

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

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CITY OF PROVIDENCE and
CITY OF CENTRAL FALLS,
Plaintiffs,

v.

JEFFERSON B. SESSIONS III, in his
official capacity as Attorney General of the
United States, and the UNITED STATES
DEPARTMENT OF JUSTICE,
Defendants.

CA 18 - 437

C.A. No.:

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

INTRODUCTION

1. In our system of government, local governments are the primary source for law enforcement policies to keep communities safe and promote trust between law enforcement agencies and the residents they serve. The Edward Byrne Memorial Justice Grant (“Byrne JAG”) program provides funding for states and units of local government to support a broad range of criminal justice related activities based on their own local needs and conditions. Congress has appropriated hundreds of millions of dollars in annual grant funds to that end. Contrary to this congressional intent, however, the United States Department of Justice (“DOJ”) has now decided to coerce local governments into enforcing the federal government’s civil immigration priorities by conditioning Byrne JAG funding on compliance with immigration-related conditions that have nothing to do with the program’s purpose. Plaintiffs—the City of Providence (“Providence”) and the City of Central Falls (“Central Falls”) (collectively, the “Cities” or “Plaintiffs”)—challenge these unconstitutional and illegal conditions, and seek declaratory and injunctive relief to protect their ability to pursue their own law enforcement prerogatives in the manner that best achieves the safety and security of their communities.

2. The Byrne JAG program is designed to “give state and local governments more flexibility to spend money for programs that work for them rather than impose a ‘one size fits all’ solution.” H.R. Rep. No. 109-233, at 89 (2005). Byrne JAG funds have been used to support a diverse array of programs tailored to local law enforcement needs.

3. On July 25, 2017, DOJ issued a press release announcing that it was imposing three immigration-related conditions on Fiscal Year (“FY”) 2017 Byrne JAG funds. The conditions require States and local governments to (1) provide access to their correctional facilities for federal immigration enforcement agents (the “access condition”); (2) provide advance notice to federal immigration authorities before an individual’s scheduled release from custody (the “notice condition”) and (3) certify compliance with 8 U.S.C. § 1373, which prohibits states and localities from restricting their officials from communicating with federal immigration authorities “regarding the citizenship or immigration status, lawful or unlawful, of any individual” (the “Section 1373 condition”).

4. DOJ’s decision to impose these sweeping conditions on Byrne JAG grantees represents an unlawful, *ultra vires* attempt to force states and localities to forsake their own policy judgments and aid in federal civil immigration enforcement. Nothing in the Byrne JAG statute “grant[s] the Attorney General the authority to impose conditions that require states or local governments to assist in immigration enforcement, nor to deny funds to states or local governments for their failure to comply with those conditions.” *City of Chicago v. Sessions*, 888 F.3d 272, 283 (7th Cir. 2018).

5. DOJ has thus forced the Cities into an untenable position: accept unlawful and unconstitutional conditions that diminish their ability to design their law enforcement policies

and protect their communities, or forfeit Byrne JAG funding, thus undermining the vital programs that such funding supports.

6. Accordingly, the Cities file this action seeking a declaratory judgment that the notice, access, and Section 1373 conditions are unlawful, and a permanent injunction enjoining DOJ from imposing these conditions on the Cities in order to receive Byrne JAG funds.

JURISDICTION AND VENUE

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

8. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(2) and (e)(1). Defendants are United States agencies or officers sued in their official capacities. The Cities are located in this District, and a substantial part of the events or omissions giving rise to this Complaint occurred and continue to occur herein.

PARTIES

9. Plaintiff City of Providence, represented by and through its Solicitor, Jeffrey Dana, is a municipal corporation organized pursuant to Rhode Island state law. The City of Providence is a political subdivision of the State of Rhode Island and derives its powers through the state constitution, state laws, and its home rule charter.

10. Providence is the state capital of Rhode Island and the third largest city in New England. According to the 2014 American Community Survey data, Providence has a population of 179,154 and an urban population density of 9,736 people per square mile. The city experiences the majority (70%) of the state's violent crimes. Providence is home to a diverse community, with a population that is 38% Hispanic or Latino, 38% White, 16% Black, 6%

Asian, and 6% Multi-Racial. Over 47% of Providence residents speak a language other than English, compared to just 21% of residents statewide. Providence is one of the poorest cities in the Northeast, with approximately 29% of its residents receiving income below the federal poverty level. Despite these financial challenges, the City's community-oriented police policies have helped reduce the incident of crime by over 20% between 2013 and 2015.

11. Plaintiff City of Central Falls, represented by and through its Solicitor, Matthew Jerzyk, is a municipal corporation organized pursuant to Rhode Island state law. Central Falls is a political subdivision of the State of Rhode Island and derives its powers through the state constitution, state laws, and its home rule charter.

12. Central Falls has the most low-income people, immigrants, and people of color, per capita, in the state. Encompassing only 1.27 square miles, Central Falls has approximately 19,376 residents, of whom 38% are foreign-born, according to the 2010 U.S. Census.¹ A supermajority of the population, 74.4%, is people of color, with an estimated two-thirds of the population of Hispanic or Latino origin (2016). Central Falls has the lowest median income among state municipalities (which approximates roughly half of the state median income). According to the 2016 RI Kids Count Factbook, 41% of Central Falls' children live in poverty and 19% in extreme poverty, more than twice the state rates. Despite these financial challenges, Central Falls has witnessed a reduction in crime of over 17% in the last five years as a result of community-oriented policing policies.

13. The Cities are aggrieved by Defendants' actions and have standing to bring this action.

¹ See <https://www.census.gov/quickfacts/fact/table/centralfallscityrhodeisland/PST045217> (last visited August 8, 2018).

14. Defendant United States Department of Justice (“DOJ”) is an agency and executive department of the United States government and has responsibility for implementing the Byrne JAG program, which is administered by DOJ through its Office of Justice Programs.

15. Defendant Jefferson B. Sessions III is the Attorney General of the United States and is the federal official in charge of the DOJ. The Attorney General is sued in his official capacity.

FACTUAL ALLEGATIONS

The Byrne JAG Program

16. The Byrne JAG program has its origins in the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, Title I, 82 Stat. 197, which created the first block grants for states and localities to use for law enforcement and criminal justice programs.² Recognizing that “crime is essentially a local problem that must be dealt with by State and local governments,” 82 Stat. at 197, Congress designed the grant to provide a reliable funding stream that States and localities could use in accordance with State and local law enforcement policies.³

17. To ensure federal deference to local priorities, the 1968 Act prohibited federal agencies and executive branch officials from using law enforcement grants to “exercise any direction, supervision, or control over any police force or any other law enforcement agency of any State or any political subdivision thereof.” *Id.* § 518(a), 82 Stat. at 208. Although Congress

² See Justice System Improvement Act of 1979, Pub. L. No. 96-157, 93 Stat. 1167, 1179 (amending Title I of the 1968 Act and reauthorizing law enforcement block grants to states and local governments); Justice Assistance Act of 1984, Pub. L. No. 98-473, 98 Stat. 1837, 2077-85 (same); Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, pt. E, 102 Stat. 4181, 4329 (amending Title I of the 1968 Act and creating a formula law-enforcement grant); Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, § 1111, 119 Stat. 2960, 3094 (2006) (amending Title I of the 1968 Act and creating the modern Byrne JAG program).

³ See, e.g., S. Rep. No. 90-1097, at 2 (1968) (stating that Congress sought to encourage States and localities to adopt programs “based upon their evaluation of State and local problems of law enforcement”); see also *Ely v. Velde*, 451 F.2d 1130, 1136 (4th Cir. 1971) (reviewing the legislative history of the 1968 Act and concluding that “[t]he dominant concern of Congress apparently was to guard against any tendency towards federalization of local police and law enforcement agencies”).

has repeatedly modified the structure and terms of the law enforcement grants authorized under Title I of the 1968 Act, the prohibition originally set forth in § 518 of the 1968 Act remains in effect with virtually no modification, and is now codified in the same chapter of the U.S. Code as Byrne JAG. *See* 34 U.S.C. § 10228(a). The full text of Section 10228(a) provides: “Nothing in this chapter or any other Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over any police force or any other criminal justice agency of any State or any political subdivision thereof.” *Id.*

18. Congress codified the modern Byrne JAG program in 2006.⁴ 34 U.S.C. §§ 10151-58. Like its predecessors, Byrne JAG aims to “give state and local governments more flexibility to spend money for programs that work for them rather than to impose a ‘one size fits all’ solution.” H.R. Rep. No. 109-233, at 89 (2005). To that end, the Byrne JAG statute gives recipients substantial discretion to use funds for eight “broad purposes,” *id.*, including law enforcement, crime prevention and education, and drug treatment. 34 U.S.C. § 10152(a)(1).

19. DOJ is required by law to issue grants in “accordance with the formula” set forth in the Byrne JAG statute. *Id.* That formula determines the distribution of Byrne JAG funds to state and local governments based on their population and relative levels of violent crime and is explicitly enumerated in 34 U.S.C. § 10156.

20. Of the money allocated to each state, sixty percent of the funding “shall be for direct grants to States,” *id.* § 10156(b)(1), and forty percent “shall be for grants” directly to localities, *id.* 34 § 10156(b)(2), (d). Each state is required to allocate a portion of its award to

⁴ The program is named after a former New York City police officer who was killed in the line of duty while protecting a Guyanese immigrant who was acting as a cooperating witness. *See About Officer Byrne*, <https://goo.gl/pLm8JM> (last visited August 8, 2018), *see also Arjune Enters Plea of Guilty in Arrest Case*, NEW YORK TIMES (1989), available at <https://www.nytimes.com/1989/12/16/nyregion/arjune-enters-plea-of-guilty-in-arrest-case.html> (last visited August 8, 2018). Congress appropriated for the program—which consolidated the existing Byrne formula program with another law enforcement block grant program—in an appropriations act passed on December 8, 2004. *See* P.L. 108-447, 118 Stat. 2809, 2863 (Dec. 8, 2004). Thus, although the program was not codified until 2006, some states began receiving awards under the program in FY 2005.

localities within the state. *See id.*, § 10156(c)(2). Thus, some localities are both direct grant recipients and subgrantees of the States. The Cities are direct grant recipients only.⁵

21. Unlike *discretionary* grant programs, which agencies award on a competitive basis, “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). Thus, if a grantee satisfies the statutory requirements, it is entitled to receive what the formula dictates.

22. Under the Byrne JAG statute, state and local governments are entitled to their share of the formula allocation as long as they use the funds to further one or more of the eight broadly defined goals, *see* 34 U.S.C. § 10152(a)(1)(A)-(H), and their applications contain a series of statutorily prescribed certifications and attestations, *see id.* § 10153(a).

23. States and localities are required to submit an application to receive Byrne JAG funds each fiscal year. *See id.* § 10153(a). The application must include the following items, among others: a certification that program funds will not be used to supplant state or local funds, *id.* § 10153(a)(1); an assurance that the application was made available for comment by the public, and by neighborhood or community-based organizations, *id.* § 10153(a)(3); an assurance that the applicant will “maintain and report such data, records, and information (programmatic and financial) as the Attorney General may reasonably require,” *id.* § 10153(a)(4); and a certification that programs to be funded meet the requirements of the Byrne JAG statute, that all the information in the application is correct, that there has been appropriate coordination with affected agencies, and that “the applicant will comply with all provisions of this part and all other applicable Federal laws,” *id.* § 10153(a)(5).

⁵ In the past, the City of Central Falls has been a direct grant recipient and subgrantee of Byrne JAG funds. Since 2014, however, it has been only a direct recipient.

24. The Byrne JAG statute does not include any provision expressly authorizing DOJ to impose conditions on Byrne JAG funding.

The Cities' Use of Byrne JAG Funding

25. For nearly fifty years, the states and local governments have used grant funds received under Byrne JAG and its predecessor grant programs to support a broad array of critical law enforcement programs tailored to local needs.

City of Providence

26. Providence has used Byrne JAG funding for a variety of purposes including overtime compensation for targeted patrols in areas known for criminal activity, training of police department personnel, and the development of a gang intervention unit and database (now known as an Intelligence Assessment Database) in order to monitor and curb the criminal activity of numerous highly organized and violent gangs operating in Providence. Providence has received Byrne JAG awards every year since at least FY 2005.

27. Upon information and belief, Providence has never had any conflicts with the federal government in obtaining Byrne JAG funds.

28. On June 26, 2018, the DOJ awarded Providence with Byrne JAG funding for FY 2017 in the amount of \$212,112.

29. For the FY 2017 grant cycle, Providence plans to use its Byrne JAG funding to support a number of criminal justice priorities. In particular, Providence plans to use FY 2017 Byrne JAG funding to:

- cover overtime expenses incurred by the Investigative and Patrol Divisions of the Providence Police Department in order to conduct targeted patrols in known “hotspot” areas;

- contract with a part-time Bilingual Police Liaison in order to assist with providing crisis intervention, serve as an interpreter, and interview potential clients and recommend appropriate program assignments; and
- cover the cost of placing a “public notice ad” in the locality’s prominent news publication.

30. Providence’s deadline to accept the FY 2017 Byrne JAG award is August 10, 2018.

City of Central Falls

31. Central Falls has used Byrne JAG funding for a variety of purposes including the following: internet access and tablets for detectives; upgrades to police department servers, video cameras, security doors, radio system, and computer technology systems; and weapons and digital recording systems.

32. Central Falls has received Byrne JAG awards every year since at least FY 2005.

33. Upon information and belief, Central Falls has never had any conflicts with the federal government in obtaining Byrne JAG funds.

34. Byrne JAG funds have been especially important to Central Falls as funding for its police department was cut dramatically following the city’s declaration of bankruptcy in August 2011 and emergence from bankruptcy in late 2012.

35. On June 26, 2018 the DOJ awarded Central Falls with Byrne JAG funding for FY 2017 in the amount of \$28,677.

36. For the FY 2017 grant cycle, Central Falls plans to use its Byrne JAG funding to support a number of criminal justice priorities. In particular, the City of Central Falls plans to use FY 2017 Byrne JAG funding to:

- purchase necessary hardware and software that will allow police personnel to log onto the existing police network with heightened security by utilizing fingerprint readers and device access with dual authentication;
- purchase hardware and software to increase the viability of the Central Falls Police Department's remote access location—the Emergency Operations Center—to assist in the maintenance and backup of data in real time and provide the police department with the ability to have an uninterrupted alternate offsite location in the event of equipment failure or an emergency event.

37. Central Falls' deadline to accept the FY 2017 Byrne JAG award is August 10, 2018.

The Cities' Local Laws and Policies

38. Immigrants are an integral part of the Cities' workforces, business sectors, schools and college populations, and civic associations; the success of local immigrants is vital to the Cities' success. To ensure that immigrant communities continue to thrive, the Cities' have adopted policies that seek to foster trust between the immigrant population and city officials and agents— especially the police department—and to encourage people of all backgrounds to take full advantage of the Cities' resources and opportunities. The rationale behind these policies is that if immigrants, including undocumented immigrants, do not fear adverse consequences to themselves or to their families from interacting with city officials, they are more likely to report crimes, enroll their children in public schools, request health services like vaccines, and contribute more fully to the Cities' health and prosperity.

39. The Cities' have determined that public safety is best promoted without their involvement in the enforcement of federal immigration law. To the contrary, the Cities' have

long recognized that a resident's immigration status has no bearing on his or her contributions to the community or on his or her likelihood to commit crimes, and that when people with foreign backgrounds are afraid to cooperate with the police, public safety is compromised.

40. Providence, in order to bridge the divide between the community and the police, has, among other things, enacted the Providence Community Police Relations Act, which prohibits police from inquiring about an individual's immigration status or complying with requests by other agencies to support or assist in operations conducted solely for the purpose of enforcing federal civil immigration law.⁶ By executive order of the Mayor, Providence issues identification cards to all City residents, regardless of immigration status.⁷ Providence has established a Muslim-American Advisory Board to better serve the Muslim-American community in Providence and to provide advice on policy decisions that effect that community. The City Council has, by resolution, expressed concern with the federal Secure Communities program, an initiative that asks local law enforcement agencies to share information with U.S. Immigration and Customs Enforcement about arrestees.⁸ In Providence's experience, these policies have promoted the city's safety by facilitating greater cooperation with the immigrant community at large.

41. Central Falls, in order to bridge the divide between the community and the police, has implemented a community policing department in recent years. In addition, in collaboration with law enforcement experts and community leaders, Central Falls' police department implemented a general order on immigration detainers stating that "when an individual is arrested ... on a criminal offense, and is determined during standard prisoner processing to have an ICE detainer request, he or she is not to be held beyond the time when they are eligible for

⁶ See Providence Code of Ordinances § 18 ½.4 (eff. Jan. 1, 2018).

⁷ See Providence Executive Order 2017-3 (Nov. 2, 2017).

⁸ See Providence City Council Resolution No. 170 (Mar. 11, 2011).

release from custody, to include, yet not limited to, transportation to an outside jail or detention facility.”⁹ The police department issued another general order on immigration matters prohibiting the detention of any individual at the request of ICE without evidence of a court-issued warrant.¹⁰ Central Falls police officers do not stop or question individuals on account of their immigration status, do not in any way act as immigration enforcement agents, and maintain the confidentiality of information about victims and witnesses to crimes. The Central Falls City Council has expressed an official position opposing immigration policies which are not sensitive to the needs of local governments and communities.¹¹ In Central Falls’ experience, these policies have promoted the city’s safety by facilitating greater cooperation with the immigrant community at large.

DOJ’s Immigration-Related Byrne JAG Conditions

42. On January 25, 2017, President Trump issued Executive Order 13768. Section 9(a) of the order threatened to deny federal grant funding to all so-called “sanctuary jurisdictions.” That section was permanently enjoined by a federal district court because it violated numerous provisions of the United States Constitution.¹²

43. DOJ subsequently sought to achieve a similar goal by imposing three immigration-related conditions on FY 2017 Byrne JAG funds.¹³ On July 25, 2017, DOJ announced that it would impose these conditions and provided a one-page “Backgrounder” and a press release, neither of which explained how or why DOJ decided to impose these immigration-

⁹ See Central Falls Police Department, General Order 14-08 (July 24, 2018).

¹⁰ See Central Falls Police Department, General Order 100.01 (May 23, 2016).

¹¹ See Central Falls City Council Resolution 17-08 (Feb. 13, 2017).

¹² *City of Santa Clara v. Trump*, 267 F. Supp. 3d 1201 (N.D. Cal. 2017) (permanent injunction).

¹³ See Press Release, Attorney General Sessions Announces Immigration Compliance Requirements for Edward Byrne Memorial Justice Assistance Programs (July 25, 2017), available at <https://goo.gl/VH5wGU> (last visited August 8, 2018); Backgrounder on Grant Requirements (July 25, 2017), available at <https://goo.gl/ZLgXMC> (last visited August 8, 2018); Byrne JAG FY2017 State Solicitation, available at <https://www.bja.gov/funding/JAGstate17.pdf> (last visited August 8, 2018).

related conditions, how the conditions would advance the interests of the Byrne JAG program, or what alternatives DOJ had considered.

44. On August 24, 2017, DOJ published a sample final award document containing the three immigration-related conditions and stated that identical conditions would be imposed on all Byrne JAG funding recipients.

45. The access condition requires all state and local grantees and state subgrantees to have a statute, rule, regulation, policy or practice designed to ensure that federal agents may access any state (or state-contracted) or local (or local-contracted) correctional facility to question suspected aliens about their right to be, or remain, in the United States.

46. The notice condition requires all state and local grantees, and state subgrantees, to have a statute, rule, regulation, policy or practice designed to ensure that, upon written request, any state (or state-contracted) or local (or local-contracted) correctional facility will provide the Department of Homeland Security, as early as practicable, advance notice of a particular alien's scheduled release date and time.

47. The Section 1373 condition requires that, in order to accept Byrne JAG funding, a local government must comply with, as well as certify compliance with, 8 U.S.C. § 1373, which prohibits states and localities from restricting their officials from communicating with federal immigration authorities "regarding the citizenship or immigration status, lawful or unlawful, of any individual." 8 U.S.C. § 1373(a).¹⁴ Although Section 1373 was enacted in 1996, FY 2017 is the first time that any federal agency has imposed compliance with that statute as a condition for

¹⁴ See also 8 U.S.C. § 1373(b) ("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 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.").

receipt of federal funding. Certification carries the risk of personal criminal prosecution, civil penalties, and administrative remedies.

48. A number of jurisdictions have brought lawsuits challenging DOJ's legal authority to impose one or more of the immigration-related conditions on Byrne JAG funding. Upon information and belief, all courts to have considered the question to date have held that DOJ likely, or actually, lacks authority to impose these conditions.

49. The City of Chicago sued on August 7, 2017, challenging the notice and access conditions and seeking a declaration that it complies with Section 1373.¹⁵ On September 15, 2017, a federal court in Chicago issued a nationwide preliminary injunction that prohibited the DOJ from imposing the notice and access conditions on any Byrne JAG applicant.¹⁶ Rather than disburse the Byrne JAG awards without these conditions, DOJ instead decided to effectively suspend the program by withholding all further FY 2017 grant awards until the injunction was narrowed or there was a final decision on the merits in the Chicago action.

50. On April 19, 2018, the Seventh Circuit unanimously affirmed the Chicago district court's nationwide preliminary injunction on the notice and access conditions and its ruling that DOJ likely lacks authority to impose those two conditions.¹⁷

51. On June 26, 2018, the Seventh Circuit issued a partial stay of the nationwide preliminary injunction previously issued by the district court in Chicago, limiting the effect of the injunction to Chicago. The Seventh Circuit also granted *en banc* review solely on the question of the propriety of the nationwide scope of the injunction.¹⁸ The Seventh Circuit will

¹⁵ Compl., *City of Chicago v. Sessions*, No. 17-cv-05720, 264 F. Supp. 3d 933 (N.D. Ill. Aug. 7, 2017), ECF No. 1.

¹⁶ *City of Chicago v. Sessions*, 264 F.Supp. 3d 933 (N.D. Ill. 2017).

¹⁷ *City of Chicago v. Sessions*, 888 F.3d 272 (7th Cir. 2018).

¹⁸ *City of Chicago v. Sessions*, 17-2991 (7th Cir. June 4, 2018), Doc. No. 128 (granting *en banc* review on scope of preliminary injunction); Order, *Chicago v. Sessions*, 17-2991 (7th Cir. June 26, 2018), Doc. No. 134 (granting partial stay of injunction as to geographic areas beyond the City of Chicago).

hear argument *en banc* in September 2018 on that limited issue. DOJ did not challenge the Seventh Circuit's ruling that DOJ likely lacks authority to impose the notice and access conditions.

52. On June 26, 2018, just hours after the Seventh Circuit issued its decision limiting the injunction to Chicago, DOJ issued grant award letters to the Cities that included the notice, access, and Section 1373 conditions.

53. Shortly after the lawsuit in Chicago was filed, the City of Philadelphia filed its own lawsuit.¹⁹ On June 6, 2018, the district court in Philadelphia permanently enjoined DOJ from imposing the three conditions on Philadelphia and ordered DOJ to immediately disburse the Byrne JAG funds to Philadelphia.²⁰

54. Also in 2017, the County and City of San Francisco ("San Francisco") filed suit seeking declaratory and injunctive relief on the basis that the notice, access, and section 1373 conditions imposed in order to receive Byrne JAG funding are unconstitutional.²¹

55. San Francisco sought, among other things, that the court declare the imposition of the notice, access, and section 1373 conditions as unconstitutional and that the Court enjoin DOJ from denying Byrne JAG funding.²² On November 20, 2017, a federal district court in California issued a decision granting summary judgment, enjoining DOJ and Attorney General Sessions

¹⁹ Compl., *City of Philadelphia v. Sessions*, No. 17-cv-03894, (E.D. Pa. Aug. 30, 2017), ECF No. 1.

²⁰ *City of Philadelphia v. Sessions*, 309 F. Supp. 3d. 289, 338-45 (E.D. Pa. 2018).

²¹ See Compls. and Am. Compls. in *City and Cty. of San Francisco v. Donald J. Trump*, No. 17-cv-00485, and related cases Nos. 17-cv-00574, 17-cv-01535, 17-cv-04642, and 17-cv-04701 (N.D. Cal.).

²² The County of Santa Clara also filed similar papers with the Northern District of California and the Court considered both Santa Clara and San Francisco in its decision.

from enforcing the notice, access, and section 1373 conditions.²³ Further, that court issued a nationwide injunction against the defendants (other than President Trump).²⁴

56. On August 1, 2018, the Ninth Circuit Court of Appeals issued a decision affirming the California district court's grant of summary judgment, affirming the injunction as to the State of California, but vacating the nationwide injunction.

57. Following the Ninth Circuit's August 1, 2018 decision vacating the nationwide injunction, the Cities were given less than ten (10) days to decide whether to accept the awards with the new immigration-related conditions.

All Three Immigration-Related Conditions Are Unlawful

58. All three immigration-related conditions are unlawful for a number of reasons.

59. First, DOJ has no statutory authorization to impose the conditions. An "agency literally has no power to act...unless and until Congress confers power upon it." *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986). Here, nothing in the statute's text, structure, purpose, or history suggests that Congress granted DOJ authority to prescribe generally applicable substantive conditions like the notice, access and Section 1373 conditions at issue here. *See City of Chicago*, 888 F.3d at 285-87; *City of Philadelphia*, 309 F.Supp.3d at 321-22.

60. The fact that Congress designed Byrne JAG as a formula grant provides further confirmation that DOJ lacks discretion to impose these substantive conditions. Formula grants leave no discretion to the administering agency: if a grantee satisfies the statutory requirements, it is entitled to the grant amount that the formula dictates. *See, e.g., City of Los Angeles*, 865 F.2d

²³ *Cty. of Santa Clara, v. Donald J. Trump*, 275 F.Supp.3d 1196 (N.D. Cal. 2017), *aff'd in part, vacated in part, remanded sub nom. City & Cty. of San Francisco v. Trump*, No. 17-17478, 2018 WL 3637911 (9th Cir. Aug 1, 2018).

²⁴ *Id.* at 1219.

at 1088.²⁵ Accordingly, DOJ's imposition of the new conditions is *ultra vires* for purposes of the Administrative Procedure Act.

61. Second, because Congress did not authorize DOJ to impose conditions on Byrne JAG, DOJ's actions here violate the Separation of Powers between Congress and the Executive. The Executive Branch may not arrogate to itself the powers that the Constitution reserves to Congress, as it has attempted to do here. The Executive has no authority to amend or cancel an appropriation that Congress has duly enacted. Nor can executive officials choose to spend less than the full amount of funding that Congress has authorized under a statute.

62. Third, the immigration-related conditions violate 34 U.S.C. § 10228(a), which is codified in the same chapter of the U.S. Code as the Byrne JAG statute and provides that “[n]othing in this title or any other Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over any police force or any other criminal justice agency of any State or political subdivision thereof.” This language has been carried forward in every law enforcement grant since the Omnibus Crime Control and Safe Streets Act of 1968—a predecessor to the Byrne JAG program and the first federal block grant program for State and local law enforcement.²⁶ The legislative history of § 10228 makes clear that Congress intended to incorporate anti-commandeering principles into the grant context to prevent executive officials from using a grant like Byrne JAG to interfere with state and local law enforcement policy.²⁷ All three immigration-related

²⁵ See also Paul G. Dembling & Malcolm S. Mason, *Essentials of Grant Law Practice* § 5.03, 33-35 (1991).

²⁶ See Omnibus Crime Control and Safe Street Act of 1968, Pub. L. No. 90-351, § 518(a), 82 Stat. 197, 208 (1968); see generally John K. Hudzik, *Federal Aid to Criminal Justice: Rhetoric, Results, Lessons* 1-68 (1984) (describing the origins of the Safe Streets Act).

²⁷ See, e.g., *Amendments to Title I (LEAA) of the Omnibus Crime Control and Safe Streets Act: Hearing Before the Subcomm. on Criminal Laws and Procedures of the S. Comm. of the Judiciary*, 94th Cong. 407-08 (1975) (statement of Richard W. Velde, Administrator of the LEAA) (“It is disturbing that it should even be suggested that LEAA ought to undertake to redirect the efforts of state and local law enforcement agencies The Congress has

conditions violate § 10228(a) because they compel grant recipients to act as enforcement arms of federal immigration authorities.

63. Fourth, the Section 1373 condition is invalid because Section 1373 is unconstitutional. *See South Dakota v. Dole*, 483 U.S. 203, 210-211 (1987) (federal government cannot impose unconstitutional conditions). In *Murphy v. NCAA*, 138 S.Ct. 1461, 1478 (2018), the Supreme Court held that Congress runs afoul of the anti-commandeering principles of the Tenth Amendment when it “unequivocally dictates what a state legislature may and may not do.” Section 1373 violates this rule because it directly prohibits states and localities enacting laws, rules, or policies that “prohibit or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Nationalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.” 8 U.S.C. § 1373(a). *See, e.g., City of Philadelphia*, 309F.Supp.3d. at 329-31 (citing *Murphy* and holding that 8 U.S.C. § 1373 violates the Tenth Amendment).

64. Finally, the conditions are arbitrary and capricious because DOJ imposed them without any explanation, reasoning, or opportunity for exchange with state or local governments regarding the likely impact of the conditions on state and local efforts to promote public safety.

The Cities Are Harmed by DOJ’s Imposition of the Immigration-Related Conditions on Byrne JAG Funding

65. The three immigration-related conditions imposed by DOJ upon applicants for FY 2017 Byrne JAG funding threaten the Cities with serious, immediate, and irreparable harm.

66. In our federal system, states and localities have primary responsibility for the design of law-enforcement policies to keep their residents safe. *See, e.g., United States v. Morrison*, 529 U.S. 598, 618 (2000) (“[W]e can think of no better example of the police

continuously emphasized that law enforcement is, and must remain, essentially a state and local responsibility. Section 518(a) of the Safe Streets Act is the embodiment of this appropriate philosophy.”).

power...reposed in the States[] than the suppression of violent crime and vindication of its victims.”).

67. Recognizing that states and local governments possess the primary authority for maintaining public safety, Congress designed the Byrne JAG program to maximize the discretion of the states and their localities to decide how to best use these funds to advance their law enforcement priorities and make their communities safer. The immigration-related conditions constrain the very choices that Congress sought to safeguard.

68. DOJ’s actions place the Cities in an untenable position. If the Cities do not acquiesce to the conditions, they collectively will forfeit hundreds of thousands of dollars in law enforcement funding, potentially compromising the critical law enforcement and criminal justice programs those funds support.

69. If they accept these conditions, the Cities will be forced to relinquish local control over law enforcement officials and law enforcement policies, including policy choices to allow localities to adopt law enforcement and criminal justice policies based on local needs. Localities that lawfully limited voluntary cooperation with federal immigration officials will now be compelled to adopt policies that undermine their relationships of trust with their immigrant communities, to the detriment of effective crime reporting and overall public safety. Immigrants also may be deterred from seeking primary care and preventative health care services, undermining the public health efforts of states and localities. The trust between immigrants and state and local officials, “once destroyed by the mandated cooperation and communication with the federal immigration authorities, [cannot] easily be restored.” *City of Chicago*, 888 F.3d at 291.

70. Certifying compliance with Section 1373 is particularly perilous for the Cities given Defendants' expansive and ever-changing interpretations of that statute's meaning and application. DOJ has advanced increasingly broad interpretations of what it means to comply with Section 1373. For example, DOJ has suggested that Section 1373 prevents jurisdictions from enacting policies that define the time and manner in which their employees exchange immigration-status information with federal officials.²⁸ DOJ has also suggested that Section 1373 requires jurisdictions to not only provide advance notification of an alien's scheduled release from state or local custody, but also to facilitate transfers from state and local jails to federal immigration authorities.²⁹ DOJ has further suggested that Section 1373 requires jurisdictions to not only share the immigration and citizenship status of individuals, but that it also requires jurisdictions to share an alien's home and work address and his scheduled release date from incarceration.³⁰ On top of all of this, DOJ has taken the position that jurisdictions have an affirmative obligation to communicate DOJ's interpretation of Section 1373 to their

²⁸ See, e.g., Letter from Alan Hanson, Acting Assistant Attorney General, to Elizabeth Glazer, Director, New York City Mayor's Office of Criminal Justice (Oct. 11, 2017), *available at* <https://www.justice.gov/opa/press-release/file/1003041/download> (last visited August 8, 2018); Letter from Alan Hanson, Acting Assistant Attorney General, to the Hon. Jim Kenney, Mayor, City of Philadelphia (Oct. 11, 2017), *available at* <https://www.justice.gov/opa/press-release/file/1003046/download> (last visited August 8, 2018).

²⁹ See Def.'s Proposed Findings of Fact 8-11, *City of Philadelphia v. Sessions*, No. 17-cv-3894 (E.D. Pa. May 17, 2018), ECF No. 200; Pl.'s Mot. For Prelim. Inj. and Mem. Of Law in Support 24-26, *United States v. California*, No. 18-cv-00490 (E.D. Cal. Mar. 6, 2018), ECF No. 2-1 (suggesting California law violates § 1373 by restricting the transfer of aliens in state custody to federal custody).

³⁰ See, e.g., Pl.'s Mot. for Prelim. Inj. and Mem. Of Law in Support 27-28, *United States v. California*, 18-cv-00490 (E.D. Cal. Mar. 6, 2018), ECF No. 2-1 (asserting that the phrase "information regarding the citizenship or immigration statute ... of any individual" in § 1373 "does not merely denote the alien's technical immigration status"); Letter from Alan Hanson, Acting Assistant Attorney General, to Elizabeth Glazer, New York City's Mayor's Office of Criminal Justice, at 2 (Oct. 11, 2017), *available at* <http://www.justice.gov/opa/press-release/file/1003041/download> (last visited August 8, 2018) ("In order to comply with 8 U.S.C. § 1373, the Department has determined that New York would need to certify that it interprets and applies Section 9-131(b) and (d) to not restrict New York officers from sharing information regarding the date and time of an alien's release from custody."). But at least one federal court has ruled that Section 1373 does not govern release dates or home or work addresses. Order re: United States of America's Mot. for Prelim. Inj., *United States v. California*, 18-cv-00490 (E.D. Cal. July 5, 2018), ECF No. 193.

employees.³¹ Thus, DOJ requires the Cities not only to certify compliance with the black-letter of Section 1373 but also with DOJ's ever-shifting interpretation of the scope of that statute.

CAUSES OF ACTION

COUNT I Separation of Powers

71. Plaintiffs incorporate by reference the allegations in the preceding paragraphs.

72. The Constitution vests the spending power in Congress, not the Executive Branch.

U.S. Const. art. I § 8, cl. 1.

73. Absent a statutory provision or express delegation, only Congress has the authority to attach conditions to federal funds.

74. The Executive “does not have unilateral authority to refuse to spend ... funds” that Congress already appropriated “for a particular project or program.” *In re Aiken Cty.*, 725 F.3d 2255, 261 n.1 (D.C. Cir. 2013); *see also Train v. City of New York*, 420 U.S. 35, 44 (1975). The Executive's unauthorized imposition of new conditions on a federal grant program amounts to refusing to spend money appropriated by Congress.

75. The Byrne JAG statute does not condition participation in the Byrne JAG program on compliance with Section 1373 or the notice or access conditions. *See* 34 U.S.C. § 10151 *et seq.* Additionally, there is nothing in either the text or legislative history of Section

³¹ *See, e.g.*, Letter from Alan Hanson, Acting Assistant Attorney General, to Elizabeth Glazer, New York City's Mayor's Office of Criminal Justice, at 2 (Oct. 11, 2017), *available at* <http://www.justice.gov/opa/press-release/file/1003041/download> (last visited August 8, 2018) (“In order to comply with 8 U.S.C. § 1373, the Department has determined that ... New York would need to certify that it has communicated this interpretation to its officers and employees.”); Letter from Alan Hanson, Acting Assistant Attorney General, to the Hon. Jim Kenney, Mayor, City of Philadelphia, at 2 (Oct. 11, 2017), *available at* <http://www.justice.gov/opa/press-release/file/1003046/download> (last visited August 8, 2018) (“In order to comply with 8 U.S.C. § 1373, the Department has determined that Philadelphia would need to certify that it interprets and applies this Executive Order to not restrict Philadelphia's officers from sharing information regarding immigration status with federal immigration officers. The Department has also determined that Philadelphia would need to certify that it has communicated this interpretation to its officers and employees.”).

1373 that conditions federal funding on compliance with Section 1373. These statutes do not grant DOJ the authority to impose the notice, access, or Section 1373 conditions.

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

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

78. The Section 1373 condition was not imposed by Congress, but rather by the DOJ in issuing its OJP guidance and the FY 2017 Byrne JAG application. Therefore, the Section 1373 condition amounts to improper usurpation of Congress's spending power by the Executive Branch.

79. The new immigration-related conditions amount to a refusal to spend money appropriated by Congress, in violation of the Executive's constitutional authority to administer the law.

80. Pursuant to 5 U.S.C. § 706 and 28 U.S.C. § 2201, Plaintiffs are entitled to a declaration that the Attorney General's imposition of the notice, access, and Section 1373 conditions violates the constitutional principle of separation of powers and impermissibly arrogates to the Executive power that is reserved to Congress. Plaintiffs also are entitled to a permanent injunction preventing the Attorney General from putting those conditions into effect.

COUNT II
Ultra Vires Conduct

81. Plaintiffs incorporate by reference the allegations in the preceding paragraphs.

82. DOJ may only exercise authority conferred by statute. *See City of Arlington*, 569 U.S. 297.

83. The Byrne JAG statute does not authorize the Attorney General to impose the notice, access, and Section 1373 conditions on the receipt of Byrne JAG funds, or to deny funds to states or local governments that fail to comply with those conditions. *See City of Chicago*, 88 F.3d 283. Indeed, such authority is at odds with the text, structure, and purpose of the Byrne JAG statute.

84. The DOJ's imposition of the new conditions contradicts the Byrne JAG program's formula grant structure. *See* 34 U.S.C. § 10156(d)(2)(A). It also contradicts Congress's intent to give states and local governments the "flexibility to spend money for programs that work for them rather than to impose a 'one size fits all' solution." H.R. Rep. No. 109-223, at 89 (2005).

85. DOJ lacks statutory authority to condition Byrne JAG funds on compliance with Section 1373. The Byrne JAG statute's requirement that grantees comply with "all applicable Federal laws" does not encompass Section 1373. Rather, the phrase "all applicable Federal laws" refers to the laws that regulate the conduct of federal grant recipients *as grant recipients* and not to every section of the U.S. Code that could possibly apply to a state or local government. Section 1373 does not regulate grantees as grantees nor does it mention federal grants or funds.

86. The notice, access, and Section 1373 conditions are invalid under 34 U.S.C. § 10228(a), which prohibits Executive Branch officials from using law-enforcement grants to exert "any direction, supervision, or control" over any state or local police force or criminal justice agency.

87. Congress has repeatedly considered and rejected legislation that would withhold grant funding as a penalty for noncooperation with federal immigration law.³² Courts should look skeptically on executive action where Congress declined to enact legislation that would have granted the same or substantially similar authority to the executive branch. *See FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159-60 (2000).

88. Under the Administrative Procedure Act (“APA”), a court must set “aside agency action” that is, *inter alia*, “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right” or “otherwise not in accordance with law,” 5 U.S.C. § 706(2). DOJ’s imposition of the three conditions on the Byrne JAG award are such agency action.

89. Pursuant to 5 U.S.C. § 706 and 28 U.S.C. § 2201, Plaintiffs are entitled to a declaration that the Attorney General lacks authority to impose the notice, access, and Section 1373 conditions on Byrne JAG funds and, in doing so, has acted contrary to law in violation of the APA. Plaintiffs also are entitled to a permanent injunction preventing the Attorney General from putting those conditions into effect.

COUNT III Arbitrary and Capricious Agency Action

90. Plaintiffs incorporate by reference the allegations in the preceding paragraphs.

91. Even if DOJ had a constitutional or statutory basis to impose the three new conditions, which it does not, DOJ’s decision to impose the conditions on recipients of Byrne JAG funds is arbitrary and capricious.

³² *See, e.g.*, Stop Dangerous Sanctuary Cities Act, H.R. 5654, 114th Cong. § 4 (2016); Stop Dangerous Sanctuary Cities Act, S. 3100, 114th Cong. § 4 (2016); Enforce the Law for Sanctuary Cities Act, H.R. 3009, 114th Cong. (2016); Mobilizing Against Sanctuary Cities Act, H.R. 3002, 114th Cong. § 2 (2015); Stop Sanctuary Policies and Protect Americans Act, S. 2146, 114th Cong. § 3 (2015); Stop Sanctuary Cities Act, S. 1814, 114th Cong. § 3(a) (2015); Stop Sanctuary Cities Act, S. 1814 114th Cong. § 2 (2015); Financial Services and General Government Appropriations Act, FY2017, H.R. 5485, 114th Cong., § 1217 (2016); *see also* H.R. 3355, 103d Cong. § 5119 (Nov. 19, 1993) (Senate version of Violent Crime Control and Law Enforcement Act, which would have authorized DOJ to withhold grant funding if the jurisdiction did not cooperate with the Immigration and Naturalization Service).

92. An agency's departure from prior practice can serve as a basis for finding an agency's interpretation to be arbitrary and capricious if the change in policy constitutes an "unexplained inconsistency." *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005).

93. DOJ departed from more than a decade of past practice when it imposed the immigration-related conditions, yet provided almost no explanation for its decision. *See Encino Motorcars, LLC v. Navarro*, 136 S.Ct. 2117, 2126 (2016) ("the agency must at least display awareness that it is changing position and show that there are good reasons for the new policy"). DOJ has never before sought to impose notice and access conditions on grantees, nor has it ever "sought to enforce [Section 1373] against a state or local government."³³

94. DOJ has never previously determined that Section 1373 is an "applicable Federal law" for the purposes of the Byrne JAG program.

95. Despite DOJ's shift in policy, it has provided virtually no explanation for its decisions. It released no reports, studies, or analysis in connection with its July 25, 2017 announcement of the immigration-related grant conditions, nor has it attempted to justify its aggressive and shifting interpretations of Section 1373.

96. In addition, DOJ "relied on factors which Congress has not intended to consider," *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983), by, for example, evaluating grant applicants on the basis of their compliance with the immigration-related conditions rather than on their compliance with expressly enumerated statutory application requirements. *See* 34 U.S.C. § 10153(a)(1)-(6).

³³ Elizabeth M. McCormick, *Federal Anti-Sanctuary Law: A Failed Approach to Immigration Enforcement and a Poor Substitute for Real Reform*, 20 Lewis & Clark L. Rev. 165, 170 (2016).

97. DOJ also “entirely failed to consider an important aspect of the problem” by failing to recognize how Section 1373 interferes with local policies that promote public health and safety. *See Philadelphia*, 280 F. Supp. 3d at 625.

98. Under the APA, a court must set “aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law,” 5 U.S.C. § 706(2)(A)—for example, because the agency has failed to consider relevant evidence or “articulate a satisfactory explanation for its action.” *State Farm*, 463 U.S. at 43.

99. Pursuant to 5 U.S.C. § 706 and 28 U.S.C. § 2201, Plaintiffs are entitled to a declaration that the three immigration-related conditions violate the APA. Plaintiffs also are entitled to a permanent injunction preventing the Attorney General from putting those conditions into effect.

COUNT IV **Tenth Amendment: Commandeering**

100. Plaintiffs incorporate by reference the allegations in the preceding paragraphs.

101. The Tenth Amendment prohibits the federal government from “requir[ing] States and localities “to govern according to Congress’ instructions,” *New York v. United States*, 505 U.S. 144, 162 (1992), or “command[ing] the States’ officers...to administer or enforce a federal regulatory program.” *Printz v. United States*, 521 U.S. 898, 935 (1997).

102. Section 1373 violates the Tenth Amendment because it “unequivocally dictates what a state legislature may and may not do.” *Murphy*, 138 S.Ct. at 1476. *See City of Philadelphia*, 309 F.Supp.3d. at 330-31.

103. When Congress enacted Section 1373, it sought to ensure that “[t]he acquisition, maintenance, and exchange of immigration-related information by State and local agencies” could be used to enforce federal law. S. Rep. No. 104-249, at 19-20 (1996). In doing so, it sought

to “require [state and local officers] to provide information that belongs to the State and is available to them only in their official capacity,”—in other words, to engage in unconstitutional commandeering.

104. Further, Section 1373 prohibits state and local governments from engaging in a core aspect of governing: controlling the actions of their agents. Compliance with Section 1373 results in the federal government commandeering states and local governments by directing how state and municipal agents should act and handle data under local control to advance a federal program. In fact, DOJ instructed that states and local governments may need to provide affirmative instructions to their agents to comply.³⁴ Section 1373 requires local officers to follow federal directives and usurps the local policymaking process.

105. The notice and access conditions impermissibly commandeer states and local governments and cannot be validly imposed on Byrne JAG funding recipients. The notice condition seeks to fundamentally reorganize not just how local officers spend their time, but also the way state and local governments balance their Fourth Amendment obligations against their interest in effective law enforcement. The access condition requires a fundamental restructuring of police procedures and functions to accommodate on-demand access to detainees by federal agents.

106. Because Section 1373 violates the Tenth Amendment, DOJ cannot require jurisdictions to comply with that statute as a condition of receiving Byrne JAG funds. *See South Dakota v. Dole*, 483 U.S. 203, 207-8 (1987).

³⁴ See Mem. From Michael E. Horowitz, Inspector Gen., U.S. Dep’t of Justice, to Karol V. Mason, Assistant Attorney General, Office of Justice Programs, U.S. Dep’t of Justice, Department of Justice Referral of Allegations of Potential Violations of 8 U.S.C. § 1373 by Grant Recipients (May 31, 2016), *available at* <https://tinyurl.com/y9rpwge4> (last visited August 8, 2018).

107. Pursuant to 5 U.S.C. § 706 and 28 U.S.C. § 2201, Plaintiffs are entitled to a declaration that the Section 1373 condition violates the Tenth Amendment. Plaintiffs also are entitled to a permanent injunction preventing the Attorney General from putting that condition into effect.

COUNT V
Violation of the Spending Clause

108. Plaintiffs incorporate by reference the allegations in the preceding paragraphs.

109. In order to satisfy the requirements of the Spending Clause of the Constitution, U.S. Const. art. I § 8, cl. 1, the conditions for receipt must be stated clearly and the funding conditions must be reasonably related to the federal interest in the project or program that the federal government is funding.

110. *First*, even if Congress had clearly conditioned receipt of Byrne JAG funding on the three new conditions, which it did not, all three of DOJ's conditions violate the Spending Clause because they are not reasonably related to the federal interest in the Byrne JAG program.

111. The access, notice, and Section 1373 conditions relate to *civil* immigration enforcement and do not reasonably relate to the Byrne JAG program, which is intended to provide funding to states and local governments for *criminal* justice purposes. The conditions actively undermine Congress's goals of disbursing funds across the country, targeting funds to combat violent crime, and respecting local judgment in settling law enforcement strategy.

112. *Second*, the Spending Clause prohibits the federal government from imposing spending conditions to "induce the States to engage in activities that would themselves be unconstitutional." *S. Dakota v. Dole*, 483 U.S. 203, 210 (1987).

113. The notice, access, and Section 1373 conditions impermissibly induce Byrne JAG recipients to engage in unconstitutional activity, such as detaining individuals without probable cause in violation of the Fourth Amendment.

114. Pursuant to 5 U.S.C. § 706 and 28 U.S.C. § 2201, Plaintiffs are entitled to a declaration that the three immigration-related conditions violate the Spending Clause. Plaintiffs also are entitled to a permanent injunction preventing the Attorney General from putting those conditions into effect.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

- a) Declare that the notice, access, and Section 1373 conditions for the FY 2017 Byrne JAG program are unlawful;
- b) Preliminarily and permanently enjoin DOJ from imposing the notice, access, and Section 1373 conditions on the FY 2017 Byrne JAG funds; and from imposing the notice, access, and compliance conditions on future Byrne JAG funds;
- c) Retain jurisdiction to monitor DOJ's compliance with this Court's judgment;
- d) Award their reasonable fees, costs, and expenses, including attorneys' fees, as permitted by federal law, including the APA and 28 U.S.C. § 2412; and
- e) Grant other such relief as this Court may deem proper.

Respectfully submitted,

CITY OF PROVIDENCE

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