance, and 40 percent is allocated for direct grants to local governments. 34 U.S.C. § 10156(d).

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States are obligated to pass at least a certain percentage of the "state" grant to local governments within the state. *Id.* § 10156(c)(2).

61. For example, in FY 2017, California's total allocation is $28.3 million. Of this, $17.7 million (60 percent) is allocated to the State.[14] The other $10.6 million (40 percent) is allocated for direct grants to local jurisdictions.[15] Of the $17.7 million allocated to the State, a minimum of 62.9 percent must be passed through to local jurisdictions.[16] In recent years, California has passed through over 85 percent of JAG funds to local jurisdictions.[17]

62. Under the Byrne JAG statute, award recipients are entitled to their share of the formula allocation as long as their proposed programs satisfy one of the statutory purpose areas. In contrast to the Byrne Formula Grant statutory requirements—which enumerated dozens of specific purposes—the Byrne JAG program allows recipients to allocate their funds in furtherance of eight purpose areas: (1) law enforcement, (2) prosecution and courts, (3) prevention and education, (4) corrections and community corrections, (5) drug treatment, (6) planning, evaluation, and technology improvement, (7) crime victim and witness programs, and (8) mental health programs, including behavioral programs and crisis intervention teams. 34 U.S.C. § 10152(a)(1)(A)-(H).

63. None of these program purposes include federal immigration enforcement.

64. Congress imposed only a limited number of requirements on Byrne JAG applicants. First, applicants are required to supply information about their intended use of grant funding, to demonstrate that they will spend the money on programs supporting the purposes identified in the statute. *See* 34 U.S.C. § 10153(a)(2) & (a)(5)(A)-(C). Second, applicants must maintain and be prepared to report information demonstrating that they possess programmatic and financial integrity.

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[14] *See* https://www.bja.gov/Funding/17JAGStateAllocations.pdf.

[15] *See* https://www.bja.gov/Programs/JAG/jag17/17CA.pdf.

[16] Byrne JAG Frequently Asked Questions (FAQs)–Updated August 2017, at 2, https://www.bja.gov/Funding/JAGFAQ.pdf; *see also* FY 2014 Justice Assistance Grant (JAG) Program Variable Passthrough (VPT) percentages, https://www.bja.gov/Funding/JAGvpt.pdf.

[17] *See, e.g.*, Byrne JAG Fiscal Year 2016 California State Application, at 26, http://www.bscc.ca.gov/downloads/2016%20BSCC%20Application%20to%20BJA%20for%20Byrne%20JAG%20Funding.pdf.

Id. § 10153(a)(4). Finally, applicants must "certif[y]," that they "will comply with all provisions of this part and all other applicable Federal laws." *Id.* § 10153(a)(5)(D).

65. The current Byrne JAG statute contains no immigration-related requirements. Indeed, Congress specifically removed an immigration-related funding requirement when it merged the Byrne Formula Grant program with LLEBG to create Byrne JAG. Congress eliminated the Byrne Formula Grant requirement that recipients make "[a]n assurance that the State has established a plan under which the State will provide without fee to the Immigration and Naturalization Service, within 30 days of the date of their conviction, notice of conviction of aliens who have been convicted of violating the criminal laws of the State and under which the State will provide the Service with the certified record of such a conviction within 30 days of the date of a request by the Service for such record." 42 U.S.C. § 3753(a)(11) (2002).

B. San Francisco Uses Byrne JAG Funds To Support Vital City Services.

66. The San Francisco Department of Children, Youth and their Families ("DCYF") applies for local Byrne JAG funds and state pass-through funds on behalf of the City. DCYF keeps a portion of the grant and also administers grant funds to the following departments: Adult Probation, District Attorney, Juvenile Probation, Public Defender, Police, and Sheriff. DCYF also passes through funds from the local grant to San Francisco Superior Court and a third party evaluator.

67. Consistent with the Byrne JAG statute, San Francisco uses its Byrne JAG funds to support critical law enforcement programs designed to reduce criminal behavior and improve public safety. Specific programs funded with this grant include: (1) Law Enforcement Assisted Diversion, an innovative approach that seeks to accomplish the goals of reduced criminal behavior and improved public safety by connecting appropriate low-level drug offenders with services; (2) Focused Drug Deterrence, short and long term proactive activities including targeted investigations and enforcement and social network analysis to increase the identification of individuals involved in high-level drug markets; (3) Drug Court Prosecution, which seeks to connect criminal defendants who suffer from a substantial substance abuse problem to treatment services in the community in order to enhance public safety, reduce recidivism, and to find appropriate dispositions to the criminal charges; (4) Targeted Drug Treatment for Underserved Populations, a treatment intervention conducted by the Sheriff's

Department for individuals in custody; (5) Intensive Probation Supervision, a targeted caseload of probationers with substance abuse and/or mental health issues; (6) Reentry Social Work through the Public Defender's Office, which provides legal and wraparound support to help indigent clients charged with felony drug cases and other felony offenses successfully exit the criminal justice system; and (7) Citywide Justice-Involved Youth Planning, which examines current criminal justice trends impacting youth and young adults and strengthens partnerships and collaboration at various levels to create a continuum of support for youth and young adults.

68. San Francisco uses Byrne JAG pass-through funds for two pilot projects designed to reduce recidivism for juveniles and young adults. One project works with the San Francisco Unified School District to create an alternative to suspension for at-risk youth. Students facing suspension—or exhibiting behaviors that put them at risk for suspension—are paired with trained role models who help them learn de-escalation skills and keep them from missing needed instruction time.

69. The other project is a Young Adult Court aimed at reducing recidivism for youth ages 18-25. This Court was designed in response to a growing body of neuroscience research showing that young adults are fundamentally different from both juveniles and older adults in how they process information and make decisions. Our traditional justice system is not well-equipped to address cases involving these individuals, who are qualitatively different in development, skills, and needs from both children and older adults. The Young Adult Court fills this gap by providing case management and other support for eligible young adult offenders from high-risk backgrounds.

70. These City programs span seven departments, and a total of approximately ten full time equivalent positions for these programs are funded with Byrne JAG funds. Without local and state Byrne JAG funds, San Francisco could be forced to reduce or eliminate these programs, including eliminating staff positions, unless other funding sources could be identified.

C. The Department Of Justice Unlawfully Requires San Francisco To Certify Compliance With Section 1373 As A Condition Of Receiving Byrne JAG Funding.

71. For many years, OJP administered the Byrne JAG program consistent with congressional intent: local jurisdictions received federal funding according to a formula to support law

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enforcement initiatives, and the federal government imposed few restrictions on state and local governments wishing to receive these grant funds.

72. But 2016, OJP began to change course. As noted above, the Byrne JAG authorizing statute requires a "certification" that "the applicant will comply with all provisions of this part and all other applicable federal laws." 34 U.S.C. § 10153(a)(5)(D). OJP issued guidance in July 2016 that Section 1373 was such an "applicable law" for which jurisdictions had to certify compliance to receive Byrne JAG funds.

73. Section 1373 provides that a "local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [federal immigration officials] information regarding the citizenship or immigration status . . . of any individual." 8 U.S.C. § 1373(a). Section 1373 further provides that, "with respect to information regarding the immigration status . . . of any individual," "no person or agency may prohibit, or in any way restrict, a . . . local government entity from . . . (1) sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service[,] (2) maintaining such information[, or] (3) exchanging such information with any other Federal, State, or local government entity." *Id.* § 1373(b).

74. In July and October 2016, DOJ indicated that it viewed Section 1373 as an applicable federal law for the Byrne JAG program. *See* Office of Justice Programs, *Guidance Regarding Compliance with 8 U.S.C. § 1373*, U.S. Dep't Just. (July 7, 2016), https://www.bja.gov/funding/8uscsection1373.pdf ("OJP July Guidance"); Office of Justice Programs, *Additional Guidance Regarding Compliance with 8 U.S.C. § 1373*, U.S. Dep't Just. (Oct. 6, 2016), https://www.bja.gov/funding/Additional-BJA-Guidance-on-Section-1373-October-6-2016.pdf ("OJP October Guidance").

75. In the OJP July Guidance, OJP suggested that Section 1373 imposes an affirmative obligation on state and local governments. The Guidance states that to comply with Section 1373, "[y]our personnel *must* be informed that notwithstanding any state or local policies to the contrary, federal law does not allow any government entity or official to prohibit the sending or receiving of

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information about an individual's citizenship or immigration status with any federal, state or local government entity and officials." OJP July Guidance at 1 (emphasis added).

76. In the October 2016 Guidance, OJP indicated that all Byrne JAG recipients needed "to examine their policies and procedures" to ensure compliance with Section 1373. OJP reiterated that "all Byrne/JAG grant applicants must certify compliance with all applicable federal laws, including Section 1373, as part of the Byrne/JAG grant application process." OJP October Guidance at 1.

77. But OJP made clear at the time that "[n]o FY 2016 or prior year Byrne/JAG . . . funding will be impacted." OJP October Guidance at 1. OJP stated that its "goal is to ensure that our JAG . . . recipients are in compliance with all applicable laws and regulations, including Section 1373, not to withhold vitally important criminal justice funding from states and localities." *Id.*

78. Beginning in FY 2017, DOJ expanded upon this mandate, requiring a detailed Certification of Compliance ("Section 1373 Certification") to be completed by an applicant's Chief Legal Officer and submitted to OJP before it can accept the award of any Byrne JAG funds. *See* Byrne JAG FY 2017 Local Solicitation (attached hereto as Exhibit B) ("Local Solicitation") at 38.

79. Among other things, the Section 1373 Certification requires the applicant's Chief Legal Officer to certify under penalty of perjury that he or she has carefully reviewed Section 1373 and understands that DOJ requires local governments to comply with Section 1373 "with respect to any 'program or activity' funded in whole or in part" with Byrne JAG dollars. The Chief Legal Officer is required to conduct—or cause to be conducted—a "diligent inquiry and review" concerning both (1) the "program or activity" to be funded with Byrne JAG funds and (2) "any prohibitions or restrictions potentially applicable to the 'program or activity' sought to be funded . . . that deal with sending to, requesting or receiving from, maintaining, or exchanging information of the types described in [Section 1373]."

80. The Section 1373 Certification further requires that the Chief Legal Officer certify under penalty of perjury that:

> [N]either the jurisdiction, nor any entity, agency, or official of the jurisdiction has in effect, purports to have in effect, or is subject to or bound by, any prohibition or any restriction that would apply to the "program or activity" to be funded in whole or in part under the FY 2017 [Byrne JAG Program], and that deals with either—(1) a government entity or –official sending or receiving

> information regarding citizenship or immigration status as described in 8 U.S.C. § 1373(a); or (2) a government entity or –agency sending to, requesting or receiving from, maintaining, or exchanging information of the types (and with respect to the entities) described in 8 U.S.C. § 1373(b).

81. The Section 1373 Certification further provides that the Chief Legal Officer must acknowledge that a "materially false, fictitious, or fraudulent statement (or concealment or omission of a material fact)" in the certification will potentially subject him or her to criminal prosecution and the applicant entity to civil penalties and administrative remedies for false claims.

82. The Section 1373 Certification is not the only time that jurisdictions will be required to assure DOJ that they comply with Section 1373. In addition, OJP has informed potential grant recipients that beginning on October 1, 2017, all Byrne JAG award recipients will be required to "certify each payment request before submission" to the federal Grant Payment Request System. That is, each time a grant recipient wishes to draw-down funds from a Byrne JAG award, the recipient must again certify compliance with Section 1373.

83. Specifically, OJP has informed recipients that they must make the following declaration, in addition to other assurances:

> To the best of my knowledge and belief, on behalf of myself and the award recipient, I certify to DOJ, under penalty of perjury, that the following are true as of the date of this request—(1) The recipient is in compliance with all award conditions that affect the obligation, expenditure, and drawdown of award funds, as well as all related requirements that appear in the certifications and assurances for this award, specifically including any restrictions concerning obligations set out in requirements related to 8 U.S.C. § 1373.

84. Further, DOJ has indicated that it will conduct ongoing monitoring of a jurisdiction's compliance with Section 1373, and will deny and/or claw back funds if it deems a jurisdiction out of compliance with Section 1373. In a November 15, 2017 letter to San Francisco Mayor Edwin Lee, Defendant Hanson informed San Francisco that its "FY 2016 Byrne JAG grant award required you to comply with 8 U.S.C. § 1373. Section 1373 compliance is an ongoing requirement that the Department of Justice monitors." Exhibit A at 1.

85. The November 15, 2017 letter further informed San Francisco that the Department "is concerned that the following San Francisco laws, policies, or practices may violate section 1373." The

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letter identified San Francisco Administrative Code Sections 12H.2 and 12I.3 as such "laws, policies, or practices" that may violate Section 1373.

86. The letter directed San Francisco to submit a response to this letter by December 8, 2017, addressing whether San Francisco's laws, policies, or practices violate Section 1373. The letter further asked San Francisco to "address whether [it] would comply with section 1373 throughout the award period, should [it] receive an FY 2017 Byrne JAG grant award."

87. On December 7, 2017, San Francisco City Attorney Dennis Herrera responded to OJP's letter on behalf of San Francisco. San Francisco informed OJP that San Francisco has no laws, policies, or practices that violate Section 1373, as it is properly construed. San Francisco directed OJP to its briefing in *San Francisco v. Trump* for further explanation of its legal position. A copy of San Francisco's response letter is attached to this Amended Complaint as Exhibit C.

88. DOJ sent similar letters to 29 other jurisdictions on November 15, 2017. In a press release issued that same day, the Attorney General stated that "[j]urisdictions that adopt so-called 'sanctuary policies' also adopt the view that the protection of criminal aliens is more important than the protection of law-abiding citizens and the rule of law." Press Release, U.S. Dep't of Justice, Justice Department Sends Letters to 29 Jurisdictions Regarding Their Compliance with 8 U.S.C. 1373 (Nov. 15, 2017), https://www.justice.gov/opa/pr/justice-department-sends-letters-29-jurisdictions-regarding-their-compliance-8-usc-1373. The Attorney General further stated "I urge all jurisdictions found to be potentially out of compliance in this preliminary review to reconsider their policies that undermine the safety of their residents. We urge jurisdictions to not only comply with Section 1373, but also to establish sensible and effective partnerships to properly process criminal aliens." *Id.*

89. These letters were consistent with letters that DOJ sent to nine jurisdictions on April 21, 2017, "alert[ing]" the recipients that they were required to submit "documentation to OJP that validates your jurisdiction is in compliance with 8 U.S.C. § 1373." DOJ has engaged in a protracted back-and-forth with several of these jurisdictions—including New York City, Philadelphia, and Chicago—and has repeatedly communicated that these jurisdictions "appear[] to have laws, policies, or practices that violate 8 U.S.C. § 1373." In a speech delivered on the same day that he sent the April 21, 2017 letters, the Attorney General reiterated that "the Department of Justice sent letters to

jurisdictions that were identified (by the Obama administration) as having policies that potentially violate federal law to receive millions in federal grants." Press Release, U.S. Dep't of Justice, Attorney General Jeff Sessions Delivers Remarks Before Media Availability in San Diego, California (Apr. 21, 2017), https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-media-availability-san-diego-california.

90. These letters stand in stark contrast to DOJ's earlier representation that FY 2016 funding would *not* be implicated by DOJ's new decision to require compliance with Section 1373. DOJ has not offered any explanation for this change, or explained how it can retroactively attach grant conditions to award documents issued well over a year ago.

91. The Administration lacks the statutory authority to require Byrne JAG applicants and recipients to certify compliance with Section 1373. Although the Byrne JAG statute requires that recipients certify compliance with "all applicable laws," Section 1373 is not an applicable law for the Byrne JAG Program or for federal grants more generally. DOJ has unilaterally imposed the Section 1373 Requirement to further its own political ends of eradicating sanctuary cities.

92. Indeed, Congress has repeatedly considered and rejected legislation that would punish cities for setting their own law enforcement priorities by allowing federal agencies to withhold certain grants. *See, e.g.*, Ending Sanctuary Cities Act of 2016, H.R. 6252, 114th Cong. (2016); Stop Dangerous Sanctuary Cities Act, S. 3100, 114th Cong. (2016); Stop Dangerous Sanctuary Cities Act, H.R. 5654, 114th Cong. (2016). None of this legislation has been enacted.

93. In July 2015, then-Senator and now-Attorney General Sessions introduced Senate Bill 1842, "Protecting American Lives Act." That bill would in part have expanded existing federal law to deprive jurisdictions having "in effect a statute, policy, or practice that prohibits law enforcement officers of the State, or of a political subdivision of the State, from assisting or cooperating with Federal immigration law enforcement in the course of carrying out the officers' routine law enforcement duties" of "any . . . law enforcement or Department of Homeland Security grant." S. 1842, 114th Cong. § 3 (2015). The bill never made it out of committee.

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D. The Department Of Justice Also Announced Two Additional Unlawful Requirements For The FY 2017 Byrne JAG Program.

94. In late July 2017, DOJ went even further when it announced two additional new requirements that it would unilaterally impose on Byrne JAG grant applicants. The Attorney General announced that "[r]ecipients for FY 2017 will be notified of new conditions of their grants."[18]

95. The Attorney General stated that:

> From now on, the Department will only provide Byrne JAG grants to cities and states that comply with federal law, allow federal immigration access to detention facilities, and provide 48 hours notice before they release an illegal alien wanted by federal authorities. This is consistent with long-established cooperative principles among law enforcement agencies. This is what the American people should be able to expect from their cities and states, and these long overdue requirements will help us take down MS-13 and other violent transnational gangs, and make our country safer.[19]

96. DOJ made clear that the Notice and Access Requirements are distinct from Section 1373. The new conditions are not included as part of the existing requirement that recipient jurisdictions certify compliance with Section 1373. Byrne JAG FY 2017 State Solicitation (attached hereto as Exhibit D) ("State Solicitation") at 21; Local Solicitation at 20. Rather, they are independent "award conditions" not connected to any statutory requirement. State Solicitation at 32; Local Solicitation at 30.

97. OJP first included the Notice and Access Requirements in the State Solicitation. The State Solicitation was posted on OJP's website on July 25, 2017, and provided that applications were to be submitted no later than August 25, 2017.

98. The State Solicitation provided, first, that OJP will require grant applicants to "provide at least 48 hours' advance notice to DHS regarding the scheduled release date and time of an alien in the jurisdiction's custody when DHS requests such notice in order to take custody of the alien pursuant to the Immigration and Nationality Act." State Solicitation at 32.

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[18] *See* Press Release, U.S. Dep't of Justice, Attorney General Sessions Announces Immigration Compliance Requirements for Edward Byrne Memorial Justice Assistance Grant Programs (July 25, 2017), https://www.justice.gov/opa/pr/attorney-general-sessions-announces-immigration-compliance-requirements-edward-byrne-memorial.

[19] *Id.*

99. Further, the State Solicitation provided that OJP will require grant applicants to "permit personnel of the [DHS] to access any correctional or detention facility in order to meet with an alien (or an individual believed to be an alien) and inquire as to his or her right to be or remain in the United States." State Solicitation at 32.

100. OJP included the same two requirements in the Local Solicitation, which was made available for applicants on August 3, 2017. Local Solicitation at 30. The Local Solicitation required that applications for FY 2017 Byrne JAG funding be submitted no later than September 5, 2017. As described in more detail below (*see infra* ¶¶ 126-27), San Francisco submitted its FY 2017 Byrne JAG application on September 5, 2017.

101. The Local Solicitation describes these two new requirements as "award requirements." Local Solicitation at 29. It provides that "[i]f selected for funding, in addition to implementing the funded project consistent with the OJP-approved application, the recipient must comply with all award requirements (including all award conditions)." *Id.* The Local Solicitation further provides that "[c]ompliance with the requirements of the two foregoing new award conditions will be an authorized and priority purpose of the award." Local Solicitation at 30.

102. San Francisco has not received a Byrne JAG award document at this time.

103. But DOJ has issued award documents to two other jurisdictions. *See* Dkt. No. 46-1, Declaration of Alan Hanson ("Hanson Decl.") ¶¶ 5-6 & Exh. B. Those award documents contain DOJ's description of the Notice and Access Requirements.

104. DOJ has asserted that it will describe the Notice and Access Requirements the same way in any future award documents. Hanson Decl. ¶¶ 5-6 ("Represented Final Conditions").

105. Paragraph 55 of one such award document describes the Notice and Access Requirements as requiring jurisdictions to have an affirmative statute, rule, regulation, policy, or practice "designed to ensure" compliance with the conditions for state or state-contracted correctional facilities "[w]ith respect to the 'program or activity' that is funded." The "[r]equirement" states in full:

> 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.
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> 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.

Hanson Decl., Exh. B at 18.

106. DOJ lacks statutory authority for imposing the Notice and Access Requirements on Byrne JAG recipients. As described above, the Byrne JAG authorizing legislation requires program applicants to certify that they will "comply with all provisions of this part and all other applicable Federal laws." 34 U.S.C. § 10153(a)(5)(D). But no federal law requires that local jurisdictions provide advance notice before releasing a purported alien from their custody, or that they grant federal officials unfettered access to local detention facilities to interrogate individuals in local custody. Nor does any federal law give the Attorney General—or any division of DOJ—the authority to impose conditions of his choice.

107. Indeed, as described above (*see supra* ¶¶ 92-93), Congress has repeatedly considered and rejected legislation that would punish cities for setting their own law enforcement priorities by allowing federal agencies to withhold certain grants. Congress has never passed legislation requiring local jurisdictions to comply with the Notice Requirement or the Access Requirement, or any similar requirement for Byrne JAG grants. Nor has it authorized the executive branch to penalize local jurisdictions—by withholding funds or through any other form of punishment—based on their refusal to comply with the Notice or Access Requirements. Defendants' unilateral imposition of the Notice and Access Requirements, in these circumstances, is unprecedented, unauthorized, and unlawful.

108. Furthermore, the Notice and Access Requirements are ambiguous as to what jurisdictions must do to be in compliance. For example, the Notice Requirement as set forth in the Local Solicitation does not explain whether notice must be given only when the scheduled release date

and time is known at least 48 hours in advance, or whether it requires jurisdictions to hold inmates in custody for additional time to provide a full 48-hour period of notice to ICE.

109. DOJ has now taken the position in the Represented Final Conditions that the Notice Requirement does not authorize or require Byrne JAG funding recipients to maintain an individual in custody beyond the date and time the individual would otherwise be released. *See* Hanson Decl., Exh. B at 18. DOJ states in the Represented Final Conditions that "[i]n the event that . . . the scheduled release date and time for an alien are such as not to permit the advance notice [of scheduled release] that DHS has requested, it shall not be a violation of this condition to provide only as much advance notice as practicable." *Id.*

110. This post-hoc retreat from the Local Solicitation's broad language does not cure the ambiguity. It still leaves San Francisco uncertain about how much notice is "practicable" to provide, and thus leaves San Francisco with no way of knowing how it can ensure compliance with the Notice Requirement. The Represented Final Conditions still refer to a "scheduled release date and time," and do not acknowledge that inmates may at times be released with little or no notice. In these circumstances, San Francisco would have little or no opportunity to provide DOJ with any advance notice. The Represented Final Conditions do not suggest that this would be sufficient.

111. And in any event, DOJ's more recent characterization of the Notice Requirement suggests that the Requirement may still operate as a detainer requirement in disguise. Although Defendants now appear to be attempting to narrow the Notice Requirement's reach, there is no certainty that they will not at some future point revert to the broader, unqualified language that appeared in the Local Solicitation or adopt a similar interpretation.

112. Likewise, the Access Requirement is unclear on its face as to whether jurisdictions are required to provide access to inmates in custody only when those individuals consent, or instead whether jurisdictions are required to compel unwilling inmates to meet with ICE representatives.

113. In litigation DOJ has attempted to define the Access Requirement's scope. DOJ has stated in briefing in a case pending in the Eastern District of Pennsylvania that there is no ambiguity about what the Access Requirement demands. Defs.' Memo. in Opp. to Pltf.'s Mot. for Prelim. Inj., *Philadelphia v. Sessions*, No. 2:17-cv-03894-MMB, Dkt. No. 28, at 32. DOJ stated that the plaintiff in

that matter "wishfully identifies a supposed ambiguity about whether the [Access Requirement] requires allowing ICE agents access to visit an inmate even when the inmate has told the facility that the inmate does not consent to an interview. The answer is yes. The condition does require allowing access in this scenario, even if the inmate might decline to answer questions." *Id.*

114. Even with DOJ's qualification, the Access Requirement is still ambiguous regarding what type of access San Francisco must provide. The Requirement does not identify any limiting principle on the access that ICE agents must receive. For instance, must San Francisco allow ICE agents to use a jail interview room to "access" an uncooperative inmate for as long as ICE wishes? The Access Requirement does not answer this and similar questions.

115. The Access Requirement is particularly ambiguous in light of San Francisco's state law obligations under the Transparent Review of Unjust Transfers and Holds Act ("TRUTH Act"), Cal. Gov't Code § 7283 *et seq.* The TRUTH Act requires that, before an interview with ICE takes place, a local law enforcement officer must provide the detained individual with a "written consent form that explains the purpose of the interview, that the interview is voluntary, and that he or she may decline to be interviewed or may choose to be interviewed only with his or her attorney present." *Id.* § 7283.1(a). It is unclear whether the Access Requirement would preclude San Francisco from complying with the TRUTH Act. For example, it is ambiguous whether the Access Requirement prohibits San Francisco from informing inmates of their right to have a lawyer present or decline an interview with ICE officials, as the TRUTH Act requires it to do.

116. Further, it is unclear what DOJ will consider an adequate rule, regulation, policy, or practice for purposes of compliance with either the Notice or Access Requirements. The conditions provide no guidance or further information as to the meaning of these terms.

IV. San Francisco Faces Immediate Injury From DOJ's Newly Announced Requirements.

A. DOJ Has Threatened To Claw Back San Francisco's FY 2016 Byrne JAG Funding.

117. In FY 2016, San Francisco received a direct Byrne JAG grant of $522,943. San Francisco also received a state pass-through of Byrne JAG funds of $981,202.

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118. DOJ did not include a Section 1373 Requirement in its FY 2016 Byrne JAG award to San Francisco. In contrast, on information and belief DOJ did include a Section 1373 condition in certain Byrne JAG awards made to other recipients.

119. In July 2016—after San Francisco applied for the FY 2016 award—OJP issued its July 2016 Guidance expressing its view that Section 1373 is an "applicable law" for Byrne JAG award purposes.

120. But in October 2016—after San Francisco accepted its FY 2016 award—OJP issued its October 2016 Guidance stating that its determination that Section 1373 is an applicable law would not impact FY 2016 funding.

121. Despite this, DOJ's November 2017 letter to San Francisco threatens to claw back FY 2016 Byrne JAG funding on the basis of San Francisco's purported failure to comply with Section 1373.

122. In its about-face, DOJ did not acknowledge its change in position, nor explain how it can attach a retroactive new requirement to FY 2016 funds that San Francisco has already accepted.

123. San Francisco's FY 2016 funding has already been allocated to support a number of vital city services. The unlawful claw back of these funds threatens to disrupt San Francisco's ability to continue these critical city programs.

B. The Section 1373 Certification And Additional FY 2017 Requirements Put San Francisco To An Unconstitutional Choice.

1. San Francisco Will Soon Be Required To Execute The Section 1373 Certification And Agree To The Notice And Access Requirements.

124. San Francisco has received state and local Byrne JAG funds every year for decades, and has applied for Byrne JAG funds for the FY 2017 grant cycle.

125. For FY 2017, San Francisco is entitled to a direct Byrne JAG formula grant of $524,845. San Francisco also expects to receive a state pass-through of Byrne JAG funds in the amount of $923,401.

126. OJP posted the FY 2017 Local Solicitation on August 3, 2017, with an application deadline of September 5, 2017.

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127. On September 5, 2017, San Francisco submitted its FY 2017 Byrne JAG application. In connection with that application, San Francisco made clear that it was not certifying that it would comply with the Notice and Access Requirements, and stated that it was challenging those requirements in litigation. San Francisco informed DOJ that San Francisco DCYF submitted the application "without confirming that it complies with the access condition or notice condition, and without agreeing as part of this application to comply with those conditions."

128. OJP posted the FY 2017 State Solicitation on July 25, 2017, with an application deadline of August 25, 2017.

129. OJP has also posted state allocations showing that the State of California is entitled to $17.7 million in Byrne JAG funds for FY 2017. *See* www.bja.gov/Funding/17JAGStateAllocations.pdf.

130. On information and belief, the State of California has applied for Byrne JAG funds for FY 2017.

131. States must pass through a portion of state Byrne JAG awards to local jurisdictions in the state. *See* 34 U.S.C. § 10156(c). The California Board of State and Community Corrections ("BSCC") is the State Administering Agency responsible for oversight of Byrne JAG funding in California. The BSCC has adopted a multi-year strategy for Byrne JAG funding that prioritizes law enforcement; prevention and education programs; and courts, prosecution and defense. This multi-year strategy does not include or prioritize enforcement of federal immigration laws.

132. Once the State of California receives Byrne JAG funds, it issues a request for proposals ("RFP") for local jurisdictions to apply for pass-through funds. In 2014, California invited proposals for a three year funding cycle beginning on March 1, 2015, and ending on December 31, 2017. The initial RFP was released on September 15, 2014, with a Notice of Intent to Apply due October 3, 2014, and proposals due November 21, 2014. After the initial award, local jurisdictions were required to re-apply for the second and third year funds. San Francisco was awarded a grant for the Young Adult Court and alternative to suspension projects discussed above, with $1,045,624 awarded in 2015, $983,971 in 2016, and $981,202 in 2017.

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133. To receive pass-through Byrne JAG funds, San Francisco will be required to submit assurances that it will comply with all award requirements. This obligation flows from the requirement that sub-recipients of state Byrne JAG awards must certify their compliance with Section 1373, as applicable to the program and award to be funded, and assure that they will comply with all award conditions, including the Notice and Access Requirements.

134. DOJ has not yet issued a final award document to San Francisco. As of the date of this filing, San Francisco's 2017 Byrne JAG application appears as "submitted" in the federal grant processing system.

135. DOJ has stated that grant recipients will have 45 days from the date they receive award documents to accept or reject a FY 2017 Byrne JAG award. To accept a FY 2017 Byrne JAG award, recipients will be required to certify that they comply with all applicable award conditions—including the Notice and Access Requirements—and to submit an executed Section 1373 Certification.

2. The Notice, Access, And Section 1373 Requirements Create An Unconstitutional Choice For San Francisco.

136. The Notice, Access, and Section 1373 Requirements will create an untenable choice for San Francisco, when it is faced with the decision whether to accept the FY 2017 Byrne JAG award.

137. As to the Notice and Access Requirements, San Francisco is unable to comply with those Requirements, as is necessary to accept a FY 2017 Byrne JAG award and draw down the related funds. San Francisco cannot assure DOJ that it complies with these Requirements for three reasons.

138. First, San Francisco does not have in place any laws, rules, regulations, or policies that fulfill the Notice and Access Requirements, as DOJ has made clear is necessary for San Francisco to accept an award. Indeed, San Francisco's Sanctuary City Laws and policies conflict with the Notice and Access Requirements, as DOJ has described them.

139. Second, practical difficulties also prevent San Francisco from complying with the Notice and Access Requirements.

140. As to the Notice Requirement, the Sheriff's Department frequently does not know whether and when an inmate will be released with enough time to provide federal officials with 48 hours' advance notice, or very much notice at all. And those release dates and times are often dictated

by factors outside of San Francisco's control. For instance, an inmate's release is often controlled by a court order that requires San Francisco to release the inmate as quickly as possible. San Francisco and its officials potentially face liability for delaying an inmate's release once a court has ordered it. *See Berry v. Baca*, 379 F.3d 764, 767 (9th Cir. 2004) (noting that local governments may violate the constitutional rights of inmates when they continue to hold inmates after a court has authorized their release).

141. As to the Access Requirement, the Sheriff's Department does not provide federal immigration officials access to inmates. Under the Sheriff's Department policy, Sheriff staff are not authorized to provide ICE representatives conducting civil immigration enforcement access to inmates in jail.

142. Third, San Francisco's uncertainty regarding what the Notice and Access Requirements demand in practice threatens to interfere with its ability to administer its jails. Although DOJ now disclaims the argument that the Notice Requirement functions as a de facto detainer request, the Notice and Access Requirements in fact could prolong an inmate's detention. DOJ's insistence that it receive access to inmates could delay an inmate's release, if ICE seeks to interview inmates when they would otherwise be released. Likewise, the Notice Requirement could delay an inmate's release in circumstances where an inmate is ordered to be released immediately. Although DOJ has suggested that it need not receive a full 48 hours' notice when that amount of time is "impracticable," the Notice Requirement still requires that *some* form of advance notice may be given. Thus, San Francisco may be forced to adjust inmates' release times to ensure that it can provide the federal government with the required period of notice. And San Francisco remains uncertain that DOJ will adhere to the "as early as practicable" limitation, which was not included in the Solicitations.

143. Coercing San Francisco to detain individuals past their projected release date—as the Notice Requirement could do at least in practice—likely violates the Fourth Amendment. Given the reality of how inmates' release times are determined, and the uncertainty regarding how DOJ will administer the Notice and Access Requirements, San Francisco fears that it may be unable to comply with these Requirements without running afoul of the Fourth Amendment.

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144. San Francisco is thus put in an untenable situation: it cannot comply with the Notice and Access Requirements without changing its local laws and policies. And even if it were willing to change its laws and policies—which it is not—those changes would expose it to potential constitutional liability. But if San Francisco refuses to change its laws and policies to enable it to accept the FY 2017 Byrne JAG award, it will be forced to forgo millions of dollars of vital law enforcement funding. Ironically, DOJ would deprive San Francisco of money for public safety because it questions San Francisco's legitimate exercise of judgment—consistent with the allocation of power under the Constitution—about what best serves the public safety of its own residents.

145. The Section 1373 Requirement likewise requires San Francisco to make another untenable choice: either sign the Section 1373 Certification under the cloud of DOJ's incorrect assertion that San Francisco's laws—in particular, Chapters 12H and 12I of the San Francisco Administrative Code—fail to satisfy Section 1373's demands, or decline to sign the certification and give up funding that City departments depend on.

146. Although San Francisco firmly believes that its laws, policies, and practices comply with Section 1373, Defendants' statements give rise to a credible fear that DOJ will either deny the application, accept the application and later claw back funds, or attempt to hold San Francisco or its officials civilly or criminally liable for signing the Certification.

147. Defendants' November 15, 2017 letter, mentioning DOJ's "concern[s]" that Chapters 12H and 12I of the Administrative Code "may violate section 1373," exacerbates this fear.

148. This credible fear is compounded by the Administration's additional statements suggesting that San Francisco violates Section 1373. The White House has characterized "[s]anctuary cities, like San Francisco" as violating Section 1373 by "block[ing] their jails from turning over criminal aliens to Federal authorities for deportation."[20] The Attorney General has criticized San Francisco for having sanctuary city policies, which he described as a "refus[al] to cooperate with

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[20] Press Release, The White House, Office of the Press Secretary, Statement on Sanctuary Cities Ruling (Apr. 25, 2017), https://www.whitehouse.gov/the-press-office/2017/04/25/statement-sanctuary-cities-ruling.

federal immigration authorities regarding illegal aliens who commit crimes."[21] And more recently, the Attorney General identified San Francisco's Sanctuary City Laws as having "led to the preventable and heartbreaking death of Kate Steinle" and vowed to "ensure that all jurisdictions place the safety and security of their communities above the convenience of criminal aliens."[22] These threats create substantial uncertainty for San Francisco about signing the Section 1373 Certification.

149. This uncertainty is compounded by the Trump Administration's continually changing interpretation of what Section 1373 requires. That interpretation has expanded repeatedly over the past year, creating apprehension for San Francisco about whether the Administration may refuse to accept San Francisco's Section 1373 Certification, or later take punitive action against San Francisco.

150. For instance, the Administration has repeatedly, and incorrectly, suggested that a local government violates Section 1373 when it refuses to honor detainer requests or allow access to jails. DOJ specifically linked Section 1373 to ICE detainers in a 2016 Office of the Inspector General memorandum that analyzed ten jurisdictions' compliance with Section 1373 and stated that detainer policies "may be causing local officials to believe and apply the policies in a manner that prohibits or restricts cooperation with ICE in all respects . . . [which], of course, would be inconsistent with and prohibited by Section 1373." May 2016 OJP Guidance. ICE Director Thomas Homan also testified to Congress that over 100 jurisdictions violated Section 1373 because they "have some sort of policy where they don't honor detainers or allow us access to the jails."[23]

151. More recently, DOJ has adopted an even broader interpretation of Section 1373 as preventing jurisdictions from prohibiting or restricting their employees from sharing vast swaths of information, far removed from Section 1373's reference to "immigration status."

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[21] Press Release, U.S. Dep't of Justice, Attorney General Jeff Sessions Delivers Remarks in Las Vegas to Federal, State and Local Law Enforcement About Sanctuary Cities and Efforts to Combat Violent Crime (July 12, 2017), https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-las-vegas-federal-state-and-local-law.

[22] Press Release, U.S. Dep't of Justice, Attorney General Sessions Statement on the Verdict in People of the State of California vs. Jose Ines Garcia Zarate aka Juan Francisco Lopez Sanchez (Nov. 30, 2017), https://www.justice.gov/opa/pr/attorney-general-sessions-statement-verdict-people-state-california-vs-jose-ines-garcia.

[23] H. Approps. Comm. Hr'g Tr., Fed. News Serv. Transcripts, 2017 WLNR 18737622 (June 13, 2017).

152. For instance, in letters Defendant Hanson has sent to other jurisdictions regarding their supposed violations of Section 1373, DOJ indicated that it believes Section 1373 requires local governments to allow their employees to share not only immigration status information, but also information regarding a person's custody status and release date. *See* Ltr. to Eddie T. Johnson, Chicago Superintendent of Police, from Alan R. Hanson (Oct. 11, 2017), https://www.justice.gov/opa/press-release/file/1003016/download. DOJ, in those letters, also made clear that it expects local jurisdictions not only to avoid having in place a "prohibition or any restriction" regarding the sending of immigration-status information—as the Section 1373 Certification suggests—but also to make affirmative communications to their employees. Ltr. to Hon. Jim Kenney, City of Philadelphia, from Alan R. Hanson (Oct. 11, 2017), https://www.justice.gov/opa/press-release/file/1003046/download.

153. And in just the past few weeks, DOJ's incorrect interpretation of Section 1373 has expanded again. In an October 2017 hearing on San Francisco's Motion for Summary Judgment in the related *San Francisco v. Trump* case, counsel for DOJ stated that Section 1373's reference to "immigration status" information includes a person's custody status, release date, a person's "identity and age," date of birth, residence, and home address. Hr'g Tr. (Oct. 23, 2017) at 21:8-23:3. Further, in recent briefing in the related *California v. Sessions* case, No. 3:17-cv-04701-WHO, DOJ took the view that Section 1373 also includes information about familial relationships. Dkt. No. 42, Defs.' Opp. to Pltf.'s Amended Mot. for Prelim Inj. at 21. In addition, at the same *San Francisco v. Trump* hearing, counsel for DOJ further stated that a "restriction" might include a jurisdiction's failure to inform its employees about Section 1373 to ensure that they "honor 1373." *Id.* at 20:22-21:5.

154. Although Defendants' overbroad reading of Section 1373 is incorrect, it nonetheless creates undue pressure for San Francisco. Although San Francisco knows that it complies with Section 1373 as properly interpreted, it has a credible fear of denial of its 2017 Byrne JAG application, the subsequent claw back of its FY 2017 Byrne JAG funds, or future enforcement actions against it or its officials if it executes the Section 1373 Certification in the face of Defendants' representations.

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155. But at the same time, San Francisco will suffer harm if it declines to execute the Section 1373 Certification. Doing so will render San Francisco ineligible for FY 2017 Byrne JAG funding.

156. Together, these conditions harm San Francisco, no matter what choices San Francisco makes regarding Byrne JAG grants. It can sacrifice its sovereignty and accede to the Administration's demands. And in doing so, it can potentially expose itself to criminal penalties, if the Administration later rejects its Section 1373 Certification, or to civil liability, if the Administration's Notice and Access Requirements intrude on individual's constitutional rights. Or it can refuse to change its considered and constitutionally protected policy judgments but forgo law enforcement dollars that are important to the community's public safety.

V. San Francisco Needs Declaratory Relief That It Properly Can Certify Compliance with Section 1373 As Required To Receive Byrne JAG Funds.

157. There is an actual controversy between San Francisco and DOJ regarding San Francisco's compliance with Section 1373, particularly in light of San Francisco's fear that DOJ will reject San Francisco's FY 2017 Section 1373 Certification, accept the Certification and later take enforcement action against San Francisco, or attempt to claw back FY 2016 Byrne JAG grant funds.

158. Even if DOJ could lawfully require San Francisco to execute the Section 1373 Certification, it cannot withhold funding from San Francisco based on San Francisco's purported non-compliance with Section 1373 because San Francisco fully satisfies the Section 1373 Certification's requirements.

159. Nothing in San Francisco Administrative Code Chapters 12H or 12I limits communications regarding citizenship or immigration status in any way, and these laws therefore comply with Section 1373.

160. San Francisco's laws do not restrict the sharing of immigration status information. Neither San Francisco nor any entity, agency, or official therein has in effect, or is subject to or bound by, any prohibition or restriction that applies to the programs or activities funded by the Byrne JAG program, and which concerns the government entity or official's sending to, or receiving from, the federal government any information regarding citizenship or immigration status.

161. None of the San Francisco departments administering a Byrne JAG-funded program has in place a prohibition or restriction on the sending to, or receiving from, the federal government any information regarding citizenship or immigration status, or on the maintaining of such information.

162. The departments administering Byrne JAG-funded programs are subject to and bound by Administrative Code Chapters 12H and 12I, and conduct their practices in accordance with those laws.

163. San Francisco has adopted policies and practices consistent with Administrative Code Chapters 12H and 12I.

164. San Francisco does not enforce detainer requests (as distinct from warrants), does not provide ICE access to its jails, and does not respond to notification requests from the federal government unless certain conditions are met. But compliance with these requests is not required by Section 1373, which speaks only to communications regarding citizenship and immigration status. Construing Section 1373 to extend to these activities would raise serious constitutional concerns.

165. San Francisco does not prohibit or in any way restrict the sharing of citizenship or immigration status information. San Francisco also does not provide a person's home address, residence, date of birth, or similar sensitive personal information to federal immigration officials. But the sharing of this information with the federal government is not required by Section 1373, which speaks only to communications regarding citizenship and immigration status.

COUNT ONE:

DECLARATORY RELIEF – SAN FRANCISCO COMPLIES WITH THE REQUIREMENTS OF THE SECTION 1373 CERTIFICATION

166. Plaintiff repeats and incorporates by reference each allegation of the prior paragraphs as if fully set forth herein.

167. San Francisco disputes Defendants' authority to require it to execute the Section 1373 Certification. But even if Defendants could require the Section 1373 Certification, they cannot withhold Byrne JAG funding from San Francisco in connection with that Certification because San Francisco complies with Section 1373.

168. San Francisco does not have in effect, purport to have in effect, or is subject to or bound by any prohibition or restriction that applies to the program or activity funded with Byrne JAG monies that deals with either the sending to, or receipt of, information regarding an individual's immigration status information with the federal government, or the maintenance of such information.

169. San Francisco's laws comply with Section 1373. San Francisco Administrative Code Chapters 12H and 12I do not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, immigration officials information regarding the citizenship or immigration status of any individual, or maintaining such information.

170. The departments administering Byrne JAG-funded programs are subject to and bound by these laws. These departments have policies and practices in place that are consistent with these laws.

171. Defendants contend that Chapters 12H and 12I of the San Francisco Administrative Code do not comply with Section 1373, based on their incorrect interpretation of Section 1373.

172. Defendants have not identified any other San Francisco laws, policies, or practices that do not comply with Section 1373.

173. Defendants' interpretation of Section 1373 is incorrect. Section 1373 only governs restrictions on the sharing and receiving of information related to citizenship and immigration status, and requesting from federal immigration enforcement agents, and maintaining of, information related to citizenship and immigration status. Section 1373 does not prohibit restrictions on detainer requests, notification requests, civil immigration authorities' access to jails, or requests for sensitive information like date of birth, residence, or home address. *See Steinle v. City and County of San Francisco*, 230 F. Supp. 3d 994, 1015-16 (N.D. Cal. 2017).

174. An actual controversy presently exists between San Francisco and Defendants about whether San Francisco's laws comply with Section 1373.

175. An actual controversy presently exists between San Francisco and Defendants regarding whether San Francisco has in effect, purports to have in effect, or is subject to or bound by any prohibition or restriction that applies to the program or activity funded with Byrne JAG monies

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that deals with either the sending to, or receiving from, immigration status information with the federal government, or the maintaining of such information.

176. A judicial determination resolving this controversy is necessary and appropriate.

COUNT TWO:
SEPARATION OF POWERS
(Notice, Access, and Section 1373 Requirements)

177. Plaintiff repeats and incorporates by reference each allegation of the prior paragraphs as if fully set forth herein.

178. In July and August 2017, Defendants issued solicitations seeking applications for the Byrne JAG program.

179. San Francisco has applied for the FY 2017 Byrne JAG program, but has not yet received a response to its application.

180. The solicitations state: "Individual FY 2017 JAG awards will include two new express conditions that, with respect to the 'program or activity' that would be funded by the FY 2017 award, are designed to ensure that States and units of local government that receive funds from the FY 2017 JAG award: (1) permit personnel of the U.S. Department of Homeland Security (DHS) to access any correctional or detention facility in order to meet with an alien (or an individual believed to be an alien) and inquire as to his or her right to be or remain in the United States; and (2) provide at least 48 hours' advance notice to DHS regarding the scheduled release date and time of an alien in the jurisdiction's custody when DHS requests such notice in order to take custody of the alien pursuant to the Immigration and Nationality Act." State Solicitation at 32; Local Solicitation at 30.

181. DOJ has subsequently stated that any FY 2017 award document San Francisco receives will require that:

> 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.

182. DOJ has also instructed that jurisdictions wishing to accept 2017 Byrne JAG funds will have to execute a Certification of Compliance with 8 U.S.C. § 1373.

183. The Constitution vests Congress with legislative powers, *see* U.S. Const. art. 1, § 1, and the spending power, *see* U.S. Const. art. 1, § 8, cl. 1. Absent a statutory provision or an express delegation, only Congress is entitled to attach conditions to federal funds.

184. Congress has not enacted the Notice, Access, and Section 1373 Requirements as part of any statutory scheme.

185. Congress has not enacted the Section 1373 Requirement as applicable to Byrne JAG funds.

186. Congress has not delegated to Defendants the ability to impose the Notice, Access, and Section 1373 Requirements on Byrne JAG funds.

187. Defendants are unilaterally imposing the Notice, Access, and Section 1373 Requirements without authorization from Congress.

188. For these reasons, the Notice, Access, and Section 1373 Requirements unlawfully and unconstitutionally intrude upon and usurp powers that have been assigned to Congress, violating principles of separation of powers.

COUNT THREE:
SPENDING CLAUSE
(Notice, Access, and Section 1373 Requirements)

189. Plaintiff repeats and incorporates by reference each allegation of the prior paragraphs as if fully set forth herein.

190. As described above, the Notice, Access, and Section 1373 Requirements violate separation of powers principles because they are not authorized by Congress, expressly or impliedly.

191. Even if Congress had delegated its authority to impose conditions on Byrne JAG funds, the Notice, Access, and Section 1373 Requirements would violate the Spending Clause by:

a. imposing conditions that are ambiguous, *see Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981) ("[I]f Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously…The legitimacy of Congress' power to legislate under the spending power . . . rests on whether the State voluntarily and knowingly accepts [Congress' conditions]… 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."); and

b. imposing conditions that are not germane to the stated purposes of the Byrne JAG funds, *see South Dakota v. Dole*, 483 U.S. 203, 207 (1987) ("[C]onditions on federal grants might be illegitimate if they are unrelated 'to the federal interest in particular national projects or programs.'").

192. The Notice and Access Requirements additionally violate the Spending Clause by imposing conditions that would require Byrne JAG recipients to engage in unconstitutional activity such as detaining individuals without probable cause in violation of the Fourth Amendment, *see Dole*, 483 U.S. at 210 (Congress's spending power "may not be used to induce the States to engage in activities that would themselves be unconstitutional.").

PRAYER FOR RELIEF

Wherefore, San Francisco prays that the Court grant the following relief:

1. Declare that Chapters 12H and 12I of the San Francisco Administrative Code comply with Section 1373;

2. Declare that San Francisco does not have in place a prohibition or restriction that applies to the program or activity funded under the Byrne JAG program, and which deals with sending to, receiving from, or requesting immigration status information with the federal government, or maintaining such information;

3. Declare the Notice, Access, and Section 1373 Requirements Defendants have imposed on the Byrne JAG program unconstitutional;

4. Permanently enjoin Defendants from using the Notice, Access, and Section 1373 Requirements as funding restrictions for any Byrne JAG awards;

5. Enjoin Defendants from denying San Francisco Byrne JAG funding on the basis of Defendants' assertion that San Francisco does not comply with Section 1373;

6. Enjoin Defendants from clawing back San Francisco's Byrne JAG funds on the basis of Defendants' assertion that San Francisco does not comply with Section 1373;

7. Award San Francisco reasonable costs and attorneys' fees; and

8. Grant any other further relief that the Court deems fit and proper.

Dated: December 12, 2017

DENNIS J. HERRERA
City Attorney
JESSE C. SMITH
RONALD P. FLYNN
YVONNE R. MERÉ
CHRISTINE VAN AKEN
TARA M. STEELEY
MOLLIE M. LEE
SARA J. EISENBERG
AILEEN M. McGRATH

Deputy City Attorneys

By: */s/ Dennis J. Herrera*
DENNIS J. HERRERA
City Attorney

Attorneys for Plaintiff
CITY AND COUNTY OF SAN FRANCISCO

EXHIBIT A

U.S. Department of Justice

Office of Justice Programs

Washington, D.C 20531

November 15, 2017

Edwin Lee
Mayor of the City of San Francisco
1 Dr. Carlton B. Goodlett Place, Suite 496
San Francisco, CA 94102

Dear Mayor Lee,

Your FY 2016 Byrne JAG grant award required you to comply with 8 U.S.C. § 1373. Section 1373 compliance is an ongoing requirement that the Department of Justice monitors. The Department is concerned that the following San Francisco laws, policies, or practices may violate section 1373:

- San Francisco Administrative Code Section 12H.2. This section prohibits the use of city funds or resources to "assist in the enforcement of Federal immigration law or to gather or disseminate information regarding release status of individuals or other personal information . . . ." The Department is concerned that this appears to restrict the sending, maintaining, or receiving of information regarding immigration status, in violation of section 1373(a) and (b).

- San Francisco Administrative Code Section 12I.3. This section restricts "provid[ing] any individual's personal information to a federal immigration officer . . . ." The Department is concerned that this appears to restrict the sending of information regarding immigration status, in violation of section 1373(a).

By December 8, 2017, please submit a response to this letter that addresses whether San Francisco has laws, policies, or practices that violate section 1373, including those discussed above. In addition to your compliance in FY 2016, please address whether you would comply with section 1373 throughout the award period, should you receive an FY 2017 Byrne JAG grant award. To the extent San Francisco laws or policies contain so called "savings clauses," please explain in your submission the way these savings clauses are interpreted and applied, and whether these interpretations are communicated to San Francisco officers or employees.

The Department has not made a final determination regarding San Francisco's compliance with section 1373. This letter does not constitute final agency action and nothing in this letter creates any right or benefit enforceable at law against the United States.

Sincerely,

Alan R. Hanson

Alan Hanson
Acting Assistant Attorney General

EXHIBIT B

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

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

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

Edward Byrne Memorial Justice Assistance Grant Program

FY 2017 Local Solicitation

Applications Due: September 5, 2017

Eligibility

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

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

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

Eligible allocations under JAG are posted annually on the JAG web page under "Funding."

Deadline

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

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

For additional information, see How to Apply in Section D. Application and Submission Information.

Contact Information

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

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

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

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

Release date: August 3, 2017

Contents

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

A. Program Description

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

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

Program-Specific Information

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

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

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

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

(1) Any security enhancements or any equipment to any nongovernmental entity that is not engaged in criminal justice or public safety.

(2) Unless the Attorney General certifies that extraordinary and exigent circumstances exist that make the use of such funds to provide such matters essential to the maintenance of public safety and good order—

   (a) Vehicles (excluding police cruisers), vessels (excluding police boats), or aircraft (excluding police helicopters)
   (b) Luxury items
   (c) Real estate
   (d) Construction projects (other than penal or correctional institutions)
   (e) Any similar matters

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

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

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

Although supplanting is prohibited, as discussed under "What An Application Should Include," the leveraging of federal funding is encouraged.

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

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

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

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

The BJA BWC Toolkit provides model BWC policies and best practices to assist departments in implementing BWC programs.

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

- Body Armor

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

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

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

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

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

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

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

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

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

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

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

BJA areas of emphasis

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

- *Reducing Gun Violence* – Gun violence has touched nearly every State and local government in America. While our nation has made great strides in reducing violent crime, some municipalities and regions continue to experience unacceptable levels of violent crime at rates far in excess of the national average. BJA encourages units of local government to invest JAG funds in programs to combat gun violence, enforce existing firearms laws, and improve the process for ensuring that persons prohibited from purchasing guns are prevented from doing so by enhancing reporting to the FBI's National Instant Criminal Background Check System (NICS).

- *National Incident-Based Reporting System (NIBRS)* – The FBI has formally announced its intentions to establish NIBRS as the law enforcement crime data reporting standard for the nation. The transition to NIBRS will provide a more complete and accurate picture of crime at the national, State, and local levels. Once this transition is complete, the FBI will no longer collect summary data and will accept data only in the NIBRS format. Also, once the transition is complete, JAG award amounts will be calculated on the basis of submitted NIBRS data. Transitioning all law enforcement agencies to NIBRS is the first step in gathering more comprehensive crime data. BJA encourages recipients of FY 2017 JAG awards to use JAG funds to expedite the transition to NIBRS.

- *Officer Safety and Wellness* – The issue of law enforcement safety and wellness is an important priority for the Department of Justice. Preliminary data compiled by the National Law Enforcement Officers Memorial Fund indicates that there were 135 line-of-duty law enforcement deaths in 2016—the highest level in the past 5 years and a 10 percent increase from 2015 (123 deaths).

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

  BJA sees a vital need to focus not only on tactical officer safety concerns but also on health and wellness as they affect officer performance and safety. It is important for law enforcement to have the tactical skills necessary, and also be physically and mentally well, to perform, survive, and be resilient in the face of the demanding duties of the profession. BJA encourages units of local government to use JAG funds to address these needs by providing training, including paying for tuition and travel expenses related to attending trainings such as VALOR training, as well as funding for health and wellness programs for law enforcement officers.

- *Border Security* – The security of United States borders is critically important to the reduction and prevention of transnational drug-trafficking networks and combating all forms of human trafficking within the United States (sex and labor trafficking of foreign nationals and U.S. citizens of all sexes and ages). These smuggling operations on both sides of the border contribute to a significant increase in violent crime and U.S. deaths from dangerous drugs. Additionally, illegal immigration continues to place a significant strain on federal, State, and local resources—particularly on those agencies charged with border security and immigration enforcement—as well as the local communities into which many of the illegal immigrants are placed. BJA encourages units of local government to use JAG funds to support law enforcement hiring, training, and technology enhancement in the area of border security.

- *Collaborative Prosecution* – BJA supports strong partnerships between prosecutors and police as a means to improve case outcomes and take violent offenders off the street. BJA strongly encourages State and local law enforcement to foster strong partnerships with prosecutors to adopt new collaborative strategies aimed at combating increases in crime, particularly violent crime. (BJA's "Smart Prosecution" Initiative is a related effort by OJP to promote partnerships between prosecutors and researchers to develop and deliver effective, data-driven, evidence-based strategies to solve chronic problems and fight crime.)

Goals, Objectives, and Deliverables

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

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

Evidence-Based Programs or Practices

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

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

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

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

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

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

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

B. Federal Award Information

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

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

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

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

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

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

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

(1) Computing an initial JAG allocation for each State, based on its share of violent crime and population (weighted equally).

(2) Reviewing the initial JAG allocation amount to determine if the State allocation is less than the minimum award amount defined in the JAG legislation (0.25 percent of the total). If this is the case, the State is funded at the minimum level, and the funds required for this are deducted from the overall pool of JAG funds. Each of the remaining States receive the minimum award plus an additional amount based on its share of violent crime and population.

(3) Dividing each State's final award amount (except for the territories and District of Columbia) between the State and its units of local governments at a rate of 60 and 40 percent, respectively.

(4) Determining unit of local government award allocations, which are based on their proportion of the State's 3-year violent crime average. If the "eligible award amount" for a particular unit of local government as determined on this basis is $10,000 or more, then the unit of local government is eligible to apply directly to OJP (under the JAG Local solicitation) for a JAG award. If the "eligible award amount" to a particular unit of local government as determined on this basis would be less than $10,000, however, the funds are not made available for a direct award to that particular unit of local government, but instead are added to the amount that otherwise would have been awarded to the State.

Financial Management and System of Internal Controls
Award recipients and subrecipients (including recipients or subrecipients that are pass-through entities[1]) must, as described in the Part 200 Uniform Requirements[2] as set out at 2 C.F.R. 200.303:

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

(b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

[1] For purposes of this solicitation, the phrase "pass-through entity" includes any recipient or subrecipient that provides a subaward ("subgrant") to carry out part of the funded award or program.
[2] The "Part 200 Uniform Requirements" refers to the DOJ regulation at 2 C.F.R Part 2800, which adopts (with certain modifications) the provisions of 2 C.F.R. Part 200.

(c) Evaluate and monitor [the recipient's (and any subrecipient's)] compliance with statutes, regulations, and the terms and conditions of Federal awards.

(d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.

(e) Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or [the recipient (or any subrecipient)] considers sensitive consistent with applicable Federal, State, local, and tribal laws regarding privacy and obligations of confidentiality.

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

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

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

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

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

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

- A second type of disparity exists when both a county and a municipality within that county qualify for a direct award, but the award amount for the municipality exceeds 150 percent of the county's award amount.

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

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

Cost Sharing or Match Requirement
The JAG Program does not require a match.

For additional cost sharing and match information, see the DOJ Grants Financial Guide.

Pre-Agreement Costs (also known as Pre-award Costs)
Pre-agreement costs are costs incurred by the applicant prior to the start date of the period of performance of the grant award.

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

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

Prior Approval, Planning, and Reporting of Conference/Meeting/Training Costs
OJP strongly encourages every applicant that proposes to use award funds for any conference-, meeting-, or training-related activity (or similar event) to review carefully—before submitting an application—the OJP and DOJ policy and guidance on approval, planning, and reporting of such events, available at:
https://www.ojp.gov/financialguide/DOJ/PostawardRequirements/chapter3.10a.htm.

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

Costs Associated with Language Assistance (if applicable)
If an applicant proposes a program or activity that would deliver services or benefits to individuals, the costs of taking reasonable steps to provide meaningful access to those services

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

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

C. Eligibility Information

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

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

D. Application and Submission Information

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

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

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

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

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

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

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

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

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

2. Project Abstract

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

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

3. Program Narrative

The following sections **should** be included as part of the program narrative[3]:

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

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

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

b. Project Design and Implementation – Describe the unit of local government's strategic planning process, if any, that guides its priorities and funding strategy. This should include a description of how the local community is engaged in the planning process and the data and analysis utilized to support the plan; it should identify the stakeholders currently participating in the strategic planning process, the gaps in the needed resources for criminal justice purposes, and how JAG funds will be coordinated with State and related justice funds.

c. Capabilities and Competencies – Describe any additional strategic planning/coordination efforts in which the units of local government participates with other criminal justice criminal/juvenile justice agencies in the State.

d. Plan for Collecting the Data Required for this Solicitation's Performance Measures – OJP will require each successful applicant to submit specific performance measures data as part of its reporting under the award (see "General Information about Post-Federal Award Reporting Requirements" in Section F. Federal Award Administration Information). The performance measures correlate to the goals, objectives, and deliverables identified under "Goals, Objectives, and Deliverables" in Section A. Program Description. Post award, recipients will be required to submit quarterly performance metrics through BJA's Performance Measurement Tool (PMT), located at: https://bjapmt.ojp.gov. The application should describe the applicant's plan for collection of all of the performance measures data listed in the JAG Program accountability measures at: https://bjapmt.ojp.gov/help/jagdocs.html.

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

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

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

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

4. Budget and Associated Documentation

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

For questions pertaining to budget and examples of allowable and unallowable costs, see the DOJ Grants Financial Guide.

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

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

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

(c) Information on Proposed Subawards (if any), as well as on Proposed Procurement Contracts (if any)
Applicants for OJP awards typically may propose to make "subawards." Applicants also may propose to enter into procurement "contracts" under the award.

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

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

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

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

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

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

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

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

If an applicant proposes to make one or more subawards to carry out the federal award and program, and those subawards are not specifically authorized (or required) by statute or regulation, the applicant should: (1) identify (if known) the proposed subrecipient(s), (2) describe in detail what each subrecipient will do to carry out the federal award and federal program, and (3) provide a justification for the subaward(s), with details on pertinent matters such as special qualifications and areas of expertise. Pertinent information on subawards should appear not only in the Program Narrative but also in the Budget Detail Worksheet and budget narrative.

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

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

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

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

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

(d) Pre-Agreement Costs
For information on pre-agreement costs, see Section B. Federal Award Information.

5. Indirect Cost Rate Agreement (if applicable)
Indirect costs may be charged to an award only if:

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

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

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

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

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

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

6. Tribal Authorizing Resolution (if applicable)

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

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

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

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

8. Applicant Disclosure of High Risk Status

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

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

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

9. Disclosure of Lobbying Activities

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

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

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

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

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

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

As discussed further below, a unit of local government (other than an Indian tribal government) applicant will be *unable to make a valid award acceptance* of an FY 2017 JAG award unless and until a properly executed certification by its chief legal officer is received by OJP on or before the day the unit of local government submits an executed award document.

12. Additional Attachments

(a) Applicant Disclosure of Pending Applications

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

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

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

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

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

SAMPLE

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

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

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

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

i. For purposes of this solicitation, each applicant is to document research and evaluation independence and integrity by including one of the following two items:

   a. A specific assurance that the applicant has reviewed its application to identify any actual or potential apparent conflicts of interest (including through review of pertinent information on the principal investigator, any co-principal investigators, and any subrecipients), and that the applicant has identified no such conflicts of interest—whether personal or financial or organizational (including on the part of the applicant entity or on the part of staff, investigators, or subrecipients)—that could affect the independence or integrity of the research, including the design, conduct, and reporting of the research.

   OR

   b. A specific description of actual or potential apparent conflicts of interest that the applicant has identified—including through review of pertinent information on the principal investigator, any co-principal investigators, and any subrecipients—that could affect the independence or integrity of the research, including the design, conduct, or reporting of the research. These conflicts may be personal (e.g., on the part of investigators or other staff), financial, or organizational (related to the applicant or any subrecipient entity). Some examples of potential investigator (or other personal) conflict situations are those in which an investigator would be in a position to evaluate a spouse's work product (actual conflict), or an investigator would be in a position to evaluate the work of a former or current colleague (potential apparent conflict). With regard to potential organizational conflicts of interest, as one example, generally an organization would not be given an award to evaluate a project, if that organization had itself provided substantial prior technical assistance to that specific project or a location implementing the project (whether funded by OJP or other sources), because the organization in such an instance might appear to be evaluating the effectiveness of its own prior work. The key is whether a reasonable person understanding all of the facts would be able to have confidence that the results of any research or evaluation project are objective and reliable. Any outside personal or financial interest that casts doubt on that objectivity and reliability of an evaluation or research product is a problem and must be disclosed.

ii. In addition, for purposes of this solicitation, each applicant is to address possible mitigation of research integrity concerns by including, at a minimum, one of the following two items:

a. If an applicant reasonably believes that no actual or potential apparent conflicts of interest (personal, financial, or organizational) exist, then the applicant should provide a brief narrative explanation of how and why it reached that conclusion. The applicant also is to include an explanation of the specific processes and procedures that the applicant has in place, or will put in place, to identify and prevent (or, at the very least, mitigate) any such conflicts of interest pertinent to the funded project during the period of performance. Documentation that may be helpful in this regard may include organizational codes of ethics/conduct and policies regarding organizational, personal, and financial conflicts of interest. There is no guarantee that the plan, if any, will be accepted as proposed.

OR

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

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

(c) Local Governing Body Review

Applicants must submit information via the Certification and Assurances by the Chief Executive (See Appendix I) which documents that the JAG application was made available for review by the governing body of the unit of local government, or to an organization designated by that governing body, for a period that was not less than 30 days before the application was submitted to BJA. The same Chief Executive Certification will also specify that an opportunity to comment on this application was provided to citizens prior to the application submission to the extent applicable law or established procedures make such opportunity available. In the past, this has been accomplished via submission of specific review dates; now OJP will only accept a chief executive's certification to attest to these facts. Units of local government may continue to submit actual dates of review should they wish to do so, in addition to the submission of the Chief Executive Certification.

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

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

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

All applicants should complete the following steps:

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

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

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

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

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

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

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

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

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

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

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

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

Note: OJP does not automatically approve requests to submit a late application. After OJP reviews the applicant's request, and contacts the GMS Help Desk to verify the reported technical issues, OJP will inform the applicant whether the request to submit a late application has been approved or denied. If OJP determines that the untimely application submission was due to the applicant's failure to follow all required procedures, OJP will deny the applicant's request to submit its application.

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

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

E. Application Review Information

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

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

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

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

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

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

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

F. Federal Award Administration Information

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

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

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

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

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

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

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

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

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

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

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

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

General Information about Post-Federal Award Reporting Requirements
A unit of local government recipient of an award under this solicitation will be required to submit the following reports and data:

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

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

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

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

G. Federal Awarding Agency Contact(s)

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

For contact information for GMS, see the title page.

H. Other Information

Freedom of Information Act and Privacy Act (5 U.S.C. § 552 and 5 U.S.C. § 552a)
All applications submitted to OJP (including all attachments to applications) are subject to the federal Freedom of Information Act (FOIA) and to the Privacy Act. By law, DOJ may withhold information that is responsive to a request pursuant to FOIA if DOJ determines that the responsive information either is protected under the Privacy Act or falls within the scope of one of nine statutory exemptions under FOIA. DOJ cannot agree in advance of a request pursuant to FOIA not to release some or all portions of an application.

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

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

Provide Feedback to OJP

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

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

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

Application Checklist

Edward Byrne Memorial Justice Assistance Grant (JAG) Program:

FY 2017 Local Solicitation

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

What an Applicant Should Do:

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

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

Overview of Post-Award Legal Requirements:

_____ Review the "Overview of Legal Requirements Generally Applicable to OJP Grants and Cooperative Agreements - FY 2017 Awards" in the OJP Funding Resource Center.

Scope Requirement:

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

What an Application Should Include:

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

Appendix I

Certifications and Assurances by the Chief Executive of the Applicant Government

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

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

U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS

Edward Byrne Justice Assistance Grant Program
FY 2017 Local Solicitation

Certifications and Assurances by the Chief Executive of the Applicant Government

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

1. I am the chief executive of the applicant unit of local government named below, and I have the authority to make the following representations on my own behalf and on behalf of the applicant unit of local government. I understand that these representations will be relied upon as material in any OJP decision to make an award, under the application described above, to the applicant unit of local government.

2. I certify that no federal funds made available by the award (if any) that OJP makes based on the application described above will be used to supplant local funds, but will be used to increase the amounts of such funds that would, in the absence of federal funds, be made available for law enforcement activities.

3. I assure that the application described above (and any amendment to that application) was submitted for review to the governing body of the unit of local government (e.g., city council or county commission), or to an organization designated by that governing body, not less than 30 days before the date of this certification.

4. I assure that, before the date of this certification— (a) the application described above (and any amendment to that application) was made public; and (b) an opportunity to comment on that application (or amendment) was provided to citizens and to neighborhood or community-based organizations, to the extent applicable law or established procedure made such an opportunity available.

5. I assure that, for each fiscal year of the award (if any) that OJP makes based on the application described above, the applicant unit of local government will maintain and report such data, records, and information (programmatic and financial), as OJP may reasonably require.

6. I certify that— (a) the programs to be funded by the award (if any) that OJP makes based on the application described above meet all the requirements of the JAG Program statute (42 U.S.C. §§ 3750-3758); (b) all the information contained in that application is correct; (c) in connection with that application, there has been appropriate coordination with affected agencies; and (d) in connection with that award (if any), the applicant unit of local government will comply with all provisions of the JAG Program statute and all other applicable federal laws.

7. I have examined certification entitled "State or Local Government: FY 2017 Certification of Compliance with 8 U.S.C. § 1373" executed by the chief legal officer of the applicant government with respect to the FY 2017 JAG program and submitted in support of the application described above, and I hereby adopt that certification as my own on behalf of that government.

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

____
Signature of Chief Executive of the Applicant Unit of Local Government

____
Date of Certification

____
Printed Name of Chief Executive

____
Title of Chief Executive

____
Name of Applicant Unit of Local Government

Appendix II

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

Template for use by the *chief legal officer* of the "Local Government" (e.g., the General Counsel) (Note: this Certification is not required by Indian tribal government applicants.)

Available for download at:
https://ojp.gov/funding/Explore/SampleCertifications-8USC1373.htm

U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS

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

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

(1) I am the chief legal officer of the State or local government of which the applicant entity named below is a part ("the jurisdiction"), and I have the authority to make this certification on behalf of the jurisdiction and the applicant entity (that is, the entity applying directly to OJP). I understand that OJP will rely upon this certification as a material representation in any decision to make an award to the applicant entity.

(2) I have carefully reviewed 8 U.S.C. § 1373(a) and (b), including the prohibitions on certain actions by State and local government entities, -agencies, and -officials regarding information on citizenship and immigration status. I also have reviewed the provisions set out at (or referenced in) 8 U.S.C. § 1551 note ("Abolition … and Transfer of Functions"), pursuant to which references to the "Immigration and Naturalization Service" in 8 U.S.C. § 1373 are to be read, as a legal matter, as references to particular components of the U.S. Department of Homeland Security.

(3) I (and also the applicant entity) understand that the U.S. Department of Justice will require States and local governments (and agencies or other entities thereof) to comply with 8 U.S.C. § 1373, with respect to any "program or activity" funded in whole or in part with the federal financial assistance provided through the FY 2017 OJP program under which this certification is being submitted ("the FY 2017 OJP Program" identified below), specifically including any such "program or activity" of a governmental entity or -agency that is a subrecipient (at any tier) of funds under the FY 2017 OJP Program.

(4) I (and also the applicant entity) understand that, for purposes of this certification, "program or activity" means what it means under title VI of the Civil Rights Act of 1964 (*see* 42 U.S.C. § 2000d-4a), and that terms used in this certification that are defined in 8 U.S.C. § 1101 mean what they mean under that section 1101, except that the term "State" also shall include American Samoa (*cf.* 42 U.S.C. § 901(a)(2)). Also, I understand that, for purposes of this certification, neither a "public" institution of higher education (*i.e.*, one that is owned, controlled, or directly funded by a State or local government) nor an Indian tribe is considered a State or local government entity or -agency.

(5) I have conducted (or caused to be conducted for me) a diligent inquiry and review concerning both—

(a) the "program or activity" to be funded (in whole or in part) with the federal financial assistance sought by the applicant entity under this FY 2017 OJP Program; and

(b) any prohibitions or restrictions potentially applicable to the "program or activity" sought to be funded under the FY 2017 OJP Program that deal with sending to, requesting or receiving from, maintaining, or exchanging information of the types described in 8 U.S.C. § 1373(a) or (b), whether imposed by a State or local government entity, -agency, or -official.

(6) As of the date of this certification, neither the jurisdiction nor any entity, agency, or official of the jurisdiction has in effect, purports to have in effect, or is subject to or bound by, any prohibition or any restriction that would apply to the "program or activity" to be funded in whole or in part under the FY 2017 OJP Program (which, for the specific purpose of this paragraph 6, shall not be understood to include any such "program or activity" of any subrecipient at any tier), and that deals with either— (1) a government entity or -official sending or receiving information regarding citizenship or immigration status as described in 8 U.S.C. § 1373(a); or (2) a government entity or -agency sending to, requesting or receiving from, maintaining, or exchanging information of the types (and with respect to the entities) described in 8 U.S.C. § 1373(b).

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

Signature of Chief Legal Officer of the Jurisdiction	Printed Name of Chief Legal Officer
Date of Certification	Title of Chief Legal Officer of the Jurisdiction

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

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

Appendix III

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

Communication between government agencies and the Immigration and Naturalization Service

(a) In general

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

(b) Additional authority of government entities

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

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

(c) Obligation to respond to inquiries

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

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

Appendix IV

OJP Certified Standard Assurances

OMB No. 1121-0140
Expires 5/31/2019

U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS

CERTIFIED STANDARD ASSURANCES

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

(1) I have the authority to make the following representations on behalf of myself and the Applicant. I understand that these representations will be relied upon as material in any OJP decision to make an award to the Applicant based on its application.

(2) I certify that the Applicant has the legal authority to apply for the federal assistance sought by the application, and that it has the institutional, managerial, and financial capability (including funds sufficient to pay any required non-federal share of project costs) to plan, manage, and complete the project described in the application properly.

(3) I assure that, throughout the period of performance for the award (if any) made by OJP based on the application—

(a) the Applicant will comply with all award requirements and all federal statutes and regulations applicable to the award;

(b) the Applicant will require all subrecipients to comply with all applicable award requirements and all applicable federal statutes and regulations; and

(c) the Applicant will maintain safeguards to address and prevent any organizational conflict of interest, and also to prohibit employees from using their positions in any manner that poses, or appears to pose, a personal or financial conflict of interest.

(4) The Applicant understands that the federal statutes and regulations applicable to the award (if any) made by OJP based on the application specifically include statutes and regulations pertaining to civil rights and nondiscrimination, and, in addition—

(a) the Applicant understands that the applicable statutes pertaining to civil rights will include section 601 of the Civil Rights Act of 1964 (42 U.S.C. § 2000d); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794); section 901 of the Education Amendments of 1972 (20 U.S.C. § 1681); and section 303 of the Age Discrimination Act of 1975 (42 U.S.C. § 6102);

(b) the Applicant understands that the applicable statutes pertaining to nondiscrimination may include section 815(c) of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3789d(c)); section 1407(e) of the Victims of Crime Act of 1984 (42 U.S.C. § 10604(e)); section 299A(b) of the Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. § 5672(b)); and that the grant condition set out at section 40002(b)(13) of the Violence Against Women Act (42 U.S.C. § 13925(b)(13)) also may apply;

(c) the Applicant understands that it must require any subrecipient to comply with all such applicable statutes (and associated regulations); and

(d) on behalf of the Applicant, I make the specific assurances set out in 28 C.F.R. §§ 42.105 and 42.204.

(5) The Applicant also understands that (in addition to any applicable program-specific regulations and to applicable federal regulations that pertain to civil rights and nondiscrimination) the federal regulations applicable to the award (if any) made by OJP based on the application may include, but are not limited to, 2 C.F.R. Part 2800 (the DOJ "Part 200 Uniform Requirements") and 28 C.F.R. Parts 22 (confidentiality - research and statistical information), 23 (criminal intelligence systems), and 46 (human subjects protection).

(6) I assure that the Applicant will assist OJP as necessary (and will require subrecipients and contractors to assist as necessary) with the Department's compliance with section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. § 306108), the Archeological and Historical Preservation Act of 1974 (54 U.S.C. §§ 312501-312508), and the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4335), and 28 C.F.R. Parts 61 (NEPA) and 63 (floodplains and wetlands).

(7) I assure that the Applicant will give the Department and the Government Accountability Office, through any authorized representative, access to, and opportunity to examine, all paper or electronic records related to the award (if any) made by OJP based on the application.

(8) I assure that, if the Applicant is a governmental entity, with respect to the award (if any) made by OJP based on the application—

(a) it will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655), which govern the treatment of persons displaced as a result of federal and federally-assisted programs; and

(b) it will comply with requirements of 5 U.S.C. §§ 1501-1508 and 7324-7328, which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by federal assistance.

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

EXHIBIT C

CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

DIRECT DIAL: (415) 554-4748
E-MAIL: brittany.feitelberg@sfgov.org

December 7, 2017

VIA U.S. MAIL AND E-MAIL

Alan R. Hanson
Acting Assistant Attorney General
Office of Justice Programs
United States Department of Justice
810 Seventh Street NW
Washington, D.C. 20531

Re: San Francisco's Compliance with 8 U.S.C. § 1373

Dear Mr. Hanson:

We write on behalf of the City and County of San Francisco in response to your November 15, 2017 letter to San Francisco Mayor Edwin Lee regarding San Francisco's compliance with 8 U.S.C. § 1373. Your letter states the Department of Justice is concerned that the following San Francisco laws, policies or practices may violate Section 1373:

- San Francisco Administrative Code Section 12H.2
- San Francisco Administrative Code Section 12I.3

As you are surely aware, San Francisco vigorously disputes your contention that these laws violate Section 1373. Indeed, San Francisco maintains that it is in full compliance with Section 1373 and is seeking a court declaration that it does so. The San Francisco City Attorney's Office and the United States Department of Justice have briefed this precise issue in *City and County of San Francisco v. Trump et al.*, Case No. 3:17-cv-00485-WHO (N.D. Cal., filed January 31, 2017), and there is likely to be further briefing on this issue in *City and County of San Francisco v. Sessions et al.*, Case No. 3-17-cv-04642-WHO (N.D. Cal., filed August 11, 2017). We refer you to San Francisco's briefs in these cases for a more complete explanation of San Francisco's compliance with Section 1373.

Your letter poses three specific questions, addressed below. We provide these responses without waiving any claim, argument, or defense that San Francisco may assert in any administrative or legal proceeding related to these issues.

1) Does San Francisco have laws, policies, or practices that violate section 1373, including those discussed above? No. As explained in *San Francisco v. Trump* briefing we have filed in court, San Francisco complies with Section 1373, properly construed. Section 1373 prohibits San Francisco from restricting the sharing or maintenance of information regarding an individual's "citizenship or immigration status." By its plain terms, Section 1373 does not address any other categories of information, nor does it impose any other obligations.

The San Francisco laws identified in your letter—San Francisco Administrative Code Sections 12H.2 and 12I.3—do not restrict the sharing of citizenship or immigration status information, and they therefore comply with Section 1373. San Francisco's other laws, policies and practices are consistent with these laws. This subject has previously been a source of confusion for the Department of Justice, which in *San Francisco v. Trump* referred the court to an outdated and superseded Sheriff's policy. Should you have concerns about any particular San Francisco law, policy or practice, other than those specified above, please notify me by December 29, 2017.

2) In addition to San Francisco's compliance in FY 2016, would San Francisco comply with Section 1373 throughout the award period, should San Francisco receive a FY 2017 Byrne JAG award? If San Francisco receives and accepts a FY 2017 Byrne JAG award, it will comply with all lawful grant conditions imposed on that award. San Francisco is challenging the Section 1373 certification condition, as well as two other immigration-related conditions, that the Department of Justice has imposed on the FY 2017 Byrne JAG awards.

3) To the extent San Francisco law or policies contain so called "savings clauses," please explain the way these savings clauses are interpreted and applied, and whether these interpretations are communicated to San Francisco officers or employees. San Francisco Administrative Code Chapter 12H.2 contains a savings clause that requires compliance with federal law. As San Francisco explained in *San Francisco v. Trump* briefing, it interprets this savings clause—and other provisions of Chapters 12H and 12I—to comply with Section 1373 by allowing employees to share immigration status information. Indeed, San Francisco has affirmatively informed all employees about Section 1373, and explained that Chapters 12H and 12I impose *other* types of restrictions, which are consistent with federal law. Please see the enclosed memorandum from the Director of San Francisco's Department of Human Resources.

We also direct you to the Department of Justice's prior analysis of San Francisco's savings clause, which was summarized in a 2007 report by the Office of the Inspector General:

> San Francisco has designated itself as a "City and County of Refuge" and has limited the extent to which municipal agencies and employees may assist in immigration enforcement. The City Administrative Code states that "no department, agency, commission, officer or employee . . . 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 . . . *unless such assistance is required by federal or state statute, regulation or court decision.*" The proviso requiring compliance with federal law reinforces our view that there is insufficient evidence to conclude that San Francisco fails to cooperate with ICE's efforts to remove undocumented aliens.

U.S. Dep't of Justice, Office of the Inspector Gen., *Cooperation of SCAAP Recipients in the Removal of Criminal Aliens from the United States* 24 (2007), available at https://oig.justice.gov/reports/OJP/a0707/final.pdf (emphasis in original). The report found that "in light of the specific provisions requiring compliance with federal law, we cannot conclude that San Francisco's policies are contrary to 8 U.S.C. § 1373." *Id.* at 26. That same analysis applies today.

In light of the ongoing litigation between the parties, please direct all further communications on this issue to my office. If you have any further questions please let us know.

Very truly yours,

DENNIS J. HERRERA
City Attorney

Enclosure: Memorandum to All City and County of San Francisco Employees from San Francisco's Human Resources Director, dated January 19, 2017

City and County of San Francisco

Edwin M. Lee
Mayor

Department of Human Resources

Micki Callahan
Human Resources Director

MEMORANDUM

Date: Jan. 19, 2017

To: All City and County of San Francisco Employees

From: Micki Callahan
Human Resources Director

Subject: Reminder about Sanctuary City Obligations

This memo is being issued to remind City and County of San Francisco (City) departments and employees of their duties under the San Francisco Charter and Administrative Code. All people seeking or receiving City services must be treated with equal dignity, respect for human rights, and due process under the law, regardless of immigration status. This includes informing them of their rights and access to services, as well as giving out general and/or translated information on services and programs that is timely, accurate and complete.

Departments must ensure that their rules, regulations, and protocols adhere to San Francisco's sanctuary city laws, codified at Chapters 12H and 12I of the Administrative Code. Although federal law states that a "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" (8 U.S.C. § 1373), Chapters 12H and 12I impose other types of restrictions, which are consistent with federal law and are summarized below.

Department employees acting in their official capacities may not use City funds or resources to:

a) Assist or cooperate with any investigation, detention, or arrest procedures, public or clandestine, conducted by federal immigration authorities (ICE) and relating to alleged violations of the civil provisions of federal immigration law.
b) Request or give out information regarding the release status or personal information of any individual, except as permitted under Administrative Code Section 12I.3.
c) Condition the receipt of City services or benefits on immigration status, except as required by federal or state statute or regulation, public assistance criteria, or court decision.
d) Include any question regarding immigration status (other than those required by federal or state statute, regulation, or court decision) on any application, questionnaire, or interview form used in relation to benefits, services, or opportunities provided by the City.
e) Detain an individual on the basis of a civil immigration detainer after that individual becomes eligible for release from custody. (See Administrative Code § 12I.3(a).)
f) Respond to a federal immigration officer's request for notification of an individual's release, unless the individual meets specified criteria listed in Administrative Code section 12I.3(c).

It's important to make sure all City employees are aware of these rules. Departments may include education on the City's sanctuary city laws in regular employee trainings and orientations based on templates that will be established by the Office of Civic Engagement and Immigrant Affairs (OCEIA).

Departments are reminded to include education on Administrative Code Chapters 12H and 12I in regular community outreach.

This memorandum is provided as a general summary of the City's sanctuary city laws and is not a substitute for legal advice. State and federal law may impose additional obligations. If you have any questions about how to apply the City's sanctuary city laws to a particular situation, please contact your manager or the Deputy City Attorney assigned to your department.

EXHIBIT D

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

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

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

Edward Byrne Memorial Justice Assistance Grant Program

FY 2017 State Solicitation

Applications Due: August 25, 2017

Eligibility

Only States may apply under this solicitation. By law, for purposes of the JAG program, the term "States" includes the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the U.S. Virgin Islands, Guam, and American Samoa. (Throughout this solicitation, each reference to a State or States includes all of these 56 jurisdictions.)

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

In addition, as discussed further below, in order validly to accept an FY 2017 JAG award, the chief legal officer of the applicant State must properly execute, and the State must submit, the specific certification regarding compliance with 8 U.S.C. § 1373 attached to this solicitation as Appendix II. (The text of 8 U.S.C. § 1373 appears in Appendix III.)

The expected allocations by State for the FY 2017 JAG program can be found at: https://www.bja.gov/Funding/17JAGStateAllocations.pdf.

Deadline

Applicants must register in the OJP Grants Management System (GMS) prior to submitting an application under this solicitation. All applicants must register, even those that previously registered in GMS. Select the "Apply Online" button associated with the solicitation title. All registrations and applications are due by 5 p.m. eastern time on August 25, 2017.

This deadline does **not** apply to the certification regarding compliance with 8 U.S.C. § 1373. As explained below, a State may not validly accept an award, however, unless that certification is submitted to OJP on or before the day the State submits the signed award acceptance documents.

For additional information, see How to Apply in Section D. Application and Submission Information.

Contact Information

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

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

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

Grants.gov number assigned to this solicitation: BJA-2017-11360

Release date: July 25, 2017

Contents

Edward Byrne Memorial
Justice Assistance Grant Program

FY 2017 State Solicitation
CFDA #16.738

A. Program Description

Overview

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

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

Program-Specific Information

Permissible uses of JAG Funds – In general

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

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

Under the JAG program, States may use award funds for broadband deployment and adoption activities as they relate to criminal justice activities.

Limitations on the use of JAG funds

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

> (1) Any security enhancements or any equipment to any nongovernmental entity that is not engaged in criminal justice or public safety.
>
> (2) Unless the Attorney General certifies that extraordinary and exigent circumstances exist that make the use of such funds to provide such matters essential to the maintenance of public safety and good order—
>
> (A) vehicles (excluding police cruisers), vessels (excluding police boats), or aircraft (excluding police helicopters);
> (B) luxury items;
> (C) real estate;
> (D) construction projects (other than penal or correctional institutions); or
> (E) any similar matters.

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

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

Prohibition of supplanting; no use of JAG funds as "match" – JAG funds may not be used to supplant State or local funds, but must be used to increase the amounts of such funds that would, in the absence of Federal funds, be made available for law enforcement activities. See the JAG FAQs on BJA's JAG web page for examples of supplanting.

Although supplanting is prohibited, as discussed under "What An Application Should Include," the leveraging of federal funding is encouraged.

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

Other restrictions on use of funds. If a State chooses to use its FY 2017 JAG funds for particular, defined types of expenditures, it must satisfy certain preconditions.

- Body-Worn Cameras (BWC)

  A State that proposes to use FY 2017 JAG award funds to purchase BWC equipment, or to implement or enhance BWC programs, must provide to OJP a certification(s) that the State (or, if applicable, that any unit of local government that will receive funds from the State for BWC purposes) has policies and procedures in place related to BWC equipment usage, data storage and access, privacy considerations, training, etc. The certification can be found at https://www.bja.gov/Funding/BodyWornCameraCert.pdf.

A State that proposes to use JAG funds for BWC-related expenses (including through a unit of local government receiving funds from the State) will have funds withheld until the required certification is submitted and approved by OJP.

The BJA BWC Toolkit provides model BWC policies and best practices to assist departments in implementing BWC programs.

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

- Body Armor

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

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

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

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

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

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

- Interoperable Communication

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

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

State obligations regarding use of JAG funds and units of local government

A State that applies for and receives an FY 2017 JAG award must—

- Pass-through a predetermined percentage of funds to "units of local government." (For purposes of the JAG program, a "unit of local government" includes a city, county, township, town, and certain federally-recognized Indian tribes.) This predetermined percentage (often referred to as the "variable pass-through" or VPT) is calculated by OJP's Bureau of Justice Statistics (BJS), based on the total criminal justice expenditures by the State and its units of local government. The variable pass-through percentages that will apply to an FY 2017 award to a recipient State can be found at: https://www.bja.gov/jag/pdfs/VPT-for-SAAs-updated-June-2017.pdf. (If a State believes the VPT percentage has been calculated incorrectly, the State may provide pertinent, verifiable data to BJA and ask OJP to reconsider.)

In certain circumstances, some or all of a project administered by a recipient State may count as part of the variable pass-through. In general, a State may do so to the extent that— (1) the State-administered project will directly benefit a unit of local government, and (2) one unit (or more) of local government voluntarily agrees and acknowledges in an appropriate written certification that the specified amount of State-administered funds would directly benefit the unit of local government in question and agrees that funding the project at the State level is in the best interests of the unit of local government. See the JAG FAQs for an example.

- Appropriately use or distribute the amount of funds that are *added* to the State's FY 2017 award because certain units of local government within the State are ineligible for a direct FY 2017 award of JAG funds because of their small size. (These small-size units of local government sometimes are referred to as "less-than-$10,000 jurisdictions.") The State must provide these additional funds included in its FY 2017 award to State police departments that provide criminal justice services to the "less-than-$10,000 jurisdictions" within the State and/or subaward the funds to such jurisdictions.

- Ensure that any court disposition or other records generated by JAG-funded programs are made available to State repositories if they are relevant to the National Instant Background Check System (NICS) determinations.

Required compliance with applicable federal laws

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

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

Potential funding reductions for noncompliance with PREA and SORNA

Prison Rape Elimination Act of 2003 (PREA). In 2012, DOJ published National PREA Standards, which were promulgated to prevent, detect, and respond to sexual victimization and abuse in confinement settings. The PREA Standards are set out at 28 C.F.R. Part 115, and apply to confinement facilities including adult prisons and jails, juvenile facilities, police lockups, and community corrections facilities.

Under PREA, if a State's chief executive (e.g., governor) does not certify full compliance with the National PREA Standards, the State is subject to the loss of 5 percent of certain DOJ grant funds, including JAG award funds, unless: (1) the chief executive submits an assurance to DOJ that no less than 5 percent of such funds will be used solely for the purpose of enabling the State to achieve and certify full compliance with the Standards in future years; or (2) the chief executive requests that the affected funds be held in abeyance by DOJ. See 42 U.S.C. § 15607(e)(2).

A reduction of a JAG award to a State under the provisions of PREA will **not** affect the portion of the JAG award that is reserved for local jurisdictions.

For additional information concerning PREA implementation, send inquiries to the PREA Management Office at PREACompliance@usdoj.gov and/or review the PREA FAQs.

Sex Offender Registration and Notification Act (SORNA). SORNA, which is Title I of the Adam Walsh Child Protection and Safety Act of 2006, mandates a 10-percent reduction in JAG award to a "State" that has failed to substantially implement SORNA. For such States, the 10-percent reduction has been applied to JAG awards since FY 2012 and will continue to be applied in each subsequent year until the JAG recipient has substantially implemented SORNA. Further, States that have substantially implemented SORNA have an ongoing obligation to maintain that status each year. A JAG reduction will be applied each year a jurisdiction has failed to have substantially implemented SORNA.

A reduction of a JAG award to a State under the provisions of SORNA will **not** affect the portion of the JAG award that is reserved for local jurisdictions.

For additional information regarding SORNA implementation, including requirements and a list of States that will be affected in FY 2017 by the 10-percent reduction to JAG awards, contact Samantha Opong with the OJP Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART Office) at Samantha.Opong@usdoj.gov or 202-514-9320. Additional SORNA guidance can be found within the SORNA FAQs.

BJA Areas of Emphasis

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

Reducing Gun Violence – Gun violence has touched nearly every State and local government in America. While our nation has made great strides in reducing violent crime, some municipalities and regions continue to experience unacceptable levels of violent crime at rates far in excess of the national average. BJA encourages States to invest JAG funds in programs to combat gun violence, enforce existing firearms laws, and improve the process for ensuring that persons prohibited from purchasing guns are prevented from doing so, by enhancing reporting to the FBI's NICS.

National Incident-Based Reporting System (NIBRS) – The FBI has formally announced its intentions to establish NIBRS as the law enforcement (LE) crime data reporting standard for the nation. The transition to NIBRS will provide a more complete and accurate picture of crime at the national, State, and local level. Once this transition is complete, the FBI will no longer collect summary data and will accept data only in the NIBRS format. Also, once the transition is complete, JAG award amounts will be calculated on the basis of submitted NIBRS data. Transitioning all law enforcement agencies to NIBRS is the first step in gathering more comprehensive crime data. BJA encourages State recipients of FY 2017 JAG awards to use JAG funds to expedite the transition to NIBRS.

Officer Safety and Wellness – The issue of law enforcement safety and wellness is an important priority for the Department of Justice. Preliminary data compiled by the National Law Enforcement Officers Memorial Fund indicates that there were 135 line-of-duty law enforcement deaths in 2016 – the highest level in the past five years, and a 10 percent increase from 2015 (123 deaths).

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

BJA sees a vital need to focus not only on tactical officer safety concerns, but also on health and wellness as they affect officer performance and safety. It is important for law enforcement to have the tactical skills necessary, and also be physically and mentally well, to perform, survive, and be resilient in the face of the demanding duties of the profession. BJA encourages States to use JAG funds to address these needs by providing training, such as paying for tuition and travel expenses related to attending trainings such as the VALOR training, as well as funding for health and wellness programs for law enforcement officers.

Border Security – The security of the United States borders is critically important to the reduction and prevention of transnational drug-trafficking networks and combating all forms of human trafficking networks within the United States (sex and labor trafficking of foreign nationals and U.S. citizens of all sexes and ages). These smuggling operations on both sides of the border contribute to a significant increase in violent crime and United States deaths from dangerous drugs. Additionally, illegal immigration continues to place a significant strain on federal, State, and local resources—particularly those agencies charged with border security and immigration enforcement—as well as the local communities into which many of the illegal immigrants are placed. BJA encourages States to use JAG funds to support law enforcement hiring, training, and technology enhancement in the area of border security.

Collaborative Prosecution – BJA supports strong partnerships between prosecutors and police as a mean to improve case outcomes and take violent offenders off the street. BJA strongly encourages State and local law enforcement to foster strong partnerships with prosecutors to adopt new collaborative strategies aimed at combating increases in crime, particularly violent crime. (BJA's "Smart Prosecution" Initiative is a related effort by OJP to promote partnerships between prosecutors and researchers to develop and deliver effective, data-driven, evidence-based strategies to solve chronic problems and fight crime.)

Goals, Objectives, and Deliverables

In general, the FY 2017 JAG State program is designed to provide additional personnel, equipment, supplies, contractual support, training, technical assistance, and information systems for criminal justice. Although the JAG State program provides assistance directly to States, through pass-through (and similar) requirements, the JAG State program also is designed to assist units of local government with respect to criminal justice.

As discussed in more detail below, a State that receives an FY 2017 JAG award will be required to make various types of reports and to submit data related to performance measures and accountability. The Goals, Objectives and Deliverables are directly related to the JAG Progam accountability measures at https://bjapmt.ojp.gov/help/jagdocs.html.

Evidence-Based Programs or Practices

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

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

OJP considers programs and practices to be evidence-based when their effectiveness has been demonstrated by causal evidence, generally obtained through one or more outcome evaluations. Causal evidence documents a relationship between an activity or intervention (including technology) and its intended outcome, including measuring the direction and size of a change, and the extent to which a change may be attributed to the activity or intervention. Causal evidence depends on the use of scientific methods to rule out, to the extent possible, alternative explanations for the documented change. The strength of causal evidence, based on the factors described above, will influence the degree to which OJP considers a program or practice to be evidence-based. The OJP CrimeSolutions.gov website is one resource that applicants may use to find information about evidence-based programs in criminal justice, juvenile justice, and crime victim services.

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

BJA Success Stories

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

If a State has a Success Story it would like to submit, it may be submitted through My BJA account, using "add a Success Story" and the Success Story Submission form. Register for a My BJA account using this registration link.

B. Federal Award Information

BJA expects to make up to 56 awards of up to $17.7 million, with an estimated total amount awarded of up to $174.4 million.

BJA plans to make awards for a four-year period of performance, to begin on October 1, 2016. An extension should not exceed 12 months. An extension beyond this period may be made on a case-by-case basis at the discretion of BJA and must be requested via GMS no less than 30 days prior to the end of the period for performance.

The expected allocations by State for the FY 2017 JAG program can be found at: https://www.bja.gov/Funding/17JAGStateAllocations.pdf.

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

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

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

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

1. Computing an initial JAG allocation for each State, based on its share of violent crime and population (weighted equally).

2. Reviewing the initial JAG allocation amount to determine if the State allocation is less than the minimum award amount defined in the JAG legislation (0.25 percent of the total). If this is the case, the State is funded at the minimum level, and the funds required for this are deducted from the overall pool of JAG funds. Each of the remaining States receive the minimum award plus an additional amount based on its share of violent crime and population.

3. Dividing each State's final award amount (except for the territories and District of Columbia) between the State and its units of local governments at a rate of 60 and 40 percent, respectively.

4. Determining unit of local government award allocations, which are based on their proportion of the State's 3-year violent crime average. If the "eligible award amount" for a particular unit of local government as determined on this basis is $10,000 or more, then the unit of local government is eligible to apply directly to OJP (under the JAG Local solicitation) for a JAG award. If the "eligible award amount" to a particular unit of local government as determined on this basis would be less than $10,000, however, the funds are not made available for a direct award to that particular unit of local government, but instead are added to the amount that otherwise would have been awarded to the State. (The State's obligations with respect to this additional amount for the "less-than-$10,000 jurisdictions" are summarized above.)

Financial Management and System of Internal Controls
Award recipients and subrecipients (including recipients or subrecipients that are pass-through entities[1]) must, as described in the Part 200 Uniform Requirements[2] as set out at 2 C.F.R. 200.303:

> (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that [the recipient (and any subrecipient)] is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
>
> (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.
>
> (c) Evaluate and monitor [the recipient's (and any subrecipient's)] compliance with statutes, regulations, and the terms and conditions of Federal awards.
>
> (d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.
>
> (e) Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or [the recipient (or any subrecipient)] considers sensitive consistent with applicable Federal, State, local, and tribal laws regarding privacy and obligations of confidentiality.

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

Budget and Financial Information

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

Tracking and reporting regarding JAG funds used for State administrative costs – As indicated earlier, a State may use up to 10 percent of a JAG award, including up to 10 percent of any earned interest, for costs associated with administering the award. Administrative costs (when utilized) must be tracked separately; a recipient must report in separate financial status reports

[1] For purposes of this solicitation, the phrase "pass-through entity" includes any recipient or subrecipient that provides a subaward ("subgrant") to carry out part of the funded award or program.
[2] The "Part 200 Uniform Requirements" refers to the DOJ regulation at 2 C.F.R Part 2800, which adopts (with certain modifications) the provisions of 2 C.F.R. Part 200.

(SF-425) those expenditures that specifically relate to each particular JAG Award during any particular reporting period.

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

Cost Sharing or Match Requirement
The JAG program does not require a match.

For additional cost sharing and match information, see the DOJ Grants Financial Guide.

Pre-Agreement Costs (also known as Pre-award Costs)
Pre-agreement costs are costs incurred by the applicant prior to the start date of the period of performance of the grant award.

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

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

Prior Approval, Planning, and Reporting of Conference/Meeting/Training Costs
OJP strongly encourages every applicant that proposes to use award funds for any conference-, meeting-, or training-related activity (or similar event) to review carefully—before submitting an application—the OJP and DOJ policy and guidance on approval, planning, and reporting of such events, available at https://www.ojp.gov/financialguide/DOJ/PostawardRequirements/chapter3.10a.htm.

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

Costs Associated with Language Assistance (if applicable)
If an applicant proposes a program or activity that would deliver services or benefits to individuals, the costs of taking reasonable steps to provide meaningful access to those services or benefits for individuals with limited English proficiency may be allowable. Reasonable steps to provide meaningful access to services or benefits may include interpretation or translation services, where appropriate.

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

C. Eligibility Information

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

Note that, as discussed in more detail below, the certification regarding compliance with 8 U.S.C. § 1373 must be executed and submitted before a State can make a valid award acceptance. Also, a State may not receive award funds (and its award will include a condition that withholds funds) until it submits a properly-executed "Certifications and Assurances by Chief Executive of Applicant Government."

D. Application and Submission Information

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

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

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

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

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

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

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

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

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

2. Project Abstract

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

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

3. Program Narrative

The following sections **should** be included as part of the program narrative[3]:

a. Statement of the Problem – Identify the State's strategy/funding priorities for the FY 2017 JAG funds, the subgrant award process and timeline, and a description of the programs to be funded over the 4-year grant period. States are strongly encouraged to prioritize the funding on evidence-based projects.

b. Project Design and Implementation – Describe the State's strategic planning process that guides its priorities and funding strategy. This should include a description of how local communities are engaged in the planning process and the data and analysis utilized to support the plan; it should identify the stakeholders currently participating in the strategic planning process, the gaps in the State's needed resources for criminal justice purposes, and how JAG funds will be coordinated with State and related justice funds.

c. Capabilities and Competencies – Describe any additional strategic planning/coordination efforts in which the State participates with other criminal justice criminal/juvenile justice agencies in the State.

d. Plan for Collecting the Data Required for this Solicitation's Performance Measures – OJP will require each successful applicant to submit specific performance measures data as part of its reporting under the award (see "General Information about Post-Federal Award Reporting Requirements" in Section F. Federal Award Administration Information). The performance measures correlate to the goals, objectives, and deliverables identified under "Goals, Objectives, and Deliverables" in Section A. Program Description. Post award, recipients will be required to submit quarterly performance metrics through BJA's PMT, located at https://bjapmt.ojp.gov. The application should describe the applicant's plan for collection of all of the performance measures data listed in the JAG Program accountability measures at: https://bjapmt.ojp.gov/help/jagdocs.html.

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

Note on Project Evaluations
An applicant that proposes to use award funds through this solicitation to conduct project evaluations should be aware that certain project evaluations (such as systematic investigations designed to develop or contribute to generalizable knowledge) may constitute "research" for purposes of applicable DOJ human subjects protection regulations. However, project evaluations that are intended only to generate internal improvements to a program or service, or are conducted only to meet OJP's performance measure data reporting requirements, likely do

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

not constitute "research." Each applicant should provide sufficient information for OJP to determine whether the particular project it proposes would either intentionally or unintentionally collect and/or use information in such a way that it meets the DOJ regulatory definition of research that appears at 28 C.F.R. Part 46 ("Protection of Human Subjects").

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

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

4. Budget and Associated Documentation

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

For questions pertaining to budget and examples of allowable and unallowable costs, see the DOJ Grants Financial Guide*.*

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

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

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

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

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

Whether–for purposes of federal grants administrative requirements–a particular agreement between a recipient and a third party will be considered a "subaward" or instead considered a procurement "contract" under the award is determined by federal rules and applicable OJP guidance. It is an important distinction, in part because the federal administrative rules and requirements that apply to "subawards" and procurement "contracts" under awards differ markedly.

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

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

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

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

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

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

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

If an applicant proposes to make one or more subawards to carry out the federal award and program, and those subawards are not specifically authorized (or required) by statute or regulation, the applicant should: (1) identify (if known) the proposed subrecipient(s), (2) describe in detail what each subrecipient will do to carry out the federal award and federal program, and (3) provide a justification for the subaward(s), with details on pertinent matters such as special qualifications and areas of expertise. Pertinent information on subawards should appear not only in the Program Narrative, but also in the Budget Detail Worksheet and budget narrative.

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

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

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

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

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

d. Pre-Agreement Costs

For information on pre-agreement costs, see Section B. Federal Award Information.

5. Indirect Cost Rate Agreement (if applicable)

Indirect costs may be charged to an award only if:

a) The recipient has a current (that is, unexpired), federally-approved indirect cost rate; or
b) The recipient is eligible to use, and elects to use, the "de minimis" indirect cost rate described in the (DOJ) Part 200 Uniform Requirements, as set out at 2 C.F.R. 200.414(f).

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

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

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

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

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

Every State is to download, complete, and submit the OJP Financial Management and System of Internal Controls Questionnaire as part of its application.

Among other things, the form requires each applicant to disclose whether it currently is designated "high-risk" by a federal grant-making agency outside of DOJ. For purposes of this disclosure, high risk includes any status under which a federal awarding agency provides additional oversight due to the applicant's past performance, or other programmatic or financial concerns with the applicant. If an applicant is designated high risk by another federal awarding agency, the applicant must provide the following information:

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

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

7. Disclosure of Lobbying Activities

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

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

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

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

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

The chief legal officer of an applicant State (e.g., the Attorney General of the State) is to carefully review the "State or Local Government: FY 2017 Certification of Compliance with 8

U.S.C. § 1373" that is attached as Appendix II to this solicitation. If the chief legal officer determines that he or she may execute the certification, the State is to submit the certification as part of its application.

As discussed further below, a State applicant will be *unable to make a valid award acceptance* of an FY 2017 JAG award unless and until a properly-executed certification by its chief legal officer is received by OJP on or before the day the State submits an executed award document.

10. State Strategic Plan (if applicable)

States are strongly encouraged to use JAG funding in support of an existing statewide strategic plan. An applicant State should attach a current version of the State strategic plan to its application, if one exists. If a State does not have such a plan, the program narrative should describe the State's timeline and process for developing such a strategic plan.

ALERT *A recent amendment to the JAG program statute requires, starting with the FY 2019 JAG program, that States have in place and submit a strategic plan that identifies stakeholders, describes evidence-based approaches that will be used, and illustrates how the State will allocate funding. By law, strategic plans are to be updated every five years.*

Training and technical assistance (TTA) is available from BJA's TTA providers to assist States with the development of their strategic planning process and plan.

To help ensure that States consider the impact of JAG funding decisions across the entire criminal justice system, BJA strongly encourages each State to bring all criminal justice system stakeholders together in the strategic planning process. The strategic planning process should include local governments, and representatives of all segments of the criminal justice system, including judges, prosecutors, law enforcement personnel, and corrections personnel, as well as providers of indigent defense services, victim services, juvenile justice delinquency prevention programs, community corrections, and reentry services. For more information, see the National Center for Justice Planning website.

11. Additional Attachments

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

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

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

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

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

SAMPLE

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

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

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

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

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

i. For purposes of this solicitation, each applicant is to document research and evaluation independence and integrity by including one of the following two items:

   a. A specific assurance that the applicant has reviewed its application to identify any actual or potential apparent conflicts of interest (including through review of pertinent information on the principal investigator, any co-principal investigators, and any subrecipients), and that the applicant has identified no such conflicts of interest – whether personal or financial or organizational (including on the part of the applicant entity or on the part of staff, investigators, or subrecipients) – that could affect the independence or integrity of the research, including the design, conduct, and reporting of the research.

   OR

   b. A specific description of actual or potential apparent conflicts of interest that the applicant has identified – including through review of pertinent information on the principal investigator, any co-principal investigators, and any subrecipients – that could affect the independence or integrity of the research, including the design, conduct, or reporting of the research. These conflicts may be personal (e.g., on the part of investigators or other staff), financial, or organizational (related to the applicant or any subrecipient entity). Some examples of potential investigator (or other personal) conflict situations are those in which an investigator would be in a position to evaluate a spouse's work product (actual conflict), or an investigator would be in a position to evaluate the work of a former or current colleague (potential apparent conflict). With regard to potential organizational conflicts of interest, as one example, generally an organization would not be given an award to evaluate a project, if that organization had itself provided substantial prior technical assistance to that specific project or a location implementing the project (whether funded by OJP or other sources), because the organization in such an instance might appear to be evaluating the effectiveness of its own prior work. The key is whether a reasonable person understanding all of the facts would be able to have confidence that the results of any research or evaluation project are objective and reliable. Any outside personal or financial interest that casts doubt on that objectivity and reliability of an evaluation or research product is a problem and must be disclosed.

ii. In addition, for purposes of this solicitation, each applicant is to address possible mitigation of research integrity concerns by including, at a minimum, one of the following two items:

a. If an applicant reasonably believes that no actual or potential apparent conflicts of interest (personal, financial, or organizational) exist, then the applicant should provide a brief narrative explanation of how and why it reached that conclusion. The applicant also is to include an explanation of the specific processes and procedures that the applicant has in place, or will put in place, to identify and prevent (or, at the very least, mitigate) any such conflicts of interest pertinent to the funded project during the period of performance. Documentation that may be helpful in this regard may include organizational codes of ethics/conduct and policies regarding organizational, personal, and financial conflicts of interest. There is no guarantee that the plan, if any, will be accepted as proposed.

OR

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

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

c. State Governing Body Review

Applicants must submit information via the Certification and Assurances by the Chief Executive (See Appendix I) which documents that the JAG application was made available for review by the governing body of the state, or to an organization designated by that governing body, for a period that was not less than 30 days before the application was submitted to BJA. The same Chief Executive Certification will also specify that an opportunity to comment on this application was provided to citizens prior to the application submission to the extent applicable law or established procedures make such opportunity available. In the past, this has been accomplished via submission of specific review dates; now OJP will only accept a Governor's certification to attest to these facts. States may continue to submit actual dates of review should they wish to do so, in addition to the submission of the Chief Executive Certification.

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

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

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

All applicants should complete the following steps:

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

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

2. **Acquire registration with the SAM.** SAM is the repository for certain standard information about federal financial assistance applicants, recipients, and subrecipients. All applicants for OJP awards (other than individuals) must maintain current registrations in the SAM database. Each applicant must **update or renew its SAM registration at least annually** to maintain an active status. SAM registration and renewal can take as long as 10 business days to complete.

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

3. **Acquire a GMS username and password**. New users must create a GMS profile by selecting the "First Time User" link under the sign-in box of the GMS home page. For more

information on how to register in GMS, go to www.ojp.gov/gmscbt. Previously registered applicants should ensure, prior to applying, that the user profile information is up-to-date in GMS (including, but not limited to, address, legal name of agency and authorized representative) as this information is populated in any new application.

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

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

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

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

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

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

Note: OJP does not automatically approve requests to submit a late application. After OJP reviews the applicant's request, and contacts the GMS Help Desk to verify the reported technical issues, OJP will inform the applicant whether the request to submit a late application has been approved or denied. If OJP determines that the untimely application submission was due to the applicant's failure to follow all required procedures, OJP will deny the applicant's request to submit its application.

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

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

E. Application Review Information

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

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

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

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

1. Applicant financial stability and fiscal integrity.
2. Quality of the management systems of the applicant, and the applicant's ability to meet prescribed management standards, including those outlined in the DOJ Grants Financial Guide.
3. Applicant's history of performance under OJP and other DOJ awards (including compliance with reporting requirements and award conditions), as well as awards from other federal agencies.
4. Reports and findings from audits of the applicant, including audits under the (DOJ) Part 200 Uniform Requirements.
5. Applicant's ability to comply with statutory and regulatory requirements, and to effectively implement other award requirements.

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

F. Federal Award Administration Information

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

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

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

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

Statutory and Regulatory Requirements; Award Conditions
If selected for funding, in addition to implementing the funded project consistent with the OJP-approved application, the recipient must comply with all award requirements (including all award conditions), as well as all applicable requirements of federal statutes and regulations (including those referred to in assurances and certifications executed as part of the application or in connection with award acceptance, and administrative and policy requirements set by statute or regulation).

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

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

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

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

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

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

General Information about Post-Federal Award Reporting Requirements
A State recipient of an award under this solicitation will be required to submit the following reports and data.

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

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

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

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

G. Federal Awarding Agency Contact(s)

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

For contact information for GMS, see the title page.

H. Other Information

Freedom of Information Act and Privacy Act (5 U.S.C. § 552 and 5 U.S.C. § 552a)
All applications submitted to OJP (including all attachments to applications) are subject to the federal Freedom of Information Act (FOIA) and to the Privacy Act. By law, DOJ may withhold information that is responsive to a request pursuant to FOIA if DOJ determines that the responsive information either is protected under the Privacy Act or falls within the scope of one of nine statutory exemptions under FOIA. DOJ cannot agree in advance of a request pursuant to FOIA not to release some or all portions of an application.

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

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

Provide Feedback to OJP

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

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

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

Application Checklist

Edward Byrne Memorial Justice Assistance Grant (JAG) Program:

FY 2017 State Solicitation

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

What an Applicant Should Do:

Prior to Registering in GMS:
_____ Acquire a DUNS Number (see page 28)
_____ Acquire or renew registration with SAM (see page 28)
To Register with GMS:
_____ For new users, acquire a GMS username and password* (see page 28)
_____ For existing users, check GMS username and password* to ensure account access (see page 29)
_____ Verify SAM registration in GMS (see page 29)
_____ Search for correct funding opportunity in GMS (see page 29)
_____ Select correct funding opportunity in GMS (see page 29)
_____ Register by selecting the "Apply Online" button associated with the funding opportunity title (see page 29)
_____ Read OJP policy and guidance on conference approval, planning, and reporting available at ojp.gov/financialguide/DOJ/PostawardRequirements/chapter3.10a.htm (see page 15)
_____ If experiencing technical difficulties in GMS, contact the NCJRS Response Center (see page 29)

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

Overview of Post-Award Legal Requirements:

_____ Review the "Overview of Legal Requirements Generally Applicable to OJP Grants and Cooperative Agreements - FY 2017 Awards" in the OJP Funding Resource Center.

Scope Requirement:

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

What an Application Should Include:

_____ Application for Federal Assistance (SF-424) (see page 17)

Appendix I

Certifications and Assurances by the Chief Executive of the Applicant Government

Template for use by *chief executive* of the "State" (e.g., the governor)

Note: By law, for purposes of the JAG program, the term "States" includes the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the U.S. Virgin Islands, Guam, and American Samoa.

U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS

Edward Byrne Justice Assistance Grant Program
FY 2017 State Solicitation

Certifications and Assurances by the Chief Executive of the Applicant Government

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

1. I am the chief executive of the applicant State named below, and I have the authority to make the following representations on my own behalf and on behalf of the applicant State. I understand that these representations will be relied upon as material in any OJP decision to make an award, under the application described above, to the applicant State.

2. I certify that no federal funds made available by the award (if any) that OJP makes based on the application described above will be used to supplant 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.

3. I assure that the application described above (and any amendment to that application) was submitted for review to the governing body of the State (e.g., the State legislature), or to an organization designated by that governing body, not less than 30 days before the date of this certification.

4. I assure that, before the date of this certification— (a) the application described above (and any amendment to that application) was made public; and (b) an opportunity to comment on that application (or amendment) was provided to citizens and to neighborhood or community-based organizations, to the extent applicable law or established procedure made such an opportunity available.

5. I assure that, for each fiscal year of the award (if any) that OJP makes based on the application described above, the applicant State will maintain and report such data, records, and information (programmatic and financial), as OJP may reasonably require.

6. I certify that— (a) the programs to be funded by the award (if any) that OJP makes based on the application described above meet all the requirements of the JAG Program statute (42 U.S.C. §§ 3750-3758); (b) all the information contained in that application is correct; (c) in connection with that application, there has been appropriate coordination with affected agencies; and (d) in connection with that award (if any), the applicant State will comply with all provisions of the JAG Program statute and all other applicable federal laws.

7. I have examined certification entitled "State or Local Government: FY 2017 Certification of Compliance with 8 U.S.C. § 1373" executed by the chief legal officer of the applicant government with respect to the FY 2017 JAG program and submitted in support of the application described above, and I hereby adopt that certification as my own on behalf of that government.

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

Signature of Chief Executive of the Applicant "State"	Date of Certification
Printed Name of Chief Executive	Title of Chief Executive
Name of Applicant State	

Appendix II

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

Template for use by *chief legal officer* of the "State" (e.g., the State Attorney General)

Available for download at:
https://ojp.gov/funding/Explore/SampleCertifications-8USC1373.htm

U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS

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

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

(1) I am the chief legal officer of the State or local government of which the applicant entity named below is a part ("the jurisdiction"), and I have the authority to make this certification on behalf of the jurisdiction and the applicant entity (that is, the entity applying directly to OJP). I understand that OJP will rely upon this certification as a material representation in any decision to make an award to the applicant entity.

(2) I have carefully reviewed 8 U.S.C. § 1373(a) and (b), including the prohibitions on certain actions by State and local government entities, -agencies, and -officials regarding information on citizenship and immigration status. I also have reviewed the provisions set out at (or referenced in) 8 U.S.C. § 1551 note ("Abolition ... and Transfer of Functions"), pursuant to which references to the "Immigration and Naturalization Service" in 8 U.S.C. § 1373 are to be read, as a legal matter, as references to particular components of the U.S. Department of Homeland Security.

(3) I (and also the applicant entity) understand that the U.S. Department of Justice will require States and local governments (and agencies or other entities thereof) to comply with 8 U.S.C. § 1373, with respect to any "program or activity" funded in whole or in part with the federal financial assistance provided through the FY 2017 OJP program under which this certification is being submitted ("the FY 2017 OJP Program" identified below), specifically including any such "program or activity" of a governmental entity or -agency that is a subrecipient (at any tier) of funds under the FY 2017 OJP Program.

(4) I (and also the applicant entity) understand that, for purposes of this certification, "program or activity" means what it means under title VI of the Civil Rights Act of 1964 (*see* 42 U.S.C. § 2000d-4a), and that terms used in this certification that are defined in 8 U.S.C. § 1101 mean what they mean under that section 1101, except that the term "State" also shall include American Samoa (*cf.* 42 U.S.C. § 901(a)(2)). Also, I understand that, for purposes of this certification, neither a "public" institution of higher education (*i.e.*, one that is owned, controlled, or directly funded by a State or local government) nor an Indian tribe is considered a State or local government entity or -agency.

(5) I have conducted (or caused to be conducted for me) a diligent inquiry and review concerning both—

(a) the "program or activity" to be funded (in whole or in part) with the federal financial assistance sought by the applicant entity under this FY 2017 OJP Program; and

(b) any prohibitions or restrictions potentially applicable to the "program or activity" sought to be funded under the FY 2017 OJP Program that deal with sending to, requesting or receiving from, maintaining, or exchanging information of the types described in 8 U.S.C. § 1373(a) or (b), whether imposed by a State or local government entity, -agency, or -official.

(6) As of the date of this certification, neither the jurisdiction nor any entity, agency, or official of the jurisdiction has in effect, purports to have in effect, or is subject to or bound by, any prohibition or any restriction that would apply to the "program or activity" to be funded in whole or in part under the FY 2017 OJP Program (which, for the specific purpose of this paragraph 6, shall not be understood to include any such "program or activity" of any subrecipient at any tier), and that deals with either— (1) a government entity or -official sending or receiving information regarding citizenship or immigration status as described in 8 U.S.C. § 1373(a); or (2) a government entity or -agency sending to, requesting or receiving from, maintaining, or exchanging information of the types (and with respect to the entities) described in 8 U.S.C. § 1373(b).

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

Signature of Chief Legal Officer of the Jurisdiction

Printed Name of Chief Legal Officer

Date of Certification

Title of Chief Legal Officer of the Jurisdiction

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

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

Appendix III

8 U.S.C. § 1373

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

Communication between government agencies and the Immigration and Naturalization Service

(a) In general

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

(b) Additional authority of government entities

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

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

(c) Obligation to respond to inquiries

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

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

Appendix IV

OJP Certified Standard Assurances

OMB No. 1121-0140
Expires 5/31/2019

U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS

CERTIFIED STANDARD ASSURANCES

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

(1) I have the authority to make the following representations on behalf of myself and the Applicant. I understand that these representations will be relied upon as material in any OJP decision to make an award to the Applicant based on its application.

(2) I certify that the Applicant has the legal authority to apply for the federal assistance sought by the application, and that it has the institutional, managerial, and financial capability (including funds sufficient to pay any required non-federal share of project costs) to plan, manage, and complete the project described in the application properly.

(3) I assure that, throughout the period of performance for the award (if any) made by OJP based on the application—

(a) the Applicant will comply with all award requirements and all federal statutes and regulations applicable to the award;

(b) the Applicant will require all subrecipients to comply with all applicable award requirements and all applicable federal statutes and regulations; and

(c) the Applicant will maintain safeguards to address and prevent any organizational conflict of interest, and also to prohibit employees from using their positions in any manner that poses, or appears to pose, a personal or financial conflict of interest.

(4) The Applicant understands that the federal statutes and regulations applicable to the award (if any) made by OJP based on the application specifically include statutes and regulations pertaining to civil rights and nondiscrimination, and, in addition—

(a) the Applicant understands that the applicable statutes pertaining to civil rights will include section 601 of the Civil Rights Act of 1964 (42 U.S.C. § 2000d); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794); section 901 of the Education Amendments of 1972 (20 U.S.C. § 1681); and section 303 of the Age Discrimination Act of 1975 (42 U.S.C. § 6102);

(b) the Applicant understands that the applicable statutes pertaining to nondiscrimination may include section 815(c) of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3789d(c)); section 1407(e) of the Victims of Crime Act of 1984 (42 U.S.C. § 10604(e)); section 299A(b) of the Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. § 5672(b)); and that the grant condition set out at section 40002(b)(13) of the Violence Against Women Act (42 U.S.C. § 13925(b)(13)) also may apply;

(c) the Applicant understands that it must require any subrecipient to comply with all such applicable statutes (and associated regulations); and

(d) on behalf of the Applicant, I make the specific assurances set out in 28 C.F.R. §§ 42.105 and 42.204.

(5) The Applicant also understands that (in addition to any applicable program-specific regulations and to applicable federal regulations that pertain to civil rights and nondiscrimination) the federal regulations applicable to the award (if any) made by OJP based on the application may include, but are not limited to, 2 C.F.R. Part 2800 (the DOJ "Part 200 Uniform Requirements") and 28 C.F.R. Parts 22 (confidentiality - research and statistical information), 23 (criminal intelligence systems), and 46 (human subjects protection).

(6) I assure that the Applicant will assist OJP as necessary (and will require subrecipients and contractors to assist as necessary) with the Department's compliance with section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. § 306108), the Archeological and Historical Preservation Act of 1974 (54 U.S.C. §§ 312501-312508), and the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4335), and 28 C.F.R. Parts 61 (NEPA) and 63 (floodplains and wetlands).

(7) I assure that the Applicant will give the Department and the Government Accountability Office, through any authorized representative, access to, and opportunity to examine, all paper or electronic records related to the award (if any) made by OJP based on the application.

(8) I assure that, if the Applicant is a governmental entity, with respect to the award (if any) made by OJP based on the application—

(a) it will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655), which govern the treatment of persons displaced as a result of federal and federally-assisted programs; and

(b) it will comply with requirements of 5 U.S.C. §§ 1501-1508 and 7324-7328, which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by federal assistance.

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