

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

_____)
 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.)
 _____)

2018 AUG -9 P 12:03

CA 18- 437

C.A. No.:

PLAINTIFFS' MOTION FOR A
TEMPORARY RESTRAINING ORDER
AND REQUEST FOR EMERGENCY
HEARING BEFORE AUGUST 10, 2018

PLAINTIFFS CITY OF PROVIDENCE AND CITY OF CENTRAL FALLS'
MOTION FOR A TEMPORARY RESTRAINING ORDER
AND REQUEST FOR EMERGENCY HEARING BEFORE AUGUST 10, 2018

NOW COME Plaintiffs, City of Providence and City of Central Falls (the "Cities" or "Plaintiffs") and respectfully move this Honorable Court to grant a Temporary Restraining Order (same or "TRO") against Defendants Jefferson B. Sessions III, in his official capacity as Attorney General of the United States, and the United States Department of Justice ("Defendants").

Plaintiffs respectfully request an emergency court conference or hearing on the within motion because Plaintiffs must certify by **August 10, 2018** their compliance with the three unlawful immigration-related conditions imposed by Defendants, as described in Plaintiffs' Complaint, in order to receive Fiscal Year ("FY") 2017 Byrne JAG federal funding. A nationwide injunction protecting Plaintiffs from this certification requirement was vacated on August 1, 2018, leaving the Cities with less than ten (10) days to decide whether to accept the federal grant funding with the new immigration-related conditions, forego the funding, or to litigate.

Plaintiffs provide the below memorandum of law, and incorporate the Complaint by reference, in support of this motion.

I. FACTS

a. Defendants Imposed New Conditions on Byrne JAG Funding Granted to the Cities in Order to Further Executive Branch Immigration Policies.

On or about June 26, 2018, Plaintiffs were awarded funding through a federal program known as the Edward Byrne Memorial Justice Grant (“Byrne JAG”) program. That program provides funding for vital law enforcement and public safety expenditures across the country. *See* 34 U.S.C. § 10151, *et. seq.* This year, Defendants are requiring that all recipients certify compliance with three new conditions in order to obtain the funding awarded. *See* Ex. 1, Providence Award and Ex. 2, Central Falls Award. Certification is required for valid award acceptance. *Id.* at 19.

In order to comply with the new requirements, the Cities must provide access to any federal agent to a 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” (the “access condition”). *Id.* at p. 22. Further, the Cities must provide notice, upon request, of the scheduled release date and time for a particular alien in a correctional facility (the “notice condition”). *Id.* Finally, the Cities must certify compliance with 8 U.S.C. § 1373, which prohibits 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”). *Id.* at 19.

As outlined in Plaintiffs’ Complaint, requiring the Cities to certify compliance with these requirements in order to receive Byrne JAG funds is unconstitutional and unlawful.

b. Cities' Use of Byrne JAG Funds

i. City of Providence

The City of Providence (“Providence”) has applied for, and has received, Byrne JAG funds since at least FY 2005, including FY 2017 in the amount of \$212,112. *See* Ex. 1, Providence Award. Providence intends to use the FY 2017 Byrne JAG funds for personnel in order to deploy officers to conduct “targeted enforcement patrols in known ‘hotspot’ areas and high crime neighborhoods,” which is vital to ensure safety in Providence. *See* Ex. 3, Providence FY 2017 Program Narrative. Further, the funds would be used to pay for a Bilingual Police Liaison, who is necessary to engage in crisis intervention and serve as an interpreter. *Id.*

ii. City of Central Falls

The City of Central Falls (“Central Falls”) has applied for, and has received, Byrne JAG funds since at least FY 2005 for a variety of purposes, including the following: internet access and tablets for detectives; upgrades to police department servers, video cameras, security doors, radio and computer technology systems; and weapons and digital recording systems. The Byrne JAG funds have been critical for the Central Falls police department as funding for the department was cut dramatically following the city declaring bankruptcy in August 2011 and emerging from bankruptcy in late 2012. Central Falls was awarded a Byrne JAG award for FY 2017 in the amount of \$28,677. *See* Ex. 2, Central Falls Award. 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 to increase the viability of the police department’s remote access location in cases of emergency. *See* Ex. 4, Central Falls FY 2017 Program Narrative.

**c. Similarly Situated Plaintiffs Across the Country Have Also Filed Suit—
Leading to a Nationwide Injunction, Which Was Vacated Less than Ten
Days Ago.**

Other similarly situated Plaintiffs (cities and states) who are also recipients of Byrne JAG funding have filed suit challenging the new requirements. *See eg.* National Criminal Justice Association, <http://www.ncja.org/ncja/policy/sanctuary-cities> (last visited August 8, 2018). On November 20, 2017, the United States District Court of the Northern District of California issued a nationwide injunction prohibiting the withholding of Byrne JAG funding pending the certification of compliance with the conditions imposed by Defendants. However, on August 1, 2018, that nationwide injunction was vacated (except as it applied to California). *See Cty. of Santa Clara v. Trump*, 275 F. Supp. 3d 1196, 1201 (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).¹

i. Preliminary Injunctions Granted in Other Jurisdictions

Other courts in which local governments have filed suit against Defendants on the same grounds as in the instant matter have already heard argument and rendered decisions in favor of the respective plaintiffs.

The City of Chicago (“Chicago”) filed a suit alleging that the new conditions on the Byrne JAG grant program were unconstitutional and unlawful. *See City of Chicago v. Sessions*, 264 F.Supp.3d 933, 940 (N.D. Ill. 2017) (see attached at Ex. 5), *reconsideration denied*, No. 17-cv-5720, 2017 WL 5499167 (N.D. Ill. Nov. 16, 2017), and *aff'd* 888 F.3d 272 (7th Cir. 2018). Chicago then sought a preliminary injunction. *Id.*

¹ It is of note that in the Ninth Circuit’s decision regarding the nationwide injunction, it found that the record was “insufficiently developed as to the question of the national scope of the injunction” and vacated the nationwide injunction “to the extent it applies outside of California and remand to the district court for a more searching inquiry into whether this case justifies the breadth of the injunction imposed.” *Id.* at *13.

In that case, the United States District Court for the Northern District of Illinois, Eastern Division, granted Chicago's preliminary injunction against the imposition of two of the conditions on the Byrne JAG grant. *Id.* The Court held that Chicago had established a "likelihood of success on the merits" and "irreparable harm if an injunction does not issue." *Id.* at 951. Further, the court opined that the conditions imposed are "nationwide in scope, there being no reason to think that the legal issues present in this case are restricted to Chicago or the statutory authority given to the Attorney General would differ in another jurisdiction." *Id.*

Attorney General Sessions appealed that decision. In affirming the decision of the district court, the Seventh Circuit explained that the district court did not err in determining that Chicago "established a likelihood of success on the merits of its contention that the Attorney General lacked the authority to impose the notice and access conditions on receipt of the Byrne JAG grants." *City of Chicago v. Sessions*, 888, F.3d 272, 293 (7th Cir. 2018).

In California, several counties brought suit against the President of the United States and others, challenging the constitutionality of DOJ's new conditions on the disbursement of federal grant funds (including Byrne JAG funds). The district court granted summary judgment and a permanent injunction in favor of the counties, which was affirmed by the Ninth Circuit. *See City and County of San Francisco v. Trump*, --- F.3d ---, 2018 WL 3637911 (9th Cir. Aug. 1, 2018) (see attached at Ex. 5).

The City of Philadelphia ("Philadelphia") also filed suit against Attorney General Sessions, alleging multiple counts of constitutional and statutory violations, for attempting to deprive Philadelphia of its Byrne JAG funding through the imposition of the new certification requirements. *See City of Philadelphia v. Sessions*, 280 F.Supp.3d 579 (E.D. Pa. 2017) (see attached at Ex. 5), *appeal dismissed sub nom. City of Philadelphia v. Attorney Gen. United*

States, No. 18-cv-1103, 2018 WL 3475491 (3d Cir. July 6, 2018). Specifically, Philadelphia alleged that the Attorney General could not condition Byrne JAG funds on the same three conditions that Plaintiffs in this suit allege are improper. *Id.* at 590. The United States District Court for the Eastern District of Pennsylvania issued a preliminary injunction in favor of Philadelphia, enjoining the Department of Justice from denying Philadelphia's FY 2017 Byrne JAG funds.

II. STANDARD OF REVIEW

On a motion for a temporary restraining order, "the moving party must demonstrate: (1) a substantial likelihood of success on the merits; (2) a significant risk of irreparable harm if the injunction is withheld; (3) a favorable balance of hardships; and (4) a fit (or lack of friction) between the injunction and the public interest. *Harris v. Wall*, 217 F.Supp.3d 541, 551 (2016), citing *Nieves-Marquez v. Puerto Rico*, 353 F.3d 108, 120 (1st Cir. 2003). "The four factors are not weighted equally; 'likelihood of success is the main bearing wall of this framework' and of primary importance." *Harris*, at 551 (internal citations omitted).

III. ARGUMENT

This Court Should Grant a Temporary Restraining Order in Favor of the Cities

In applying the standard for a temporary restraining order, there can be no question that the Cities are likely to succeed on the merits. The claims asserted by the Cities in their Complaint mirror the same causes of action asserted in the cases filed by Philadelphia, Chicago, and the multiple counties in California. In each of those cases, preliminary injunctions were granted to Plaintiffs. *See generally* Plaintiffs' Complaint. Plaintiffs are unaware of any cases brought on similar grounds in which Defendants have been successful on the merits.

Additionally, there exists a significant risk of irreparable harm to the Cities if this Court does not issue a temporary restraining order. If the Cities fail to certify by **August 10, 2018**, the Cities risk permanently losing access to the FY 2017 Byrne JAG funds, which although properly granted to the Cities, have not yet been disbursed. These awards, which amount to tens of thousands of dollars for Central Falls and hundreds of thousands of dollars for Providence, both of which are fiscally-strapped cities, fund important public safety initiatives in both Cities that they would have to forego.² The funds are necessary to enhance the public safety of the residents, employees, and visitors of the Cities. Without the Byrne JAG funds, the public safety of the Cities could be compromised. Furthermore, the loss of FY 2017 Byrne JAG funds would come too late in the Cities' budget process for them to replace the missing federal dollars (both Cities' FY 2017 ended on June 30, 2018). Courts routinely find irreparable harm when an impending withdrawal of funding threatens to cause cuts to services or employees. *See, e.g., Planned Parenthood of Ind., Inc. v. Comm'r of Ind. State Dep't of Health*, 699 F.3d 962, 980 (7th Cir. 2012).³ If, on the other hand, the Cities capitulate to Defendants' ultimatum, they jeopardize the trust and cooperation between law enforcement and immigrant communities that they have strived to build over decades and will be forced to violate constitutional rights of arrestees. Such trust, once lost, cannot be resurrected by a money judgment down the line.

Indeed, the Cities suffer an irreparable harm simply by being put to this choice. As home rule jurisdictions in Rhode Island, Providence and Central Falls are guaranteed the right to self-government over matters of local concern. *See* R.I. const. art. XIII. As political subdivisions of

² Indeed, the Byrne JAG statute indicates that those monies are not merely forgone, but divvied up and parceled out to other jurisdictions around the country, impossible for the Cities to later reclaim. *See* 42 U.S.C. § 3755.

³ *See also Planned Parenthood Gulf Coast, Inc. v. Kliebert*, 141 F. Supp. 3d 604, 649-650 (M.D. La. 2015), *aff'd*, 862 F.3d 445 (5th Cir. 2017); *Planned Parenthood Ariz., Inc. v. Betlach*, 899 F. Supp. 2d 868, 886 (D. Ariz. 2012); *Planned Parenthood of Cent. N.C. v. Cansler*, 804 F. Supp. 2d 482, 499 (M.D.N.C. 2011).

the State of Rhode Island, the Tenth Amendment's sovereignty guarantees are violated by the federal government's coercive policies. *See, e.g., New York v. United States*, 505 U.S. 144, 177 (1992); *Nat'l Fed. of Indep. Bus. v. Sebelius*, 567 U.S. 519, 578, 580 (2012). Because money cannot compensate for being denied the right of sovereignty, "where sovereign interests and public policies [are] at stake ... the harm the State stands to suffer [is] irreparable." *Kansas v. United States*, 249 F.3d 1213, 1227 (10th Cir. 2001); *see also Ezell v. City of Chicago*, 651 F.3d 684, 699 (7th Cir. 2011) (explaining that, in certain cases of "constitutional violations," "irreparable harm is presumed"). Accordingly, violations of local sovereignty are uniformly remedied by striking the offending law, not by ordering a cash payment. *See, e.g., Nat'l Fed. of Indep. Bus.*, 567 U.S. at 587. Because the injury arises from being put to the choice, rather than from the consequences of any particular decision, the choice itself must be enjoined to prevent constitutional injury. *Am. Trucking Ass'ns, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1058-1059 (9th Cir. 2009) (irreparable harm exists when entity put to "a stark choice—either violation of their constitutional rights or loss of their" income source); *see also Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 380-381 (1992) (irreparable harm where entity "faced with a Hobson's choice": "violate the . . . law and expose themselves to potentially huge liability" or "suffer the injury of obeying the law"); *Cty. of Santa Clara*, 2017 WL 1459081, at *27-*28 ("By forcing the Counties to make this unreasonable choice, the Order results in ... irreparable harm.")

Finally, there exists no friction in allowing the *status quo* to remain and allow further time for the Cities to seek a Preliminary Injunction and for this Court to consider this matter on the merits. A Temporary Restraining Order merely allows time for the Cities to present full arguments without the risk of having to choose between refusing a significant amount of federal

funding for public safety or having to certify compliance with policies and procedures that not only contravene the ordinances and policies of the respective Cities, but are unconstitutional and a violation of federal statute.

IV. CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, the Cities request that this Honorable Court GRANT Plaintiffs' Motion for a Temporary Restraining Order, suspend deadline by which the Cities must certify compliance with the Byrne JAG conditions, and require the Defendants to reserve the Byrne JAG funds which have been awarded to the Cities in escrow, until such time that this Court may hear and consider the merits of this case.

Respectfully submitted,

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