



AGENDA

CITY OF SEASIDE
CITY COUNCIL/SUCCESSOR
AGENCY TO REDEVELOPMENT
AGENCY OF THE CITY OF SEASIDE

JOINT SPECIAL MEETING
Council Chamber
440 Harcourt Avenue
Thursday, March 2, 2017
5:00 PM

PLEASE TURN OFF YOUR CELL PHONES UPON ENTERING THE MEETING

1. **CALL TO ORDER**

Ralph Rubio	Mayor/Chair
Dennis Alexander	Mayor Pro Tem/Vice Chair
Jason Campbell	Council/Agency Member
David R. Pacheco	Council/Agency Member
Kayla Jones	Council/Agency Member

2. **PLEDGE OF ALLEGIANCE**

3. **PUBLIC COMMENT**

Members of the public wishing to address the City Council on matters within the jurisdiction of the City of Seaside, but not on this agenda, may do so during the Public Comment period for up to three minutes. Public Comments on specific agenda items are heard under that item. For the public record, please state your name.

4. **CLOSED SESSION**

**A. CLOSED SESSION PURSUANT TO GOVERNMENT CODE 54957.6 -
CONFERENCE WITH LABOR NEGOTIATORS**

Agency Negotiators: Craig Malin, City Manager; Roberta Greathouse, Human Resources Director; Donna Williamson, Labor Negotiator

Employee Organizations:

1. Seaside Police Officers' Association
2. Seaside City Employees' Association
3. Seaside Managers and Supervisory Employees' Association
4. Confidential Employees
5. Executive Managers

B. CONFERENCE WITH REAL PROPERTY NEGOTIATORS PURSUANT TO GOVERNMENT CODE SECTION 54956.8:

PG&E pole on Mescal Street near Hilby Avenue. 1) Negotiator for the City: Craig Malin, City Manager. Under Negotiation: Price, Terms of payment, or both.

C. CLOSED SESSION CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9

1. Keep Fort Ord Wild VS. City of Seaside Case Number 16Cv003795
2. LandWatch Monterey County VS. City of Seaside (Real Party: Monterey Downs, LLC) Case Number 16CV003793

5. CONSENT AGENDA

A. APPROVE AND FILE SUCCESSOR AGENCY CHECKS

PURPOSE: It is requested that the Successor Agency Board approve and file the accounts payable and wired payments made during the period of February 4, 2017 through February 17, 2017. In addition, approval of the payroll and benefits checks, direct deposits and wired payments related to the period of February 16, 2017 is requested. Total Accounts Payable and Payroll for the above referenced period is \$4,024.99.

RECOMMENDATION: It is recommended that the Successor Agency Board approve and file the attached checks.

B. APPROVAL OF MINUTES FROM FEBRUARY 16, 2017 MEETING

PURPOSE: To review and approve the minutes.

RECOMMENDATION: That the minutes be reviewed and approved.

6. STUDY SESSION

A. STUDY SESSION ON "SANCTUARY CITY" POLICY DECISIONS AND OPERATIONAL PRACTICES

PURPOSE: To discuss policy decisions and operational practices related to "Sanctuary Cities".

RECOMMENDATION: That the City Council receive a presentation, discuss and provide direction to staff.

7. ADJOURNMENT

Next Regularly Scheduled Meeting:
March 16, 2017
Seaside City Hall
5:30 PM

The City of Seaside is committed to providing accessible facilities and accommodating people with disabilities in all of its services programs and activities. If special considerations are needed by any person to fully participate in this meeting, they are asked to contact the City Clerk at 899-6707 no fewer than two business days prior to the meeting to allow reasonable arrangements. The City Council chamber is equipped with a portable microphone and assisted listening devices are available at all meetings.

City Council Meetings that are held in the City Council Chambers are broadcast live to all Seaside residents on Comcast Channel 25 and U-verse Channel 99. Meetings are also available through live streaming at:

<http://cyp.telvue.com/player?id=T01629&video=52314&noplaylistskin=1&width=400&height=300>

Videos of past meetings are available on demand through the City's website: <http://www.ci.seaside.ca.us>

Agenda-related writings or documents provided during public meetings are available for public inspection during the meeting or from the office of the City Clerk. This agenda is posted in compliance with California Government Code Section 54954.2(a) or Section 54956.



**CITY OF SEASIDE
STAFF REPORT**

Item No.: 5.A.

TO: Successor Agency to the Redevelopment Agency of the City of Seaside

FROM: Craig Malin, City Manager

BY: Daphne Hodgson, Deputy City Manager Administrative Services

DATE: March 2, 2017

SUBJECT: APPROVE AND FILE SUCCESSOR AGENCY CHECKS

PURPOSE

It is requested that the Successor Agency Board approve and file the accounts payable and wired payments made during the period of February 4, 2017 through February 17, 2017. In addition, approval of the payroll and benefits checks, direct deposits and wired payments related to the period of February 16, 2017 is requested. Total Accounts Payable and Payroll for the above referenced period is \$4,024.99.

RECOMMENDATION

It is recommended that the Successor Agency Board approve and file the attached checks.

BACKGROUND

In accordance with Government Code Section 37208, at each Agency meeting the Board is provided a listing of the payroll and general checks issued since the last report so that it can inspect and confirm these checks. Each purchase had been reviewed and approved by the department making the purchase at the time of procurement. The invoice has been reviewed by the Finance Department prior to payment to ensure that it conforms to the approved budget.

Therefore, in accordance with Government Code Section 37208 the above referenced, and linked, list of checks conforms to the approved budget and has been paid. These checks are submitted to the Agency Board for inspection and confirmation.

There were no checks that exceeded \$10,000 between February 4, 2017 and February 17, 2017 for Successor Agency related expenses.

The Checks report is available on the City's website here:

<http://www.ci.seaside.ca.us/194/Check-Draft-Register>

FISCAL IMPACT

No fiscal impact.

ATTACHMENTS

Reviewed for Submission to the
City Council by:

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke.

Craig Malin, City Manager



DRAFT MINUTES

CITY OF SEASIDE
CITY COUNCIL/ SUCCESSOR
AGENCY TO THE
REDEVELOPMENT AGENCY

JOINT SPECIAL MEETING
COUNCIL CHAMBER
Thursday, February 16, 2017
5:00 PM

1. **CALL TO ORDER**

Mayor Rubio called the meeting to order at 5:00 PM.

CITY COUNCIL/SUCCESSOR AGENCY TO REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE

PRESENT: Alexander, Campbell, Jones, Pacheco, Rubio

ABSENT: None

2. **PLEDGE OF ALLEGIANCE**

3. **PUBLIC COMMENT**

Mayor Rubio invited comments from the public and had no requests to speak.

4. **CLOSED SESSION**

City Attorney Freeman indicated that the City Council will only hear items C, D, E. Items A and B will not be discussed this evening and there are no announcements anticipated. The meeting was adjourned to Closed Session at 5:03 PM.

A. **CLOSED SESSION PURSUANT TO GOVERNMENT CODE 54957.6 - CONFERENCE WITH LABOR NEGOTIATORS**

Action: Continued

B. **CONFERENCE WITH REAL PROPERTY NEGOTIATORS PURSUANT TO GOVERNMENT CODE SECTION 54956.8:**

Action: Continued

C. **CLOSED SESSION CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9**

D. **CLOSED SESSION PURSUANT TO GOVERNMENT CODE SECTION 54956.9 (c) - POTENTIAL LITIGATION**

E. **CONFERENCE WITH REAL PROPERTY NEGOTIATORS PURSUANT TO GOVERNMENT CODE SECTION 54956.8:**

The City Council reconvened the meeting at 6:02 PM. There were no announcements for the public.

5. **CONSENT AGENDA**

Mayor Rubio invited comments from the public and had no requests to speak.

On motion by Mayor Pro Tem Alexander, Seconded by Council Member Pacheco and passed by

the following vote, the City Council/Agency Board approved the Consent Agenda as presented.

RESULT:	Approved
MOVER:	Mayor Pro Tem Dennis Alexander
SECONDER:	Council Member Dave Pacheco
AYES:	Ralph Rubio, Dennis Alexander, Jason Campbell, Dave Pacheco, Kayla Jones
NOES:	None
ABSENT:	None

A. APPROVE THE MINUTES FROM THE FEBRUARY 2, 2017 MEETING

Action: Approved

B. APPROVE AND FILE SUCCESSOR AGENCY CHECKS - CONTINUED FROM THE FEBRUARY 2, 2017 MEETING

Action: Accepted & Filed

C. APPROVE AND FILE SUCCESSOR AGENCY CHECKS

Action: Accepted & Filed

6. BUSINESS ITEMS

A. CONSIDER EXCLUSIVE NEGOTIATING AGREEMENT WITH SEASIDE DEVELOPMENT COMPANY, LLC TO DEVELOP THE PROPERTY COMMONLY KNOWN AS MAINGATE

Mity Manager Malin spoke to the release of the Request for Proposals for the Main Gate site and reported the City received four responses, which a panel, including representatives from FORA, CSUMB and Monterey County assisted with vetting. Mr. Malin also spoke to the public aspect of the review, which allowed members of the public to participate in both the proposal review as well as the developer presentations. Seaside Development Company LLC was selected by consensus and staff has negotiated the terms of the Exclusive Negotiating Agreement that is agendaized for consideration and approval.

Mr. Petrovitch provided a brief presentation to the Council. He detailed the team he assembled of architects, designers and brokers and spoke to this portfolio history of successful projects. Mr. Petrovitch presented the concept plan, and explicitly stated he understands the need for engaging the community. He acknowledged that there is much to be learned about the issues and complications relative to the property, including FORA, specific plans, fees, potential munitions, and more. He also acknowledged that this project would be a partnership between the developer, the City, CSUMB, other agencies and the community. He spoke to his personal belief that private industry can also assist with community and social change. Speaking to the concept plan, he detailed the project elements to include student and faculty housing, a hotel, retail and housing, a brewery, an auto museum, kitchen town the food science incubator, potential veterans monument and outdoor amphitheater. He spoke to the potential for concerts, farmers markets and other community events could take place within this development. He spoke to being able to make the project deliverable, understanding the challenges this parcel presents. Mr. Petrovitch answered questions from the Council.

Council Member Pacheco questioned what the project deal breakers could be. Mr. Petrovitch spoke to the market economics and the project challenges. If it is found that the cost to develop the project, is greater than the revenue, then it is not plausible. He believes that the project is a \$350 million project and the goal is to work together as a team with all the project partners to make it work. Mr. Pacheco then asked if there would be an office locally so his development team would be accessible,

to which Mr. Petrovitch agreed it has been negotiated as a part of the ENA. On question regarding public engagement, he explained his philosophy that when you listen to the community, you understand what they want and responsiveness to that can morph the project to satisfy the concern and become an amenity. He spoke to holding 230 public meetings for his last 72 acre project. He spoke to his development philosophy that development can be a win - win for everyone.

Council Member Campbell spoke to his environmental priorities. He questioned the developer's understanding of the FORTAG Project and the tunnel trails and requested considerations similar to a habitat express way to which Mr. Petrovitch explained his experience and understanding. Mayor Pro Tem Alexander questioned how they address retail related crimes and questioned if there was the potential for a police substation on the project site. Mr. Petrovitch spoke to his practice to hire private security for most of their projects and ensure the environment is safe, and indicated the security features are taken into account in the design element. Mayor Rubio re-expressed his priority to have prevailing wage incorporated, the quality jobs that it provides is a benefit to the City, during construction and thereafter. Mayor Rubio clarified that Petrovitch Development typically maintains the developed property and does not sell it, to which Mr. Petrovitch confirmed and added his intent is to maintain this project as a legacy project that is maintained at a high standard into the future. On request, Mr. Petrovitch explained his personal importance of incorporating a Veteran's memorial component and spoke in support of more recognition of the military for this property history as well as today's service members. Mayor Rubio asked then about programs to encourage local businesses to participate in the project. He spoke to the need for anchor tenants to be financially sound but what makes a unique center needs to be local talent and explained that the incubator purpose is to spin off restaurants and help create new local businesses to be placed in the retail space. His past developments typically have 40-50% local stores and influence.

Mayor Rubio invited comments from the public.

- Ron Cheshire, CEO of the Monterey Santa Cruz Building Council appreciated the patriotism of the developer's proposal and indicated that his mission is to ensure prevailing wage and good jobs. He extended his hand to Mr. Petrovich's project and indicated he is willing to sit down to discuss and help in any way to make the project pencil out for the success of the project, the City and the community.
- Sergio Rangle, President of United 43 Union understand the project can be good but requested assurance that this project going forward will create jobs that provide a livable wages and affordable housing.
- Hector Aspigueta spoke to previously working in the hospitality industry also spoke representing the United 43 Union. This project will help the community to be a leading community when it comes to quality jobs. They believe that the living expenses will rise and requested consideration for hospitality works in Monterey County to help provide livable wages and affordable housing.
- Stephan Abadida from Unite Here Local 43 said many of his members live in Seaside and stand to be impacted by the project both by way of increased traffic and impacts to the environment. He requested that the developer manage the natural environment and manage the traffic impacts.
- John Martines spoke in support of the project, to the opportunity to grow youth and create a destination point to bring the peninsula together. He suggested adding a certification program, partnered with the local universities or colleges for the incubator concept to further assist young people for successful careers.

The City Council deliberated on the presentation and Mayor Rubio asked for the wishes of the Council.

On motion by Mayor Pro Tem Alexander and seconded by Council Member Pacheco and passed

by the following vote the City Council approved the execution of an Exclusive Negotiating Agreement with Seaside Development LLC as presented.

RESULT:	Approved
MOVER:	Mayor Pro Tem Dennis Alexander
SECONDER:	Council Member Dave Pacheco
AYES:	Ralph Rubio, Dennis Alexander, Jason Campbell, Dave Pacheco, Kayla Jones
NOES:	None
ABSENT:	None

Mayor Rubio spoke to the potential positive impacts to the city including bringing jobs, industry, and improve the quality of life in Seaside.

7. **ADJOURNMENT**

On motion the meeting as adjourned at 6:59 PM

Respectfully submitted,

Lesley Milton-Rerig, City Clerk

Ralph Rubio, Mayor/Chair



**CITY OF SEASIDE
STAFF REPORT**

Item No.: 6.A.

TO: Successor Agency to the Redevelopment Agency of the City of Seaside

FROM: Craig Malin, City Manager

BY: Craig Malin, City Manager

DATE: March 2, 2017

**SUBJECT: STUDY SESSION ON "SANCTUARY CITY" POLICY DECISIONS
AND OPERATIONAL PRACTICES**

PURPOSE

To discuss policy decisions and operational practices related to "Sanctuary Cities".

RECOMMENDATION

That the City Council receive a presentation, discuss and provide direction to staff.

BACKGROUND

On January 25, President Trump signed Executive Orders titled "Enhancing Public Safety in the Interior of the United States" and "Border Security and Immigration Enforcement Improvements". Combined, the Executive Orders provide executive guidance regarding immigration enforcement and border security, with a particular focus on border security with Mexico. Subsequently, Department of Homeland Security (DHS) Secretary Kelly issued a Memorandum on Implementing the President's Border Security and Immigration Enforcement Improvements Policies. Both the Executive Orders and DHS memorandum are attached.

With regard to immigration enforcement in "Sanctuary Cities", the Executive Orders seek to compel local cooperation with federal agents through the threat of curtailing federal funds. This practice, described in a November, 2016 National Review article (excerpt attached) as an "off-switch" by Chairman of the House Appropriations Subcommittee on Commerce, Justice, and Science John Culberson (a Republican representative from Texas) has several challenges associated with it.

One such challenge is there is no single definition for what a "Sanctuary City" is. The "Sanctuary Cities" movement grew from protests to federal policies which denied asylum to refugees from El Salvador and Guatemala in the 1980s. Churches shielded refugees and cities

such as San Francisco adopted ordinances limiting federal immigration enforcement cooperation by local police. Today, “Sanctuary Cities” incorporate a wide range of policy and programmatic features, some substantive, and others only symbolic. The Executive Order seeks to resolve the legal definition of what a “Sanctuary Jurisdiction” is by granting the DHS Secretary “the authority to designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction”.

The Executive Order further declares in Section 9 (a) that “the Attorney General and the Secretary, 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”.

The extent to which Section 9 (a) is consistent with law is an open question. Already, San Francisco has sued for injunctive relief (complaint attached), citing the Tenth Amendment, Spending Clause and Article 1, Section 1 of the Constitution in its litigation. While not filing litigation, Salinas City Attorney Callihan similarly opines that any attempts by the federal government to withhold federal funding from “sanctuary” jurisdictions would be unconstitutional, citing multiple cases (Salinas 2.21.17 report attached).

In the case of Seaside, federal funding averages \$1.4 million a year, the bulk of which in any typical year includes pass-through via the Presidio of Monterey Base Operations and Maintenance Contract. The schedule of expenditures of federal awards from the last three fiscal years (2014 – 2016) are attached.

At the operational level, the essence of the discussion regarding sanctuary cities is how do local government employees interact with citizens with regard to immigration status and how do local police departments interact with federal law enforcement officers with regards to immigration enforcement. Chief Jackson addresses these two matters in an attached memo, describing that SPD does not inquire about anyone’s immigration status as it is “irrelevant ... to carrying out our department’s mission”. Chief Jackson notes the mission of SPD is to “provide quality police services, in partnership with our community, to enhance and maintain a safe environment”. Central to the community partnership required at the local level is a foundation of trust between law enforcement and residents.

With regard to the matter of how SPD interacts with federal immigration agents, SPD does not take part in civil immigration sweeps. Immigration enforcement is a federal activity, not a local law enforcement responsibility.

In a nation founded in mankind’s desperation to breathe the air of freedom, tyrants have no place. In a nation propelled forward by the immense talents and extraordinary efforts of wave after wave of immigrants, xenophobic seeds may be sowed, but they do not take root. In a nation that has long shouldered any burden, and paid any price to serve as the globe’s beacon for liberty, no darkness will prevail.

America’s diversity is its strength. Seaside’s diversity is our strength. It is our calling card in region; a young community of palpable spirit, pulsing with the hard work and ambition of first

and second generation Americans, and blessed with veterans who've worn the flag of freedom on their uniforms; a flag many first marched behind at Fort Ord. Thirty percent of Seaside residents (nearly three times the national average) are foreign-born, and from this beautiful beachhead of diversity and inclusion, of dreams and aspirations, who knows how far they and their descendants will pull this long great nation ever forward?

Such trajectories are unknown, as are periodic diversions from the long march of liberty America set forth on at Lexington and Concord in 1775. It's a nation made of states, and those states are made of cities, towns and villages. In those cities, towns and villages, the nation's dreams were first dreamt, and the nation's battles were first fought. The dreams and battles continued as the long march of liberty carried forth. Human rights at Gettysburg. Workers rights at Pullman in Chicago. Civil rights in Selma. Gay rights at Stonewall. The long march of liberty is this long great nation's destiny.

Seaside Police Officers swear an oath to the Constitution that was forged as that long march to liberty began. They carry out their daily duties with diligence, dignity and honor, in partnership with the community they serve. They do so without discrimination to race, ethnicity, national origin or immigration status.

Should the City Council direct further policy discussion, staff awaits direction.

FISCAL IMPACT

The fiscal impact of conducting the Study Session is nominal, and within budget. Should the City Council direct policy changes which DHS Secretary Kelly becomes responsive to, the fiscal impact may become significant.

ATTACHMENTS

1. Executive Order: Enhancing Public Safety in the Interior of the United States
 2. Executive Order: Border Security and Immigration Enforcement Improvements
 3. DHS Secretary Kelly 2.20.17 Memorandum
 4. "Can Congress Force an End to 'Sanctuary City' Policies?" - National Review excerpt 11.30.16
 5. City & County of San Francisco v. Donald Trump, President of the United States
 6. Salinas City Attorney Callihan 2.21.17 Report to City Council
 7. Seaside Schedule of Expenditures of Federal Awards 2014, 2015, 2016
 8. Seaside Police Chief Jackson Memorandum to City Manager Malin 2.24.17
 9. Seaside Police Department Policy 402 – Racial or Bias-Based Profiling
 10. Seaside Police Department Policy 428 – Immigration Violations
-

Meeting Date: March 2, 2017

Reviewed for Submission to the
City Council by:



Craig Malin, City Manager

The White House

Office of the Press Secretary

For Immediate Release

January 25, 2017

Executive Order: Enhancing Public Safety in the Interior of the United States

EXECUTIVE ORDER

ENHANCING PUBLIC SAFETY IN THE INTERIOR OF THE UNITED STATES

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq.), and in order to ensure the public safety of the American people in communities across the United States as well as to ensure that our Nation's immigration laws are faithfully executed, I hereby declare the policy of the executive branch to be, and order, as follows:

Section 1. Purpose. Interior enforcement of our Nation's immigration laws is critically important to the national security and public safety of the United States. Many aliens who illegally enter the United States and those who overstay or otherwise violate the terms of their visas present a significant threat to national security and public safety. This is particularly so for aliens who engage in criminal conduct in the United States.

Sanctuary 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.

Tens of thousands of removable aliens have been released into communities across the country, solely because their home countries refuse to accept their repatriation. Many of these aliens are criminals who have served time in our Federal, State, and local jails. The presence of such individuals in the United States, and the practices of foreign nations that refuse the repatriation of their nationals, are contrary to the national interest.

Although Federal immigration law provides a framework for Federal-State partnerships in enforcing our immigration laws to ensure the removal of aliens who have no right to be in the United States, the Federal Government has failed to discharge this basic sovereign responsibility. We cannot faithfully execute the immigration laws of the United States if we exempt classes or categories of removable aliens from potential enforcement. The purpose of this order is to direct executive departments and agencies (agencies) to employ all lawful means to enforce the immigration laws of the United States.

Sec. 2. Policy. It is the policy of the executive branch to:

- (a) Ensure the faithful execution of the immigration laws of the United States, including the INA, against all removable aliens, consistent with Article II, Section 3 of the United States Constitution and section 3331 of title 5, United States Code;
- (b) Make use of all available systems and resources to ensure the efficient and faithful execution of the immigration laws of the United States;
- (c) Ensure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law;
- (d) Ensure that aliens ordered removed from the United States are promptly removed; and
- (e) Support victims, and the families of victims, of crimes committed by removable aliens.

Sec. 3. Definitions. The terms of this order, where applicable, shall have the meaning provided by section 1101 of title 8, United States Code.

Sec. 4. Enforcement of the Immigration Laws in the Interior of the United States. In furtherance of the policy described in section 2 of this order, I hereby direct agencies to employ all lawful means to ensure the faithful execution of the immigration laws of the United States against all removable aliens.

Sec. 5. Enforcement Priorities. In executing faithfully the immigration laws of the United States, the Secretary of Homeland Security (Secretary) shall prioritize for removal those aliens described by the Congress in sections 212(a)(2), (a)(3), and (a)(6)(C), 235, and 237(a)(2) and (4) of the INA (8 U.S.C. 1182(a)(2), (a)(3), and (a)(6)(C), 1225, and 1227(a)(2) and (4)), as well as removable aliens who:

- (a) Have been convicted of any criminal offense;
- (b) Have been charged with any criminal offense, where such charge has not been resolved;
- (c) Have committed acts that constitute a chargeable criminal offense;
- (d) Have engaged in fraud or willful misrepresentation in connection with any official matter or application before a governmental agency;
- (e) Have abused any program related to receipt of public benefits;
- (f) Are subject to a final order of removal, but who have not complied with their legal obligation to depart the United States; or
- (g) In the judgment of an immigration officer, otherwise pose a risk to public safety or national security.

Sec. 6. Civil Fines and Penalties. As soon as practicable, and by no later than one year after the date of this order, the Secretary shall issue guidance and promulgate regulations, where required by law, to ensure the assessment and collection of all fines and penalties that the Secretary is authorized under the law to assess and collect from aliens unlawfully present in the United States and from those who facilitate their presence in the United States.

Sec. 7. Additional Enforcement and Removal Officers. The Secretary, through the Director of U.S. Immigration and Customs Enforcement, shall, to the extent

permitted by law and subject to the availability of appropriations, take all appropriate action to hire 10,000 additional immigration officers, who shall complete relevant training and be authorized to perform the law enforcement functions described in section 287 of the INA (8 U.S.C. 1357).

Sec. 8. Federal-State Agreements. It is the policy of the executive branch to empower State and local law enforcement agencies across the country to perform the functions of an immigration officer in the interior of the United States to the maximum extent permitted by law.

(a) In furtherance of this policy, the Secretary shall immediately take appropriate action to engage with the Governors of the States, as well as local officials, for the purpose of preparing to enter into agreements under section 287(g) of the INA (8 U.S.C. 1357(g)).

(b) To the extent permitted by law and with the consent of State or local officials, as appropriate, the Secretary shall take appropriate action, through agreements under section 287(g) of the INA, or otherwise, to authorize State and local law enforcement officials, as the Secretary determines are qualified and appropriate, to perform the functions of immigration officers in relation to the investigation, apprehension, or detention of aliens in the United States under the direction and the supervision of the Secretary. Such authorization shall be in addition to, rather than in place of, Federal performance of these duties.

(c) To the extent permitted by law, the Secretary may structure each agreement under section 287(g) of the INA in a manner that provides the most effective model for enforcing Federal immigration laws for that jurisdiction.

Sec. 9. Sanctuary Jurisdictions. It is the policy of the executive branch to ensure, to the fullest extent of the law, that a State, or a political subdivision of a State, shall comply with 8 U.S.C. 1373.

(a) In furtherance of this policy, the Attorney General and the Secretary, 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. The Secretary

has the authority to designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction. 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.

(b) To better inform the public regarding the public safety threats associated with sanctuary jurisdictions, the Secretary shall utilize the Declined Detainer Outcome Report or its equivalent and, on a weekly basis, make public a comprehensive list of criminal actions committed by aliens and any jurisdiction that ignored or otherwise failed to honor any detainers with respect to such aliens.

(c) The Director of the Office of Management and Budget is directed to obtain and provide relevant and responsive information on all Federal grant money that currently is received by any sanctuary jurisdiction.

Sec. 10. Review of Previous Immigration Actions and Policies. (a) The Secretary shall immediately take all appropriate action to terminate the Priority Enforcement Program (PEP) described in the memorandum issued by the Secretary on November 20, 2014, and to reinstitute the immigration program known as "Secure Communities" referenced in that memorandum.

(b) The Secretary shall review agency regulations, policies, and procedures for consistency with this order and, if required, publish for notice and comment proposed regulations rescinding or revising any regulations inconsistent with this order and shall consider whether to withdraw or modify any inconsistent policies and procedures, as appropriate and consistent with the law.

(c) To protect our communities and better facilitate the identification, detention, and removal of criminal aliens within constitutional and statutory parameters, the Secretary shall consolidate and revise any applicable forms to more effectively communicate with recipient law enforcement agencies.

Sec. 11. Department of Justice Prosecutions of Immigration Violators. The Attorney General and the Secretary shall work together to develop and implement a program that ensures that adequate resources are devoted to the prosecution of criminal immigration offenses in the United States, and to

develop cooperative strategies to reduce violent crime and the reach of transnational criminal organizations into the United States.

Sec. 12. Recalcitrant Countries. The Secretary of Homeland Security and the Secretary of State shall cooperate to effectively implement the sanctions provided by section 243(d) of the INA (8 U.S.C. 1253(d)), as appropriate. The Secretary of State shall, to the maximum extent permitted by law, ensure that diplomatic efforts and negotiations with foreign states include as a condition precedent the acceptance by those foreign states of their nationals who are subject to removal from the United States.

Sec. 13. Office for Victims of Crimes Committed by Removable Aliens. The Secretary shall direct the Director of U.S. Immigration and Customs Enforcement to take all appropriate and lawful action to establish within U.S. Immigration and Customs Enforcement an office to provide proactive, timely, adequate, and professional services to victims of crimes committed by removable aliens and the family members of such victims. This office shall provide quarterly reports studying the effects of the victimization by criminal aliens present in the United States.

Sec. 14. Privacy Act. Agencies shall, to the extent consistent with applicable law, ensure that their privacy policies exclude persons who are not United States citizens or lawful permanent residents from the protections of the Privacy Act regarding personally identifiable information.

Sec. 15. Reporting. Except as otherwise provided in this order, the Secretary and the Attorney General shall each submit to the President a report on the progress of the directives contained in this order within 90 days of the date of this order and again within 180 days of the date of this order.

Sec. 16. Transparency. To promote the transparency and situational awareness of criminal aliens in the United States, the Secretary and the Attorney General are hereby directed to collect relevant data and provide quarterly reports on the following:

(a) the immigration status of all aliens incarcerated under the supervision of the Federal Bureau of Prisons;

(b) the immigration status of all aliens incarcerated as Federal pretrial detainees under the supervision of the United States Marshals Service; and

(c) the immigration status of all convicted aliens incarcerated in State prisons and local detention centers throughout the United States.

Sec. 17. Personnel Actions. The Office of Personnel Management shall take appropriate and lawful action to facilitate hiring personnel to implement this order.

Sec. 18. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE,
January 25, 2017.

The White House

Office of the Press Secretary

For Immediate Release

January 25, 2017

Executive Order: Border Security and Immigration Enforcement Improvements

EXECUTIVE ORDER

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BORDER SECURITY AND IMMIGRATION ENFORCEMENT IMPROVEMENTS

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) (INA), the Secure Fence Act of 2006 (Public Law 109 367) (Secure Fence Act), and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104 208 Div. C) (IIRIRA), and in order to ensure the safety and territorial integrity of the United States as well as to ensure that the Nation's immigration laws are faithfully executed, I hereby order as follows:

Section 1. Purpose. Border security is critically important to the national security of the United States. Aliens who illegally enter the United States without inspection or admission present a significant threat to national security and public safety. Such aliens have not been identified or inspected by Federal immigration officers to determine their admissibility to the United States. The recent surge of illegal immigration at the southern border with Mexico has placed a significant strain on Federal resources and overwhelmed agencies charged with border security and immigration enforcement, as well as the local communities into which many of the aliens are placed.

Transnational criminal organizations operate sophisticated drug- and human-trafficking networks and smuggling operations on both sides of the southern border, contributing to a significant increase in violent crime and United States deaths from dangerous drugs. Among those who illegally enter are those who seek to harm Americans through acts of terror or criminal conduct. Continued illegal immigration presents a clear and present danger to the interests of the United States.

Federal immigration law both imposes the responsibility and provides the means for the Federal Government, in cooperation with border States, to secure the Nation's southern border. Although Federal immigration law provides a robust framework for Federal-State partnership in enforcing our immigration laws and the Congress has authorized and provided appropriations to secure our borders the Federal Government has failed to discharge this basic sovereign responsibility. The purpose of this order is to direct executive departments and agencies (agencies) to deploy all lawful means to secure the Nation's southern border, to prevent further illegal immigration into the United States, and to repatriate illegal aliens swiftly, consistently, and humanely.

Sec. 2. Policy. It is the policy of the executive branch to:

- (a) secure the southern border of the United States through the immediate construction of a physical wall on the southern border, monitored and supported by adequate personnel so as to prevent illegal immigration, drug and human trafficking, and acts of terrorism;
- (b) detain individuals apprehended on suspicion of violating Federal or State law, including Federal immigration law, pending further proceedings regarding those violations;
- (c) expedite determinations of apprehended individuals' claims of eligibility to remain in the United States;
- (d) remove promptly those individuals whose legal claims to remain in the United States have been lawfully rejected, after any appropriate civil or criminal sanctions have been imposed; and

(e) cooperate fully with States and local law enforcement in enacting Federal-State partnerships to enforce Federal immigration priorities, as well as State monitoring and detention programs that are consistent with Federal law and do not undermine Federal immigration priorities.

Sec. 3. Definitions. (a) "Asylum officer" has the meaning given the term in section 235(b)(1)(E) of the INA (8 U.S.C. 1225(b)(1)).

(b) "Southern border" shall mean the contiguous land border between the United States and Mexico, including all points of entry.

(c) "Border States" shall mean the States of the United States immediately adjacent to the contiguous land border between the United States and Mexico.

(d) Except as otherwise noted, "the Secretary" shall refer to the Secretary of Homeland Security.

(e) "Wall" shall mean a contiguous, physical wall or other similarly secure, contiguous, and impassable physical barrier.

(f) "Executive department" shall have the meaning given in section 101 of title 5, United States Code.

(g) "Regulations" shall mean any and all Federal rules, regulations, and directives lawfully promulgated by agencies.

(h) "Operational control" shall mean the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.

Sec. 4. Physical Security of the Southern Border of the United States. The Secretary shall immediately take the following steps to obtain complete operational control, as determined by the Secretary, of the southern border:

(a) In accordance with existing law, including the Secure Fence Act and IIRIRA, take all appropriate steps to immediately plan, design, and construct a physical wall along the southern border, using appropriate materials and technology to most effectively achieve complete operational control of the southern border;

(b) Identify and, to the extent permitted by law, allocate all sources of Federal funds for the planning, designing, and constructing of a physical wall along the southern border;

(c) Project and develop long-term funding requirements for the wall, including preparing Congressional budget requests for the current and upcoming fiscal years; and

(d) Produce a comprehensive study of the security of the southern border, to be completed within 180 days of this order, that shall include the current state of southern border security, all geophysical and topographical aspects of the southern border, the availability of Federal and State resources necessary to achieve complete operational control of the southern border, and a strategy to obtain and maintain complete operational control of the southern border.

Sec. 5. Detention Facilities. (a) The Secretary shall take all appropriate action and allocate all legally available resources to immediately construct, operate, control, or establish contracts to construct, operate, or control facilities to detain aliens at or near the land border with Mexico.

(b) The Secretary shall take all appropriate action and allocate all legally available resources to immediately assign asylum officers to immigration detention facilities for the purpose of accepting asylum referrals and conducting credible fear determinations pursuant to section 235(b)(1) of the INA (8 U.S.C. 1225(b)(1)) and applicable regulations and reasonable fear determinations pursuant to applicable regulations.

(c) The Attorney General shall take all appropriate action and allocate all legally available resources to immediately assign immigration judges to immigration detention facilities operated or controlled by the Secretary, or operated or controlled pursuant to contract by the Secretary, for the purpose of conducting proceedings authorized under title 8, chapter 12, subchapter II, United States Code.

Sec. 6. Detention for Illegal Entry. The Secretary shall immediately take all appropriate actions to ensure the detention of aliens apprehended for violations of immigration law pending the outcome of their removal proceedings or their removal from the country to the extent permitted by law. The Secretary shall

issue new policy guidance to all Department of Homeland Security personnel regarding the appropriate and consistent use of lawful detention authority under the INA, including the termination of the practice commonly known as "catch and release," whereby aliens are routinely released in the United States shortly after their apprehension for violations of immigration law.

Sec. 7. Return to Territory. The Secretary shall take appropriate action, consistent with the requirements of section 1232 of title 8, United States Code, to ensure that aliens described in section 235(b)(2)(C) of the INA (8 U.S.C. 1225(b)(2)(C)) are returned to the territory from which they came pending a formal removal proceeding.

Sec. 8. Additional Border Patrol Agents. Subject to available appropriations, the Secretary, through the Commissioner of U.S. Customs and Border Protection, shall take all appropriate action to hire 5,000 additional Border Patrol agents, and all appropriate action to ensure that such agents enter on duty and are assigned to duty stations as soon as is practicable.

Sec. 9. Foreign Aid Reporting Requirements. The head of each executive department and agency shall identify and quantify all sources of direct and indirect Federal aid or assistance to the Government of Mexico on an annual basis over the past five years, including all bilateral and multilateral development aid, economic assistance, humanitarian aid, and military aid. Within 30 days of the date of this order, the head of each executive department and agency shall submit this information to the Secretary of State. Within 60 days of the date of this order, the Secretary shall submit to the President a consolidated report reflecting the levels of such aid and assistance that has been provided annually, over each of the past five years.

Sec. 10. Federal-State Agreements. It is the policy of the executive branch to empower State and local law enforcement agencies across the country to perform the functions of an immigration officer in the interior of the United States to the maximum extent permitted by law.

(a) In furtherance of this policy, the Secretary shall immediately take appropriate action to engage with the Governors of the States, as well as local

officials, for the purpose of preparing to enter into agreements under section 287(g) of the INA (8 U.S.C. 1357(g)).

(b) To the extent permitted by law, and with the consent of State or local officials, as appropriate, the Secretary shall take appropriate action, through agreements under section 287(g) of the INA, or otherwise, to authorize State and local law enforcement officials, as the Secretary determines are qualified and appropriate, to perform the functions of immigration officers in relation to the investigation, apprehension, or detention of aliens in the United States under the direction and the supervision of the Secretary. Such authorization shall be in addition to, rather than in place of, Federal performance of these duties.

(c) To the extent permitted by law, the Secretary may structure each agreement under section 287(g) of the INA in the manner that provides the most effective model for enforcing Federal immigration laws and obtaining operational control over the border for that jurisdiction.

Sec. 11. Parole, Asylum, and Removal. It is the policy of the executive branch to end the abuse of parole and asylum provisions currently used to prevent the lawful removal of removable aliens.

(a) The Secretary shall immediately take all appropriate action to ensure that the parole and asylum provisions of Federal immigration law are not illegally exploited to prevent the removal of otherwise removable aliens.

(b) The Secretary shall take all appropriate action, including by promulgating any appropriate regulations, to ensure that asylum referrals and credible fear determinations pursuant to section 235(b)(1) of the INA (8 U.S.C. 1125(b)(1)) and 8 CFR 208.30, and reasonable fear determinations pursuant to 8 CFR 208.31, are conducted in a manner consistent with the plain language of those provisions.

(c) Pursuant to section 235(b)(1)(A)(iii)(I) of the INA, the Secretary shall take appropriate action to apply, in his sole and unreviewable discretion, the provisions of section 235(b)(1)(A)(i) and (ii) of the INA to the aliens designated under section 235(b)(1)(A)(iii)(II).

(d) The Secretary shall take appropriate action to ensure that parole authority under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) is exercised only on a case-by-case basis in accordance with the plain language of the statute, and in all circumstances only when an individual demonstrates urgent humanitarian reasons or a significant public benefit derived from such parole.

(e) The Secretary shall take appropriate action to require that all Department of Homeland Security personnel are properly trained on the proper application of section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (8 U.S.C. 1232) and section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)(2)), to ensure that unaccompanied alien children are properly processed, receive appropriate care and placement while in the custody of the Department of Homeland Security, and, when appropriate, are safely repatriated in accordance with law.

Sec. 12. Authorization to Enter Federal Lands. The Secretary, in conjunction with the Secretary of the Interior and any other heads of agencies as necessary, shall take all appropriate action to:

(a) permit all officers and employees of the United States, as well as all State and local officers as authorized by the Secretary, to have access to all Federal lands as necessary and appropriate to implement this order; and

(b) enable those officers and employees of the United States, as well as all State and local officers as authorized by the Secretary, to perform such actions on Federal lands as the Secretary deems necessary and appropriate to implement this order.

Sec. 13. Priority Enforcement. The Attorney General shall take all appropriate steps to establish prosecution guidelines and allocate appropriate resources to ensure that Federal prosecutors accord a high priority to prosecutions of offenses having a nexus to the southern border.

Sec. 14. Government Transparency. The Secretary shall, on a monthly basis and in a publicly available way, report statistical data on aliens apprehended at or near the southern border using a uniform method of reporting by all Department of Homeland Security components, in a format that is easily understandable by the public.

Sec. 15. Reporting. Except as otherwise provided in this order, the Secretary, within 90 days of the date of this order, and the Attorney General, within 180 days, shall each submit to the President a report on the progress of the directives contained in this order.

Sec. 16. Hiring. The Office of Personnel Management shall take appropriate action as may be necessary to facilitate hiring personnel to implement this order.

Sec. 17. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE,
January 25, 2017.



Homeland Security

February 20, 2017

MEMORANDUM FOR:

Kevin McAleenan
Acting Commissioner
U.S. Customs and Border Protection

Thomas D. Homan
Acting Director
U.S. Immigration and Customs Enforcement

Lori Scialabba
Acting Director
U.S. Citizenship and Immigration Services

Joseph B. Maher
Acting General Counsel

Dimple Shah
Acting Assistant Secretary for International Affairs

Chip Fulghum
Acting Undersecretary for Management

FROM:

John Kelly
Secretary

A handwritten signature in black ink, appearing to read "John Kelly", written over the printed name and title.

SUBJECT:

**Implementing the President's Border Security and
Immigration Enforcement Improvements Policies**

This memorandum implements the Executive Order entitled "Border Security and Immigration Enforcement Improvements," issued by the President on January 25, 2017, which establishes the President's policy regarding effective border security and immigration enforcement through faithful execution of the laws of the United States. It implements new policies designed to stem illegal immigration and facilitate the detection, apprehension, detention, and removal of aliens who have no lawful basis to enter or remain in the United States. It constitutes guidance to all Department personnel, and supersedes all existing conflicting policy, directives, memoranda, and other guidance regarding this subject matter—to the extent of the conflict—except as otherwise expressly stated in this memorandum.

A. Policies Regarding the Apprehension and Detention of Aliens Described in Section 235 of the Immigration and Nationality Act.

The President has determined that the lawful detention of aliens arriving in the United States and deemed inadmissible or otherwise described in section 235(b) of the Immigration and Nationality Act (INA) pending a final determination of whether to order them removed, including determining eligibility for immigration relief, is the most efficient means by which to enforce the immigration laws at our borders. Detention also prevents such aliens from committing crimes while at large in the United States, ensures that aliens will appear for their removal proceedings, and substantially increases the likelihood that aliens lawfully ordered removed will be removed.

These policies are consistent with INA provisions that mandate detention of such aliens and allow me or my designee to exercise discretionary parole authority pursuant to section 212(d)(5) of the INA only on a case-by-case basis, and only for urgent humanitarian reasons or significant public benefit. Policies that facilitate the release of removable aliens apprehended at and between the ports of entry, which allow them to abscond and fail to appear at their removal hearings, undermine the border security mission. Such policies, collectively referred to as "catch-and-release," shall end.

Accordingly, effective upon my determination of (1) the establishment and deployment of a joint plan with the Department of Justice to surge the deployment of immigration judges and asylum officers to interview and adjudicate claims asserted by recent border entrants; and, (2) the establishment of appropriate processing and detention facilities, U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) personnel should only release from detention an alien detained pursuant to section 235(b) of the INA, who was apprehended or encountered after illegally entering or attempting to illegally enter the United States, in the following situations on a case-by-case basis, to the extent consistent with applicable statutes and regulations:

1. When removing the alien from the United States pursuant to statute or regulation;
2. When the alien obtains an order granting relief or protection from removal or the Department of Homeland Security (DHS) determines that the individual is a U.S. citizen, national of the United States, or an alien who is a lawful permanent resident, refugee, asylee, holds temporary protected status, or holds a valid immigration status in the United States;
3. When an ICE Field Office Director, ICE Special Agent-in-Charge, U.S. Border Patrol Sector Chief, CBP Director of Field Operations, or CBP Air & Marine Operations Director consents to the alien's withdrawal of an application for admission, and the alien contemporaneously departs from the United States;
4. When required to do so by statute, or to comply with a binding settlement agreement or order issued by a competent judicial or administrative authority;

5. When an ICE Field Office Director, ICE Special Agent-in-Charge, U.S. Border Patrol Sector Chief, CBP Director of Field Operations, or CBP Air & Marine Operations Director authorizes the alien's parole pursuant to section 212(d)(5) of the INA with the written concurrence of the Deputy Director of ICE or the Deputy Commissioner of CBP, except in exigent circumstances such as medical emergencies where seeking prior approval is not practicable. In those exceptional instances, any such parole will be reported to the Deputy Director or Deputy Commissioner as expeditiously as possible; or
6. When an arriving alien processed under the expedited removal provisions of section 235(b) has been found to have established a "credible fear" of persecution or torture by an asylum officer or an immigration judge, provided that such an alien affirmatively establishes to the satisfaction of an ICE immigration officer his or her identity, that he or she presents neither a security risk nor a risk of absconding, and provided that he or she agrees to comply with any additional conditions of release imposed by ICE to ensure public safety and appearance at any removal hearings.

To the extent current regulations are inconsistent with this guidance, components will develop or revise regulations as appropriate. Until such regulations are revised or removed, Department officials shall continue to operate according to regulations currently in place.

As the Department works to expand detention capabilities, detention of all such individuals may not be immediately possible, and detention resources should be prioritized based upon potential danger and risk of flight if an individual alien is not detained, and parole determinations will be made in accordance with current regulations and guidance. *See* 8 C.F.R. §§ 212.5, 235.3. This guidance does not prohibit the return of an alien who is arriving on land to the foreign territory contiguous to the United States from which the alien is arriving pending a removal proceeding under section 240 of the INA consistent with the direction of an ICE Field Office Director, ICE Special Agent-in-Charge, CBP Chief Patrol Agent, or CBP Director of Field Operations.

B. Hiring More CBP Agents/Officers

CBP has insufficient agents/officers to effectively detect, track, and apprehend all aliens illegally entering the United States. The United States needs additional agents and officers to ensure complete operational control of the border. Accordingly, the Commissioner of CBP shall—while ensuring consistency in training and standards—immediately begin the process of hiring 5,000 additional Border Patrol agents, as well as 500 Air & Marine Agents/Officers, subject to the availability of resources, and take all actions necessary to ensure that such agents/officers enter on duty and are assigned to appropriate duty stations, including providing for the attendant resources and additional personnel necessary to support such agents, as soon as practicable.

Human Capital leadership in CBP and ICE, in coordination with the Under Secretary for

Management, Chief Financial Officer, and Chief Human Capital Officer, shall develop hiring plans that balance growth and interagency attrition by integrating workforce shaping and career paths for incumbents and new hires.

C. Identifying and Quantifying Sources of Aid to Mexico

The President has directed the heads of all executive departments to identify and quantify all sources of direct and indirect Federal aid or assistance to the Government of Mexico. Accordingly, the Under Secretary for Management shall identify all sources of direct or indirect aid and assistance, excluding intelligence activities, from every departmental component to the Government of Mexico on an annual basis, for the last five fiscal years, and quantify such aid or assistance. The Under Secretary for Management shall submit a report to me reflecting historic levels of such aid or assistance provided annually within 30 days of the date of this memorandum.

D. Expansion of the 287(g) Program in the Border Region

Section 287(g) of the INA authorizes me to enter into a written agreement with a state or political subdivision thereof, for the purpose of authorizing qualified officers or employees of the state or subdivision to perform the functions of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States. This grant of authority, known as the 287(g) Program, has been a highly successful force multiplier that authorizes state or local law enforcement personnel to perform all law enforcement functions specified in section 287(a) of the INA, including the authority to investigate, identify, apprehend, arrest, detain, transport and conduct searches of an alien for the purposes of enforcing the immigration laws. From January 2006 through September 2015, the 287(g) Program led to the identification of more than 402,000 removable aliens, primarily through encounters at local jails.

Empowering state and local law enforcement agencies to assist in the enforcement of federal immigration law is critical to an effective enforcement strategy. Aliens who engage in criminal conduct are priorities for arrest and removal and will often be encountered by state and local law enforcement officers during the course of their routine duties. It is in the interest of the Department to partner with those state and local jurisdictions through 287(g) agreements to assist in the arrest and removal of criminal aliens.

To maximize participation by state and local jurisdictions in the enforcement of federal immigration law near the southern border, I am directing the Director of ICE and the Commissioner of CBP to engage immediately with all willing and qualified law enforcement jurisdictions that meet all program requirements for the purpose of entering into agreements under 287(g) of the INA.

The Commissioner of CBP and the Director of ICE should consider the operational functions and capabilities of the jurisdictions willing to enter into 287(g) agreements and structure such agreements in a manner that employs the most effective enforcement model for that jurisdiction, including the jail enforcement model, task force officer model, or joint jail enforcement-task force officer model. In furtherance of my direction herein, the Commissioner of

CBP is authorized, in addition to the Director of ICE, to accept state services and take other actions as appropriate to carry out immigration enforcement pursuant to 287(g).

E. Commissioning a Comprehensive Study of Border Security

The Under Secretary for Management, in consultation with the Commissioner of CBP, Joint Task Force (Border), and Commandant of the Coast Guard, is directed to commission an immediate, comprehensive study of the security of the southern border (air, land and maritime) to identify vulnerabilities and provide recommendations to enhance border security. The study should include all aspects of the current border security environment, including the availability of federal and state resources to develop and implement an effective border security strategy that will achieve complete operational control of the border.

F. Border Wall Construction and Funding

A wall along the southern border is necessary to deter and prevent the illegal entry of aliens and is a critical component of the President's overall border security strategy. Congress has authorized the construction of physical barriers and roads at the border to prevent illegal immigration in several statutory provisions, including section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, 8 U.S.C. § 1103 note.

Consistent with the President's Executive Order, the will of Congress and the need to secure the border in the national interest, CBP, in consultation with the appropriate executive departments and agencies, and nongovernmental entities having relevant expertise—and using materials originating in the United States to the maximum extent permitted by law—shall immediately begin planning, design, construction and maintenance of a wall, including the attendant lighting, technology (including sensors), as well as patrol and access roads, along the land border with Mexico in accordance with existing law, in the most appropriate locations and utilizing appropriate materials and technology to most effectively achieve operational control of the border.

The Under Secretary for Management, in consultation with the Commissioner of CBP shall immediately identify and allocate all sources of available funding for the planning, design, construction and maintenance of a wall, including the attendant lighting, technology (including sensors), as well as patrol and access roads, and develop requirements for total ownership cost of this project, including preparing Congressional budget requests for the current fiscal year (e.g., supplemental budget requests) and subsequent fiscal years.

G. Expanding Expedited Removal Pursuant to Section 235(b)(1)(A)(iii)(I) of the INA

It is in the national interest to detain and expeditiously remove from the United States aliens apprehended at the border, who have been ordered removed after consideration and denial of their claims for relief or protection. Pursuant to section 235(b)(1)(A)(i) of the INA, if an immigration officer determines that an arriving alien is inadmissible to the United States under

section 212(a)(6)(C) or section 212(a)(7) of the INA, the officer shall, consistent with all applicable laws, order the alien removed from the United States without further hearing or review, unless the alien is an unaccompanied alien child as defined in 6 U.S.C. § 279(g)(2), indicates an intention to apply for asylum or a fear of persecution or torture or a fear of return to his or her country, or claims to have a valid immigration status within the United States or to be a citizen or national of the United States.

Pursuant to section 235(b)(1)(A)(iii)(I) of the INA and other provisions of law, I have been granted the authority to apply, by designation in my sole and unreviewable discretion, the expedited removal provisions in section 235(b)(1)(A)(i) and (ii) of the INA to aliens who have not been admitted or paroled into the United States, who are inadmissible to the United States under section 212(a)(6)(C) or section 212(a)(7) of the INA, and who have not affirmatively shown, to the satisfaction of an immigration officer, that they have been continuously physically present in the United States for the two-year period immediately prior to the determination of their inadmissibility. To date, this authority has only been exercised to designate for application of expedited removal, aliens encountered within 100 air miles of the border and 14 days of entry, and aliens who arrived in the United States by sea other than at a port of entry.¹

The surge of illegal immigration at the southern border has overwhelmed federal agencies and resources and has created a significant national security vulnerability to the United States. Thousands of aliens apprehended at the border, placed in removal proceedings, and released from custody have absconded and failed to appear at their removal hearings. Immigration courts are experiencing a historic backlog of removal cases, primarily proceedings under section 240 of the INA for individuals who are not currently detained.

During October 2016 and November 2016, there were 46,184 and 47,215 apprehensions, respectively, between ports of entry on our southern border. In comparison, during October 2015 and November 2015 there were 32,724 and 32,838 apprehensions, respectively, between ports of entry on our southern border. This increase of 10,000–15,000 apprehensions per month has significantly strained DHS resources.

Furthermore, according to EOIR information provided to DHS, there are more than 534,000 cases currently pending on immigration court dockets nationwide—a record high. By contrast, according to some reports, there were nearly 168,000 cases pending at the end of fiscal year (FY) 2004 when section 235(b)(1)(A)(i) was last expanded.² This represents an increase of more than 200% in the number of cases pending completion. The average removal case for an alien who is not detained has been pending for more than two years before an immigration judge.³ In some immigration courts, aliens who are not detained will not have their cases heard by an

¹ Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(a)(iii) of the Immigration and Nationality Act, 67 Fed. Reg. 68924 (Nov. 13, 2002); Designating Aliens For Expedited Removal, 69 Fed. Reg. 48877 (Aug. 11, 2004); Eliminating Exception to Expedited Removal Authority for Cuban Nationals Encountered in the United States or Arriving by Sea, 82 Fed. Reg. 4902 (Jan. 17, 2017).

² Syracuse University, *Transactional Records Access Clearinghouse (TRAC) Data Research*, available at http://trac.syr.edu/phptools/immigration/court_backlog/.

³ *Id.*

immigration judge for as long as five years. This unacceptable delay affords removable aliens with no plausible claim for relief to remain unlawfully in the United States for many years.

To ensure the prompt removal of aliens apprehended soon after crossing the border illegally, the Department will publish in the *Federal Register* a new Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(a)(iii) of the Immigration and Nationality Act, which may, to the extent I determine is appropriate, depart from the limitations set forth in the designation currently in force. I direct the Commissioner of CBP and the Director of ICE to conform the use of expedited removal procedures to the designations made in this notice upon its publication.

H. Implementing the Provisions of Section 235(b)(2)(C) of the INA to Return Aliens to Contiguous Countries

Section 235(b)(2)(C) of the INA authorizes the Department to return aliens arriving on land from a foreign territory contiguous to the United States, to the territory from which they arrived, pending a formal removal proceeding under section 240 of the INA. When aliens so apprehended do not pose a risk of a subsequent illegal entry or attempted illegal entry, returning them to the foreign contiguous territory from which they arrived, pending the outcome of removal proceedings saves the Department's detention and adjudication resources for other priority aliens.

Accordingly, subject to the requirements of section 1232, Title 8, United States Code, related to unaccompanied alien children and to the extent otherwise consistent with the law and U.S. international treaty obligations, CBP and ICE personnel shall, to the extent appropriate and reasonably practicable, return aliens described in section 235(b)(2)(A) of the INA, who are placed in removal proceedings under section 240 of the INA—and who, consistent with the guidance of an ICE Field Office Director, CBP Chief Patrol Agent, or CBP Director of Field Operations, pose no risk of recidivism—to the territory of the foreign contiguous country from which they arrived pending such removal proceedings.

To facilitate the completion of removal proceedings for aliens so returned to the contiguous country, ICE Field Office Directors, ICE Special Agents-in-Charge, CBP Chief Patrol Agent, and CBP Directors of Field Operations shall make available facilities for such aliens to appear via video teleconference. The Director of ICE and the Commissioner of CBP shall consult with the Director of EOIR to establish a functional, interoperable video teleconference system to ensure maximum capability to conduct video teleconference removal hearings for those aliens so returned to the contiguous country.

I. Enhancing Asylum Referrals and Credible Fear Determinations Pursuant to Section 235(b)(1) of the INA

With certain exceptions, any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum. For those aliens who are subject

to expedited removal under section 235(b) of the INA, aliens who claim a fear of return must be referred to an asylum officer to determine whether they have established a credible fear of persecution or torture.⁴ To establish a credible fear of persecution, an alien must demonstrate that there is a "significant possibility" that the alien could establish eligibility for asylum, taking into account the credibility of the statements made by the alien in support of the claim and such other facts as are known to the officer.⁵

The Director of USCIS shall ensure that asylum officers conduct credible fear interviews in a manner that allows the interviewing officer to elicit all relevant information from the alien as is necessary to make a legally sufficient determination. In determining whether the alien has demonstrated a significant possibility that the alien could establish eligibility for asylum, or for withholding or deferral of removal under the Convention Against Torture, the asylum officer shall consider the statements of the alien and determine the credibility of the alien's statements made in support of his or her claim and shall consider other facts known to the officer, as required by statute.⁶

The asylum officer shall make a positive credible fear finding only after the officer has considered all relevant evidence and determined, based on credible evidence, that the alien has a significant possibility of establishing eligibility for asylum, or for withholding or deferral of removal under the Convention Against Torture, based on established legal authority.⁷

The Director of USCIS shall also increase the operational capacity of the Fraud Detection and National Security (FDNS) Directorate and continue to strengthen the integration of its operations to support the Field Operations, Refugee, Asylum, and International Operations, and Service Center Operations Directorate, to detect and prevent fraud in the asylum and benefits adjudication processes, and in consultation with the USCIS Office of Policy and Strategy as operationally appropriate.

The Director of USCIS, the Commissioner of CBP, and the Director of ICE shall review fraud detection, deterrence, and prevention measures throughout their respective agencies and provide me with a consolidated report within 90 days of the date of this memorandum regarding fraud vulnerabilities in the asylum and benefits adjudication processes, and propose measures to enhance fraud detection, deterrence, and prevention in these processes.

J. Allocation of Resources and Personnel to the Southern Border for Detention of Aliens and Adjudication of Claims

The detention of aliens apprehended at the border is critical to the effective enforcement of the immigration laws. Aliens who are released from custody pending a determination of their removability are highly likely to abscond and fail to attend their removal hearings. Moreover, the screening of credible fear claims by USCIS and adjudication of asylum claims by EOIR at

⁴ See INA § 235(b)(1)(A)-(B); 8 C.F.R. §§ 235.3, 208.30.

⁵ See INA § 235(b)(1)(B)(v).

⁶ See *id.*

⁷ *Id.*

detention facilities located at or near the point of apprehension will facilitate an expedited resolution of those claims and result in lower detention and transportation costs.

Accordingly, the Director of ICE and the Commissioner of CBP should take all necessary action and allocate all available resources to expand their detention capabilities and capacities at or near the border with Mexico to the greatest extent practicable. CBP shall focus these actions on expansion of "short-term detention" (defined as 72 hours or less under 6 U.S.C. § 211(m)) capability, and ICE will focus these actions on expansion of all other detention capabilities. CBP and ICE should also explore options for joint temporary structures that meet appropriate standards for detention given the length of stay in those facilities.

In addition, to the greatest extent practicable, the Director of USCIS is directed to increase the number of asylum officers and FDNS officers assigned to detention facilities located at or near the border with Mexico to properly and efficiently adjudicate credible fear and reasonable fear claims and to counter asylum-related fraud.

K. Proper Use of Parole Authority Pursuant to Section 212(d)(5) of the INA

The authority to parole aliens into the United States is set forth in section 212(d)(5) of the INA, which provides that the Secretary may, in his discretion and on a case-by-case basis, temporarily parole into the United States any alien who is an applicant for admission for urgent humanitarian reasons or significant public benefit. The statutory language authorizes parole in individual cases only where, after careful consideration of the circumstances, it is necessary because of demonstrated urgent humanitarian reasons or significant public benefit. In my judgment, such authority should be exercised sparingly.

The practice of granting parole to certain aliens in pre-designated categories in order to create immigration programs not established by Congress, has contributed to a border security crisis, undermined the integrity of the immigration laws and the parole process, and created an incentive for additional illegal immigration.

Therefore, the Director of USCIS, the Commissioner of CBP, and the Director of ICE shall ensure that, pending the issuance of final regulations clarifying the appropriate use of the parole power, appropriate written policy guidance and training is provided to employees within those agencies exercising parole authority, including advance parole, so that such employees are familiar with the proper exercise of parole under section 212(d)(5) of the INA and exercise such parole authority only on a case-by-case basis, consistent with the law and written policy guidance.

Notwithstanding any other provision of this memorandum, pending my further review and evaluation of the impact of operational changes to implement the Executive Order, and additional guidance on the issue by the Director of ICE, the ICE policy directive establishing standards and procedures for the parole of certain arriving aliens found to have a credible fear of persecution or

torture shall remain in full force and effect.⁸ The ICE policy directive shall be implemented in a manner consistent with its plain language. In every case, the burden to establish that his or her release would neither pose a danger to the community, nor a risk of flight remains on the individual alien, and ICE retains ultimate discretion whether it grants parole in a particular case.

L. Proper Processing and Treatment of Unaccompanied Alien Minors Encountered at the Border

In accordance with section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (codified in part at 8 U.S.C. § 1232) and section 462 of the Homeland Security Act of 2002 (6 U.S.C. § 279), unaccompanied alien children are provided special protections to ensure that they are properly processed and receive the appropriate care and placement when they are encountered by an immigration officer. An unaccompanied alien child, as defined in section 279(g)(2), Title 6, United States Code, is an alien who has no lawful immigration status in the United States, has not attained 18 years of age; and with respect to whom, (1) there is no parent or legal guardian in the United States, or (2) no parent of legal guardian in the United States is available to provide care and physical custody.

Approximately 155,000 unaccompanied alien children have been apprehended at the southern border in the last three years. Most of these minors are from El Salvador, Honduras, and Guatemala, many of whom travel overland to the southern border with the assistance of a smuggler who is paid several thousand dollars by one or both parents, who reside illegally in the United States.

With limited exceptions, upon apprehension, CBP or ICE must promptly determine if a child meets the definition of an “unaccompanied alien child” and, if so, the child must be transferred to the custody of the Office of Refugee Resettlement within the Department of Health and Human Services (HHS) within 72 hours, absent exceptional circumstances.⁹ The determination that the child is an “unaccompanied alien child” entitles the child to special protections, including placement in a suitable care facility, access to social services, removal proceedings before an immigration judge under section 240 of the INA, rather than expedited removal proceedings under section 235(b) of the INA, and initial adjudication of any asylum claim by USCIS.¹⁰

Approximately 60% of minors initially determined to be “unaccompanied alien children” are placed in the care of one or more parents illegally residing in the United States. However, by Department policy and practice, such minors maintained their status as “unaccompanied alien children,” notwithstanding that they may no longer meet the statutory definition once they have been placed by HHS in the custody of a parent in the United States who can care for the minor. Exploitation of that policy led to abuses by many of the parents and legal guardians of those minors and has contributed to significant administrative delays in adjudications by immigration

⁸ ICE Policy No. 11002.1: Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture (Dec. 8, 2009).

⁹ See 8 U.S.C. § 1232(b)(3).

¹⁰ See generally 8 U.S.C. § 1232; INA § 208(b)(3)(C).

courts and USCIS.

To ensure identification of abuses and the processing of unaccompanied alien children consistent with the statutory framework and any applicable court order, the Director of USCIS, the Commissioner of CBP, and the Director of ICE are directed to develop uniform written guidance and training for all employees and contractors of those agencies regarding the proper processing of unaccompanied alien children, the timely and fair adjudication of their claims for relief from removal, and, if appropriate, their safe repatriation at the conclusion of removal proceedings. In developing such guidance and training, they shall establish standardized review procedures to confirm that alien children who are initially determined to be “unaccompanied alien child[ren],” as defined in section 279(g)(2), Title 6, United States Code, continue to fall within the statutory definition when being considered for the legal protections afforded to such children as they go through the removal process.

M. Accountability Measures to Protect Alien Children from Exploitation and Prevent Abuses of Our Immigration Laws

Although the Department’s personnel must process unaccompanied alien children pursuant to the requirements described above, we have an obligation to ensure that those who conspire to violate our immigration laws do not do so with impunity—particularly in light of the unique vulnerabilities of alien children who are smuggled or trafficked into the United States.

The parents and family members of these children, who are often illegally present in the United States, often pay smugglers several thousand dollars to bring their children into this country. Tragically, many of these children fall victim to robbery, extortion, kidnapping, sexual assault, and other crimes of violence by the smugglers and other criminal elements along the dangerous journey through Mexico to the United States. Regardless of the desires for family reunification, or conditions in other countries, the smuggling or trafficking of alien children is intolerable.

Accordingly, the Director of ICE and the Commissioner of CBP shall ensure the proper enforcement of our immigration laws against any individual who—directly or indirectly—facilitates the illegal smuggling or trafficking of an alien child into the United States. In appropriate cases, taking into account the risk of harm to the child from the specific smuggling or trafficking activity that the individual facilitated and other factors relevant to the individual’s culpability and the child’s welfare, proper enforcement includes (but is not limited to) placing any such individual who is a removable alien into removal proceedings, or referring the individual for criminal prosecution.

N. Prioritizing Criminal Prosecutions for Immigration Offenses Committed at the Border

The surge of illegal immigration at the southern border has produced a significant increase in organized criminal activity in the border region. Mexican drug cartels, Central American gangs, and other violent transnational criminal organizations have established sophisticated criminal

enterprises on both sides of the border. The large-scale movement of Central Americans, Mexicans, and other foreign nationals into the border area has significantly strained federal agencies and resources dedicated to border security. These criminal organizations have monopolized the human trafficking, human smuggling, and drug trafficking trades in the border region.

It is in the national interest of the United States to prevent criminals and criminal organizations from destabilizing border security through the proliferation of illicit transactions and violence perpetrated by criminal organizations.

To counter this substantial and ongoing threat to the security of the southern border—including threats to our maritime border and the approaches—the Directors of the Joint Task Forces-West, -East, and -Investigations, as well as the ICE-led Border Enforcement Security Task Forces (BESTs), are directed to plan and implement enhanced counternetwork operations directed at disrupting transnational criminal organizations, focused on those involved in human smuggling. The Department will support this work through the Office of Intelligence and Analysis, CBP's National Targeting Center, and the DHS Human Smuggling Cell.

In addition, the task forces should include participants from other federal, state, and local agencies, and should target individuals and organizations whose criminal conduct undermines border security or the integrity of the immigration system, including offenses related to alien smuggling or trafficking, drug trafficking, illegal entry and reentry, visa fraud, identity theft, unlawful possession or use of official documents, and acts of violence committed against persons or property at or near the border.

In order to support the efforts of the BESTs and counter network operations of the Joint Task Forces, the Director of ICE shall increase the number of special agents and analysts in the Northern Triangle ICE Attaché Offices and increase the number of vetted Transnational Criminal Investigative Unit international partners. This expansion of ICE's international footprint will focus both domestic and international efforts to dismantle transnational criminal organizations that are facilitating and profiting from the smuggling routes to the United States.

O. Public Reporting of Border Apprehensions Data

The Department has an obligation to perform its mission in a transparent and forthright manner. The public is entitled to know, with a reasonable degree of detail, information pertaining to the aliens unlawfully entering at our borders.

Therefore, consistent with law, in an effort to promote transparency and renew confidence in the Department's border security mission, the Commissioner of CBP and the Director of ICE shall develop a standardized method for public reporting of statistical data regarding aliens apprehended at or near the border for violating the immigration law. The reporting method shall include uniform terminology and shall utilize a format that is easily understandable by the public in a medium that can be readily accessed.

At a minimum, in addition to statistical information currently being publicly reported regarding apprehended aliens, the following information must be included: the number of convicted criminals and the nature of their offenses; the prevalence of gang members and prior immigration violators; the custody status of aliens and, if released, the reason for release and location of that release; and the number of aliens ordered removed and those aliens physically removed.

P. No Private Right of Action

This document provides only internal DHS policy guidance, which may be modified, rescinded, or superseded at any time without notice. This guidance is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigation prerogatives of DHS.

In implementing this guidance, I direct DHS Components to consult with legal counsel to ensure compliance with all applicable laws, including the Administrative Procedure Act.

Can Congress Force an End to ‘Sanctuary City’ Policies?

National Review

by Alexandra DeSanctis, November 30, 2016

Using the power of the purse, Congress can incentivize local jurisdictions to comply with federal immigration law.

Nearly a year and a half ago, California resident Kate Steinle was murdered in San Francisco by a criminal illegal alien who had been deported from the U.S. five times. Today, San Francisco remains a so-called sanctuary city, where illegal aliens — including those who are convicted criminals — are shielded from federal immigration law by the city government, and where local law enforcement is not permitted to cooperate with the federal government to identify or deport these individuals. Despite a number of legislative attempts by the congressional GOP to address the blatant disregard of federal law by San Francisco and numerous other sanctuary jurisdictions, no measure has yet been able to effectively curb the problem. But that is about to change.

John Culberson, a Republican representative from Texas, has effectively used his post as chairman of the House Appropriations Subcommittee on Commerce, Justice, and Science to coerce the Department of Justice into enforcing a pre-existing federal law against harboring illegal aliens in sanctuary cities. As chair of the subcommittee, Culberson serves as chief financial officer of the departments under his jurisdiction and thus has the authority to cut off parts of their funding, block certain types of spending, and put intense financial pressure on executive agencies behind the scenes. After assuming his role in January of 2015, he realized that this authority enabled him to insist that departments take certain actions or risk losing their desired funding.

Curbing the ill effects of sanctuary cities is one central area in which Culberson chose to leverage the power of the purse to get results, and he is the first appropriations subcommittee chairman to have such success with this method. Luckily for Culberson, there was already a law on the books for him to work with. In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act, including section 8 U.S.C. 1373, which provided that no state or local entity can in any way restrict its law-enforcement officials from communicating with federal immigration authorities regarding an individual’s citizenship or immigration status.

After Culberson met with officials within the Justice Department and made clear that their financial situation could become strained if they refused to cooperate, the department released guidance notifying all U.S. jurisdictions that they must comply with all federal law — including 8 U.S.C. 1373 — in order to receive federal grants. “I’ve effectively created an off-switch that Attorney General Sessions and President Trump can throw at noon on January 20 to cut off all federal law-enforcement grants to these cities,” Culberson tells National Review.

Read more at: <http://www.nationalreview.com/article/442578/sanctuary-cities-federal-law-congress-power-purse-incentivizes-cooperation-john>

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 CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

CITY AND COUNTY OF SAN
 FRANCISCO,

Plaintiff,

vs.

DONALD J. TRUMP, President of the United
 States, UNITED STATES OF AMERICA,
 JOHN F. KELLY, Secretary of United States
 Department of Homeland Security, DANA J.
 BOENTE, Acting Attorney General of the
 United States, DOES 1-100,

Defendants.

Case No.

COMPLAINT FOR DECLARATORY AND
 INJUNCTIVE RELIEF

INTRODUCTION

1
2 1. The City and County of San Francisco (“San Francisco”) seeks declaratory and
3 injunctive relief against the United States of America and the above-named federal officials for
4 violating the Tenth Amendment, U.S. Const. amend. X. San Francisco further seeks a declaration that
5 it complies with Title 8, Section 1373 of the United States Code (“Section 1373”) under the
6 Declaratory Judgment Act, 28 U.S.C. Sections 2201 and 2202 *et seq.*

7 2. In blatant disregard of the law, the President of the United States seeks to coerce local
8 authorities into abandoning what are known as “Sanctuary City” laws and policies. To accomplish this
9 objective, on January 25, 2017, the President issued an Executive Order entitled, “Enhancing Public
10 Safety in the Interior of the United States.” Exec. Order No. 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017)
11 (“Executive Order”). The Executive Order announces that it is the Executive Branch’s policy to
12 withhold federal funds from “sanctuary jurisdictions,” and directs the Attorney General and Secretary
13 of Homeland Security to ensure that sanctuary jurisdictions do not receive Federal grants, and directs
14 the Attorney General to take enforcement action against any local entity that “hinders the enforcement
15 of Federal law.” This strikes at the heart of established principles of federalism and violates the United
16 States Constitution.

17 3. The President and San Francisco agree that San Francisco is a Sanctuary City, but
18 disagree about what that means. San Francisco laws limit when city employees and agencies may
19 assist with the enforcement of federal immigration law. These laws generally prohibit city employees
20 from using city funds or resources to assist in the enforcement of federal immigration law, unless
21 required by federal or state law. They specifically prohibit local law enforcement officers from
22 cooperating with Immigration and Customs Enforcement (“ICE”) detainer requests, which are
23 voluntary, and limit when local law enforcement officers may give ICE advance notice of a person’s
24 release from local jail.

25 4. Like many other cities, San Francisco is a city of immigrants, many of whom are
26 undocumented, who come here to live, work, and raise families. San Francisco is safer when all
27 people, including undocumented immigrants, feel safe reporting crimes. San Francisco is healthier
28 when all residents, including undocumented immigrants, access public health programs. And San

1 Francisco is economically and socially stronger when all children, including undocumented
2 immigrants, attend school. Using city and county resources for federal immigration enforcement
3 breeds distrust of local government and officials who have no power to change federal laws, and can
4 also wrench apart family and community structures that support residents and thus conserve resources.
5 For these reasons, among others, San Francisco has directed its employees and officers not to assist the
6 Federal government in enforcing federal immigration law, with limited exceptions.

7 5. San Francisco faces the imminent loss of federal funds and impending enforcement
8 action if it does not capitulate to the President's demand that it help enforce federal immigration law.
9 At least one jurisdiction has already succumbed to this presidential fiat.

10 6. The Executive Order relies on Title 8, Section 1373 of the United States Code ("Section
11 1373"), which provides that local governments may not prohibit or restrict any government entity or
12 official from "sending to, or receiving from, [federal immigration officials] information regarding the
13 citizenship or immigration status . . . of any individual." San Francisco seeks declaratory relief that its
14 Sanctuary City laws comply with Section 1373. San Francisco does not prohibit or restrict its
15 employees from sharing information about the citizenship or immigration status of any individual with
16 federal immigration officials.

17 7. The Executive Order is a severe invasion of San Francisco's sovereignty. The
18 Executive Order not only interferes with San Francisco's ability to direct the official actions of its
19 officers and employees but also threatens new consequences for failing to comply with 1373. In this
20 action, San Francisco seeks declaratory relief that Section 1373 is unconstitutional on its face and as
21 applied to state and local Sanctuary City laws such as San Francisco's. The Executive Branch may not
22 commandeer state and local officials to enforce federal law.

23 8. The Constitution establishes a balance of power between the state and Federal
24 governments, as well as among the coordinate branches of Federal government, to prevent the
25 excessive accumulation of power in any single entity and reduce the risk of tyranny and abuse from
26 any government office. In so doing, the Tenth Amendment provides that "[t]he powers not delegated
27 to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States
28

1 respectively, or to the people.” This state sovereignty extends to political subdivisions of the State,
 2 including cities and counties such as San Francisco.

3 9. This lawsuit is about state sovereignty and a local government’s autonomy to devote
 4 resources to local priorities and to control the exercise of its own police powers, rather than being
 5 forced to carry out the agenda of the Federal government. Under the Constitution and established
 6 principles of federalism, state and local governments have this autonomy. The Executive Order
 7 purports otherwise to wrest this autonomy from state and local governments, and a court order is
 8 needed to resolve this controversy.

9 10. San Francisco recognizes that there will be additional developments related to the
 10 Executive Order in the weeks and months to come. But the consequences threatened by the Executive
 11 Order are too severe for San Francisco to wait. The Executive Order threatens the loss of more than \$1
 12 billion in federal funds that support vital services, the loss of community trust, and the loss of San
 13 Francisco’s sovereign authority to set and follow its own laws on matters appropriately and
 14 historically within the control of local government. San Francisco has no choice but to seek the
 15 intervention of this Court to ensure that its rights and residents are protected, and that the
 16 Administration complies with Federal law and the Constitution.

17 JURISDICTION AND VENUE

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

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

24 PARTIES

25 13. Plaintiff, City and County of San Francisco (“San Francisco”), is a municipal
 26 corporation organized and existing under and by virtue of the laws of the State of California, and is a
 27 charter city and county.
 28

14. Defendant Donald J. Trump is the President of the United States. He is sued in his official capacity.

15. Defendant United States of America is sued under 28 U.S.C. Section 1346.

16. The U.S. Department of Homeland Security (“DHS”) is a cabinet department of the United States Federal government with the primary mission of securing the United States. Defendant John F. Kelly is the Secretary of DHS. Secretary Kelly is responsible for executing relevant provisions of the Executive Order. Secretary Kelly is sued in his official capacity.

17. The Attorney General (“AG”) is a cabinet department of the United States Federal government overseeing the Department of Justice. Defendant Dana J. Boente is the Acting Attorney General. Acting Attorney General Boente is responsible for executing relevant provisions of the Executive Order. Acting Attorney General Dana J. Boente is sued in his official capacity.¹

18. Doe 1 through Doe 100 are sued under fictitious names. Plaintiffs do 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.

FACTUAL ALLEGATIONS

I. SAN FRANCISCO’S SANCTUARY CITY LAWS

19. San Francisco is a Sanctuary City and has been since 1989. In the 1980s, thousands of Central American refugees fled countries in the midst of violent civil wars to seek legal protection in the United States. Against the backdrop of this humanitarian crisis, San Francisco began enacting the ordinances that, as later amended, make up San Francisco’s Sanctuary City laws.

20. Numerous other municipalities—including New York, D.C., Chicago, Los Angeles, New Orleans, Santa Clara, Minneapolis, and Houston—have also enacted Sanctuary City laws. Although the details of their ordinances differ, all of these jurisdictions have adopted laws or policies that limit using local resources to implement and enforce federal immigration laws.

21. Today, San Francisco’s body of Sanctuary City law is contained in two chapters of San Francisco’s Administrative Code: Chapters 12H and 12I.

¹ Jeff Sessions has been nominated to serve as Attorney General and will replace Acting Attorney General Dana J. Boente, if confirmed.

22. Importantly, these chapters do not protect criminals or prevent people from being prosecuted for illegal acts. Instead, they protect children by ensuring that their parents feel safe taking them to playgrounds, to schools, and to hospitals. They protect families from being split up when parents of children born in the United States are deported. And they protect the safety and health of all residents of San Francisco by helping to ensure that everyone, including undocumented immigrants, feels safe reporting crimes, cooperating with police investigations, and seeking medical treatment. Specifically, Chapters 12H and 12I apply as follows.

23. San Francisco Administrative Code Chapter 12H—the full text of which is attached as Exhibit 1—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.

24. San Francisco Administrative Code Chapter 12I—the full text of which is attached as Exhibit 2—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.

25. Section 287.7 of Title 8 of the Code of Federal Regulations provides that such a detainer “serves to advise another law enforcement agency that the Department seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien.” Subsection (d) provides that “[u]pon a determination by the Department to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the Department.”

26. A detainer request issued under this section 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 and is not 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.

27. Complying with such a detainer request requires committing scarce law enforcement personnel and resources to track and respond to requests, detain individuals in holding cells, and supervise and feed individuals during the prolonged detention. And the Federal government has made clear that the local agency bears the financial burden of the detention, providing that “[n]o detainer issued as a result of a determination made under this chapter . . . shall incur any fiscal obligation on the part of the Department.” 8 C.F.R. 287(e).

28. 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 in question meets certain criteria. *See* Section 12I.3(c), (d).

29. 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* Section 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* Section 12I.2.

30. The legislative findings set forth in Chapter 12I evidence the legitimate local purpose of San Francisco’s Sanctuary City laws. For example, the Legislature 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.)

31. 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

1 agencies may continue to collaborate with federal authorities to protect public safety.” See Section
2 12I.4.

3 32. Further underscoring that San Francisco’s Sanctuary City laws arise from San
4 Francisco’s commitment and responsibility to ensure public safety and welfare, the Board of
5 Supervisors, as San Francisco’s legislative body, found that public safety is “founded on trust and
6 cooperation of community residents and local law enforcement.” Section 12I.1. Citing a study by the
7 University of Illinois, which found that at least 40% of Latinos surveyed were less likely to provide
8 information to police because they feared exposing themselves, family, or friends to a risk of
9 deportation, the Legislature stated that “civil immigration detainers and notifications regarding release
10 undermine community trust of law enforcement by instilling fear in immigrant communities of coming
11 forward to report crimes and cooperate with local law enforcement agencies.” *Id.*; see also *id.* (“The
12 City has enacted numerous laws and policies to strengthen communities and to build trust between
13 communities and local law enforcement. Local cooperation and assistance with civil immigration
14 enforcement undermines community policing strategies.”).

15 33. The Board of Supervisors also had a public health purpose for its decision to restrict
16 disclosure of confidential information: “To carry out public health programs, the City must be able to
17 reliably collect confidential information from all residents Information gathering and cooperation
18 may be jeopardized if release of personal information results in a person being taken into immigration
19 custody.” *Id.*

20 34. Finally, the Board of Supervisors determined that enforcing immigration detainer
21 requests would require San Francisco to redirect scarce local law enforcement personnel and
22 resources—noting that the costs of “responding to a civil immigration detainer can include, but [are]
23 not limited to, extended detention time, the administrative costs of tracking and responding to
24 detainers, and the legal liability for erroneously holding an individual who is not subject to a civil
25 immigration detainer.” *Id.* In short, the Board of Supervisors concluded that “[c]ompliance with civil
26 immigration detainers and involvement in civil immigration enforcement diverts limited local
27 resources from programs that are beneficial to the City.” *Id.*
28

35. San Francisco departments have adopted policies and practices consistent with Chapters 12H and 12I.

36. California law incorporates local Sanctuary City laws such as Chapters 12H and 12I. The TRUST Act states that that local law enforcement officials may comply with ICE detainer requests only if (1) the continued detention would not violate any federal, state, or local law, or any local policy, and (2) the defendant's criminal history meets specified conditions. Cal. Gov't Code §§ 7282, 7282.5. Thus, because in San Francisco ICE detentions are prohibited under local law, they are also prohibited under state law.

II. SECTION 1373

37. 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). This restriction exclusively regulates government entities.

38. Section 1373 requires San Francisco to allow its employees to use city resources, including San Francisco tax dollars, to respond to requests for information about citizenship and immigration status.

39. On May 31, 2016, in response to a request from the Office of the Attorney General, the Office of the Inspector General ("OIG") of the Department of Justice issued a memorandum ("OIG Memo") regarding potential violations of Section 1373 by recipients of funding from the Edward Byrne Memorial Justice Assistance Grant Program ("JAG"). Memorandum from Michael E. Horowitz, Inspector Gen., to Karol V. Mason, Assistant Att'y Gen. for the Office of Justice Programs, "Department of Justice Referral of Allegations of Potential Violations of 8 U.S.C. § 1373 by Grant Recipients" (May 31, 2016), <https://oig.justice.gov/reports/2016/1607.pdf>.²

40. In analyzing the local laws and policies of ten selected state and local jurisdictions, the OIG demonstrated how the Federal government interprets Section 1373.

² The authorizing legislation for the JAG program requires that all grant applicants certify compliance with the provisions of the authorizing legislation and all other "applicable federal laws." 42 U.S.C. § 3750 et seq. The U.S. Department of Justice, Office of Justice Programs has recently announced that Section 1373 is an "applicable" law under the JAG authorizing legislation.

41. For example, though Section 1373 does not expressly address immigration detainers, OIG expressed concern that local laws concerning the handling of detainer requests “may have a broader practical impact on the level of cooperation afforded to ICE by these jurisdictions and may, therefore, be inconsistent with at least the intent of Section 1373.” OIG Memo at 7. It went on to state that local laws and policies that “purport to be focused on civil immigration detainer requests [and say nothing about sharing immigration status with ICE] . . . may nevertheless be affecting ICE’s interactions with the local officials regarding ICE immigration status requests.” *Id.*

42. OIG also stated that such immigration detainer request 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.” *Id.* at 8.

43. In the OIG Memo, the Federal government also endorses the view that local jurisdictions hinder the enforcement of Federal immigration law if they do not honor detainer requests or if they place any other limitations on cooperation with ICE. *See, e.g., id.* at 4 (stating that even though Section 1373 does not specifically address restrictions by state or local entities on cooperation with ICE regarding detainers, “[a] primary and frequently cited indicator of limitations placed on cooperation by state and local jurisdictions with ICE is how the particular state or local jurisdiction handles immigration detainer requests issued by ICE”).

44. In the OIG Memo, OIG recommended that the U.S. Department of Justice, Office of Justice Programs (“OJP”) provide JAG recipients clear guidance on their obligation to comply with Section 1373 and require them to certify that they comply with that section. *See id.* at 9.

45. In response to these recommendations, in July and October 2016 OJP issued guidance regarding compliance with Section 1373. *See* Office of Justice Programs, *Guidance Regarding Compliance with 8 U.S.C. § 1373*, U.S. Dep’t Just. (July 7, 2016) (“OJP July Guidance”); Office of Justice Programs, *Additional Guidance Regarding Compliance with 8 U.S.C. § 1373*, U.S. Dep’t Just. (October 6, 2016) (“OJP October Guidance”).

46. In the OJP July Guidance, OJP stated that to comply with Section 1373, “[y]our personnel *must* be informed that notwithstanding any state or local policies to the contrary, federal law

1 does not allow any government entity or official to prohibit the sending or receiving of information
 2 about an individual’s citizenship or immigration status with any federal, state or local government
 3 entity and officials.” OJP July Guidance at 1 (emphasis added). Accordingly, OJP reads into the law
 4 an affirmative obligation to instruct personnel regarding the substance of Section 1373.

5 47. In the October 2016 Guidance, OIG stated that all JAG applicants must comply with—
 6 and certify their compliance with—Section 1373. OJP October Guidance at 1.

7 48. As a subgrantee of a JAG grant, San Francisco is required to certify its compliance with
 8 Section 1373.

9 **III. SAN FRANCISCO COMPLIES WITH SECTION 1373**

10 49. San Francisco complies with Section 1373.

11 50. The plain language of Section 1373 states that “a local government entity or official
 12 may not prohibit, or in any way restrict, any government entity or official from sending to, or
 13 receiving from, [federal immigration officials] information regarding the citizenship or immigration
 14 status . . . of any individual.” 8 U.S.C. § 1373(a). Nothing in San Francisco Administrative Code
 15 Chapters 12H or 12I limits communications regarding *citizenship or immigration status* in any way.

16 51. And, indeed, under ICE’s Secure Communities program (also known as “S-Comm”)
 17 whenever an individual is taken into custody, the person is digitally fingerprinted and those
 18 fingerprints are sent to the California Department of Justice and ultimately the FBI. The FBI forwards
 19 the fingerprints to DHS, which allows ICE to determine the immigration status of everyone in San
 20 Francisco custody.

21 52. Under Chapter 12I and the TRUST Act, San Francisco does not enforce detainer
 22 requests (*see* ¶24, *supra*), and does not respond to notification requests from the Federal government
 23 unless certain conditions are met (*see* ¶28, *supra*)—but compliance with such requests is not, in fact,
 24 required by Section 1373, which speaks only to communications regarding *citizenship and*
 25 *immigration status*. By contrast, San Francisco does comply with criminal warrants.

26 53. Also, complying with civil immigration detainer requests alone, in the absence of
 27 probable cause for the detainer, would violate the Fourth Amendment to the United States Constitution
 28 and could subject San Francisco to civil liability for this harm. *See Arizona v. United States*, 132 S. Ct.

2492, 2509 (2012) (noting that “[d]etaining individuals solely to verify their immigration status would raise constitutional concerns”); *Morales v. Chadbourne*, 793 F.3d 208, 217 (1st Cir. 2015); *see also Melendres v. Arpaio*, 695 F.3d 990, 1000-01 (9th Cir. 2012) (applying the Fourth Amendment to immigration arrests).

54. San Francisco has affirmatively instructed personnel regarding the substance of Section 1373. For example, in a recent memorandum to all San Francisco employees, the San Francisco Human Resources Director explained: “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.”

IV. THE EXECUTIVE ORDER

55. On January 25, 2017, President Donald J. Trump issued the Executive Order attached as Exhibit 3.³

56. The Executive Order declares that “Sanctuary 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.

57. To address the purported harm caused by Sanctuary Cities, the Executive Order establishes the policy that “jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law.” *Id.*

³ On January 27, 2017, President Trump issued a second Executive Order relating to immigration issues entitled, “Protecting The Nation From Foreign Terrorist Entry Into The United States.” The January 27, 2017 Executive Order barred individuals from certain countries from entering the United States. Since its issuance, five courts have issued orders granting temporary relief against the January 27, 2017 Executive Order. *See Darweesh v. Trump*, United States District Court, Eastern District of New York, Case No. 17 Civ. 480; *Tootkaboni v. Trump*, United States District Court, District of Massachusetts, Case No. 17-cv-10154; *Aziz v. Trump*, United States District Court, Eastern District of Virginia, Case No. 1:17-cv-116; *Doe v. Trump*, United States District Court, Western District of Washington, Case No. 17-cv-00126; *Vayeghan v. Trump*, United States District Court, Central District of California, Case No. CV 17-0702.

1 58. Specifically, Section 9(a) of the Executive Order states: “It is the policy of the
2 executive branch to ensure, to the fullest extent of the law, that a State, or a political subdivision of a
3 State, shall comply with 8 U.S.C. 1373.” *Id.* at 8801.

4 59. The Executive Order establishes a funding restriction:

5 In furtherance of this policy, the Attorney General and the Secretary, in their discretion
6 and to the extent consistent with law, shall ensure that jurisdictions that willfully refuse
7 to comply with 8 U.S.C. 1373 (sanctuary jurisdictions) are not eligible to receive
8 Federal grants, except as deemed necessary for law enforcement purposes by the
9 Attorney General or the Secretary. The Secretary has the authority to designate, in his
discretion and to the extent consistent with law, a jurisdiction as a sanctuary
jurisdiction.

10 *Id.* (the “Funding Restriction”).

11 60. The Funding Restriction imposes new funding conditions on existing federal funds that
12 go beyond the statutory conditions imposed by Congress.

13 61. Also, the Funding Restriction imposes funding conditions that are not germane to the
14 purpose of the funds insofar as it reaches funds that are unrelated to law enforcement or immigration.

15 62. The Funding Restriction also imposes conditions so severe that they cross the line
16 distinguishing encouragement from coercion. The Funding Restriction threatens a significant percent
17 of San Francisco’s overall budget, including virtually the entire funding stream for critical programs to
18 its residents, such as Medicaid.

19 63. Finally, the Funding Restriction imposes new funding conditions that require
20 jurisdictions to act unconstitutionally insofar as Defendants interpret Section 1373 to require San
21 Francisco to detain individuals who would otherwise be released from custody. Such detentions would
22 violate, *inter alia*, the Fourth Amendment.

23 64. For all these reasons, the Funding Restriction violates the Tenth Amendment, the
24 Spending Clause, and Article 1, sec. 1 of the United States Constitution.

25 65. The Executive Order also mandates enforcement action:

26 The Attorney General shall take appropriate enforcement action against any entity that
27 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.

28 *Id.* (the “Enforcement Directive”).

66. The Enforcement Directive commandeers state and local governments by, *inter alia*, compelling them to enforce federal law under threat of legal action, violating Tenth Amendment to the United States Constitution.

V. DEFENDANTS CHARACTERIZE SAN FRANCISCO AS A SANCTUARY CITY THAT WILL LOSE FEDERAL FUNDING

67. In the Executive Order, Defendants equate Sanctuary Cities with jurisdictions that fail to comply with Section 1373.

68. Defendants characterize San Francisco as a Sanctuary City.

69. For example, in a written campaign speech then-candidate Donald J. Trump gave in Phoenix, Arizona on August 31, 2016, he expressly referred to San Francisco as a Sanctuary City. *See Donald J. Trump: Address on Immigration*, Donald J. Trump for President (Aug. 31, 2016), <https://www.donaldjtrump.com/press-releases/donald-j.-trump-address-on-immigration> (“Another victim is Kate Steinle, gunned down in the Sanctuary City of San Francisco by an illegal immigrant deported five previous times.”).

70. Not only have Defendants made clear that they consider San Francisco a Sanctuary City, but they have also repeatedly indicated that Sanctuary Cities, like San Francisco, violate federal law and should have their federal funding revoked.

- In statements to the Daily Caller on July 7, 2015, Congressman Darrell Issa and Attorney General nominee Senator Jeff Sessions criticized San Francisco and other sanctuary jurisdictions for failing to honor detainers. Attorney General nominee Senator Jeff 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.’” Kerry Picket, *Sen. Sessions: City Officials Harboring Illegal Immigrant Felons Could Be Charged with Crime*, Daily

1 Caller (July 7, 2015, 10:07 PM), [http://dailycaller.com/2015/07/07/sen-sessions-](http://dailycaller.com/2015/07/07/sen-sessions-city-officials-harboring-illegal-immigrant-felons-could-be-charged-with-crime/#ixzz4XE9I12Ux)
 2 [city-officials-harboring-illegal-immigrant-felons-could-be-charged-with-](http://dailycaller.com/2015/07/07/sen-sessions-city-officials-harboring-illegal-immigrant-felons-could-be-charged-with-crime/#ixzz4XE9I12Ux)
 3 [crime/#ixzz4XE9I12Ux](http://dailycaller.com/2015/07/07/sen-sessions-city-officials-harboring-illegal-immigrant-felons-could-be-charged-with-crime/#ixzz4XE9I12Ux).

- 4 • On July 8, 2015, Attorney General nominee Senator Jeff Sessions gave a speech to
 5 Congress describing San Francisco as “a jurisdiction that is known to release illegal
 6 immigrants back into the public,” and one which refused to “honor” a detainer
 7 sought by federal authorities. News Release, Office of Senator Jeff Sessions,
 8 Senator Sessions Calls on Congress To Take Up Immigration Reform for
 9 Americans (July 9, 2015), [http://www.sessions.senate.gov/public/index.cfm/news-](http://www.sessions.senate.gov/public/index.cfm/news-releases?ID=B7A98B63-8ECA-4A4E-B5C8-4A665F2343DE)
 10 [releases?ID=B7A98B63-8ECA-4A4E-B5C8-4A665F2343DE](http://www.sessions.senate.gov/public/index.cfm/news-releases?ID=B7A98B63-8ECA-4A4E-B5C8-4A665F2343DE).
- 11 • In an interview with Breitbart News in May 2016, then-candidate Donald J. Trump
 12 stated, “Sanctuary cities are a disaster They’re a safe-haven for criminals and
 13 people that should not have a safe-haven in many cases. It’s just unacceptable.
 14 We’ll be looking at sanctuary cities very hard.” Matthew Boyle, *Exclusive —*
 15 *Donald J. Trump to San Francisco: Sanctuary Cities ‘Unacceptable,’ A ‘Disaster’*
 16 *Creating ‘Safe-Haven for Criminals’*, Breitbart News (May 16, 2016),
 17 [http://www.breitbart.com/2016-presidential-race/2016/05/16/exclusive-donald-j-](http://www.breitbart.com/2016-presidential-race/2016/05/16/exclusive-donald-j-trump-to-san-francisco-sanctuary-cities-unacceptable-a-disaster-creating-safe-haven-for-criminals/)
 18 [trump-to-san-francisco-sanctuary-cities-unacceptable-a-disaster-creating-safe-](http://www.breitbart.com/2016-presidential-race/2016/05/16/exclusive-donald-j-trump-to-san-francisco-sanctuary-cities-unacceptable-a-disaster-creating-safe-haven-for-criminals/)
 19 [haven-for-criminals/](http://www.breitbart.com/2016-presidential-race/2016/05/16/exclusive-donald-j-trump-to-san-francisco-sanctuary-cities-unacceptable-a-disaster-creating-safe-haven-for-criminals/). This Breitbart news report further stated that, “Trump’s
 20 comments . . . come in response to efforts by far left progressive organizations in
 21 San Francisco to expand that city’s sanctuary city laws.” *Id.*
- 22 • Another Breitbart News article published on November 21, 2016 regarding
 23 Sanctuary Cities quoted Texas Republican Congressman John Culberson as stating,
 24 “The law requires cooperation with immigration officials 100 percent of the time.”
 25 Bob Price, *Sanctuary Cities Risk Losing DOJ Funds in 2017, Texas Congressman*
 26 *Says*, Breitbart News (Nov. 21, 2016),
 27 [http://www.breitbart.com/texas/2016/11/21/sanctuary-cities-risk-losing-doj-funds-](http://www.breitbart.com/texas/2016/11/21/sanctuary-cities-risk-losing-doj-funds-2017-texas-congressman-says/)
 28 [2017-texas-congressman-says/](http://www.breitbart.com/texas/2016/11/21/sanctuary-cities-risk-losing-doj-funds-2017-texas-congressman-says/).

- In a statement by White House Press Secretary Sean Spicer on January 25, 2017 announcing the issuance of the Executive Order, Spicer stated, “We 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.” White House, *1/25/17: White House Press Briefing*, YouTube (Jan. 25, 2017), <https://www.youtube.com/watch?v=OaPriMVvtZA>.

71. In a speech at the GOP Congressional Republican Retreat in Philadelphia on January 26, 2017, President Trump reiterated his views on Sanctuary Cities: “And finally, at long last, cracking down on Sanctuary Cities. It’s time to restore the civil rights of Americans to protect their jobs, their hopes, and their dreams for a much better future. Congress passed these laws to serve our citizens. It is about time those laws were properly enforced. They are not enforced.” See Donald J. Trump, President Trump Remarks at Congressional Republican Retreat, C-Span (Jan 26, 2017), <https://www.c-span.org/video/?422829-1/president-trump-tells-congressional-republicans-now-deliver>.

72. A press release from the Office of the Press Secretary for the White House issued on January 28, 2017 detailing President Trump’s First Week of Action, reads in relevant part: “President Trump signed an executive order to ensure that immigration laws are enforced throughout the United States, including halting federal funding for sanctuary cities.” Press Release, The White House, Office of the Press Secretary, President Trump’s First Week of Action (Jan. 28, 2017), <https://www.whitehouse.gov/the-press-office/2017/01/28/president-trumps-first-week-action>.

73. Defendants’ statements establish their view that Sanctuary Cities, like San Francisco, violate Section 1373 and will lose federal funding—apparently all or almost all federal funding—under the Executive Order.

VI. SECTION 1373 AND THE EXECUTIVE ORDER HARM SAN FRANCISCO

A. Section 1373(a) Impermissibly Intrudes on State Sovereignty

74. Section 1373(a) unconstitutionally regulates “States in their sovereign capacity.” *Reno, v. Condon*, 528 U.S. 141, 151 (2000). It necessarily regulates governments in their capacities as

1 governments. It does not “subject state governments to generally applicable laws.” *New York v. U.S.*,
 2 505 U.S. 144, 160 (1992). On the contrary, in every possible application, it targets “government
 3 entit[ies] or official[s]” for special treatment. 8 U.S.C. § 1373(a).

4 75. Congress may not command States to provide the Federal government with information
 5 “that only state officials have access to,” *Printz v. United States*, 521 U.S. 898, 932 n.17 (1997). The
 6 Federal government must not regulate its fellow governments in their capacities as governments.

7 76. Also, Section 1373 targets government entities’ and officials’ authority to control their
 8 subordinates—an authority at the heart of a government’s existence as a government. “[A] State can
 9 act only through its officers and agents.” *Nevada v. Hicks*, 533 U.S. 353, 365 (2001). “Through the
 10 structure of its government, and the character of those who exercise government authority, a State
 11 defines itself as a sovereign.” *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991).

12 77. By preventing state and local governments from directing employees how to handle
 13 information about citizenship and immigration status, Section 1373 makes it impossible for local
 14 jurisdictions freely to choose and clearly to establish how they will handle this information. Under
 15 Section 1373, San Francisco cannot legislate or regulate that government officials and employees will
 16 never share citizenship or immigration information. Yet Congress has no power “to require the States
 17 to govern according to Congress’ instructions.” *New York*, 505 U.S. at 162 (emphasis added).

18 78. Section 1373 mandates uncertainty where Sanctuary City laws seek to provide
 19 certainty. Because of Section 1373, San Francisco cannot tell the public that it will never share
 20 information about citizenship or immigration status. Any attempt to impose a uniform rule is fettered
 21 by the individual discretion of over 30,000 employees and officials. This is not the way San Francisco
 22 chooses to govern. It is chaos imposed by the Federal government.

23 79. To the extent the Executive Order incorporates Section 1373(a), it is invalid for all of
 24 the reasons described above.

25 **B. Federal Funds Received by San Francisco**

26 80. San Francisco receives in excess of \$1.2 billion annually in federal funds. This is
 27 approximately 13% of San Francisco’s annual budget.
 28

1 81. Only a small percentage of all federal funds received by San Francisco relate to
2 immigration or law enforcement.

3 82. San Francisco receives federal funds for entitlement programs for its residents
4 including Medicaid and Medicare, Temporary Assistance to Needy Families, Supplemental Nutrition
5 Assistance Program, Foster Care, Child Welfare Programs, and Child Support Services.

6 83. San Francisco also receives federal grants for infrastructure and transportation projects,
7 public health programs, workforce development, supportive housing, and veterans' services, among
8 other things.

9 84. Congress has established numerous conditions governing eligibility for these funds. For
10 instance, to receive Medicaid funds, a state must create a state plan that includes assurances to the
11 Federal government that the state will provide specified types of care and that the state regulates health
12 insurance providers to ensure access to medical assistance, among many other requirements. 42 U.S.C.
13 § 1396(a).

14 85. As with entitlement programs, most federal grants are awarded based on statutory
15 eligibility criteria. For example, HUD Community Development Block Grants fund many projects to
16 combat evictions, maintain stable housing occupancy and supply, and incentivize affordable unit
17 construction. These grants require the grantee to prepare a statement of community development
18 objectives and projected use of funds, provide a citizen participation plan, and certify other
19 enumerated criteria. 42 U.S.C. § 5304.

20 86. No federal funds received by San Francisco have statutory conditions specifically
21 requiring compliance with Section 1373.

22 87. San Francisco receives most federal funds as reimbursements. Thus, San Francisco is
23 currently providing services and benefits that the Federal government has agreed to reimburse. The
24 Executive Order calls into question whether the Federal government will in fact reimburse San
25 Francisco for these funds. This presents San Francisco with a Hobson's choice. San Francisco, facing
26 possible reductions, could cut services now, harming the public. Or San Francisco could continue to
27 spend knowing that if cuts come they could come suddenly, outside of the budget process, and the San
28

1 Francisco will have to impose service cuts even more radically at that time, given that funds have
2 already been spent in anticipation of federal reimbursement.

3 **C. Budget Impact of the Executive Order**

4 88. The Executive Order's threat to cut federal funds impairs San Francisco's internal
5 government operations by hampering its budget process. The threatened loss of federal funds renders
6 San Francisco unable to prepare a balanced budget for the next fiscal year.

7 89. San Francisco has already begun the seven-month process of adopting the annual
8 budget for the fiscal year beginning on July 1, 2017. On December 13, 2016, the Mayor and the
9 Controller (San Francisco's chief financial officer) issued budget instructions to all San Francisco
10 departments with detailed guidance on the preparation of departments' budget requests. Public
11 hearings have begun to consider departmental budget proposals. Most San Francisco departments must
12 submit their budget requests for the coming fiscal year to the Controller by February 21. The
13 Controller must submit a consolidated budget proposal to the Mayor by March 1, the Mayor must
14 submit budget proposal to the Board of Supervisors by June 1, and the Board must approve a balanced
15 budget by August 1.

16 90. The Executive Order's threat to cut federal funds is manifestly coercive. This is why at
17 least one jurisdiction has already changed its policy about immigration detainers in response to the
18 Executive Order. The day after the Executive Order was issued, Miami-Dade County Mayor Carlos
19 Gimenez instructed the county's interim corrections director to "fully cooperate" with the Federal
20 government and comply with all immigration detainer requests, eliminating a previous federal
21 reimbursement requirement. "It's really not worth the risk of losing millions of dollars to the residents
22 of Miami-Dade County in discretionary money from the feds," said Mayor Gimenez. Ray Sanchez,
23 *Trump's Sanctuary Crackdown*, CNN Politics (Jan. 27, 2017, 6:34 PM ET),
24 <http://www.cnn.com/2017/01/27/politics/miami-dade-mayor-sanctuary-crackdown/>. There is little
25 doubt that is exactly what the President intends in his promise to end sanctuary cities.

26 **D. Community Relations Impact of the Executive Order**

27 91. The Executive Order fosters an atmosphere of fear and distrust between undocumented
28 immigrants and local government officials in San Francisco.

92. By heightening undocumented immigrants' concerns that any interaction with San Francisco officials will lead to their information being turned over to ICE, the Executive Order discourages undocumented immigrants from reporting crimes, seeking public health services, and otherwise engaging with San Francisco programs and services. This threat harms public safety, public health, and San Francisco's ability to act in what San Francisco has determined to be the best interest of its residents, consistent with federal and state law.

93. The Executive Order undermines San Francisco's ability to provide critical services not just to undocumented immigrants, but to all residents. When witnesses and crime victims will not talk to the police, law enforcement suffers and the entire community is less safe. When children are not vaccinated or the sick are not treated for communicable diseases, illness spreads throughout the community. The United States Constitution guarantees states and local governments, such as San Francisco, that they may make those decisions and do not have to carry out the Federal government's immigration programs.

94. San Francisco has been forced to expend its tax dollars educating San Francisco officials and reassuring residents in response to the Executive Order.

95. As a result, the Executive Order causes the very harms San Francisco's Sanctuary City laws were designed to prevent. The Executive Order destroys rather than "foster[s] respect and trust between law enforcement and residents," wastes rather than "protect[s] limited local resources," and discourages rather than "encourage[s] cooperation between residents and City officials, including especially law enforcement and public health officers and employees." San Francisco Administrative Code Ch. 12I.1.

CAUSES OF ACTION

COUNT ONE

DECLARATORY RELIEF – SAN FRANCISCO COMPLIES WITH 8 U.S.C. § 1373

96. Plaintiffs repeat and incorporate by reference each allegation of the prior paragraphs as if fully set forth herein.

97. San Francisco contends that it complies 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, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

98. Defendants contend that San Francisco does not comply with Section 1373.

99. An actual controversy presently exists between San Francisco and Defendants about whether San Francisco complies with Section 1373.

100. A judicial determination resolving this controversy is necessary and appropriate at this time.

COUNT TWO

TENTH AMENDMENT – 8 U.S.C. § 1373(a) IS UNCONSTITUTIONAL

101. Plaintiffs repeat and incorporate by reference each allegation of the prior paragraphs as if fully set forth herein.

102. On its face, Section 1373 commandeers state and local governments in violation of the Tenth Amendment to the Constitution by, *inter alia*, regulating the “States in their sovereign capacity,” *Reno*, 528 U.S. at 151, limiting state authority to regulate internal affairs and determine the duties and responsibilities of state employees, *Gregory*, 501 U.S. at 460, and ultimately forcing States to allow their employees to use state time and state resources to assist in the enforcement of federal statutes regulating private individuals, *Reno*, 528 U.S. at 151, and to provide information that belongs to the State and is available to them only in their official capacity, *Printz*, 521 U.S. at 932-33 & n.17.

103. As applied to invalidate state and local Sanctuary City laws, like San Francisco Administrative Code Chapters 12H and 12I, which were enacted to further legitimate local interests grounded in the basic police powers of local government and related to public health and safety, Section 1373(a) commandeers state and local governments and violates the Tenth Amendment to the United States Constitution.

COUNT THREE

TENTH AMENDMENT – EXECUTIVE ORDER SECTION 9(A)’S ENFORCEMENT DIRECTIVE IS UNCONSTITUTIONAL

104. Plaintiffs repeat and incorporate by reference each allegation of the prior paragraphs as if fully set forth herein.

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

2
3 Dated: January 31, 2017

4 DENNIS J. HERRERA
5 City Attorney
6 RONALD FLYNN
7 JESSE C. SMITH
8 YVONNE R. MERÉ
9 MOLLIE M. LEE
10 SARA J. EISENBERG
11 Deputy City Attorneys

12 By: /s/ Dennis J. Herrera
13 DENNIS J. HERRERA
14 City Attorney

15 By: /s/ Mollie M. Lee
16 MOLLIE M. LEE
17 Deputy City Attorney

18 Attorneys for Plaintiff
19 CITY AND COUNTY OF SAN FRANCISCO
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FILER'S ATTESTATION

I, Mollie M. Lee, am the ECF user whose identification and password are being used to file this COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF. Pursuant to Civil Local Rule 5-1(i)(3), I hereby attest that the other above-named signatories concur in this filing.

EXHIBIT 1

San Francisco Administrative Code

CHAPTER 12H: IMMIGRATION STATUS

- Sec. 12H.1. City and County of Refuge.
Sec. 12H.2. Use of City Funds Prohibited.
Sec. 12H.3. Clerk of Board to Transmit Copies of this Chapter; Informing City Employees.
Sec. 12H.4. Enforcement.
Sec. 12H.5. City Undertaking Limited to Promotion of General Welfare.
Sec. 12H.6. Severability.

SEC. 12H.1. CITY AND COUNTY OF REFUGE.

It is hereby affirmed that the City and County of San Francisco is a City and County of Refuge.

(Added by Ord. 375-89, App. 10/24/89)

SEC. 12H.2. USE OF CITY FUNDS PROHIBITED.

No department, agency, commission, officer, or employee of the City and County of San Francisco shall use any City funds or resources to assist in the enforcement of Federal immigration law or to gather or disseminate information regarding release status of individuals or any other such personal information as defined in Chapter 12I in the City and County of San Francisco unless such assistance is required by Federal or State statute, regulation, or court decision. The prohibition set forth in this Chapter 12H shall include, but shall not be limited to:

(a) Assisting or cooperating, in one's official capacity, with any investigation, detention, or arrest procedures, public or clandestine, conducted by the Federal agency charged with enforcement of the Federal immigration law and relating to alleged violations of the civil provisions of the Federal immigration law, except as permitted under Administrative Code Section 12I.3.

(b) Assisting or cooperating, in one's official capacity, with any investigation, surveillance, or gathering of information conducted by foreign governments, except for cooperation related to an alleged violation of City and County, State, or Federal criminal laws.

(c) Requesting information about, or disseminating information, in one's official capacity, regarding the release status of any individual or any other such personal information as defined in Chapter 12I, except as permitted under Administrative Code Section 12I.3, or conditioning the provision of services or benefits by the City and County of San Francisco upon immigration status, except as required by Federal or State statute or regulation, City and County public assistance criteria, or court decision.

(d) Including on any application, questionnaire, or interview form used in relation to benefits, services, or opportunities provided by the City and County of San Francisco any question regarding immigration status other than those required by Federal or State statute, regulation, or court decision. Any such questions existing or being used by the City and County at the time this Chapter is adopted shall be deleted within sixty days of the adoption of this Chapter.

SEC. 12H.2-1. [REPEALED.]

(Added by Ord. 282-92, App. 9/4/92; amended by Ord. 238-93, App. 8/4/93; Ord. 228-09, File No. 091032, App. 10-28-2009; repealed by Ord. 96-16, File No. 160022, App. 6/17/2016, Eff. 7/17/2016)

SEC. 12H.3. CLERK OF BOARD TO TRANSMIT COPIES OF THIS CHAPTER; INFORMING CITY EMPLOYEES.

The Clerk of the Board of Supervisors shall send copies of this Chapter, including any future amendments thereto that may be made, to every department, agency and commission of the City and County of San Francisco, to California's United States Senators, and to the California Congressional delegation, the Commissioner of the Federal agency charged with enforcement of the Federal immigration law, the United States Attorney General, and the Secretary of State and the President of the United States. Each appointing officer of the City and County of San Francisco shall inform all employees under her or his jurisdiction of the prohibitions in this ordinance, the duty of all of her or his employees to comply with the prohibitions in this ordinance, and that employees who fail to comply with the prohibitions of the ordinance shall be subject to appropriate disciplinary action. Each City and County employee shall be given a written directive with instructions for implementing the provisions of this Chapter.

(Added by Ord. 375-89, App. 10/24/89; Ord. 228-09, File No. 091032, App. 10-28-2009)

SEC. 12H.4. ENFORCEMENT.

The Human Rights Commission shall review the compliance of the City and County departments, agencies, commissions and employees with the mandates of this ordinance in particular instances in which there is question of noncompliance or when a complaint alleging noncompliance has been lodged.

(Added by Ord. 375-89, App. 10/24/89)

SEC. 12H.5. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE.

In undertaking the adoption and enforcement of this Chapter, the City is assuming an undertaking only to promote the general welfare. This Chapter is not intended to create any new rights for breach of which the City is liable in money damages to any person who claims that such breach proximately caused injury. This section shall not be construed to limit or proscribe any other existing rights or remedies possessed by such person.

(Added by Ord. 375-89, App. 10/24/89)

SEC. 12H.6. SEVERABILITY.

If any part of this ordinance, or the application thereof, is held to be invalid, the remainder of this ordinance shall not be affected thereby, and this ordinance shall otherwise continue in full force and effect. To this end, the provisions of this ordinance, and each of them, are severable.

(Added by Ord. 375-89, App. 10/24/89)

EXHIBIT 2

San Francisco Administrative Code

CHAPTER 12I:

CIVIL IMMIGRATION DETAINERS

Sec. 12I.1.	Findings.
Sec. 12I.2.	Definitions.
Sec. 12I.3.	Restrictions on Law Enforcement Officials.
Sec. 12I.4.	Purpose of this Chapter.
Sec. 12I.5.	Semiannual Report.
Sec. 12I.6.	Severability.
Sec. 12I.7.	Undertaking for the General Welfare.

SEC. 12I.1. FINDINGS.

The City and County of San Francisco (the "City") is home to persons of diverse racial, ethnic, and national backgrounds, including a large immigrant population. The City respects, upholds, and values equal protection and equal treatment for all of our residents, regardless of immigration status. 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.

The United States Immigration and Customs Enforcement ("ICE") is responsible for enforcing the civil immigration laws. ICE's programs, including Secure Communities and its replacement, the Priority Enforcement Program ("PEP"), seek to enlist local law enforcement's voluntary cooperation and assistance in its enforcement efforts. In its description of PEP, ICE explains that all requests under PEP are for voluntary action and that any request is not an authorization to detain persons at the expense of the federal government. The federal government should not shift the financial burden of federal civil immigration enforcement, including personnel time and costs relating to notification and detention, onto local law enforcement by requesting that local law enforcement agencies continue detaining persons based on non-mandatory civil immigration detainers or cooperating and assisting with requests to notify ICE that a person will be released from local custody. It is not a wise and effective use of valuable City resources at a time when vital services are being cut.

ICE's Secure Communities program (also known as "S-Comm") shifted the burden of federal civil immigration enforcement onto local law enforcement. S-Comm came into operation after the state sent fingerprints that state and local law enforcement agencies had transmitted to the California Department of Justice ("Cal DOJ") to positively identify the arrestees and to check their criminal history. The FBI would forward the fingerprints to the Department of Homeland Security ("DHS") to be checked against immigration and other databases. To give itself time to take a detainee into immigration custody, ICE would send an Immigration Detainer – Notice of Action (DHS Form I-247) to the local law enforcement official requesting that the local law enforcement official hold the individual for up to 48 hours after that individual would otherwise be released ("civil immigration detainers"). Civil Immigration detainers may be issued without evidentiary support or probable cause by border patrol agents, aircraft pilots, special agents, deportation officers, immigration inspectors, and immigration adjudication officers.

Given that civil immigration detainers are issued by immigration officers without judicial oversight, and the regulation authorizing civil immigration detainers provides no minimum standard of proof for their issuance, there are serious questions as to their constitutionality. Unlike criminal warrants, which must be supported by probable cause and issued by a neutral magistrate, there are no such requirements for the issuance of a civil immigration detainer. Several federal courts have ruled that because civil immigration detainers and other ICE "Notice of Action" documents are issued without probable cause of criminal conduct, they do not meet the Fourth Amendment requirements for state or local law enforcement officials to arrest and hold an individual in custody. (*Miranda-Olivares v. Clackamas Co.*, No. 3:12-cv-02317-ST *17 (D.Or. April 11, 2014) (finding that detention pursuant to an immigration detainer is a seizure that must comport with the Fourth Amendment). *See also Morales v. Chadbourne*, 996 F. Supp. 2d 19, 29 (D.R.I 2014); *Villars v. Kubiowski*, No. 12-cv-4586 *10-12 (N.D. Ill. filed May 5, 2014).)

On December 4, 2012, the Attorney General of California, Kamala Harris, clarified the responsibilities of local law enforcement agencies under S-Comm. The Attorney General clarified that S-Comm did not require state or local law enforcement officials to determine an individual's immigration status or to enforce federal immigration laws. The Attorney General also clarified that civil immigration detainers are voluntary requests to local law enforcement agencies that do not mandate compliance. California local law enforcement agencies may determine on their own whether to comply with non-mandatory civil immigration detainers. In a June 25, 2014, bulletin, the Attorney General warned that a federal court outside of California had held a county liable for damages where it voluntarily complied with an ICE request to detain an individual, and the individual was otherwise eligible for release and that local law enforcement agencies may also be held liable for such conduct. Over 350 jurisdictions, including Washington, D.C., Cook County, Illinois, and many of California's 58 counties, have already acknowledged the discretionary nature of civil immigration detainers and are declining to hold people in their jails for the additional 48 hours as requested by ICE. Local law enforcement agencies' responsibilities, duties, and powers are regulated by state law. However, complying with non-mandatory civil immigration detainers frequently raises due process concerns.

According to Section 287.7 of Title 8 of the Code of Federal Regulations, the City is not reimbursed by the federal government for the costs associated with civil immigration detainers alone. The full cost of responding to a civil immigration detainer can include, but is not limited to, extended detention time, the administrative costs of tracking and responding to detainers, and the legal liability for erroneously holding an individual who is not subject to a civil immigration detainer. Compliance with civil immigration detainers and involvement in civil immigration enforcement diverts limited local resources from programs that are beneficial to the City.

The City seeks to protect public safety, which is founded on trust and cooperation of community residents and local law enforcement. However, 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. A 2013 study by the University of Illinois, entitled "Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement," found that at least 40% of Latinos surveyed are less likely to provide information to police because they fear exposing themselves, family, or friends to a risk of deportation. Indeed, civil immigration detainers have resulted in the transfer of victims of crime, including domestic violence victims, to ICE.

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.

In 2014, DHS ended the Secure Communities program and replaced it with PEP. PEP and S-Comm share many similarities. Just as with S-Comm, PEP uses state and federal databases to check an individual's fingerprints against immigration and other databases. PEP employs a number of tactics to facilitate transfers of individuals from local jails to immigration custody.

First, PEP uses a new form (known as DHS Form I-247N), which requests notification from local jails about an individual's release date prior to his or her release from local custody. As with civil immigration detainers, these notification requests are issued by immigration officers without judicial oversight, thus raising questions

about local law enforcement's liability for constitutional violations if any person is overdetrained when immigration agents are unable to be present at the time of the person's release from local custody.

Second, under PEP, ICE will continue to issue civil immigration detainer requests where local law enforcement officials are willing to respond to the requests, and in instances of "special circumstances," a term that has yet to be defined by DHS. Despite federal courts finding civil immigration detainers do not meet Fourth Amendment requirements, local jurisdictions are often unable to confirm whether or not a detention request is supported by probable cause or has been reviewed by a neutral magistrate.

The increase in information-sharing between local law enforcement and immigration officials raises serious concerns about privacy rights. Across the country, including in the California Central Valley, there has been an increase of ICE agents stationed in jails, who often have unrestricted access to jail databases, booking logs, and other documents that contain personal information of all jail inmates.

The City has an interest in ensuring that confidential information collected in the course of carrying out its municipal functions, including but not limited to public health programs and criminal investigations, is not used for unintended purposes that could hamper collection of information vital to those functions. To carry out public health programs, the City must be able to reliably collect confidential information from all residents. To solve crimes and protect the public, local law enforcement depends on the cooperation of all City residents. Information gathering and cooperation may be jeopardized if release of personal information results in a person being taken into immigration custody.

In late 2015, Pedro Figueroa, an immigrant father of an 8-year-old U.S. citizen, sought the San Francisco Police Department's help in locating his stolen vehicle. When Mr. Figueroa went to the police station to retrieve his car, which police had located, he was detained for some time by police officers before being released, and an ICE agent was waiting to take him into immigration custody immediately as he left the police station. It was later reported that both the Police Department and the San Francisco Sheriff's Department had contact with ICE officials while Mr. Figueroa was at the police station. He spent over two months in an immigration detention facility and remains in deportation proceedings. Mr. Figueroa's case has raised major concerns about local law enforcement's relationship with immigration authorities, and has weakened the immigrant community's confidence in policing practices. Community cooperation with local law enforcement is critical to investigating and prosecuting crimes. Without the cooperation of crime victims – like Mr. Figueroa – and witnesses, local law enforcement's ability to investigate and prosecute crime, particularly in communities with large immigrant populations, will be seriously compromised.

(Added by Ord. [204-13](#), File No. 130764, App. 10/8/2013, Eff. 11/7/2013; amended by Ord. [96-16](#), File No. 160022, App. 6/17/2016, Eff. 7/17/2016)

(Former Sec. 12I.1 added by Ord. 391-90, App. 12/6/90; amended by Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

SEC. 12I.2. DEFINITIONS.

"Administrative warrant" means a document issued by the federal agency charged with the enforcement of the Federal immigration law that is used as a non-criminal, civil warrant for immigration purposes.

"Eligible for release from custody" means that the individual may be released from custody because one of the following conditions has occurred:

- (a) All criminal charges against the individual have been dropped or dismissed.
- (b) The individual has been acquitted of all criminal charges filed against him or her.
- (c) The individual has served all the time required for his or her sentence.
- (d) The individual has posted a bond, or has been released on his or her own recognizance.
- (e) The individual has been referred to pre-trial diversion services.

(f) The individual is otherwise eligible for release under state or local law.

"Civil immigration detainer" means a non-mandatory request issued by an authorized federal immigration officer under Section 287.7 of Title 8 of the Code of Federal Regulations, to a local law enforcement official to maintain custody of an individual for a period not to exceed 48 hours and advise the authorized federal immigration officer prior to the release of that individual.

"Convicted" means the state of having been proved guilty in a judicial proceeding, unless the convictions have been expunged or vacated pursuant to applicable law. The date that an individual is Convicted starts from the date of release.

"Firearm" means a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion as defined in Penal Code Section 16520.

"Law enforcement official" means any City Department or officer or employee of a City Department, authorized to enforce criminal statutes, regulations, or local ordinances; operate jails or maintain custody of individuals in jails; and operate juvenile detention facilities or maintain custody of individuals in juvenile detention facilities.

"Notification request" means a non-mandatory request issued by an authorized federal immigration officer to a local law enforcement official asking for notification to the authorized immigration officer of an individual's release from local custody prior to the release of an individual from local custody. Notification requests may also include informal requests for release information by the Federal agency charged with enforcement of the Federal immigration law.

"Personal information" means any confidential, identifying information about an individual, including, but not limited to, home or work contact information, and family or emergency contact information.

"Serious Felony" means all serious felonies listed under Penal Code Section 1192.7(c) that also are defined as violent felonies under Penal Code Section 667.5(c); rape as defined in Penal Code Sections 261, and 262; exploding a destructive device with intent to injure as defined in Penal Code Section 18740; assault on a person with caustic chemicals or flammable substances as defined in Penal Code Section 244; shooting from a vehicle at a person outside the vehicle or with great bodily injury as defined in Penal Code Sections 26100(c) and (d).

"Violent Felony" means any crime listed in Penal Code Section 667.5(c); human trafficking as defined in Penal Code Section 236.1; felony assault with a deadly weapon as defined in Penal Code Section 245; any crime involving use of a firearm, assault weapon, machine gun, or .50 BMG rifle, while committing or attempting to commit a felony that is charged as a sentencing enhancement as listed in Penal Code Sections 12022.4 and 12022.5.

(Added by Ord. [204-13](#), File No. 130764, App. 10/8/2013, Eff. 11/7/2013; amended by Ord. [96-16](#), File No. 160022, App. 6/17/2016, Eff. 7/17/2016)

(Former Sec. 121.2 added by Ord. 391-90, App. 12/6/90; amended by Ord. 278-96, App. 7/3/96; Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

SEC. 12I.3. RESTRICTIONS ON LAW ENFORCEMENT OFFICIALS.

(a) Except as provided in subsection (b), a law enforcement official shall not detain an individual on the basis of a civil immigration detainer after that individual becomes eligible for release from custody.

(b) Law enforcement officials may continue to detain an individual in response to a civil immigration detainer for up to 48 hours after that individual becomes eligible for release if the continued detention is consistent with state and federal law, and the individual meets both of the following criteria:

(1) The individual has been Convicted of a Violent Felony in the seven years immediately prior to the date of the civil immigration detainer; and

(2) A magistrate has determined that there is probable cause to believe the individual is guilty of a Violent Felony and has ordered the individual to answer to the same pursuant to Penal Code Section 872.

In determining whether to continue to detain an individual based solely on a civil immigration detainer as permitted in this subsection (b), law enforcement officials shall consider evidence of the individual's rehabilitation and evaluate whether the individual poses a public safety risk. Evidence of rehabilitation or other mitigating factors to consider includes, but is not limited to: the individual's ties to the community, whether the individual has been a victim of any crime, the individual's contribution to the community, and the individual's participation in social service or rehabilitation programs.

This subsection (b) shall expire by operation of law on October 1, 2016, or upon a resolution passed by the Board of Supervisors that finds for purposes of this Chapter, the federal government has enacted comprehensive immigration reform that diminishes the need for this subsection (b), whichever comes first.

(c) Except as provided in subsection (d), a law enforcement official shall not respond to a federal immigration officer's notification request.

(d) Law Enforcement officials may respond to a federal immigration officer's notification request if the individual meets both of the following criteria:

(1) The individual either:

(A) has been Convicted of a Violent Felony in the seven years immediately prior to the date of the notification request; or

(B) has been Convicted of a Serious Felony in the five years immediately prior to the date of the notification request; or

(C) has been Convicted of three felonies identified in Penal Code sections 1192.7(c) or 667.5(c), or Government Code sections 7282.5(a)(2) or 7282.5(a)(3), other than domestic violence, arising out of three separate incidents in the five years immediately prior to the date of the notification request; and

(2) A magistrate has determined that there is probable cause to believe the individual is guilty of a felony identified in Penal Code sections 1192.7(c) or 667.5(c), or Government Code sections 7282.5(a)(2) or 7282.5(a)(3), other than domestic violence, and has ordered the individual to answer to the same pursuant to Penal Code Section 872.

In determining whether to respond to a notification request as permitted by this subsection (d), law enforcement officials shall consider evidence of the individual's rehabilitation and evaluate whether the individual poses a public safety risk. Evidence of rehabilitation or other mitigating factors to consider includes, but is not limited to, the individual's ties to the community, whether the individual has been a victim of any crime, the individual's contribution to the community, and the individual's participation in social service or rehabilitation programs.

(e) Law 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.

(f) Law enforcement officials shall make good faith efforts to seek federal reimbursement for all costs incurred in continuing to detain an individual, after that individual becomes eligible for release, in response each civil immigration detainer.

(Added by Ord. [204-13](#), File No. 130764, App. 10/8/2013, Eff. 11/7/2013; amended by Ord. [96-16](#), File No. 160022, App. 6/17/2016, Eff. 7/17/2016)

(Former Sec. 12I.3 added by Ord. 391-90, App. 12/6/90; amended by Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

SEC. 12I.4. PURPOSE OF THIS CHAPTER.

The intent of this Chapter 12I is to address requests for non-mandatory civil immigration detainers, voluntary notification of release of individuals, transmission of personal information, and civil immigration documents based solely on alleged violations of the civil provisions of immigration laws. Nothing in this Chapter shall be construed to apply to matters other than those 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. In all other respects, local law enforcement agencies may continue to collaborate with federal authorities to protect public safety. This collaboration includes, but is not limited to, participation in joint criminal investigations that are permitted under local policy or applicable city or state law.

(Added by Ord. [204-13](#), File No. 130764, App. 10/8/2013, Eff. 11/7/2013; amended by Ord. [96-16](#), File No. 160022, App. 6/17/2016, Eff. 7/17/2016)

(Former Sec. 12I.4 added by Ord. 391-90, App. 12/6/90; amended by Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

SEC. 12I.5. SEMIANNUAL REPORT.

By no later than July 1, 2014, the Sheriff and Juvenile Probation Officer shall each provide to the Board of Supervisors and the Mayor a written report stating the number of detentions that were solely based on civil immigration detainers during the first six months following the effective date of this Chapter, and detailing the rationale behind each of those civil immigration detainers. Thereafter, the Sheriff and Juvenile Probation Officer shall each submit a written report to the Board of Supervisors and the Mayor, by January 1st and July 1st of each year, addressing the following issues for the time period covered by the report:

(a) a description of all communications received from the Federal agency charged with enforcement of the Federal immigration law, including but not limited to the number of civil immigration detainers, notification requests, or other types of communications.

(b) a description of any communications the Department made to the Federal agency charged with enforcement of the Federal immigration law, including but not limited to any Department's responses to inquiries as described in subsection 12I.5 and the Department's determination of the applicability of subsections 12I.3(b), 12I.3(d) and 12I.3(e).

(Added by Ord. [204-13](#), File No. 130764, App. 10/8/2013, Eff. 11/7/2013; amended by Ord. [96-16](#), File No. 160022, App. 6/17/2016, Eff. 7/17/2016)

(Former Sec. 12I.5 added by Ord. 391-90, App. 12/6/90; amended by Ord. 304-92, App. 9/29/92; Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

SEC. 12I.6. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or word of this Chapter 12I or its¹ application, is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter 12I. The Board of Supervisors hereby declares that it would have passed this Chapter 12I and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter 12I would be subsequently declared invalid or unconstitutional.

(Added by Ord. [204-13](#), File No. 130764, App. 10/8/2013, Eff. 11/7/2013)

(Former Sec. 12I.6 added by Ord. 391-90, App. 12/6/90; amended by Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

CODIFICATION NOTE

1. So in Ord. [204-13](#).

SEC. 12I.7. UNDERTAKING FOR THE GENERAL WELFARE.

In enacting and implementing this Chapter 12I the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

(Added by Ord. [204-13](#), File No. 130764, App. 10/8/2013, Eff. 11/7/2013)

(Former Sec. 12I.7 added by Ord. 391-90, App. 12/6/90; amended by Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

SEC. 12I.8.

(Added by Ord. 391-90, App. 12/6/90; amended by Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

SEC. 12I.10.

(Added by Ord. 391-90, App. 12/6/90; amended by Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

SEC. 12I.11.

(Added by Ord. 391-90, App. 12/6/90; amended by Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

EXHIBIT 3

Presidential Documents

Executive Order 13768 of January 25, 2017

Enhancing Public Safety in the Interior of the United States

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Immigration and Nationality Act (INA) (8 U.S.C. 1101 *et seq.*), and in order to ensure the public safety of the American people in communities across the United States as well as to ensure that our Nation's immigration laws are faithfully executed, I hereby declare the policy of the executive branch to be, and order, as follows:

Section 1. Purpose. Interior enforcement of our Nation's immigration laws is critically important to the national security and public safety of the United States. Many aliens who illegally enter the United States and those who overstay or otherwise violate the terms of their visas present a significant threat to national security and public safety. This is particularly so for aliens who engage in criminal conduct in the United States.

Sanctuary 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.

Tens of thousands of removable aliens have been released into communities across the country, solely because their home countries refuse to accept their repatriation. Many of these aliens are criminals who have served time in our Federal, State, and local jails. The presence of such individuals in the United States, and the practices of foreign nations that refuse the repatriation of their nationals, are contrary to the national interest.

Although Federal immigration law provides a framework for Federal-State partnerships in enforcing our immigration laws to ensure the removal of aliens who have no right to be in the United States, the Federal Government has failed to discharge this basic sovereign responsibility. We cannot faithfully execute the immigration laws of the United States if we exempt classes or categories of removable aliens from potential enforcement. The purpose of this order is to direct executive departments and agencies (agencies) to employ all lawful means to enforce the immigration laws of the United States.

Sec. 2. Policy. It is the policy of the executive branch to:

(a) Ensure the faithful execution of the immigration laws of the United States, including the INA, against all removable aliens, consistent with Article II, Section 3 of the United States Constitution and section 3331 of title 5, United States Code;

(b) Make use of all available systems and resources to ensure the efficient and faithful execution of the immigration laws of the United States;

(c) Ensure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law;

(d) Ensure that aliens ordered removed from the United States are promptly removed; and

(e) Support victims, and the families of victims, of crimes committed by removable aliens.

Sec. 3. Definitions. The terms of this order, where applicable, shall have the meaning provided by section 1101 of title 8, United States Code.

Sec. 4. *Enforcement of the Immigration Laws in the Interior of the United States.* In furtherance of the policy described in section 2 of this order, I hereby direct agencies to employ all lawful means to ensure the faithful execution of the immigration laws of the United States against all removable aliens.

Sec. 5. *Enforcement Priorities.* In executing faithfully the immigration laws of the United States, the Secretary of Homeland Security (Secretary) shall prioritize for removal those aliens described by the Congress in sections 212(a)(2), (a)(3), and (a)(6)(C), 235, and 237(a)(2) and (4) of the INA (8 U.S.C. 1182(a)(2), (a)(3), and (a)(6)(C), 1225, and 1227(a)(2) and (4)), as well as removable aliens who:

- (a) Have been convicted of any criminal offense;
- (b) Have been charged with any criminal offense, where such charge has not been resolved;
- (c) Have committed acts that constitute a chargeable criminal offense;
- (d) Have engaged in fraud or willful misrepresentation in connection with any official matter or application before a governmental agency;
- (e) Have abused any program related to receipt of public benefits;
- (f) Are subject to a final order of removal, but who have not complied with their legal obligation to depart the United States; or
- (g) In the judgment of an immigration officer, otherwise pose a risk to public safety or national security.

Sec. 6. *Civil Fines and Penalties.* As soon as practicable, and by no later than one year after the date of this order, the Secretary shall issue guidance and promulgate regulations, where required by law, to ensure the assessment and collection of all fines and penalties that the Secretary is authorized under the law to assess and collect from aliens unlawfully present in the United States and from those who facilitate their presence in the United States.

Sec. 7. *Additional Enforcement and Removal Officers.* The Secretary, through the Director of U.S. Immigration and Customs Enforcement, shall, to the extent permitted by law and subject to the availability of appropriations, take all appropriate action to hire 10,000 additional immigration officers, who shall complete relevant training and be authorized to perform the law enforcement functions described in section 287 of the INA (8 U.S.C. 1357).

Sec. 8. *Federal-State Agreements.* It is the policy of the executive branch to empower State and local law enforcement agencies across the country to perform the functions of an immigration officer in the interior of the United States to the maximum extent permitted by law.

(a) In furtherance of this policy, the Secretary shall immediately take appropriate action to engage with the Governors of the States, as well as local officials, for the purpose of preparing to enter into agreements under section 287(g) of the INA (8 U.S.C. 1357(g)).

(b) To the extent permitted by law and with the consent of State or local officials, as appropriate, the Secretary shall take appropriate action, through agreements under section 287(g) of the INA, or otherwise, to authorize State and local law enforcement officials, as the Secretary determines are qualified and appropriate, to perform the functions of immigration officers in relation to the investigation, apprehension, or detention of aliens in the United States under the direction and the supervision of the Secretary. Such authorization shall be in addition to, rather than in place of, Federal performance of these duties.

(c) To the extent permitted by law, the Secretary may structure each agreement under section 287(g) of the INA in a manner that provides the most effective model for enforcing Federal immigration laws for that jurisdiction.

Sec. 9. *Sanctuary Jurisdictions.* It is the policy of the executive branch to ensure, to the fullest extent of the law, that a State, or a political subdivision of a State, shall comply with 8 U.S.C. 1373.

(a) In furtherance of this policy, the Attorney General and the Secretary, 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. The Secretary has the authority to designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction. 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.

(b) To better inform the public regarding the public safety threats associated with sanctuary jurisdictions, the Secretary shall utilize the Declined Detainer Outcome Report or its equivalent and, on a weekly basis, make public a comprehensive list of criminal actions committed by aliens and any jurisdiction that ignored or otherwise failed to honor any detainers with respect to such aliens.

(c) The Director of the Office of Management and Budget is directed to obtain and provide relevant and responsive information on all Federal grant money that currently is received by any sanctuary jurisdiction.

Sec. 10. *Review of Previous Immigration Actions and Policies.* (a) The Secretary shall immediately take all appropriate action to terminate the Priority Enforcement Program (PEP) described in the memorandum issued by the Secretary on November 20, 2014, and to reinstitute the immigration program known as “Secure Communities” referenced in that memorandum.

(b) The Secretary shall review agency regulations, policies, and procedures for consistency with this order and, if required, publish for notice and comment proposed regulations rescinding or revising any regulations inconsistent with this order and shall consider whether to withdraw or modify any inconsistent policies and procedures, as appropriate and consistent with the law.

(c) To protect our communities and better facilitate the identification, detention, and removal of criminal aliens within constitutional and statutory parameters, the Secretary shall consolidate and revise any applicable forms to more effectively communicate with recipient law enforcement agencies.

Sec. 11. *Department of Justice Prosecutions of Immigration Violators.* The Attorney General and the Secretary shall work together to develop and implement a program that ensures that adequate resources are devoted to the prosecution of criminal immigration offenses in the United States, and to develop cooperative strategies to reduce violent crime and the reach of transnational criminal organizations into the United States.

Sec. 12. *Recalcitrant Countries.* The Secretary of Homeland Security and the Secretary of State shall cooperate to effectively implement the sanctions provided by section 243(d) of the INA (8 U.S.C. 1253(d)), as appropriate. The Secretary of State shall, to the maximum extent permitted by law, ensure that diplomatic efforts and negotiations with foreign states include as a condition precedent the acceptance by those foreign states of their nationals who are subject to removal from the United States.

Sec. 13. *Office for Victims of Crimes Committed by Removable Aliens.* The Secretary shall direct the Director of U.S. Immigration and Customs Enforcement to take all appropriate and lawful action to establish within U.S. Immigration and Customs Enforcement an office to provide proactive, timely, adequate, and professional services to victims of crimes committed by removable aliens and the family members of such victims. This office shall provide quarterly reports studying the effects of the victimization by criminal aliens present in the United States.

Sec. 14. *Privacy Act.* Agencies shall, to the extent consistent with applicable law, ensure that their privacy policies exclude persons who are not United States citizens or lawful permanent residents from the protections of the Privacy Act regarding personally identifiable information.

Sec. 15. *Reporting.* Except as otherwise provided in this order, the Secretary and the Attorney General shall each submit to the President a report on the progress of the directives contained in this order within 90 days of the date of this order and again within 180 days of the date of this order.

Sec. 16. *Transparency.* To promote the transparency and situational awareness of criminal aliens in the United States, the Secretary and the Attorney General are hereby directed to collect relevant data and provide quarterly reports on the following:

(a) the immigration status of all aliens incarcerated under the supervision of the Federal Bureau of Prisons;

(b) the immigration status of all aliens incarcerated as Federal pretrial detainees under the supervision of the United States Marshals Service; and

(c) the immigration status of all convicted aliens incarcerated in State prisons and local detention centers throughout the United States.

Sec. 17. *Personnel Actions.* The Office of Personnel Management shall take appropriate and lawful action to facilitate hiring personnel to implement this order.

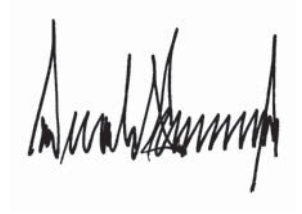
Sec. 18. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

A handwritten signature in black ink, appearing to be "Donald Trump", is located in the upper right quadrant of the page. The signature is stylized with a large, prominent 'D' and 'T'.

THE WHITE HOUSE,
January 25, 2017.

[FR Doc. 2017-02102
Filed 1-27-17; 11:15 am]
Billing code 3295-F7-P

**REPORT TO THE
CITY COUNCIL**
City of Salinas, California

DATE: February 21, 2017

FROM: Christopher A. Callihan, City Attorney

SUBJECT: A RESOLUTION OF THE CITY OF SALINAS REGARDING IMMIGRANT
PERSONS AND IMMIGRATION STATUS

RECOMMENDATION:

It is recommended that the City Council consider a Resolution affirming the City of Salinas's position that all persons be treated equally and with dignity and respect regardless of their national origin or immigration status.

DISCUSSION:

At the January 10, 2017 City Council meeting, Council member Davis requested, with the support of Council member Barrera, the preparation for the full City Council's consideration of a Resolution regarding the City's position on the enforcement of federal immigration regulations. At the City Council's February 7, 2017 meeting, the City Council unanimously approved a Resolution supporting comprehensive immigration reform and directed the Mayor to submit a letter to the City's Congressional delegation calling upon Congress to consider and to approve comprehensive immigration reform. During the City Council's consideration of that Resolution, Councilmember Davis suggested that an additional Resolution be prepared and brought forward to the City Council making clear the City's position regarding immigrant persons and their immigration status. Councilmember McShane supported this request. Councilmember Davis requested specific information be included in the Resolution to make clear to the community the City's position regarding the City's use of resources to support immigration enforcement.

The proposed Resolution has five (5) components, in addition to the findings made in support of the Resolution:

1. City of Salinas officials and employees, including its law enforcement officers, shall not take any direct action against an individual solely because of his/her immigration status.
2. The City of Salinas shall not use its resources, including personnel resources, technology, facilities, equipment, or funds to enforce or to assist in the enforcement of federal immigration regulations, which is the exclusive authority of the federal government.

3. In accordance with state and federal laws the City of Salinas, including the Salinas Police Department, will continue to cooperate with federal immigration agencies in matters involving criminal activity and the protection of public safety.

4. Nothing in this Resolution shall be construed to prohibit City employees, including Salinas Police Officers, from cooperating with federal immigration agencies when they are required to do so by statute, federal regulation, court decision, or a legally binding agreement.

5. Nothing in this Resolution shall be construed or implemented to conflict with any obligation imposed by federal law. City staff shall monitor any efforts by the federal government to withhold or to withdraw federal funding as a result of the City's policies and practices with regard to its immigrant community and shall take all actions necessary to protect such funding.

While many state and local jurisdictions throughout the United States have adopted policies or practices that limit their jurisdictions' federal civil immigration law enforcement efforts, the federal government has not yet taken a formal position as to whether those state and local policies or practices violate federal law. The local policies or practices are sometimes referred to as "sanctuary policies", while the jurisdictions themselves are sometimes referred to as "sanctuary cities."

This Resolution essentially establishes a "sanctuary policy" for the City of Salinas and makes clear that to the extent federal funding for the City would not be compromised, it is the policy of the City of Salinas to not use City resources to assist in the enforcement of federal immigration regulations. Operating pursuant to the Resolution, the City of Salinas will continue to cooperation with federal immigration agencies in matters involving criminal activity and the protection of public safety, but will not take any direct action against an individual because of his/her immigration status.

On January 25, 2017, President Trump signed an Executive Order titled "Enhancing Public Safety in the Interior of the United States" taking the position that jurisdictions which declare themselves to be "sanctuary" jurisdictions and which do not comply with and enforce federal immigration law will not receive federal funding. (A copy of the Executive Order is attached to this Report for reference. Refer to Section 9 for the provision regarding withholding of federal funding.) The order indicates that sanctuary cities "that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law." More specifically, it mandates that "the Attorney General and the [Homeland Security] Secretary, 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. Section 1373 mandates that "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."

Any attempts by the federal government to withhold federal funding to "sanctuary" jurisdictions is, in my opinion, unconstitutional. In 2012, the United States Supreme Court issued its opinion in National Association of Independent Businesses v. Sebellius (2012) 132 S. Ct. 2566. There are two

serious constitutional problems with conditioning federal grants to sanctuary cities on compliance with Section 1373. First, longstanding United States Supreme Court decisions mandate that the federal government may not impose conditions on grants to states and localities unless the conditions are “unambiguously” stated in the text of the law “so that the States can knowingly decide whether or not to accept those funds.” Few if any federal grants to sanctuary cities are explicitly conditioned on compliance with Section 1373. Any such condition must be passed by Congress, and may only apply to new grants, not ones that have already been appropriated. The executive cannot simply make up new conditions on its own and impose them on state and local governments.

The Supreme Court has repeatedly ruled that the federal government may not “commander” state and local officials by compelling them to enforce federal law. Such policies violate the Tenth Amendment. Section 1373 attempts to circumvent this prohibition by forbidding higher-level state and local officials from mandating that lower-level ones refuse to help in enforcing federal policy. But the same principle that forbids direct commandeering also counts against Section 1373. As the late conservative Justice Antonin Scalia explained in Printz v. United States (1997) 521 U.S. 898, the purpose of the anti-commandeering doctrine is the “[p]reservation of the States as independent and autonomous political entities.” That independence and autonomy is massively undermined if the federal government can take away the states’ power to decide what state and local officials may do while on the job. As Scalia put it in the same opinion, federal law violates the Tenth Amendment if it “requires [state employees] to provide information that belongs to the State and is available to them only in their official capacity.” The same is true if, as in the case of Section 1373, the federal government tries to prevent states from controlling their employees’ use of information that “is available to them only in their official capacity.”

The anti-coercion doctrine further holds that while Congress may impose conditions on receipt of federal funds, it cannot coerce states into accepting those conditions. In the 1980s, Congress passed a law withholding 5% of highway funds from any state that refused to adopt a minimum drinking age of 21. The Supreme Court, in South Dakota v. Dole (1987) 479 U.S. 1027, upheld it. Because highway funds are expended — in part — to ensure safe travel, the court reasoned that raising the drinking age was “relevant to the federal interest in the project and the overall objectives thereof.” More significantly, withholding 5% of federal funds wasn’t coercive because while it represented a loss of \$615 million dollars, it was only 0.19% of states’ total budgets.

By contrast, in National Federation of Independent Businesses v. Sebelius (2012) 567 U.S. ____, the Supreme Court found that Congress violated the anti-coercion doctrine. Specifically, in the Affordable Care Act, Congress withheld 100% of states’ Medicaid funding if they didn’t expand those programs. A court plurality characterized this as a coercive “gun to the head” because it involved a loss of over \$233 billion dollars — more than 20% of states’ budgets.

Nonetheless, to mitigate any potential action by the federal government to reduce or to eliminate federal funding to Salinas should it be considered a sanctuary city, paragraph number 5 of the proposed Resolution makes it clear that there is no intent for the Resolution to be in conflict with federal law or any obligation imposed pursuant to federal law. Further, paragraph number 5 vests in City staff the obligation to monitor efforts by the federal government to withhold or to withdraw

federal funding as a result of the proposed action and to take all actions necessary to protect such funding.

ISSUE:

Shall the City Council approve a Resolution making clear the City will not take any direct action against an individual solely based on his/her immigration status and will not use its resources to assist in the enforcement of federal immigration regulations?

FISCAL IMPACT:

No impact to the City's General Fund or Measure V or Measure G funds are anticipated with the recommended action.

TIME CONSIDERATIONS:

There are no special time considerations associated with the recommended action.

ALTERNATIVES:

The City Council may choose to not to take action at this time.

CONCLUSION:

Many cities and towns across the United States have taken action to demonstrate their commitment to equal, respectful, and dignified treatment of all people, regardless of their immigration status. If the Salinas City Council approves the proposed Resolution it would similarly demonstrate its commitment to its residents by unequivocally stating its support of all residents by assuring them that no City resources would be used to administer federal immigration law, except in those situations involving criminal activity and the protection of public safety. In approving the proposed Resolution, the City Council would join public officials in more than ten major United States cities including San Francisco, Oakland, Los Angeles, Santa Ana, New York, Chicago, Washington D.C.

Attachments:
Proposed Resolution

CITY OF SEASIDE

Schedule of Expenditures of Federal Awards
For the Year Ended June 30, 2014

<u>Federal Grantor/Pass-Through Grantor/ Program Title</u>	<u>Federal CFDA Number</u>	<u>Pass-Through Grantor's Number</u>	<u>Disbursements/ Expenditures</u>
<u>U.S. Department of Army</u>			
Pass-Through City of Monterey, CA:			
Presidio of Monterey Base			
Operations and Maintenance Contract	99.Unknown		<u>\$ 862,924</u>
<u>Department of Homeland Security</u>			
Direct Programs:			
Staffing and Adequate Fire and Emergency Response (SAFER)	97.083		110,184
Assistance to Firefighters Grant (AFG)	97.044		<u>102,813</u>
Total U.S. Department of Homeland Security			<u>212,997</u>
<u>U.S. Department of Justice</u>			
Direct Programs:			
Edward Byrne Memorial Justice Assistance Grant Program	16.738		13,941
Bulletproof Vest Partnership Program	16.607		<u>4,404</u>
Total U.S. Department of Justice			<u>18,345</u>
<u>Executive Office of the President</u>			
Direct Programs:			
High Intensity Drug Trafficking Areas Program	95.001		<u>3,764</u>
<u>Department of Housing and Urban Development</u>			
Direct Programs:			
Community Development Block Grants/Entitlement Grants	14.218		<u>245,113</u>
Total Expenditures of Federal Awards			<u><u>\$ 1,343,143</u></u>

See accompanying Notes to Schedule of Expenditures of Federal Awards.

CITY OF SEASIDE

Schedule of Expenditures of Federal Awards
For the Year Ended June 30, 2015

<u>Federal Grantor/Pass-Through Grantor/ Program Title</u>	<u>Federal CFDA Number</u>	<u>Pass-Through Grantor's Number</u>	<u>Disbursements/ Expenditures</u>
<u>U.S. Department of Army</u>			
Pass-Through City of Monterey, CA:			
Presidio of Monterey Base			
Operations and Maintenance Contract	99.Unknown		<u>\$ 849,423</u>
<u>Department of Housing and Urban Development</u>			
Direct Programs:			
Community Development Block Grants/Entitlement Grants	14.218		<u>579,542</u>
<u>U.S. Department of Justice</u>			
Direct Programs:			
Edward Byrne Memorial Justice Assistance Grant Program	16.738		25,025
Bulletproof Vest Partnership Program	16.607		<u>3,970</u>
Total U.S. Department of Justice			<u>28,995</u>
<u>Executive Office of the President</u>			
Direct Programs:			
High Intensity Drug Trafficking Areas Program	95.001		<u>5,351</u>
<u>Department of Homeland Security</u>			
Direct Programs:			
Assistance to Firefighters Grant (AFG)	97.044		<u>262,026</u>
Total Expenditures of Federal Awards			<u>\$ 1,725,337</u>

See accompanying Notes to Schedule of Expenditures of Federal Awards.

CITY OF SEASIDE

Schedule of Expenditures of Federal Awards
For the Year Ended June 30, 2016

<u>Federal Grantor/Pass-Through Grantor/ Program Title</u>	<u>Federal CFDA Number</u>	<u>Pass-Through Grantor's Number</u>	<u>Disbursements/ Expenditures</u>
<u>U.S. Department of Army</u>			
Pass-Through City of Monterey, CA:			
Presidio of Monterey Base			
Operations and Maintenance Contract	99.Unknown		<u>\$ 656,603</u>
<u>Department of Housing and Urban Development</u>			
Direct Programs:			
Community Development Block Grants/Entitlement Grants	14.218		<u>474,523</u>
<u>U.S. Department of Justice</u>			
Direct Programs:			
Bulletproof Vest Partnership Program	16.607		<u>5,844</u>
Total U.S. Department of Justice			<u>5,844</u>
<u>Executive Office of the President</u>			
Direct Programs:			
High Intensity Drug Trafficking Areas Program	95.001		<u>666</u>
<u>Department of Homeland Security</u>			
Direct Programs:			
SAFER Grant	97.083		159,281
Assistance to Firefighters Grant (AFG)	97.044		<u>53,941</u>
			<u>213,222</u>
Total Expenditures of Federal Awards			<u><u>\$ 1,350,858</u></u>

See accompanying Notes to Schedule of Expenditures of Federal Awards.

MEMORANDUM

City of Seaside
Police Department

Date: February 24, 2017

To: Craig Malin, City Manager

From: Robert Jackson, Chief *RJ*

Subject: Questions on Immigration

Mr. Malin,

This information is being provided as a follow up to our discussion on February 22, 2017, regarding the Seaside Police Department and how our police department deals with immigration activities in the City of Seaside.

You had two specific questions. The first was for a description on how we interact with citizens with regards to immigration.

The primary function for our department is to create a safe and secure community for everyone. We are not involved with deportation or the enforcement of immigration laws. We do not ask anyone to provide their immigration status when we come in contact with them and are only concerned with the resolution of the situation that caused our contact in the first place. The immigration status of an individual is irrelevant to us with regards to carrying out our department's mission.

Our department's mission statement captures our mission very well. "The mission of the Seaside Police Department is to provide quality police services, in partnership with our community, to enhance and maintain a safe environment."

A review of our practices has found, during bookings of subjects at the jail, we have been asking the arrestees for information on their place of birth. My research has not found any requirements for us to do this. As such, we are taking steps to stop this practice.

The second was a request for an explanation of how we interact with federal law enforcement officers with regards to immigration.

Our interaction with Immigration and Customs Enforcement (ICE) is very limited. We do not take part in civil immigration sweeps. These are sweeps where they actively search for people who do not have valid credentials or permission to be in this country and have not committed any crimes other than being in this country without a valid approval. We may assist if there is a serious criminal violation occurring but that would be on a very infrequent basis. Our role would be the investigation and enforcement of state statutes and not immigration violations.

You may also hear mention of Title 8, Section 1373, of the United States Government Code. This section prohibits the limitations of any government entity with regulating the flow of information to and from the Immigration and Naturalization Service (INS) by its employees. This government entity is now known as Immigration and Customs Enforcement (ICE). This is a law that was put in place in 1996. The section reads:

8 U.S. Code 1373 – 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 governmental 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 of information.

Racial- or Bias-Based Profiling

402.1 PURPOSE AND SCOPE

This policy provides guidance to department members and establishes appropriate controls to ensure that employees of the Seaside Police Department do not engage in racial- or bias-based profiling or violate any related laws while serving the community.

402.1.1 DEFINITION

Definitions related to this policy include:

Racial- or bias-based profiling - An inappropriate reliance on factors such as race, ethnicity, national origin, religion, sex, sexual orientation, economic status, age, cultural group, disability or affiliation with any other similar identifiable group as a factor in deciding whether to take law enforcement action or to provide service.

402.2 POLICY

The Seaside Police Department is committed to providing law enforcement services to the community with due regard for the racial, cultural or other differences of those served. It is the policy of this department to provide law enforcement services and to enforce the law equally, fairly and without discrimination toward any individual or group.

Race, ethnicity or nationality, religion, sex, sexual orientation, economic status, age, cultural group, disability or affiliation with any other similar identifiable group shall not be used as the basis for providing differing levels of law enforcement service or the enforcement of the law.

402.3 RACIAL- OR BIAS-BASED PROFILING PROHIBITED

Racial- or bias-based profiling is strictly prohibited. However, nothing in this policy is intended to prohibit an officer from considering factors such as race or ethnicity in combination with other legitimate factors to establish reasonable suspicion or probable cause (e.g., suspect description is limited to a specific race or group).

402.4 MEMBER RESPONSIBILITY

Every member of this department shall perform his/her duties in a fair and objective manner and is responsible for promptly reporting any known instances of racial- or bias-based profiling to a supervisor.

402.4.1 REASON FOR DETENTION

Officers detaining a person shall be prepared to articulate sufficient reasonable suspicion to justify a detention, independent of the individual's membership in a protected class.

To the extent that written documentation would otherwise be completed (e.g., arrest report, Field Interview (FI) card), the involved officer should include those facts giving rise to the officer's reasonable suspicion or probable cause for the detention, as applicable.

Seaside Police Department

Policy Manual

Racial- or Bias-Based Profiling

Nothing in this policy shall require any officer to document a contact that would not otherwise require reporting.

402.4.2 REPORTING TRAFFIC STOPS

Each time an officer makes a traffic stop, the officer shall report any information required in the Traffic Function and Responsibility Policy.

402.5 SUPERVISOR RESPONSIBILITY

Supervisors shall monitor those individuals under their command for any behavior that may conflict with the purpose of this policy and shall handle any alleged or observed violation of this policy in accordance with the Personnel Complaints Policy.

- (a) Supervisors should discuss any issues with the involved officer and his/her supervisor in a timely manner.
- (b) Supervisors should periodically review MAV recordings, MDT data and any other available resource used to document contact between officers and the public to ensure compliance with the policy.
 - 1. Supervisors should document these periodic reviews.
 - 2. Recordings that capture a potential instance of racial- or bias-based profiling should be appropriately retained for administrative investigation purposes.
- (c) Supervisors shall initiate investigations of any actual or alleged violations of this policy.
- (d) Supervisors should ensure that no retaliatory action is taken against any member of this department who discloses information concerning racial- or bias-based profiling.

402.6 ADMINISTRATION

Each year, the Field Operations Deputy Chief shall review the efforts of the Department to prevent racial- or bias-based profiling and submit an overview, including public concerns and complaints, to the Chief of Police.

This report should not contain any identifying information regarding any specific complaint, citizen or officers. It should be reviewed by the Chief of Police to identify any changes in training or operations that should be made to improve service.

Supervisors shall review the annual report and discuss the results with those they are assigned to supervise.

402.7 TRAINING

Training on racial- or bias-based profiling and review of this policy should be conducted as directed by the Training Section.

- (a) All sworn members of this department will be scheduled to attend Peace Officer Standards and Training (POST)-approved training on the subject of racial- or bias-based profiling.

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Racial- or Bias-Based Profiling

- (b) Pending participation in such POST-approved training and at all times, all members of this department are encouraged to familiarize themselves with and consider racial and cultural differences among members of this community.
- (c) Each sworn member of this department who received initial racial- or bias-based profiling training will thereafter be required to complete an approved refresher course every five years, or sooner if deemed necessary, in order to keep current with changing racial and cultural trends (Penal Code § 13519.4(i)).

Immigration Violations

428.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to members of the Seaside Police Department for investigating and enforcing immigration laws.

428.2 DEPARTMENT POLICY

The U.S. Immigration and Customs Enforcement (ICE) has primary jurisdiction for enforcement of the provisions of Title 8, United States Code dealing with illegal entry.

When assisting ICE at its specific request, or when suspected criminal violations are discovered as a result of inquiry or investigation based on probable cause originating from activities other than the isolated violations of 8 USC § 1304; 8 USC § 1324; 8 USC § 1325 and 8 USC § 1326, this department may assist in the enforcement of federal immigration laws.

428.3 VICTIMS AND WITNESSES

To encourage crime reporting and cooperation in the investigation of criminal activity, all individuals, regardless of their immigration status, must feel secure that contacting or being addressed by members of law enforcement will not automatically lead to immigration inquiry and/or deportation. While it may be necessary to determine the identity of a victim or witness, members shall treat all individuals equally and without regard to race, color or national origin in any way that would violate the United States or California Constitutions.

428.4 ENFORCEMENT

An officer may detain an individual when there are facts supporting a reasonable suspicion that the individual entered into the United States in violation of a federal criminal law. Federal authorities shall be notified as soon as possible and the detained individual shall be immediately released if the federal authorities do not want the person held. An officer should not detain any individual, for any length of time, for a civil violation of federal immigration laws or a related civil warrant.

428.4.1 CIVIL VS. CRIMINAL FEDERAL OFFENSES

An individual who enters into the United States illegally has committed a misdemeanor (8 USC § 1325(a)). Generally, an alien who initially made a legal entry into the United States but has remained beyond what is a legal period of time has committed a federal civil offense.

Reasonable suspicion that a criminal immigration violation has occurred shall not be based on race, color, national origin or any other generalization that would cast suspicion on or stigmatize any person, except to the extent permitted by the United States or California Constitutions. Instead, the totality of circumstances shall be used to determine reasonable suspicion, and shall include factors weighing for and against reasonable suspicion.

Factors that may be considered in determining reasonable suspicion that a criminal immigration violation has occurred may include, but are not limited to:

Seaside Police Department

Policy Manual

Immigration Violations

- (a) An admission that the person entered the United States illegally.
- (b) Reason to suspect that the person possesses immigration documentation that is forged, altered or otherwise indicative that the person is not legally present in the United States.
- (c) While a lack of English proficiency may be considered, it should not be the sole factor in establishing reasonable suspicion. When practicable, reasonable effort should be made to accommodate persons with limited English proficiency.
- (d) Other factors based upon training and experience.

428.4.2 IMMIGRATION CHECKS

Immigration status may be determined through any of the following sources:

- (a) A law enforcement officer who is authorized by the federal government under 8 USC § 1357 to verify or ascertain an alien's immigration status (sometimes referred to as a 287(g) certified officer)
- (b) Immigration and Customs Enforcement (ICE)
- (c) U.S. Customs and Border Protection (CBP)

An officer shall verify from a 287(g) certified officer, ICE or CBP whether a person's presence in the United States relates to a federal civil violation or a criminal violation.

If the officer has facts that establish probable cause to believe that a person already lawfully detained has committed a criminal immigration offense, he/she may continue the detention and may request ICE or CBP to respond to the location to take custody of the detained person. In addition, the officer should notify a supervisor as soon as practicable. No individual who is otherwise ready to be released should continue to be detained only because questions about the individual's status are unresolved.

An officer is encouraged to forgo detentions made solely on the basis of a misdemeanor offense when time limitations, availability of personnel, issues of officer safety, communication capabilities or the potential to obstruct a separate investigation outweigh the need for the detention.

428.4.3 SUPERVISOR RESPONSIBILITIES

When notified that an officer has detained a person and established probable cause to believe the person has committed a criminal immigration offense, the supervisor should:

- (a) Confirm that the detained person's immigration status was properly verified.
- (b) Ensure that the detained person is taken into custody when appropriate. Take any additional steps necessary that may include, but are not limited to:
 - 1. Transfer to federal authorities.
 - 2. Lawful arrest for a criminal offense or warrant.
 - 3. Notification of family members.
 - 4. Appropriate care and custody of the detained person's minor children.

Seaside Police Department

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Immigration Violations

428.5 ARREST NOTIFICATION TO IMMIGRATION AND CUSTOMS ENFORCEMENT

Except as described below, it is not necessary to notify ICE when booking arrestees at the county jail. Immigration officials routinely interview suspected undocumented aliens who are booked into the county jail. Notification should be handled according to jail operation procedures.

Whenever an officer has reason to believe that an individual arrested for any offense listed in Health and Safety Code § 11369 may not be a citizen of the United States, and the individual is not going to be booked into the county jail, the arresting officer shall notify ICE or other appropriate agency of the United States.

Individuals arrested for other offenses who are not going to be booked into the county jail may be reported to ICE or other appropriate agency of the United States.

When determining whether notification of immigration authorities is appropriate, the officer should, in consultation with a supervisor, consider the totality of circumstances of each case, including, but not limited to:

- (a) Seriousness of the offense
- (b) Community safety
- (c) Potential burden on ICE or other federal agency
- (d) Impact on the immigrant community

No individual who is otherwise ready to be released should continue to be detained solely for the purpose of making notification to immigration authorities.

428.6 ICE REQUESTS FOR ASSISTANCE

Requests by ICE, or any other federal agency, for assistance from this department should be directed to a supervisor. The Department may provide available support services, such as traffic control or peacekeeping efforts, to ICE or other federal agencies.

428.7 INFORMATION SHARING

No member of this department will prohibit, or in any way restrict, any other member from doing any of the following regarding the citizenship or immigration status, lawful or unlawful, of any individual (8 USC § 1373):

- (a) Sending information to, or requesting or receiving such information from ICE
- (b) Maintaining such information in department records
- (c) Exchanging such information with any other federal, state or local government entity

428.7.1 IMMIGRATION HOLDS

Individuals should not be held in custody solely for a civil immigration hold under 8 CFR 287.7 unless the individual (Government Code § 7282; Government Code § 7282.5):

- (a) Has been convicted of offenses specified in Government Code § 7282.5.

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(b) Has been charged with offenses specified in Government Code § 7282.5 after a court has determined probable cause supports the charge.

(c) Is a sex or arson registrant.

In no event should a person be held under this section for longer than 48 hours. Notification to the federal authority should be made prior to the release.

428.8 U VISA AND T VISA NONIMMIGRANT STATUS

Under certain circumstances, federal law allows temporary immigration benefits, known as a U visa, to victims and witnesses of certain qualifying crimes (8 USC § 1101(a)(15)(U)). A law enforcement certification for a U visa may be completed by an officer in order for a U visa to be issued.

Similar immigration protection, known as a T visa, is available for certain qualifying victims of human trafficking (8 USC § 1101(a)(15)(T)). A law enforcement declaration for a T visa may be completed by an officer in order for a T visa to be issued.

Any request for assistance in applying for U visa or T visa status should be forwarded in a timely manner to the Investigations Division supervisor assigned to oversee the handling of any related case. The Investigations Division supervisor shall:

- (a) Consult with the assigned investigator to determine the current status of any related case and whether further documentation is warranted.
- (b) Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the certification or declaration has not already been completed and whether a certification or declaration is warranted.
- (c) Address the request and complete the certification or declaration, if appropriate, in a timely manner.
 - 1. The instructions for completing certification and declaration forms can be found on the U.S. Department of Homeland Security (DHS) website.
 - 2. Form I-918 Supplement B certification shall be completed if the victim qualifies under Penal Code § 679.10.
- (d) Ensure that any decision to complete, or not complete, a certification or declaration form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed form in the case file.
- (e) Inform the victim liaison of any requests and their status.

428.8.1 TIME FRAMES FOR COMPLETION

Officers and their supervisors who are assigned to investigate a case of human trafficking shall complete the above process and the documents needed for a T visa application within 15 business days of the first encounter with the victim, regardless of whether it is requested by the victim (Penal Code § 236.5).

Officers and their supervisors shall complete the above process and the documents needed for a U visa application pursuant to Penal Code § 679.10 within 90 days of a request from the victim or

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victim's family related to one of their assigned cases. If the victim is in removal proceedings, the certification shall be processed within 14 days of the request.

428.9 TRAINING

The Training Manager shall ensure that all appropriate members receive immigration training.