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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE CITY OF PHILADELPHIA,

Plaintiff,

v.

JEFFERSON BEAUREGARD SESSIONS III,
Attorney General of the United States,

Defendant.

17 3894

Civil Action No._____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff, the City of Philadelphia, hereby alleges as follows:

INTRODUCTION

1. The City of Philadelphia ("Philadelphia" or "the City") brings this action to enjoin the Attorney General of the United States from imposing new and unprecedented requirements on the Edward Byrne Memorial Justice Assistance Grant ("Byrne JAG"). Philadelphia also seeks a declaratory judgment that the new conditions are contrary to law, unconstitutional, and arbitrary and capricious. Additionally, Philadelphia seeks a declaratory judgment confirming that its policies comply with 8 U.S.C. § 1373 ("Section 1373"), to the extent that statute is lawfully deemed applicable to the Byrne JAG program.

2. Philadelphia has a vibrant immigrant community. Immigrants are an integral part of Philadelphia's workforce, small business sector, school and college population, and civic associations; their success is vital to the City's success. To ensure that Philadelphia's immigrant

community continues to thrive, the City has adopted policies that seek to foster trust between the immigrant population and City officials and employees, and to encourage people of all backgrounds to take full advantage of the City's resources and opportunities. Several of those policies protect the confidentiality of individuals' immigration and citizenship status information, and prevent the unnecessary disclosure of that information to third parties. The rationale behind these policies is that if immigrants, including undocumented immigrants, do not fear adverse consequences to themselves or to their families from interacting with City officers, they are more likely to report crimes, apply for public benefits to which they are entitled, enroll their children in Philadelphia's public schools, request health services like vaccines, and—all in all—contribute more fully to the City's health and prosperity.

3. Philadelphia also practices community policing. And, like most major cities, it has determined that public safety is best promoted *without* the City's active involvement in the enforcement of federal immigration law. To the contrary, Philadelphia has long recognized that a resident's immigration status has no bearing on his or her contributions to the community or on his or her likelihood to commit crimes, and that when people with foreign backgrounds are afraid to cooperate with the police, public safety in Philadelphia is compromised. For this reason, the Philadelphia Police Department ("PPD") has for many years prohibited its officers from asking individuals with whom they interact about their immigration status. Police officers also do not stop or question people on account of their immigration status, do not in any way act as immigration enforcement agents, and are particularly protective of the confidential information of victims and witnesses to crimes. In Philadelphia's experience—with property crimes currently at their lowest since 1971, robberies at their lowest since 1969, and violent crime the

lowest since 1979— these policies have promoted the City's safety by facilitating greater cooperation with the immigrant community writ large.

4. For over a decade, Philadelphia has pursued the above policies while also relying upon the funding supplied by the Byrne JAG program to support critical criminal justice programming in the City. Indeed, the Byrne JAG award has become a staple in Philadelphia's budget and is today an important source of funding for the PPD, District Attorney's Office, and local court system. Since the grant was created in 2005, Philadelphia has applied for—and successfully been awarded—its local allocation every year. Philadelphia has never had any conflicts with the federal government in obtaining Byrne JAG funds.

5. That is all changing. On July 25, 2017, the Department of Justice ("DOJ" or "the Department") notified Philadelphia that, as a condition to receiving any Byrne JAG funds in fiscal year 2017, Philadelphia must comply with three conditions. Philadelphia must: (1) certify, as part of its FY 2017 grant application, that the City complies with Section 1373, a statute which bars states and localities from adopting policies that restrict immigration-related communications between state and local officials and the federal government; (2) permit officials from the U.S. Department of Homeland Security ("DHS") (which includes U.S. Immigration and Customs Enforcement ("ICE")) to access "any detention facility" maintained by Philadelphia in order to meet with persons of interest to DHS; and (3) provide at least 48 hours' advance notice to DHS regarding the "scheduled release date and time" of an inmate for whom DHS requests such advance notice.[1]

6. The imposition of these conditions marks a radical departure from the Department of Justice's past grant-making practices. No statute permits the Attorney General to impose

[1] U.S. Dep't of Justice, *Backgrounder On Grant Requirements* (July 25, 2017), *available at* https://goo.gl/h5uxMX. A copy of this document is attached as Exhibit 1.

these conditions on the Byrne JAG program. Although Congress delegated certain authorities to the Attorney General to administer Byrne JAG awards, the Attorney General has far exceeded that delegation here. Moreover, even if Congress *had* intended to authorize the Attorney General to attach conditions of this nature to JAG grants (which it did not), that would have been unlawful: Demanding that localities certify compliance with Section 1373, allow ICE agents unrestrained access to their prisons, or provide ICE advance notification of inmates' scheduled release dates as conditions of receiving Byrne JAG funds, would flout the limits of Congress' Spending Clause powers under the United States Constitution.

7. Simply put, the Attorney General's imposition of these three conditions on the FY 2017 Byrne JAG grant is contrary to law, unconstitutional, and arbitrary and capricious. That action should be enjoined.

8. The Department of Justice's decision to impose its sweeping conditions upon Byrne JAG grantees represents the latest affront in the Administration's ever-escalating attempts to force localities to forsake their local discretion and act as agents of the federal government. Within the President's first week in office, he signed an Executive Order commanding federal agencies to withhold funds from so-called "sanctuary cities"—*i.e.*, cities that have exercised their basic rights to self-government and have chosen to focus their resources on local priorities rather than on federal immigration enforcement.[2] After a federal court enjoined much of that Order,[3] the Department of Justice singled out Philadelphia along with eight other jurisdictions by demanding that these jurisdictions certify their compliance with Section 1373 by June 30, 2017. The Department warned the localities that their failure to certify compliance "could result in the

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[2] Exec. Order No. 13768, "Enhancing Public Safety in the Interior of the United States," 82 Fed. Reg. 8799 (Jan. 25, 2017).

[3] *County of Santa Clara v. Trump*, --- F. Supp. 3d ----, 2017 WL 1459081 (N.D. Cal. Apr. 25, 2017).

withholding of [Byrne JAG] funds, suspension or termination of the [Byrne JAG] grant, ineligibility for future OJP grants or subgrants, or other action."[4] By this time in the grant funding schedule, Philadelphia had already appropriated and in most cases obligated the funds it received under the FY 2016 JAG award to a number of important programs to strengthen its criminal justice system.

9. Without any facts or support, the Attorney General claimed in April that "the lawless practices" of cities he characterized as "so-called 'sanctuary' jurisdictions . . . make our country less safe."[5] Philadelphia's experience is quite the opposite: Philadelphia has witnessed a reduction in crime of over 17 percent since the City formally adopted policies protecting the confidentiality of its constituents.

10. Philadelphia certified its compliance with Section 1373 on June 22, 2017. Fundamentally, Philadelphia explained that it complies with Section 1373 because its agents do not collect immigration status information in the first place, and, as a result, the City is in no position to share or restrict the sharing of information it simply does not have. At the same time, the City explained, if immigration status information does inadvertently come into the City's possession, Philadelphia's policies allow local law enforcement to cooperate with federal authorities and to share identifying information about criminal suspects in the City. For these reasons and others, Philadelphia certified that it complies with all of the obligations that Section 1373 can constitutionally be read to impose on localities.

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[4] Letter from Alan R. Hanson, Acting Assistant Attorney General, Office of Justice Programs, to Major Jim Kenney, City of Philadelphia (Apr. 21, 2017).

[5] Press Release, U.S. Dep't of Justice, *Attorney General Jeff Sessions Delivers Remarks on Violent Crime to Federal, State and Local Law Enforcement* (Apr. 28, 2017), *available at* https://goo.gl/sk37qN.

11. In response to the certifications filed in June 2017 by Philadelphia and other jurisdictions, the Attorney General issued a press release condemning those submissions. He did not offer his definition of compliance or any details on the aspects of any locality's policies he considered illegal; he said only that "[i]t is not enough to assert compliance" and that "jurisdictions must actually be in compliance."[6]

12. Against this backdrop, the Department of Justice announced in a July 25, 2017 press release that it would now be imposing two additional conditions on jurisdictions applying for FY 2017 Byrne JAG funding, along with another mandatory certification of compliance with Section 1373. The fiscal year 2017 application is due on September 5, 2017.

13. The Attorney General's action was an unlawful, *ultra vires* attempt to force Philadelphia to abandon its policies and accede to the Administration's political agenda. It is one thing for the Department of Justice to disagree with Philadelphia as a matter of policy; it is quite another thing for the Department to violate both a congressionally-defined program and the Constitution in seeking to compel Philadelphia to forfeit its autonomy.

14. In response, Philadelphia now seeks a declaration from this Court that the Department of Justice's imposition of the new conditions to Byrne JAG funding was unlawful. That agency action is contrary to federal statute, contrary to the Constitution's separation of powers, and arbitrary and capricious. Further, even if Congress had intended to permit the Attorney General's action, it would violate the Spending Clause. The City also seeks a declaration from this Court that, to the extent Section 1373 can be made an applicable condition to the receipt of Byrne JAG funds, Philadelphia is in full compliance with that provision.

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[6] Press Release, U.S. Dep't of Justice, *Department of Justice Reviewing Letters from Ten Potential Sanctuary Jurisdictions* (July 6, 2017), *available at* https://goo.gl/of8UhG. A copy of this press release is attached as Exhibit 2.

15. The City also seeks injunctive relief. It requests that this Court permanently enjoin the Department of Justice from imposing these three conditions in conjunction with the FY 2017 Byrne JAG application, and any future grants under the Byrne JAG program. Further, the City seeks any other injunctive relief the Court deems necessary and appropriate to allow Philadelphia to receive its FY 2017 JAG allocation as Philadelphia has since the inception of the JAG program, and as Congress intended.

PARTIES

16. Plaintiff Philadelphia is a municipal corporation, constituted in 1701 under the Proprietor's Charter. William Penn, its founder, was a Quaker and early advocate for religious freedom and freedom of thought, having experienced persecution firsthand in his native England. He fashioned Philadelphia as a place of tolerance and named it such. "Philadelphia," the City of Brotherly Love, derives from the Greek words "philos," meaning love or friendship, and "adelphos," meaning brother.

17. Philadelphia is now the sixth-largest city in the United States and is home to almost 1.6 million residents. About 200,000 Philadelphia residents, or 13 percent of the City's overall population, are foreign-born, which includes approximately 50,000 undocumented immigrants. The number of undocumented Philadelphia residents therefore account for roughly one of every four foreign-born Philadelphians.

18. Defendant Jefferson Beauregard Sessions III is the Attorney General of the United States. The Attorney General is sued in his official capacity. The Attorney General is the federal official in charge of the United States Department of Justice, which took and threatens imminently to take the governmental actions at issue in this lawsuit.

JURISDICTION AND VENUE

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

20. Venue is proper in the Eastern District of Pennsylvania under 28 U.S.C. § 1391(e)(1) because substantial events giving rise to this action occurred therein and because Philadelphia resides therein and no real property is involved in this action.

FACTUAL ALLEGATIONS

I. PHILADELPHIA'S POLICIES

21. As the City of Brotherly Love, Philadelphia is recognized as a vital hub for immigrants from across the globe who seek good jobs and better futures for themselves and their children. A study by the Brookings Institute found "Philadelphia's current flow of immigrants [to be] sizable, varied, and . . . grow[ing] at a moderately fast clip."[7]

22. Philadelphia's policies developed over time to address the needs and concerns of its growing immigrant community. Today, Philadelphia has four sets of policies relevant to the present suit, as each concern the City's efforts to engender trust with the City's immigrant community and bring individuals from that community into the fold of City life. These policies work. They are discussed in turn below.

A. Philadelphia's Police Department Memorandum 01-06

23. Decades ago, the Philadelphia Police Department recognized that a resident's immigration status was irrelevant to effective policing and, if anything, that asking about an individual's immigration status hampers police investigations. For that reason, PPD officers

[7] Audrey Singer et al., *Recent Immigration to Philadelphia: Regional Change in a Re-Emerging Gateway*, Metropolitan Policy Program at Brookings (Nov. 2008), https://goo.gl/pZOnJx.

were trained to refrain from asking persons about their immigration status when investigating crimes or conducting routine patrols.

24. That practice was formalized into policy on May 17, 2001, when Philadelphia's then-Police Commissioner John F. Timoney issued Memorandum 01-06, entitled "Departmental Policy Regarding Immigrants" ("Memorandum 01-06").[8] The Memorandum states that one of its overarching goals is for "the Police Department [to] preserve the confidentiality of all information regarding law abiding immigrants to the maximum extent permitted by law." Memorandum 01-06 ¶ 2B.

25. Memorandum 01-06 generally prohibits police officers in Philadelphia from unnecessarily disclosing individuals' immigration status information to other entities. The Memorandum sets out this non-disclosure instruction, and three exceptions, as follows: "In order to safeguard the confidentiality of information regarding an immigrant, police personnel will transmit such information to federal immigration authorities only when: (1) required by law, or (2) the immigrant requests, in writing, that the information be provided, to verify his or her immigration status, or (3) the immigrant is suspected of engaging in criminal activity, including attempts to obtain public assistance benefits through the use of fraudulent documents." Memorandum 01-06 ¶¶ 3A-3B.

26. Notwithstanding the instruction to "safeguard the confidentiality of information regarding an immigrant," Memorandum 01-06 also directs police officers to continue adhering to typical law enforcement protocols for the reporting and investigating of crimes. Section 3B of the Memorandum provides that "[s]worn members of the Police Department who obtain information on immigrants suspected of criminal activity will comply with normal crime

[8] A copy of Memorandum 01-06 is attached hereto as Exhibit 3.

reporting and investigating procedures." *Id.* ¶ 3B. This mandate applies irrespective of the criminal suspect's identity or immigration status. Section 3C further instructs that "[t]he Philadelphia Police Department will continue to cooperate with federal authorities in investigating and apprehending immigrants suspected of criminal activities." *Id.* ¶ 3C. But as to "immigrants who are victims of crimes," the Memorandum provides a blanket assurance of confidentiality. Such persons "will not have their status as an immigrant transmitted in any manner." *Id.*

27. The Philadelphia Police Department's policy was motivated by the desire to encourage members of Philadelphia's immigrant community to make use of City services and to cooperate with the police without fear of negative repercussions. *See id.* ¶¶ 2B, 3C. Indeed, an essential tenet of modern policing is that police departments should engender trust from the communities they serve so that members of those communities will come forward with reports of criminal wrongdoing, regardless of their immigration status or that of their loved ones. Numerous police chiefs and criminal law enforcement experts have echoed that finding.[9]

28. Philadelphia has witnessed firsthand the positive effects that increased trust between communities, including immigrant communities, and the police, has on law and order. In part due to the tireless efforts of the PPD to forge that trust with the immigrant community, the City has seen a drop in its overall crime rate.

29. The success of Philadelphia's policies should come as no surprise. A systematic review of municipalities' "sanctuary city" policies, defined as "at least one law or formal

[9] *See* Hearing before the Comm. on Homeland Security & Gov't Affairs of the United States Senate, May 24, 2014 (statement of J. Thomas Manger, Chief of Police of Montgomery County, Maryland) (conveying that the "moment" immigrant "victims and witnesses begin to fear that their local police will deport them, cooperation with their police then ceases"); Chuck Wexler, *Police Chiefs Across the Country Support Sanctuary Cities Because They Keep Crime Down*, L.A. Times (Mar. 6, 2017), https://goo.gl/oQs9AT (similar).

resolution limiting local enforcement of immigration laws as of 2001," found that policies of this nature were *inversely correlated* with rates of robbery and homicide—meaning that "sanctuary policies" made cities safer.[10] Indeed, cities with these policies saw lower rates of crime even among immigrant populations.[11] Social science research confirms that when there is a concern of deportation, immigrant communities are less likely to approach the police to report crime.[12]

30. Recent events also confirm the positive relationship between policies that forge community trust with immigrant populations and the overall reporting of crimes. Since President Trump was elected and announced plans to increase deportations and crack down on so-called sanctuary cities, overall crime reporting by Latinos in three major cities—including in Philadelphia—"markedly decline[d]" as compared to reporting by non-Latinos.[13]

B. Philadelphia's Confidentiality Order

31. Philadelphia's policies that engender confidence between its immigrant population and City officials extend beyond its police-related protocols. Indeed, the City's hallmark policy in building trust with all city service offerings is its "Confidentiality Order," signed by then-Mayor Michael A. Nutter on November 10, 2009. *See* Executive Order No. 8-09,

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[10] *See* Christopher Lyons, Maria B. Ve'lez, & Wayne A. Santoro, *Neighborhood Immigration, Violence, and City-Level Immigrant Political Opportunities*, 78 American Sociological Review, no. 4, pp. 9, 14-19 (June 17, 2013).

[11] *Id.* at 14, 18.

[12] Cecilia Menjiyar & Cynthia L. Bejarano, *Latino Immigrants' Perceptions of Crime and Police Authorities in the United States: A Case Study from the Phoenix Metropolitan Area*, 27 Ethnic and Racial Studies, no. 1, pp. 120-148 (Jan. 2004) ("As these cases illustrate, when there is a threat of immigration officials' intervention, immigrants (particularly those who fear any contacts with these officials due to their uncertain legal status, as is the case of the Mexicans and Central Americans in this study) are more reluctant to call the police because they are aware of the links between the two.").

[13] Rob Arthur, *Latinos in Three Cities Are Reporting Fewer Crimes Since Trump Took Office*, FiveThirtyEight (May 18, 2017), https://goo.gl/ft1fwW (surveying trends in Philadelphia, Dallas, and Denver).

"Policy Concerning Access of Immigrants to City Services" ("Confidentiality Order").[14] That policy recognizes that the City as a whole fares better if all residents, including undocumented immigrants, pursue health care services, enroll their children in public education, and report crimes.

32. The Confidentiality Order instructs City officials to protect the confidentiality of individuals' immigration status information in order to "promote the utilization of [City] services by all City residents and visitors who are entitled to and in need of them, including immigrants." *See* Confidentiality Order preamble. It intends that all immigrants, regardless of immigration status, equally come forward to access City services to which they are entitled, without having to fear "negative consequences to their personal lives." *Id.* The Order defines "confidential information" as "any information obtained and maintained by a City agency related to an individual's immigration status." *Id.* § 3A.

33. The Confidentiality Order directs City officers and employees to refrain from affirmatively collecting information about immigration status, unless that information is necessary to the officer or employee's specific task or the collection is otherwise required by law. The Order states: "No City officer or employee, other than law enforcement officers, shall inquire about a person's immigration status unless: (1) documentation of such person's immigration status is legally required for the determination of program, service or benefit eligibility . . . or (2) such officer or employee is required by law to inquire about such person's immigration status." *Id.* § 2A.

34. The Confidentiality Order has additional mandates for law enforcement officers. It directs that officers "shall not" stop, question, detain, or arrest an individual solely because of

[14] A copy of the Confidentiality Order is attached hereto as Exhibit 4.

his perceived immigration status; shall not "inquire about a person's immigration status, unless the status itself is a necessary predicate of a crime the officer is investigating or unless the status is relevant to identification of a person who is suspected of committing a crime"; and shall not "inquire regarding immigration status for the purpose of enforcing immigration laws." *Id.* §§ 2B(1), (2), (4). Witnesses and victims are afforded special protection: Law enforcement officers "shall not . . . inquire about the immigration status of crime victims, witnesses, or others who call or approach the police seeking help." *Id.* § 2B(3).

35. The Confidentiality Order also requires City officers and employees to avoid making unnecessary disclosures of immigration status information that may inadvertently come into their possession. *Id.* § 3B ("No City officer or employee shall disclose confidential information[.]"). But the Order permits disclosure both by City "officer[s] or employee[s]," when "such disclosure is required by law," or when the subject individual "is suspected . . . of engaging in criminal activity." *Id.* § 3B(2)-(3).

36. Philadelphia's Confidentiality Order, like the PPD's Memorandum 01-06, is motivated by concerns among officials across local government—from the City's health and social services departments to its law enforcement departments—that members of Philadelphia's immigrant community, especially those who are undocumented, would otherwise not access the municipal services to which they and their families are entitled and would avoid reporting crimes to the police, for fear of exposing themselves or their family members to adverse immigration consequences. The City's Confidentiality Order and Memorandum 01-06 play a vital role in mitigating undesired outcomes like neighborhoods where crimes go unreported, where families suffer from preventable diseases, and where children do not go to school.

37. Indeed, notwithstanding the Attorney General's claim that "[t]he residents of Philadelphia have been victimized" because the City has "giv[en] sanctuary to criminals,"[15] Philadelphia's crime statistics tell a very different story. Since 2009, when the Confidentiality Order was enacted, Philadelphia has witnessed a decrease in crime of over 17 percent, including a 20 percent decrease in violent crime. Tellingly, the Administration offers not a single statistic or fact to support their allegations otherwise—either publicly or as a part of the JAG solicitation announcing the requirement of the three new conditions. This is because the Administration has no support for its claims that sanctuary cities promote crime or lawlessness.

C. Philadelphia's Policies on Responding to ICE Detainer and Notification Requests

38. On April 16, 2014, shortly after the United States Court of Appeals for the Third Circuit issued a decision concluding that "detainer" requests sent by ICE are voluntary upon localities, *see Galarza v. Szalczyk*, 745 F.3d 634, 640 (3d Cir. 2014), then-Mayor Nutter signed Executive Order No. 1-14, entitled "Policy Regarding U.S. Immigration and Customs Enforcement Agency Detainer Requests" ("Detainer Order I").[16]

39. Detainer Order I stated that under the "Secure Communities" program, the U.S. Immigration and Customs and Enforcement Agency had been "shift[ing] the burden of federal civil immigration enforcement onto local law enforcement, including shifting costs of detention of individuals in local custody who would otherwise be released." Detainer Order I preamble.

40. Accordingly, Detainer Order I announced a policy that "[n]o person in the custody of the City who otherwise would be released from custody shall be detained pursuant to an ICE civil immigration detainer request . . . nor shall notice of his or her pending release be

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[15] Rebecca R. Ruiz, *Sessions Presses Immigration Agenda in Philadelphia, a Sanctuary City*, N.Y. Times (July 21, 2017), https://goo.gl/4EDuuo.

[16] A copy of Detainer Order I is attached hereto as Exhibit 5.

provided, unless such person is being released after conviction for a first or second degree felony involving violence and the detainer is supported by a judicial warrant." *Id.* § 1. The Order instructed the "Police Commissioner, the Superintendent of Prisons and all other relevant officials of the City" to "take appropriate action to implement this order." *Id.* § 2.

41. Detainer Order I was partly rescinded at the end of then-Mayor Nutter's term. After his election and upon taking office, on January 4, 2016, Mayor James F. Kenney signed a new order dealing with ICE detainer and notification requests. Its title was the same as Mayor Nutter's prior order and it was numbered Executive Order No. 5-16 ("Detainer Order II").[17]

42. Detainer Order II states that, although ICE had "recently discontinued its 'Secure Communities' program" and "the Department of Homeland Security and ICE have initiated the new Priority Enforcement Program (PEP) to replace Secure Communities[,] . . . it is incumbent upon the Federal government and its agencies to both listen to individuals concerned with this new program, and ensure that community members are both informed and invested in the program's success." Detainer Order II preamble. Until that occurs, Detainer Order II directs that Philadelphia officers "should not comply with detainer requests unless they are supported by a judicial warrant and they pertain to an individual being released after conviction for a first or second-degree felony involving violence." *Id.*

43. Detainer Order II therefore provides: "No person in the custody of the City who otherwise would be released from custody shall be detained pursuant to an ICE civil immigration detainer request . . . nor shall notice of his or her pending release be provided, unless such person is being released after conviction for a first or second degree felony involving violence and the detainer is supported by a judicial warrant." *Id.* § 1. The Order instructs "the Police

[17] A copy of Detainer Order II is attached hereto as Exhibit 6.

Commissioner, the Prisons Commissioner and all other relevant officials of the City" to "take appropriate action to implement this order." *Id.* § 2.

44. As a result of Detainer Orders I and II, Philadelphia prison authorities stopped notifying ICE of the forthcoming release of inmates, unless ICE provided the authorities a notification request that was accompanied by a judicial warrant. This has been the practice in the prisons since the signing of Detainer Order I in April 2014 through the date of this filing. Because the vast majority of individuals in Philadelphia's prison facilities are pre-trial or pre-sentence detainees, however, the vast majority of detainer or notification requests that the City receives from ICE concern persons without scheduled release dates. Since January 2016, only three individuals for whom ICE sent Philadelphia detainer or notification requests and who were in City custody had been serving a sentence after being convicted of a crime. Every other individual for whom ICE sent a detainer or notification request during that time period was an individual in a pre-trial, pre-sentencing, or temporary detention posture, whose release could often be ordered with no advance notification to local authorities.

45. On March 22, 2017, the City's First Deputy Managing Director, Brian Abernathy, clarified by memorandum that, although Executive Order 5-16 (Detainer Order II) suggested that in order for the City to cooperate with an ICE notification request, there needed to be both a "judicial warrant" and a prior conviction by the inmate for a first or second degree felony, that text did not and does not reflect the practice of the City's prisons.[18] Mr. Abernathy explained that the historical practice of the Department of Prisons has been to "cooperat[e] with all federal criminal warrants, including criminal warrants obtained by Immigration and Customs Enforcement," and "[b]y signing Executive Order 5-16, Mayor Kenney did not intend to alter

[18] A copy of Mr. Abernathy's March 22, 2017 internal memorandum is attached hereto as Exhibit 7.

this cooperation." Accordingly, Mr. Abernathy's memorandum stated that "the Department is directed to continue to cooperate with all federal agencies, including ICE, when presented with a warrant to the same extent it cooperated before Executive Order 5-16." Philadelphia therefore continues to comply with ICE advance notification requests, regardless of the crime for which the individual was convicted, when ICE also presents a "judicial warrant."

46. Philadelphia's policies on detainer requests—that is, of complying with ICE requests to detain an individual for a brief period of time or to provide advance notification of a person's release *only* if ICE presents a judicial warrant—serve an important function in the City. Like Police Memorandum 01-06 and the Confidentiality Order, these policies forge trust with the immigrant community because they convey the message that Philadelphia's local law enforcement authorities are not federal immigration enforcement agents. They tell residents that if they find themselves in the City's custody and are ordered released, they *will* be released—not turned over to ICE unless a judge has determined such action is warranted. For instance, if a member of the immigrant community is arrested for a petty infraction and is temporarily detained in a Philadelphia Prison facility, or if he or she is arrested and then released the next morning, the City will not voluntarily detain that individual at the request of ICE or alert ICE to their release—unless, in the rare circumstance, ICE presents a judicial warrant. This message of assurance is important to community trust: Philadelphia's residents do not have to fear that each and every encounter with the local police is going to land them in an ICE detention center. After all, lawful immigrants and even citizens can be wrongfully caught up in alleged immigration enforcement actions.

47. Philadelphia's detainer policies also ensure fair treatment for all of Philadelphia's residents, immigrants and non-immigrants alike. Just as Philadelphia would not detain an

individual at the request of the FBI for 48 hours without a judicial warrant, Philadelphia will not do so at the request of ICE. The City believes that all persons should be treated with equal dignity and respect, whatever their national origin or immigration status.

D. Philadelphia's Policies on ICE Access to Prisons

48. The Philadelphia Prison System ("PPS") is managed by the Philadelphia Department of Prisons ("PDP"). PDP operates six facilities: (1) the Curran-Fromhold Correctional Facility, which is PPS' largest facility and contains 256 cells; (2) the Detention Center; (3) the House of Correction; (4) the Philadelphia Industrial Correctional Center ("PICC"); (5) the Riverside Correctional Facility; and (6) the Alternative & Special Detention facilities.

49. Across these six facilities, the inmate population is roughly 6,700. Approximately 17 percent of those inmates are serving time for criminal sentences imposed, and the remaining 83 percent inmates are all in a pre-trial posture (roughly 78 percent of inmates), a pre-sentencing posture (roughly 2 percent of inmates), or some other form of temporary detention (roughly 3 percent of inmates). Of the 17 percent serving sentences, none are serving sentences longer than 23 months, and approximately 30 percent are serving sentences of one year or less.

50. In May 2017, the Philadelphia Department of Prisons implemented a new protocol providing that ICE may only interview an inmate if the inmate consents in writing to that interview. To implement this protocol, the Department of Prisons created a new "consent form," to be provided to any inmate in a PPS facility whom ICE seeks to interview. The consent

form informs the individual that "Immigration and Customs Enforcement ("ICE") wants to interview you" and that "[y]ou have the right to agree or to refuse this interview."[19]

51. The new consent-based policy for ICE access to PPS facilities was put in place to help protect prisoners' constitutional rights to decline speaking with law enforcement authorities against their will or to speak only with such authorities in the presence of counsel if they so choose. The consent-based policy also ensures the orderly administration of Philadelphia's prisons, by avoiding the unnecessary expenditure of time and resources that would otherwise occur were inmates to be delivered to interviews with ICE only then to exercise their constitutional rights to remain silent or have counsel present.

E. Other Relevant Policies and Practices

52. In addition to the above policies, each of which are important for strengthening Philadelphia's relationship with its immigrant communities and fostering the health and welfare of the City, Philadelphia also believes that combatting crime is a leading—and entirely consistent—policy priority. To that effect, the Philadelphia Police Department routinely cooperates with federal law enforcement authorities in detecting, combatting, and holding people accountable for crimes committed in the City or by residents of the City, irrespective of the identity of the perpetrator or their immigration status. For instance, Philadelphia actively participates in a number of federal task forces, including the Violent Crimes Task Force; the Alcohol, Tobacco, Firearms and Explosive (ATF) Task Force; the FBI Terrorism Task Force; Joint Terrorism Task Force; the Human Trafficking Task Force; and the U.S. Marshals Service's Task Force.

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[19] *See* Philadelphia Department of Prisons "Inmate Consent Form – ICE Interview," attached hereto as Exhibit 8.

53. Philadelphia also uses a number of databases as part of its regular police work and law enforcement activities. Philadelphia's use of these databases provides the federal government notice about—and identifying information for—persons stopped, detained, arrested, or convicted of a crime in the City. In turn, federal authorities can use information derived from those databases to obtain knowledge about undocumented persons of interest in the City. The databases Philadelphia uses include:

a. The FBI's National Crime Information Center ("NCIC") database: The Philadelphia Police Department's protocol is for its officers to voluntarily and regularly use the NCIC database as they engage in criminal law enforcement. For instance, Philadelphia police officers are trained to run an NCIC "look-up" for all individuals who are subjected to "investigative detention" by the police, for the purpose of determining if an outstanding warrant has been issued for the individual whether in Philadelphia or another jurisdiction. If the officer is able to collect the person's date of birth or license plate information, NCIC protocols mandate that that information will also be entered into NCIC.

b. The Automated Fingerprint Identification System ("AFIS")[20]: As part of a routine and longstanding protocol, at the time a person in Philadelphia is arrested, his or her fingerprints are inputted into Philadelphia's AFIS platform, which feeds automatically into Pennsylvania's identification bureau and then to the FBI. The FBI in turn has the capacity to run

[20] Philadelphia recently transitioned to the Multimodal Biometric Identification System ("MBIS"), which is the next generation to AFIS. But because the FBI refers to the Integrated Automated Fingerprint Identification System ("IAFIS"), we use AFIS here.

fingerprints against the Integrated Automated Fingerprint Identification System ("IAFIS"), a national fingerprint and criminal history system maintained by the FBI, and the Automated Biometric Identification System ("IDENT"), a DHS-wide system for storing and processing biometric data for national security and border management purposes.

c. The Preliminary Arraignment System ("PARS"): PARS is a database maintained by the First Judicial District of Pennsylvania, the Philadelphia Police Department, and the Philadelphia District Attorney. The purpose of the database is to give information that the police collect upon an arrest directly to the District Attorney's Office. Based upon an end-user license agreement signed with ICE in 2008 and amended in 2010, ICE has access to criminal information in the PARS database, *i.e.*, to information about people suspected of criminal activity and entered into the system.

54. Philadelphia does not have visibility into how various federal agencies use or share information derived from the above databases with one another. But to Philadelphia's awareness and understanding, the federal government can use the NCIC, AFIS, and PARS databases to look up persons of interest to the federal government (including ICE) and determine whether they are in Philadelphia's custody or otherwise in the City.

II. THE BYRNE JAG PROGRAM AND 2017 GRANT CONDITIONS

A. Overview of the Byrne JAG Program

55. Congress created the modern-day Byrne JAG program in 2005 as part of the Violence Against Women and Department of Justice Reauthorization Act. *See* Pub. L. No. 109-162 (codified at 42 U.S.C. § 3751 *et seq.*). In fashioning the present-day Byrne JAG grant,

Congress merged two prior grant programs that had also provided criminal justice assistance funding to states and localities. These two predecessor grant programs were the Edward Byrne Memorial Formula Grant Program, created in 1988, and the Local Law Enforcement Block Grant Program.[21]

56. Today, grants under the Byrne JAG program are the primary source of federal criminal justice funding for states and localities. As stated in a 2005 House Report accompanying the bill, the program's goal is to provide State and local governments the "flexibility to spend money for programs that work for them rather than to impose a 'one size fits all' solution" for local policing. *See* H.R. Rep. No. 109-233, at 89 (2005).

57. The authorizing statute for the Byrne JAG program provides that localities can apply for funds to support a range of local programming to strengthen their criminal justice systems. For instance, localities can apply for funds to support "law enforcement programs, prosecution and court programs, prevention and education programs, corrections and community corrections programs, drug treatment and enforcement programs," and "crime victim and witness programs." 42 U.S.C. § 3751(a)(1).

58. Byrne JAG funding is structured as a formula grant, awarding funds to all eligible grantees according to a prescribed formula. *See* 42 U.S.C. § 3755(d)(2)(A). The formula for states is a function of population and violent crime, *see id.* § 3755(a), while the formula for local governments is a function of the state's allocation and of the ratio of violent crime in that locality to violent crime in the state as a whole, *see id.* § 3755(d).

59. Unlike discretionary grants, which agencies award on a competitive basis, "formula grants . . . are not awarded at the discretion of a state or federal agency, but are

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[21] *See* Nathan James, *Edward Byrne Memorial Justice Assistance Grant ("JAG") Program*, Congressional Research Service (Jan. 3, 2013), https://goo.gl/q8Tr6z.

awarded pursuant to a statutory formula." *City of Los Angeles v. McLaughlin*, 865 F.2d 1084, 1088 (9th Cir. 1989). States and local governments are entitled to their share of the Byrne JAG formula allocation as long as their proposed programs fall within at least one of eight broadly-defined goals, *see* 42 U.S.C. § 3751(a)(1)(A)-(H), and their applications contain a series of statutorily prescribed certifications and attestations, *see id.* § 3752(a).

60. Philadelphia has filed direct applications for Byrne JAG funding every year since the program's inception in 2005. All of its applications have been granted; the City has never been denied Byrne JAG funds for which it applied. For instance, in FY 2016, Philadelphia received $1.67 million in its direct Byrne JAG award. That award was dated August 23, 2016. In FY 2015, the City received $1.6 million in its direct Byrne JAG award. Over the past eleven years, excluding funds received as part of the 2009 Recovery Act, Philadelphia's annual Byrne JAG award has averaged $2.17 million and has ranged between $925,591 (in 2008) to $3.13 million (in 2005).

61. The City is also eligible for, and has previously been awarded, competitive subgrants from the annual Byrne JAG award to the State of Pennsylvania.

62. Philadelphia uses the federal funding provided by the Byrne JAG program to support a number of priorities within and improvements to its criminal justice system. In recent years, a significant portion of Philadelphia's Byrne JAG funding has gone towards Philadelphia Police Department technology and equipment enhancements, training, and over-time payments to police officers. Philadelphia has also drawn upon Byrne JAG funds to finance upgrades to courtroom technology in the City; to enable the District Attorney's Office to purchase new technology and invest in training programs for Assistant District Attorneys; to support juvenile delinquency programs for the City's youth; to bolster reentry programs for formerly incarcerated

individuals seeking to reenter the community; to operate alternative rehabilitation programs for low-level offenders with substance use disorders; to make physical improvements to blighted communities with Clean and Seal teams; and to improve indigent criminal defense services. It is clear, then, that the funds that the City receives from the Byrne JAG program play a vital role in many facets of the City's criminal justice programming.

B. Conditions for Byrne JAG Funding

63. The statute creating the Byrne JAG program authorizes the Attorney General to impose a limited set of conditions on applicants. First, the statute authorizes the Attorney General to require that applicants supply information about their intended use of the grant funding, and to demonstrate that they will spend the money on purposes envisioned by the statute. *See* 42 U.S.C. § 3752(a)(2) & (5) (the Attorney General can insist upon assurances by applicants that "the programs to be funded by the grant meet all the requirements of this part" and "that Federal funds . . . will not be used to supplant State or local funds"). Second, the statute allows the Attorney General to require that applicants provide information about their budget protocols; for instance, he can insist that a recipient of a Byrne JAG "maintain and report such data, records, and information (programmatic and financial) as [he] may reasonably require." *Id.* § 3752(a)(4). Third, the Attorney General can demand that localities "certif[y]," in conjunction with their applications for funding, that they "will comply with all provisions of this part and all other applicable Federal laws." *Id.* § 3752(a)(5)(D). Finally, the statute authorizes the Attorney General to "issue Rules to carry out this part." *Id.* § 3754.

64. That is all. The above delegations of authority do not include a general grant of authority to the Attorney General to impose new obligations the Attorney General himself creates and that are neither traceable to existing "applicable Federal law[]" nor reflected in

"provisions of this part" (*i.e.*, the JAG statute itself). *See id.* § 3752(a)(5)(D). Congress' decision *not* to delegate to the Attorney General such a broad scope of authority was intentional and clear.

65. Time and time again, Congress has demonstrated that it knows how to confer agency discretion to add substantive conditions to federal grants when it wants to. *See, e.g.*, 42 U.S.C. § 3796gg-1(e)(3) (authorizing the Attorney General to "impose reasonable conditions on grant awards" in a different program created by the Omnibus Control and Safe Streets Act); 42 U.S.C. § 14135(c)(1) (providing that the Attorney General shall "distribute grant amounts, and establish grant conditions . . ."); *see also Andrus v. Glover Const. Co.*, 446 U.S. 608, 616-617 (1980) ("Where Congress explicitly enumerates certain exceptions," its "omission" of a different exception means "only one inference can be drawn: Congress meant to" exclude that provision).

66. Furthermore, the Attorney General has never imposed conditions on Byrne JAG applicants beyond the bounds of his statutory authority, *i.e.*, conditions that neither reflect "applicable Federal laws" nor that relate to the disbursement of the grants themselves. For instance, the FY 2016 JAG funds awarded to Philadelphia on August 23, 2016 included many "special conditions." Philadelphia had to certify, among other things, that it:

a. complies with the Department of Justice's "Part 200" Uniform Administrative Requirements, Cost Principles, and Audit Requirements;

b. adheres to the "DOJ Grants Financial Guide";

c. will "collect and maintain data that measure the performance and effectiveness of activities under this award";

d. recognizes that federal funds "may not be used by the recipient, or any subrecipient" on "lobbying" activities;

e. "agrees to assist BJA in complying with the National Environmental Policy Act (NEPA) . . . in the use of these grant funds";

f. will ensure any recipients, subrecipients, or employees of recipients do not engage in any "conduct related to trafficking in persons";

g. will ensure that any recipient or subrecipient will "comply with all applicable requirements of 28 C.F.R. Part 42" (pertaining to civil rights and non-discrimination).[22]

67. These conditions almost all relate to the administration and expenditure of the grant itself. The few conditions that apply to the general conduct of the recipient or subrecipient are expressly made applicable to federal grantees by statute. The Department of Justice's new conditions do not apply to the expenditure of the grant funding, and neither the jail access nor advance notification conditions discussed below invoke any existing federal law or statute. Meanwhile, the Section 1373 condition refers to a federal law that is wholly inapplicable to the JAG grant. The Department offered no statistics, studies, or legal authority to support its imposition of these 2017 conditions as promoting public safety and the law enforcement purposes of the JAG program.

68. Had Congress authorized the Attorney General to create new substantive conditions for Byrne JAG funds at his choosing, that would have upended Congress' formula approach for distributing funds under the program based on population and violent crime. That in turn would have resulted in the allocating of grants according to criteria invented by the Department of Justice. That is not the program Congress created. *See Amalgamated Transit Union v. Skinner*, 894 F.2d 1362, 1364 (D.C. Cir. 1990) ("Where Congress prescribes the form

[22] All of these conditions appear in Philadelphia's FY 2016 JAG award, attached as Exhibit 9.

in which an agency may exercise its authority, . . . we cannot elevate the goals of an agency's action, however reasonable, over that prescribed form.").

C. Section 1373 Condition

69. On February 26, 2016, Congressman John Culberson, Chairman of the House Appropriations Subcommittee on Commerce, Justice, Science and Related Agencies, sent a letter to then-Attorney General Loretta Lynch, inquiring whether recipients of Department of Justice grants were complying with Section 1373.[23]

70. The Culberson letter spurred the Office of Justice Programs ("OJP") at the Department of Justice to ask that the Department's Office of Inspector General ("OIG") investigate local jurisdictions' compliance with Section 1373. In an email sent from OJP to Inspector General Michael Horowitz on April 8, 2016, OJP indicated that it had "received information" indicating that several jurisdictions who receive OJP funding may be in violation of Section 1373 and attached a spreadsheet of over 140 state and local jurisdictions that it wanted OIG to investigate.[24]

71. On May 31, 2016, Inspector General Horowitz transmitted a report to Department of Justice Assistant Attorney General Karol Mason, reviewing the policies of ten state and local jurisdictions, including Philadelphia, and whether they comply with Section

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[23] *See* Letter from Cong. Culberson to Attorney General Lynch (Feb. 26, 2016), *available at* https://goo.gl/Cytb3B. Congressman Culberson's letter was accompanied by analysis from the Center for Immigration Studies, a non-profit institute that describes itself as "animated by a 'low-immigration, pro-immigrant' vision of America that admits fewer immigrants but affords a warmer welcome for those who are admitted." *About the Center for Immigration Studies*, Center for Immigration Studies (last visited August 29, 2017 2:42 PM EDT), https://goo.gl/GrsfoQ.

[24] *See* Memorandum from Department of Justice Inspector General Michael Horowitz to Assistant Attorney General Karol Mason (May 31, 2016) (describing OJP's earlier email to OIG). A copy of this memorandum is attached as Exhibit 10.

1373.[25] The other jurisdictions analyzed were: Connecticut, California, City of Chicago (Illinois), Clark County (Nevada), Cook County (Illinois), Miami-Dade (Florida), Milwaukee County (Wisconsin), Orleans Parish (Louisiana), and New York City. The report expressed "concerns" with several of the localities' laws and policies. The report did not analyze the effects of any of the ten local jurisdictions' policies on crime rates or public safety.

72. On July 7, 2016, Assistant Attorney General Mason, who then oversaw the Office of Justice Programs, sent a Memorandum to Inspector General Horowitz conveying that, in response to OIG's report, "the Office of Justice Programs has determined that Section 1373 is an applicable federal law for the purposes of the Edward Byrne Memorial Justice Assistant Grant (JAG) program and the State Criminal Alien Assistance Program (SCAAP)."[26] There was no analysis supporting this conclusion whatsoever, nor any explanation for why OJP had not reached that conclusion during the prior ten years that it administered the JAG program.

73. Also on July 7, 2016, the Office of Justice Programs released a Question and Answer "Guidance" document, entitled "Office of Justice Programs Guidance Regarding Compliance with 8 U.S.C. § 1373."[27] The Q&A Guidance document stated that under the Department's new policy, "[a] JAG grantee is required to assure and certify compliance with all applicable federal statutes, including Section 1373." The document explained that Section 1373 "prevents federal, state, and local government entities and officials from 'prohibit[ing] or in any way restrict[ing]' government officials or entities from sending to, or receiving from, federal immigration officers information concerning an individual's citizenship or immigration status." But it further stated that "Section 1373 does not impose on states and localities the affirmative

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[25] *Id.*

[26] Memorandum from Assistant Attorney General Karol Mason to Inspector General Michael Horowitz (July 7, 2016). A copy of this memorandum is attached as Exhibit 11.

[27] A copy of this guidance document is attached as Exhibit 12.

obligation to collect information from private individuals regarding their immigration status, nor does it require that statutes and localities take specific actions upon obtaining such information."

74. On October 6, 2016, OJP released a document entitled "Additional Guidance Regarding Compliance with 8 U.S.C. § 1373."[28] That document addressed the question, "Does OJP's guidance on 8 U.S.C. § 1373 impact FY 2016 funding?" And it answered: "No FY 2016 or prior year Byrne/JAG or SCAAP funding will be impacted. However, OJP expects that JAG and SCAAP recipients will use this time to examine their policies and procedures to ensure they will be able to submit the required assurances when applying for JAG and SCAAP funding in FY 2017."

75. As DOJ has conceded, Section 1373 imposes no affirmative obligation on state or local entities to collect immigration status information or take any specific actions upon receiving immigration status information. Nor does the statutory provision address ICE detainer requests or release-date notification requests.

76. Within a week of taking office, on January 25, 2017, President Trump issued Executive Order 13768, a sweeping order aimed at punishing "sanctuary" jurisdictions. Entitled "Enhancing Public Safety in the Interior of the United States," the order announced that it is the policy of the Executive Branch to withhold "Federal funds" from "jurisdictions that fail to comply with applicable Federal law" by acting as "sanctuary jurisdictions." Exec. Order 13768 §§ 1, 2(c). The Order directed the Attorney General and the Secretary of Homeland Security to "ensure that jurisdictions that willfully refuse to comply with 8 U.S.C. § 1373 (sanctuary jurisdictions) are not eligible to receive Federal grants," and authorized the Secretary of DHS to "designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary

[28] A copy of this guidance document is attached as Exhibit 13.

jurisdiction." *Id.* § 8(a). The Order was ultimately enjoined in large part by the United States District Court for the Northern District of California because the court found that it violated multiple constitutional provisions. *County of Santa Clara v. Trump*, --- F. Supp. 3d ----, 2017 WL 1459081 (N.D. Cal. Apr. 25, 2017).

77. As the *Santa Clara* case unfolded, the Trump Administration sharpened its focus—both within the context of that lawsuit and more broadly—on denying local jurisdictions grants disbursed by the Departments of Justice and Homeland Security *in particular*, as the mechanism for carrying out the Administration's efforts to crack down on so-called sanctuary cities. At the preliminary injunction hearing in March in the *Santa Clara* case, the lawyer for the government represented that the Executive Order only applied to three federal grants administered by the Departments of Justice and Homeland Security. *Id.* at *1.

78. On April 21, 2017, the Department of Justice sent letters to Philadelphia and eight other jurisdictions "alert[ing]" the recipients that "under the terms of your FY 2016 Byrne JAG grant, award 2016 DJ-BX-0949 from the Office of Justice Programs ('OJP'), your jurisdiction is required to submit documentation to OJP that validates your jurisdiction is in compliance with 8 U.S.C. § 1373."[29] The letter went on that "this documentation must be accompanied by an official legal opinion from counsel . . . [and] must be submitted to OJP no later than June 30, 2017." It provided that "[f]ailure to comply with this condition could result in the withholding of grant funds, suspension, or termination of the grant, ineligibility for future OJP grants or subgrants, or other action, as appropriate."

[29] Letter from Alan R. Hanson to Mayor Jim Kenney, *supra* note 4. Connecticut does not appear to have received such a letter, but the other nine jurisdictions in the OIG report did. *See* https://goo.gl/r16Gmb (collecting letters from Alan R. Hanson dated April 21, 2017).

79. On June 22, 2017, Philadelphia City Solicitor Sozi Pedro Tulante signed a formal "certification" memorandum declaring that the City determined it is in compliance with Section 1373 and explaining why.[30] The letter was addressed to Tracey Trautman, Acting Director of the Bureau of Justice Assistance at the Department of Justice and submitted to DOJ that day.

80. Philadelphia certified that, as a general matter, it does not collect immigration status information from its residents. Both Memorandum 01-06 and the Confidentiality Order bar City officials and employees from asking residents or other persons within the City for such information, subject to discrete exceptions. Philadelphia certified that it neither restricts nor prohibits its officials and employees from sharing immigration-status information with the federal government in contravention of Section 1373, because as a result of the City's aforementioned policies, the City is rarely in possession of that type of information.

81. Philadelphia also certified that it complies with Section 1373 because its policies allow for the sharing of immigration-status and other identifying information with federal authorities in the case of criminals or persons suspected of crime. Both the Confidentiality Order and Memorandum 06-01 mandate the continued cooperation between local officers and federal authorities in combating crime. Further, those policies allow for the disclosure and "transmi[ssion] . . . to federal authorities" of confidential information (i.e., immigration status information) by Philadelphia police officers when the individual is suspected of engaging in criminal activity.[31] The Confidentiality Order and Memorandum 01-06 also contain "savings clauses," which permit inquiry into or disclosure of immigration status information if "required by law."

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[30] A copy of the City's certification memorandum is attached hereto as Exhibit 14.
[31] *See* Exhibit 14, at 7 (citing Sections 2B and 2C of the Confidentiality Order and Parts 3B and 3C of Memorandum 06-01).

82. Philadelphia also explained how its everyday law enforcement practices comply with Section 1373. Specifically, Philadelphia's use of the FBI's National Crime Information Center ("NCIC") database, its sharing access with ICE to certain information in the City's Preliminary Arraignment System ("PARS") database, and its use of the Automated Fingerprint Identification System ("AFIS"), all enable federal immigration authorities to access identifying information about any persons stopped, detained, arrested, or convicted of a crime in the City.

83. Philadelphia acknowledged that for witnesses of crimes, victims of crimes, and law-abiding persons seeking City services, its policies do mean that immigration status information, to the extent it inadvertently comes into the City's possession, is ordinarily not disclosed to the federal government. But Philadelphia contended that Section 1373 cannot be construed to require the City to disclose confidential information about those persons because reading the statute in such a manner would raise constitutional problems. Specifically, construing Section 1373 to impose that type of mandate on the City would undermine its core police powers under the U.S. Constitution and its critical interests in protecting the safety and welfare of its residents.

84. Philadelphia reserved the right to challenge the Section 1373 certification requirement on several grounds in its June 22, 2017 submission. Notably, it reserved the argument that the DOJ's insistence that localities certify compliance with Section 1373 as a condition of receiving Byrne JAG grants is itself unlawful and beyond the authority that Congress delegated to the Attorney General. It also argued that making JAG grants contingent on compliance with Section 1373 violates the Spending Clause.

85. Days after receiving certifications from Philadelphia and other jurisdictions, the Department of Justice expressed non-specific concerns with those submissions. It issued a press

release saying that "some of these jurisdictions have boldly asserted that they will not comply with requests from federal immigration authorities," and that "[i]t is not enough to assert compliance, the jurisdictions must actually be in compliance."[32] Although the press release noted that the DOJ was "in the process of reviewing" the certifications and planned to "examine these claims carefully," it has since provided no further guidance on the matter, has not indicated which certifications it finds problematic, and has not responded to Philadelphia's certification specifically.[33]

D. July 2017 Announcement Regarding Advance Notification and Jail Access Conditions

86. On July 25, 2017, the Department of Justice announced two *more* significant changes that it would be unilaterally making—without authority—to the Byrne JAG application process. In a two-paragraph press release and accompanying press "backgrounder," the Department announced that in addition to requiring applicants for the FY 2017 Byrne JAG award to again certify their compliance with Section 1373, applicants would be required to adhere to two additional conditions.[34] These conditions are (1) the "advance notification" condition and (2) the "jail access" condition.

87. Under the advance notification condition, the Department of Justice will now require Byrne JAG grantees to "provide at least 48 hours' advance notice to DHS regarding the scheduled release date and time of an alien in the jurisdiction's custody when DHS requests such notice in order to take custody of the alien pursuant to the Immigration and Nationality Act."[35]

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[32] *See* Exhibit 2.
[33] *Id.*
[34] Press Release, U.S. Dep't of Justice, *Attorney General Sessions Announces Immigration Compliance Requirements for Edward Byrne Memorial Justice Assistance Grant Programs* (July 25, 2017), *available at* https://goo.gl/KBwVNP.
[35] *See* Exhibit 1.

88. The Department did not define the term "scheduled release date" as a part of the advance notification condition. The Federal Bureau of Prisons defines "date of release" as the "date of the expiration of the prisoner's term of imprisonment, less any time credited toward the service of the prisoner's sentence . . . ." 18 U.S.C. § 3624. Similarly, within the Philadelphia Department of Prisons, only inmates serving sentences would have "scheduled release dates." Accordingly, the advance notification condition appears to apply only to those inmates in Philadelphia's prisons who have been convicted of crimes and are serving sentences—not to the roughly 83% of inmates in PPS facilities who are in a pre-trial, pre-sentence, or other temporary detention posture, many of whom may be ordered released with less than 48 hours' notice (i.e., because they post bond or the charges against them are dropped). But this is far from clear.

89. Under the jail access condition, the Department of Justice will now require Byrne JAG grantees to "permit personnel of the U.S. Department of Homeland Security (DHS) to access any correctional or detention facility in order to meet with an alien (or an individual believed to be an alien) and inquire as to his or her right to be or remain in the United States."[36] Like the advance notification condition, the jail access condition is vague and ambiguous; it gives no indication of what "access" means, and whether jurisdictions will be deemed compliant as long as they permit ICE personnel to access their facilities in order to meet with inmates who have in turn consented to such meetings. By its broadest construction, this requirement appears to mandate that federal immigration agents be given unprecedented and unfettered access to local correctional or detention facilities, including to meet with and to question inmates on a non-consensual basis and/or without notice of their right to have counsel present.

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[36] *See id.*; *see also* U.S. Dep't of Justice, Office of Justice Programs, *Overview of Legal Requirements Generally Applicable to OJP Grants and Cooperative Agreements - FY 2017 Awards* (last visited Aug. 29, 2017, 2:42 PM EDT), https://goo.gl/PcnsXV. A printed copy of this webpage is attached as Exhibit 15.

90. The application deadline for local FY 2017 Byrne JAG funding—the grant for which cities, such as Philadelphia, apply—is September 5, 2017.[37]

91. The Department of Justice's July 25, 2017 announcement was accompanied by virtually no explanation for the change in policy and no opportunity for public notice and comment. The Department did not explain how it arrived at these conditions or what alternatives it considered. The press release is also noticeably silent as to the purpose of the Byrne JAG program and the ways in which the newly-imposed conditions—or even complying with Section 1373—relate to, let alone serve to advance, the interests of the Byrne JAG program. The Department also failed to provide law enforcement with any guidance as to how the conditions will operate in practice.

92. As a result of the Department of Justice's actions, for Philadelphia to apply for the FY 2017 Byrne JAG grant on September 5, 2017 and receive the award, the City will have to (1) certify again its compliance with Section 1373, (2) be prepared to adhere to the advance notification condition, and (3) be prepared to comply with the jail access condition, despite the ambiguity about what each condition will entail.

93. Although Philadelphia is confident that it complies with Section 1373 and has certified as much, the Department of Justice has not responded to Philadelphia's June 22, 2017 certification nor provided the City any guidance on the matter. All the while, the Administration has made confusing and threatening public statements that leave the City uncertain as to whether its certification in the FY 2017 application will be accepted. Likewise, Philadelphia believes that its jail access policy may comply with the new jail access condition, because Philadelphia

[37] U.S. Dep't of Justice, Office of Justice Programs, *Edward Byrne Memorial Justice Assistance Grant Program: FY 2017 Local Solicitation* (Aug. 3, 2017), https://goo.gl/SfiKMM. A copy of the FY 2017 JAG Local Solicitation is attached as Exhibit 16.

allows ICE agents to enter PPS facilities to meet with individuals who have consented to such meetings; and Philadelphia believes its detainer and notification policies do not meaningfully interfere with the Department of Justice's prerogatives, because while Philadelphia does not provide advance notification of release without a judicial warrant, it rarely if ever gets notification requests from ICE for inmates who have scheduled release dates. However, Philadelphia is left only to wonder whether the Department of Justice will accept these contentions because the jail access and advance notification conditions are inscrutably vague.

III. IMPACT OF THE NEW JAG CONDITIONS ON PHILADELPHIA

94. None of the three new conditions imposed by the Department of Justice upon applicants for FY 2017 Byrne JAG funding can withstand legal scrutiny.

95. The authorizing statute creating the Byrne JAG grant program does not delegate authority to the Attorney General to impose these conditions. Rather, the authorizing statute allows the Attorney General to insist that applicants "comply with all ... applicable Federal laws." 42 U.S.C. § 3752(a)(5)(D). None of the three conditions constitutes "applicable" federal requirements. Each deals with civil immigration enforcement—something wholly *inapplicable* to criminal justice grants. And the last two conditions are not reflected in any existing federal law whatsoever: There is no federal law requiring local jurisdictions to provide ICE "at least 48 hours' advance notice" before they release alleged aliens in their custody, and there is no federal law requiring jurisdictions to grant access to DHS officials to their detention facilities.

96. In fact, Congress has considered—and failed to enact—legislation that would have stripped federal funding from states and localities that do not provide ICE advance notification of the release of persons for whom detainer requests have been sent. *See, e.g.*, Stop Dangerous Sanctuary Cities Act §3(a)(2), S. 1300, 114th Cong. (rejected by Senate July 6, 2016)

(entities that do not "comply with a detainer for, or notify about the release of, an individual" in response to requests made by ICE shall be ineligible for public works and economic development grants and community development block grants). The fact that Congress failed to pass bills of this type demonstrates that Congress considered and then chose not to link federal spending to advance notification.

97. The Department of Justice's new conditions also represent a sharp break with past agency practice. The agency has never before attached any conditions of this nature to Byrne JAG funds.

98. The Department of Justice's imposition of the conditions violates several bedrock constitutional principles. The Department's actions violate the Separation of Powers between Congress and the Executive. They also exceed limits on the federal government's ability to place conditions on federal funds under the Spending Clause. In particular, although conditions on federal funds must be germane to the purpose of the federal program, the Department's new conditions bear no relation to the purpose of the Byrne JAG program. Moreover, the conditions are woefully ambiguous, leaving cities like Philadelphia guessing as to how to comply. At its worst, this ambiguity threatens to induce unconstitutional action, as the conditions could potentially be construed to require localities to detain individuals of interest to ICE even after they have been ordered released.

99. If the City is forced to comply with the Department's new conditions in order to receive its FY 2017 JAG award, and if those conditions are not construed in accordance with constitutional and reasonable limits, the result would be that Philadelphia would be forced to significantly change several of its policies. In turn, such changes would compromise the City's criminal enforcement, public safety, and health and welfare.

100. Philadelphia believes that it does already comply with Section 1373 when read in light of the U.S. Constitution. But if Section 1373 is interpreted to extend to victims, witnesses, and law-abiding persons in the City—and to require that Philadelphia allow for the unfettered disclosure to federal authorities of those persons' immigration status information—that would require Philadelphia to overhaul several of its policies, including Memorandum 01-06 and the Confidentiality Order. The trust that Philadelphia has worked so hard to build with its immigrant population would be broken, and the City's efforts to prosecute crimes to completion, provide redress to victims, and ensure full access to City services, would be hindered.

101. Philadelphia also believes that it may already comply with the jail access condition. The Department of Justice did not define the term "access" or explicitly state that jurisdictions must permit entry to ICE even when an inmate refuses to speak with ICE; Philadelphia, meanwhile, allows for meetings to which inmates consent. However, the condition as written is exceedingly vague, and in its most unreasonable light could be read to insist that jurisdictions provide federal agents unrestrained entry to their detention facilities. Requiring Philadelphia to apply for the FY 2017 grant amidst this uncertainty is harmful in itself, and if the Department takes an extreme reading, it could result in forcing Philadelphia to sacrifice an important local prerogative. Philadelphia should not be compelled to abandon its efforts to protect the constitutional rights of its inmates, nor to take actions that will sow the very fear and mistrust among the immigrant population that the City has worked so hard to overcome.

102. Philadelphia further believes that its notification and detainer policies do not meaningfully conflict with the Department of Justice's policy concerns that underlie the advance notification condition. Although Philadelphia only provides advance notification of an inmate's release when ICE presents a judicial warrant, ICE rarely sends advance notification requests for

inmates who have scheduled release dates. Given the ambiguity and lack of explanation for the condition, however, Philadelphia cannot be sure that the Department will accept the City's position. Requiring Philadelphia to apply for the FY 2017 grant amidst this uncertainty is harmful in itself, and if the Department seeks to apply the condition in its most extreme and unreasonable light, it could result in forcing Philadelphia to sacrifice an important local prerogative.

103. If the City's application for the FY 2017 Byrne JAG award is rejected or withheld, or if its award is clawed back, either because the Department of Justice rejects the City's Section 1373 certification, or because the Department insists on certain activities pursuant to the advance notification and jail access conditions and the City refuses to comply, the vitality of Philadelphia's criminal justice programs would be placed in jeopardy.

104. As a result of the injuries Philadelphia will suffer in all of the above circumstances, Philadelphia faces a significant danger of harm due to the Department of Justice's imposition of the new conditions for the FY 2017 grant.

CAUSES OF ACTION

COUNT I
(Violation of the Administrative Procedure Act through *Ultra Vires* Conduct Not Authorized by Congress in the Underlying Statute)

105. Plaintiff incorporates by reference the allegations in the preceding paragraphs.

106. The Department of Justice may only exercise authority conferred by statute. *See City of Arlington v. FCC*, 133 S. Ct. 1863, 1869 (2013).

107. The Byrne JAG statute provides no authority to the Attorney General to impose conditions on the receipt of Byrne JAG funds that are neither reflected in "applicable Federal laws" nor concern the administration of the JAG program itself.

108. The three conditions added to the FY 2017 grant by the Department of Justice are neither "applicable Federal laws" nor conditions that deal with the administration and spending of the Byrne JAG funds.

109. The Attorney General's imposition of the new conditions is unauthorized by statute.

110. The Attorney General's imposition of the new conditions also contradicts the formula-grant structure of the Byrne JAG program. *See* 42 U.S.C. § 3755(d)(2)(A).

111. The APA requires courts to hold unlawful and set aside any agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law"; "contrary to constitutional right, power, privilege, or immunity"; or "in excess of statutory jurisdictions, authority, or limitations[.]" 5 U.S.C. § 706(2)(A)-(C).

112. Pursuant to 5 U.S.C. § 706 and 28 U.S.C. § 2201, Plaintiff is entitled to a declaration that the Attorney General is without the statutory authority to impose the Section 1373, advance notification, and jail access conditions on FY 2017 Byrne JAG funds, and in doing so, has acted contrary to law under the APA. Plaintiff is also entitled to a permanent injunction preventing the Attorney General from putting those conditions into effect.

COUNT II
(Violation of the Administrative Procedure Act through Violation of the Constitution's Separation-of-Powers)

113. Plaintiff incorporates by reference the allegations of the preceding paragraphs.

114. The Constitution vests Congress, not the President or officials in the Executive Branch, with the power to appropriate funding to "provide for the . . . general Welfare of the United States." U.S. Const. art I, § 8, cl. 1.

115. The President's constitutional duty—and that of his appointees in the Executive Branch—is to "take Care that the Law be faithfully executed." U.S. Const. art. II, § 3, cl. 5.

116. The President "does not have unilateral authority to refuse to spend . . . funds" that have already been appropriate by Congress "for a particular project or program." *In re Aiken Cnty.*, 725 F.3d 255, 261 n.1 (D.C. Cir. 2013); *see also Train v. City of New York*, 420 U.S. 35, 44 (1975).

117. The President also cannot amend or cancel appropriations that Congress has duly enacted because doing such violates the Presentment Clause of the Constitution and results in the President purporting to wield a constitutional power not vested within his office. *See Clinton v. City of New York*, 524 U.S. 417, 438 (1998).

118. Imposing a new condition on a federal grant program amounts to refusing to spend money appropriated by Congress unless that condition is satisfied.

119. The Section 1373 condition was not imposed by Congress, but rather by the Department of Justice in issuing its Office of Justice Program Guidance for FY 2016 Byrne JAG awards and its FY 2017 Byrne JAG application. Therefore, the Section 1373 condition amounts to an improper usurpation of Congress's spending power by the Executive Branch.

120. The advance notification and jail access conditions were not imposed by Congress, but rather by the Department in issuing the FY 2017 Byrne JAG application. Therefore, the imposition of the advance notification and jail access conditions amounts to an improper usurpation of Congress's spending power by the Executive Branch.

121. Pursuant to 28 U.S.C. § 2201, Plaintiff is entitled to a declaration that the Attorney General's imposition of the Section 1373, advance notification, and jail access conditions violates the constitutional principle of separation of powers and impermissibly

arrogates to the Executive Branch power that which is reserved for the Legislative Branch. Plaintiff is also entitled to a permanent injunction preventing the Attorney General from putting those conditions into effect.

COUNT III
(Violation of the Administrative Procedure Act through Arbitrary and Capricious Agency Action)

122. Plaintiff incorporates by reference the allegations of the preceding paragraphs.

123. The Department of Justice's decision to impose the Section 1373, advance notification, and jail access conditions on the receipt of FY 2017 Byrne JAG funds deviates from past agency practice without reasoned explanation or justification.

124. Pursuant to 28 U.S.C. § 2201, Plaintiff is entitled to a declaration that the Attorney General's imposition of the Section 1373, advance notification, and jail access conditions is arbitrary and capricious. Plaintiff is also entitled to a permanent injunction preventing the Attorney General from putting those conditions into effect.

COUNT IV
(Spending Clause)

125. Plaintiff incorporates by reference the allegations of the preceding paragraphs.

126. Congress could not have authorized the immigration-related conditions attached the Byrne JAG award here because they do not satisfy the requirements of the Spending Clause of the Constitution.

127. None of the three conditions is "reasonably related" or "germane[]" to the federal interest that underlies the Byrne JAG grant program. *See South Dakota v. Dole*, 483 U.S. 203, 207-08 & n.3 (1987) (conditions must be "reasonably related," or "germane[]," to the particular program); *see also New York v. United States*, 505 U.S. 144, 167 (1992) (the attached "conditions must . . . bear some relationship to the purpose of the federal spending"). The three

conditions all deal with federal civil immigration enforcement, not localities' enforcement of state or local criminal law.

128. The three conditions threaten the federal interest that underlies the Byrne JAG program. They undermine Congress's goals of dispersing funds across the country, targeting funds to combat violent crime, and respecting local judgment in setting law enforcement strategy.

129. The Department's imposition of the conditions also violates the requirement that Spending Clause legislation "impose unambiguous conditions on states, so they can exercise choices knowingly and with awareness of the consequences." *Koslow v. Commonwealth of Pennsylvania*, 302 F.3d 161, 175 (3d Cir. 2002).

130. Moreover, because the conditions are ambiguous, they arguably require cities to infringe on individuals' Fourth and Fifth Amendment rights, violating the prohibition on Spending Clause conditions that "induce unconstitutional action." *Koslow*, 302 F.3d at 175.

131. Pursuant to 28 U.S.C. § 2201, Plaintiff is entitled to a declaration that the imposition of the three immigration-related conditions for the FY 2017 Byrne JAG violates the Constitution's Spending Clause as well as an injunction preventing those conditions from going into effect.

COUNT V
(Tenth Amendment: Commandeering)

132. Plaintiff incorporates by reference the allegations of the preceding paragraphs.

133. The Tenth Amendment prohibits the federal government from "requir[ing]" states and localities "to govern according to Congress's instructions," *New York*, 505 U.S. at 162, and from "command[ing] the States' officers . . . to administer or enforce a federal regulatory program," *Printz v. United States*, 521 U.S. 898, 935 (1997).

134. Where the "whole object" of a provision of a federal statute is to "direct the functioning" of state and local governments, that provision is unconstitutional, *Printz*, 521 U.S. at 932, and must be enjoined, *id.* at 935; *New York*, 505 U.S. at 186-187. That description precisely fits each of the three immigration-related conditions.

135. If Section 1373 is interpreted to extend to information sharing about witnesses, victims, and law-abiding persons in the City, and to require that Philadelphia provide federal authorities unfettered access to immigration status information about such persons, that would hamper Philadelphia's ability to ensure law and order. As a result, Philadelphia's personnel would be "commandeered" to perform federal functions rather than to pursue local priorities, in violation of the Tenth Amendment.

136. The advance notification and jail access conditions, in their most extreme and unreasonable lights, could be construed to require that Philadelphia change its policies concerning the administration of its detention facilities and the providing of advance notification of release to ICE only pursuant to a judicial warrant. That federalization of bedrock local police power functions would violate the Tenth Amendment's anti-commandeering principle.

137. Pursuant to 28 U.S.C. § 2201, Plaintiff is entitled to a declaration that if Section 1373 or the other two grant conditions are construed by the Department to conflict with Philadelphia's local policies, that would result in a violation of the Tenth Amendment. Plaintiff is entitled to a permanent injunction preventing the Department from taking such an interpretation.

COUNT VI
(Declaratory Judgment Act: Philadelphia Complies with 8 U.S.C. § 1373)

138. Plaintiff incorporates by reference the allegations of the preceding paragraphs.

139. Philadelphia certified its compliance with Section 1373 to the Department of Justice in a June 22, 2017 legal opinion signed by the City's Solicitor and describing the basis for the City's certification.

140. Philadelphia complies with Section 1373 to the extent it can be constitutionally enforced vis-a-vis the City.

141. Philadelphia's policies, namely Memorandum 01-06 and the Confidentiality Order, direct City officials and employees not to collect immigration status information unless such collection is required by state or federal law. Because Philadelphia cannot restrict the sharing of information it does not collect, the City's policy of non-collection renders it necessarily compliant with Section 1373 for all cases covered by the non-collection policy.

142. Where City officials or agents do incidentally come to possess immigration status information, the City has no policy prohibiting or restricting the sharing of such information contrary to Section 1373. Both Memorandum 06-01 and the Confidentiality Order contains "saving clauses" that limits the disclosure of an individual's citizenship or immigration status information "unless such disclosure is required by law." Both policies also direct City police officers to cooperate with federal authorities in the enforcement of the criminal law, and to provide identifying information to federal authorities, when requested, about criminals or criminal suspects within the City.

143. Any non-disclosure about immigration status information that the City's policies directs in the case of witnesses of crimes, victims of crimes, and law-abiding individuals seeking City services, is consistent with Section 1373 when read in light of the Constitution.

144. Pursuant to 28 U.S.C. § 2201, Plaintiff is entitled to a declaration that it complies with Section 1373 as properly construed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays this Court:

a. Declare that all three immigration-related conditions for the FY 2017 Byrne JAG are unlawful;

b. Declare that Philadelphia complies with 8 U.S.C. § 1373 as properly construed;

c. Permanently enjoin the Department of Justice from enforcing the advance notification, jail access, or Section 1373 conditions for the FY 2017 Byrne JAG and retain jurisdiction to monitor the Department's compliance with this Court's judgment;

d. Grant such other relief as this Court may deem proper; and

e. Award Philadelphia reasonable costs and attorneys' fees.

DATED: August 30, 2017

Respectfully submitted,

SOZI PEDRO TULANTE, I.D. NO. 202579
City Solicitor
MARCEL S. PRATT, I.D. NO. 307483
Chair, Litigation Group
LEWIS ROSMAN, I.D. NO. 72033
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(215) 994-4000

Attorneys for the City of Philadelphia

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays this Court:

a. Declare that all three immigration-related conditions for the FY 2017 Byrne JAG are unlawful;

b. Declare that Philadelphia complies with 8 U.S.C. § 1373 as properly construed;

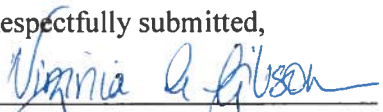
c. Permanently enjoin the Department of Justice from enforcing the advance notification, jail access, or Section 1373 conditions for the FY 2017 Byrne JAG and retain jurisdiction to monitor the Department's compliance with this Court's judgment;

d. Grant such other relief as this Court may deem proper; and

e. Award Philadelphia reasonable costs and attorneys' fees.

DATED: August 30, 2017

Respectfully submitted,



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Attorneys for the City of Philadelphia

EXHIBIT 1

BACKGROUNDER ON GRANT REQUIREMENTS

The following is on background, attributable to a DOJ official:

- Today, consistent with the goal of increasing information sharing between federal, state, and local law enforcement, Edward Byrne Memorial Justice Assistance Grant Program ("Byrne JAG") recipients for FY 2017 have been notified that they will be required to do the following:

    - certify compliance with section 1373, a federal statute applicable to state and local governments that generally bars restrictions on communications between state and local agencies and officials at the Department of Homeland Security;

    - permit personnel of the U.S. Department of Homeland Security ("DHS") to access any detention facility in order to meet with an alien and inquire as to his or her right to be or remain in the United States; and

    - provide at least 48 hours advance notice to DHS regarding the scheduled release date and time of an alien in the jurisdiction's custody when DHS requests such notice in order to take custody of the alien.

  For background on the Byrne JAG program, please click here.

  For more information on Byrne JAG allocation for past fiscal years, please click here.

  For more information on Byrne JAG as it pertains to FY2017, please click here.

- Improving the flow of information between federal and state law enforcement authorities is paramount to ensuring that federal immigration authorities have the information they need to enforce the law and keep our communities safe.

- 8 U.S.C. § 1373 is a federal statute applicable to state and local governments that generally bars restrictions on communication between state and local agencies and officials at the Department of Homeland Security (and certain other entities) with respect to information regarding the citizenship or immigration status of any individual.

- In March 2016, the Department's Office of Justice Programs ("OJP") notified recipients of Byrne JAG grants of the requirement to comply with 8 U.S.C. § 1373. The Department has also announced that it will take all lawful steps to claw back any funds awarded to a jurisdiction that violates its grant agreement, including the condition to comply with section 1373.

- These common-sense measures will improve the flow of information between federal, state, and local law enforcement, and help keep our communities safe. Every year, the Department of Justice awards billions of dollars in grants to state and local jurisdictions across the United States. Unfortunately, some of these jurisdictions have adopted policies and regulations that frustrate the enforcement of federal immigration law, including by refusing to cooperate with federal immigration authorities in information sharing about illegal aliens who commit crimes.

- These measures will also prevent the counterproductive use of federal funds for policies that frustrate federal immigration enforcement. By refusing to communicate with the federal officials, these jurisdictions jeopardize the safety of their residents and undermine the Department's ability to protect the public and reduce crime and violence.

EXHIBIT 2

JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE Thursday, July 6, 2017

Department of Justice Reviewing Letters from Ten Potential Sanctuary Jurisdictions

Today, the Department of Justice provided an update on the ten jurisdictions identified in a May 2016 report by the Department's Inspector General as having policies that potentially violate 8 U.S.C. 1373. Each of the ten jurisdictions were required to submit their legal analysis of how they are in compliance with 8 U.S.C. 1373 by June 30, 2017.

The Justice Department received alleged compliance information from each of the ten jurisdictions by the deadline, is in the process of reviewing them, and looks forward to making a determination as to whether those jurisdictions are in compliance with federal law. Some of these jurisdictions have boldly asserted they will not comply with requests from federal immigration authorities, and this would potentially violate 8 U.S.C. 1373.

"It is not enough to assert compliance, the jurisdictions must actually be in compliance," Attorney General Sessions said. "Sanctuary cities put the lives and well-being of their residents at risk by shielding criminal illegal aliens from federal immigration authorities. These policies give sanctuary to criminals, not to law-abiding Americans. The Trump Administration is determined to keep every American neighborhood safe and that is why we have asked these cities to comply with federal law, specifically 8 U.S.C. 1373. The Department of Justice has now received letters from ten jurisdictions across the United States claiming that they are in compliance with what federal law requires of them, and we will examine these claims carefully. Residents have a right to expect basic compliance with federal law from their local and state governments."

Topic(s):
Immigration

Component(s):
Office of the Attorney General

Press Release Number:
17-736

Updated July 6, 2017

EXHIBIT 3

PHILADELPHIA POLICE DEPARTMENT

MEMORANDUM (01-06)
MAY 17, 2001

SUBJECT: DEPARTMENTAL POLICY REGARDING IMMIGRANTS

I. PURPOSE

A. The purpose of this memorandum is to advise all Philadelphia Police Department personnel of the policy concerning the treatment of legal and illegal immigrants. The definition of "immigrant" as it applies to this memorandum is as follows:

"Any person who is not a citizen or a national of the United States".

II. POLICY

A. While the City has various services available to immigrants, few take advantage of These services because they fear that any contact with these agencies may bring their immigration status to the attention of the federal authorities.

B. All immigrants should be encouraged to utilize these City services without fear of any reprisals because the city has no obligation to report any illegal immigrants to the federal government as long as they are law abiding. The Police Department will preserve the confidentiality of all information regarding law abiding immigrants to the maximum extent permitted by law.

C. Additionally, sworn members shall not arbitrarily exclude immigrants from eligibility for services that are available to all.

III. PROCEDURE

A. In order to safeguard the confidentiality of information regarding an immigrant, police personnel will transmit such information to federal immigration authorities only when:

1. Required by law, **or**

2. The immigrant requests, in writing, information be provided, to verify his or her

immigration status, **or**

3. The immigrant is suspected of engaging in criminal activity, including attempts to obtain public assistance benefits through the use of fraudulent documents.

B. Sworn members of the Police Department who obtain information on immigrants suspected of criminal activity will comply with normal crime reporting and investigating procedures (refer to Directive 11, "Aliens/Military Personnel in Police Custody and Requests for Political Asylum" dated 6-24-92).

C. The Philadelphia Police Department will continue to cooperate with federal authorities in investigating and apprehending immigrants suspected of criminal activities. However, immigrants who are victims of crimes will not have their status as an immigrant transmitted in any manner.

JOHN F. TIMONEY
Commissioner

EXHIBIT 4

EXECUTIVE ORDER NO. 8-09

POLICY CONCERNING ACCESS OF IMMIGRANTS TO CITY SERVICES

WHEREAS, immigrants make significant contributions to every facet of The City of Philadelphia's economic, educational and cultural life;

WHEREAS, immigrants are critical to the economic, cultural and social fabric of not only The City of Philadelphia, but also the greater Philadelphia region;

WHEREAS, the City's policy is to promote the utilization of its services by all City residents and visitors who are entitled to and in need of them, including immigrants;

WHEREAS, all individuals should know that they may seek and obtain the assistance of City departments and agencies regardless of their personal status, without negative consequences to their personal lives;

WHEREAS, meeting the needs of the City's immigrant population is important to maintaining public trust and confidence in City government; and

WHEREAS, the City's ability to obtain pertinent information, which may be essential to the performance of governmental functions, is sometimes made difficult or even impossible if some expectation of confidentiality is not preserved;

NOW, THEREFORE, I, Michael A. Nutter, Mayor of The City of Philadelphia, by the powers vested in me by the Philadelphia Home Rule Charter, do hereby order as follows:

Section 1. Access to City Services.

All City services, including but not limited to the following listed services, shall be made available to all City of Philadelphia residents, consistent with applicable law, regardless of the person's citizenship or legal immigration status:

- Police and Fire services;
- Medical services, such as emergency medical services, general medical care at Community Health Centers and immunization, testing and treatment with respect to communicable diseases;
- Mental health services;
- Children's protective services; and

- Access to City facilities, such as libraries and recreation centers.

Section 2. Inquiries Regarding Immigration Status

A. No City officer or employee, other than law enforcement officers, shall inquire about a person's immigration status unless:

(1) documentation of such person's immigration status is legally required for the determination of program, service or benefit eligibility or the provision of services; or

(2) such officer or employee is required by law to inquire about such person's immigration status.

B. Law enforcement officers shall not:

(1) stop, question, arrest or detain an individual solely because of the individual's ethnicity, national origin, or perceived immigration status;

(2) inquire about a person's immigration status, unless the status itself is a necessary predicate of a crime the officer is investigating or unless the status is relevant to identification of a person who is suspected of committing a crime (other than mere status as an undocumented alien);

(3) inquire about the immigration status of crime victims, witnesses, or others who call or approach the police seeking help; or

(4) inquire regarding immigration status for the purpose of enforcing immigration laws.

C. Law enforcement officers shall continue to cooperate with state and federal authorities in investigating and apprehending individuals who are suspected of criminal activity.

Section 3. Confidentiality of Information

A. As used herein, "confidential information" means any information obtained and maintained by a City agency relating to an individual's immigration status.

B. No City officer or employee shall disclose confidential information unless:

(1) such disclosure has been authorized in writing by the individual to whom such information pertains, in a language that he or she understands or, if such

individual is a minor or is otherwise not legally competent, by such individual's parent or legal guardian;

(2) such disclosure is required by law; or

(3) the individual to whom such information pertains is suspected by such officer or employee or such officer's or employee's agency of engaging in criminal activity (other than mere status as an undocumented alien).

Section 4. EFFECTIVE DATE

This Order shall take effect immediately.

November 10, 2009
DATE

MICHAEL A. NUTTER, MAYOR

EXHIBIT 5

EXECUTIVE ORDER NO. 1-14
POLICY REGARDING U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT AGENCY DETAINER REQUESTS

WHEREAS, immigrants make significant contributions to every facet of The City of Philadelphia's economic, educational and cultural life; and

WHEREAS, the purpose of detainer requests by the U.S. Immigration and Customs Enforcement Agency (ICE) under its "Secure Communities" program is to enhance ICE's ability to track and apprehend dangerous criminals who are in the country illegally; and

WHEREAS, the Secure Communities program shifts the burden of federal civil immigration enforcement onto local law enforcement, including shifting costs for detention of individuals in local custody who would otherwise be released; and

WHEREAS, a growing number of jurisdictions, including New York City, Cook County, Illinois, Newark and the State of California, have adopted policies of refusing ICE detainer requests when the individual in detention does not pose a serious risk to public safety;

NOW, THEREFORE, I, Michael A. Nutter, Mayor of the City of Philadelphia, by the powers vested in me by the Philadelphia Home Rule Charter, do hereby order as follows:

Section 1. No person in the custody of the City who otherwise would be released from custody shall be detained pursuant to an ICE civil immigration detainer request pursuant to 8 C.F.R. § 287.7, nor shall notice of his or her pending release be provided, unless such person is being released after conviction for a first or second degree felony involving violence and the detainer is supported by a judicial warrant.

Section 2. The Police Commissioner, the Superintendent of Prisons and all other relevant officials of the City are hereby required to take appropriate action to implement this order.

4/16/14
Date

Michael A. Nutter, Mayor

EXHIBIT 6

EXECUTIVE ORDER NO. 5-16

POLICY REGARDING U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT AGENCY DETAINER REQUESTS

WHEREAS, immigrants make significant contributions to every facet of the City of Philadelphia's economic, educational and cultural life; and

WHEREAS, City government has a responsibility to both maintain public safety and ensure that residents feel secure, respected and able to interact with public safety officials without fear; and

WHEREAS, the U.S. Immigration and Customs Enforcement Agency (ICE) has recently discontinued its "Secure Communities" program. Secure Communities had shifted much of the burden of federal civil immigration enforcement onto local law enforcement; and

WHEREAS, the Department of Homeland Security and ICE have instituted the new Priority Enforcement Program (PEP) to replace Secure Communities; and

WHEREAS, it is incumbent upon the Federal government and its agencies to both listen to individuals concerned with this new program, and ensure that community members are both informed and invested in the program's success; and

WHEREAS, unless and until this happens, the City of Philadelphia should not comply with detainer requests unless they are supported by a judicial warrant and they pertain to an individual being released after conviction for a first or second-degree felony involving violence;

NOW, THEREFORE, I, JAMES F. KENNEY, Mayor of the City of Philadelphia, by the powers vested in me by the Philadelphia Home Rule Charter, do hereby order as follows:

SECTION 1. No person in the custody of the City who otherwise would be released from custody shall be detained pursuant to an ICE civil immigration detainer request pursuant to

8 C.F.R. § 287.7, nor shall notice of his or her pending release be provided, unless such person is being released after conviction for a first or second degree felony involving violence and the detainer is supported by a judicial warrant.

SECTION 2. The Police Commissioner, the Prisons Commissioner and all other relevant officials of the City are hereby required to take appropriate action to implement this order.

SECTION 3. Executive Order 7-15 (Policy Regarding U.S. Immigration and Customs Enforcement Agency Detainer and Notification Requests in Instances of Terrorism or Violence) is hereby rescinded.

SECTION 4. This Order shall take effect immediately.

1/4/16
Date

James F. Kenney, Mayor

City of Philadelphia
Law Department

Memorandum

TO: Jim Engler, Policy Director-Designate for Mayor-Elect Kenney

FROM: Lewis Rosman, Senior Attorney s\\lr

DATE: December 31, 2015

SUBJECT: Executive Order Entitled "Policy Regarding U.S. Immigration and Customs Enforcement Agency Detainer Requests"

You have submitted for review a draft of an Executive Order entitled:

POLICY REGARDING U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT AGENCY DETAINER REQUESTS

This proposed Executive Order, a copy of which is attached hereto, is in proper form and there is no legal objection to its issuance. In accordance with customary practice, we have not been requested to review any factual premises upon which this Executive Order may be based.

EXHIBIT 7

CITY OF PHILADELPHIA
OFFICE OF THE MANAGING DIRECTOR
MEMORANDUM

To:	Blanche Carney, Prisons Commissioner
From:	Brian Abernathy, First Deputy Managing Director
Cc:	Sozi Tulante, City Solicitor
Date:	March 22, 2017
RE:	**Cooperation with Federal Law Enforcement and Criminal Warrants**

From my understanding, historically and prior to Executive Order 5-16, the Department of Prisons cooperated with all federal criminal warrants, including criminal warrants obtained by Immigration and Customs Enforcement (ICE), and, at the federal government's request, held individuals for a limited period of time beyond the individual's release date.

By signing Executive Order 5-16, Mayor Kenney did not intend to alter this cooperation but to provide guidance on voluntary detainers and notification requests issued by ICE.

As such, the Department is directed to continue to cooperate with all federal agencies, including ICE, when presented with a warrant to the same extent it cooperated before Executive order 5-16 and related earlier orders.

If you have additional questions, please let me know.

BA:jg

EXHIBIT 8

INMATE CONSENT FORM – ICE INTERVIEW

❑ Solicito recibir este formulario en español. I request to receive this form in Spanish.
I request to receive this form in Russian.

If another language is applicable, Correctional Staff is directed to facilitate the inmate locating the appropriate language for translation using the City's Language Line Solutions Language Identification Guide, containing approximately ninety five (95) different languages. Once the language is identified, the PDP will facilitate the inmate using the Language Line Solutions telephone service for a translation and explanation of the form by telephone. The Office of Immigrant Affairs will be informed of the identified language for tracking purposes.

Philadelphia Department of Prisons "PDP"

Consent Form for Immigration and Customs Enforcement Interview

This notice is to inform you that Immigration and Customs Enforcement ("ICE") wants to interview you to get information that they may use to try to deport you. **You have the right to agree or to refuse this interview.**
This notice is intended to provide you with information about your rights:

(1) **ICE interviews are voluntary.** You can say no to an interview by ICE.

(2) **You have the right to remain silent.** Even if you decide to say yes to an interview, you can refuse to answer any questions, including questions about your immigration status. This includes where you were born and how you came to the United States. Anything you say may be used against you in criminal and/or immigration proceedings. You should not sign any forms you do not understand.

(3) **You may request to have an attorney present during any interview.** If you request an attorney in this form below, you will not be escorted to the ICE interview without your attorney present.

(4) **If you are already in removal (deportation) proceedings,** you have the right to have your immigration lawyer present during any questioning. You should tell ICE to contact your attorney (if you have one) before the interview.

By checking the box and signing below, you are indicating whether or not you agree to an interview with ICE. The PDP will inform ICE of your decision. The PDP will only bring you to an ICE interview if you agree.

_____ I do **not** agree to speak to ICE.

_____ I agree to speak with ICE, **only** with my attorney present.

_____ I agree to speak with ICE, **without** an attorney present.

_____ I have had this document read and explained to me by a Language Line Translator by telephone.
_____ After translation in my own language, I do **not** agree to speak with ICE.
_____ After translation in my own language, I agree to speak with ICE with my attorney present.
_____ After translation in my own language, I agree to speak with ICE without an attorney present.

Name: _____ Police Photo #: _____

Signature: _____ Date: _____

Identified Language (To be inserted by PDP Staff): _____

FOR PDP PERSONNEL:

Inmate Name: _____ Inmate PP# _____

Served by : _____ Payroll #:_____ Date: _____

_____
Identified Language

EXHIBIT 9

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

Grant

1. RECIPIENT NAME AND ADDRESS (Including Zip Code)
City of Philadelphia
1401 John F. Kennedy Blvd. Municipal Services Bldg., Room 1430
Philadelphia, PA 19102

4. AWARD NUMBER: 2016-DJ-BX-0949

5. PROJECT PERIOD: FROM 10/01/2015 TO 09/30/2019
BUDGET PERIOD: FROM 10/01/2015 TO 09/30/2019

6. AWARD DATE 08/23/2016

7. ACTION
Initial

2a. GRANTEE IRS/VENDOR NO.
236003045

8. SUPPLEMENT NUMBER
00

2b. GRANTEE DUNS NO.
617422258

9. PREVIOUS AWARD AMOUNT $ 0

3. PROJECT TITLE
City of Philadelphia - Police Justice Assistance Grant 2016

10. AMOUNT OF THIS AWARD $ 1,677,937

11. TOTAL AWARD $ 1,677,937

12. SPECIAL CONDITIONS
THE ABOVE GRANT PROJECT IS APPROVED SUBJECT TO SUCH CONDITIONS OR LIMITATIONS AS ARE SET FORTH ON THE ATTACHED PAGE(S).

13. STATUTORY AUTHORITY FOR GRANT
This project is supported under FY16(BJA - JAG) 42 USC 3750, et seq.

14. CATALOG OF DOMESTIC FEDERAL ASSISTANCE (CFDA Number)
16.738 - Edward Byrne Memorial Justice Assistance Grant Program

15. METHOD OF PAYMENT
GPRS

[redacted] AGENCY APPROVAL [redacted]

16. TYPED NAME AND TITLE OF APPROVING OFFICIAL
Denise O'Donnell
Director

17. SIGNATURE OF APPROVING OFFICIAL

[redacted] GRANTEE ACCEPTANCE [redacted]

18. TYPED NAME AND TITLE OF AUTHORIZED GRANTEE OFFICIAL
Michael DiBerardinis
Managing Director

19. SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL

19A. DATE
9.26.16

[redacted] AGENCY USE ONLY [redacted]

20. ACCOUNTING CLASSIFICATION CODES

FISCAL YEAR	FUND CODE	BUD. ACT.	OFC.	DIV. REG.	SUB.	POMS	AMOUNT
X	B	DJ	80	00	00		1677937

21. RDJUGT0542

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

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

PROJECT NUMBER 2016-DJ-BX-0949 AWARD DATE 08/23/2016

SPECIAL CONDITIONS

1. Applicability of Part 200 Uniform Requirements

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

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

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

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

2. Compliance with DOJ Grants Financial Guide

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

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

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

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

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

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

SPECIAL CONDITIONS

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

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

5. Requirement to report potentially duplicative funding

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

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

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

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

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

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

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

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

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

SPECIAL CONDITIONS

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

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

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

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

   The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of recipients, subrecipients ("subgrantees"), or individuals defined (for purposes of this condition) as "employees" of the recipient or of any subrecipient.
   The details of the recipient's obligations related to prohibited conduct related to trafficking in persons are posted on the OJP web site at http://ojp.gov/funding/Explore/ProhibitedConduct-Trafficking.htm (Award condition: Prohibited conduct by recipients and subrecipients related to trafficking in persons (including reporting requirements and OJP authority to terminate award)), and are incorporated by reference here.

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

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

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

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

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

12. OJP Training Guiding Principles

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

SPECIAL CONDITIONS

13. Effect of failure to address audit issues

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

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

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

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

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

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

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

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

17. Restrictions on "lobbying"

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

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

SPECIAL CONDITIONS

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

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

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

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

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

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

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

SPECIAL CONDITIONS

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

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

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

1. In accepting this award, the recipient--

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

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

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

a. it represents that--

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

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

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

SPECIAL CONDITIONS

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

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

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

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

22. Encouragement of policies to ban text messaging while driving

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

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

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

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

SPECIAL CONDITIONS

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

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

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

29. Grantee agrees to comply with the requirements of 28 C.F.R. Part 46 and all Office of Justice Programs policies and procedures regarding the protection of human research subjects, including obtainment of Institutional Review Board approval, if appropriate, and subject informed consent.

30. Grantee agrees to comply with all confidentiality requirements of 42 U.S.C. section 3789g and 28 C.F.R. Part 22 that are applicable to collection, use, and revelation of data or information. Grantee further agrees, as a condition of grant approval, to submit a Privacy Certificate that is in accord with requirements of 28 C.F.R. Part 22 and, in particular, section 22.23.

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

32. The grantee agrees that within 120 days of award acceptance, each current member of a law enforcement task force funded with these funds who is a task force commander, agency executive, task force officer, or other task force member of equivalent rank, will complete required online (internet-based) task force training. Additionally, all future task force members are required to complete this training once during the life of this award, or once every four years if multiple awards include this requirement. The training is provided free of charge online through BJA's Center for Task Force Integrity and Leadership (www.ctfli.org). This training addresses task force effectiveness as well as other key issues including privacy and civil liberties/rights, task force performance measurement, personnel selection, and task force oversight and accountability. When BJA funding supports a task force, a task force personnel roster should be compiled and maintained, along with course completion certificates, by the grant recipient. Additional information is available regarding this required training and access methods via BJA's web site and the Center for Task Force Integrity and Leadership (www.ctfli.org).

33. The recipient agrees to participate in BJA-sponsored training events, technical assistance events, or conferences held by BJA or its designees, upon BJA's request.

SPECIAL CONDITIONS

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

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

    The grantee understands that this special condition applies to its following new activities whether or not they are being specifically funded with these grant funds. That is, as long as the activity is being conducted by the grantee, a subgrantee, or any third party and the activity needs to be undertaken in order to use these grant funds, this special condition must first be met. The activities covered by this special condition are:
    a. New construction;
    b. Minor renovation or remodeling of a property located in an environmentally or historically sensitive area, including properties located within a 100-year flood plain, a wetland, or habitat for endangered species, or a property listed on or eligible for listing on the National Register of Historic Places;
    c. A renovation, lease, or any proposed use of a building or facility that will either (a) result in a change in its basic prior use or (b) significantly change its size;
    d. Implementation of a new program involving the use of chemicals other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or education environments; and
    e. Implementation of a program relating to clandestine methamphetamine laboratory operations, including the identification, seizure, or closure of clandestine methamphetamine laboratories.

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

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

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

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

SPECIAL CONDITIONS

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

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

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

41. The recipient agrees that funds received under this award will not be used to supplant State or local funds, but will be used to increase the amounts of such funds that would, in the absence of Federal funds, be made available for law enforcement activities.

42. Award recipients must submit quarterly Federal Financial Reports (SF-425) and semi-annual performance reports through GMS (https://grants.ojp.usdoj.gov). Consistent with the Department's responsibilities under the Government Performance and Results Act (GPRA), P.L. 103-62, applicants who receive funding under this solicitation must provide data that measure the results of their work. Therefore, quarterly performance metrics reports must be submitted through BJA's Performance Measurement Tool (PMT) website (www.bjaperformancetools.org). For more detailed information on reporting and other JAG requirements, refer to the JAG reporting requirements webpage. Failure to submit required JAG reports by established deadlines may result in the freezing of grant funds and future High Risk designation.

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

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

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

SPECIAL CONDITIONS

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

47. Recipient understands and agrees that the purchase or acquisition of any item on the Controlled Expenditure List at the time of purchase or acquisition, including as the list may be amended from time to time, with award funds by an agency will trigger a requirement that the agency collect and retain (for at least 3 years) certain information about the use of 1) any federally-acquired Controlled Equipment in the agency's inventory, and 2) any other controlled equipment in the same category as the federally-acquired controlled equipment in the agency's inventory, regardless of source; and make that information available to BJA upon request. Details about what information must be collected and retained may be accessed here: https://www.whitehouse.gov/sites/default/files/docs/le_equipment_wg_final_report_final.pdf

48. Recipient understands and agrees that failure to comply with conditions related to Prohibited or Controlled Expenditures may result in a prohibition from further Controlled Expenditure approval under this or other federal awards.

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

50. Recipient understands and agrees that, notwithstanding 2 CFR § 200.313, no equipment listed on the Controlled Expenditure List that is purchased under this award may be transferred or sold to a third party, except as described below:

    a. Agencies may transfer or sell any controlled equipment, except riot helmets and riot shields, to a Law Enforcement Agency (LEA) after obtaining prior written approval from BJA. As a condition of that approval, the acquiring LEA will be required to submit information and certifications to BJA as if it was requesting approval to use award fund for the initial purchase of items on the Controlled Expenditure List.
    b. Agencies may not transfer or sell any riot helmets or riot shields purchased under this award.
    c. Agencies may not transfer or sell any Controlled Equipment purchased under this award to non-LEAs, with the exception of fixed wing aircraft, rotary wing aircraft, and command and control vehicles. Before any such transfer or sale is finalized, the agency must obtain prior written approval from BJA. All law enforcement-related and other sensitive or potentially dangerous components, and all law enforcement insignias and identifying markings must be removed prior to transfer or sale.

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

PROJECT NUMBER 2016-DJ-BX-0949 AWARD DATE 08/23/2016

SPECIAL CONDITIONS

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

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

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

52. Recipient may not expend or drawdown funds until the Bureau of Justice Assistance (BJA) has received documentation demonstrating that the recipient jurisdiction's public comment requirements have been met and a Grant Adjustment Notice (GAN) has been approved releasing this special condition.

53. Submission of compliance validation:
The recipient agrees to undertake a review to validate its compliance with 8 U.S.C § 1373. If the recipient determines that it is in compliance with 8 U.S.C § 1373 at the time of review, then it must submit documentation that contains a validation to that effect and includes an official legal opinion from counsel (including related legal analysis) adequately supporting the validation. If the recipient determines that it is not in compliance with 8 U.S.C. § 1373 at the time of review, then it must take sufficient and effective steps to bring it into compliance therewith and thereafter submit documentation that details the steps taken, contains a validation that the recipient has come into compliance, and includes an official legal opinion from counsel (including related legal analysis) adequately supporting the validation. Documentation must be submitted via GMS to BJA by June 30, 2017. Failure to comply with this condition could result in the withholding of grant funds, suspension or termination of the grant, ineligibility for future OJP grants or subgrants, or other administrative, civil, or criminal penalties, as appropriate.

EXHIBIT 10

~~LAW ENFORCEMENT SENSITIVE~~

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

MEMORANDUM FOR KAROL V. MASON
ASSISTANT ATTORNEY GENERAL
FOR THE OFFICE OF JUSTICE PROGRAMS

FROM: MICHAEL E. HOROWITZ
INSPECTOR GENERAL

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

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

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

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

OIG Methodology

At the outset, we determined it would be impractical for the OIG to promptly assess compliance with Section 1373 by the more than 140 jurisdictions that were listed on the spreadsheet accompanying your referral. Accordingly, we judgmentally selected a sample of state and local jurisdictions from the information you provided for further review. We started by comparing the specific jurisdictions cited in the CIS report you provided to us with the jurisdictions identified by ICE in its draft *Declined Detainer Outcome Report*, dated December 2, 2014.[2] Additionally, we compared these lists with a draft report prepared by ICE that identified 155 jurisdictions and stated that "all jurisdictions on this list contain policies that limit or restrict cooperation with ICE and, as of Q3 FY 2015, have declined detainers."[3] From this narrowed list of jurisdictions, we determined, using the spreadsheet provided with your e-mail, which jurisdictions had active OJP and OVW awards as of March 17, 2016, the date through which you provided award information, and received fiscal year (FY) 2015 State Criminal Alien Assistance Program (SCAAP) payments. Lastly, we considered, based on the spreadsheet, the total dollars awarded and the number of active grants and payments made as of March 17,

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

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

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

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

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

Section 1373 states in relevant part:

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

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

(1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.

(2) Maintaining such information.

(3) Exchanging such information with any other Federal, State, or local government entity.

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

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

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

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

State and Local Cooperation with ICE

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

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

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

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

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

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

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

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

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

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

(a) Required to do so by federal or state law; or

(b) Such disclosure has been authorized in writing by the person who is the subject of the request for information; or

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

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

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

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

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

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

Similarly, we have concerns that other local laws and policies, that by their terms apply to the handling of ICE detainer requests, may have a broader practical impact on the level of cooperation afforded to ICE by these jurisdictions and may, therefore, be inconsistent with at least the intent of Section 1373.[9] Specifically, local policies and ordinances that purport to be focused on civil immigration detainer requests, yet do not explicitly restrict the sharing of immigration status information with ICE, may nevertheless be affecting ICE's interactions with the local officials regarding ICE immigration status requests. We identified several jurisdictions with policies and ordinances that raised such concerns, including Cook County, Orleans Parish, Philadelphia, and New York City.

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

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

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

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

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

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

Although the Cook County, Orleans Parish, Philadelphia, and New York City local policies and ordinances purport to be focused on civil immigration detainer requests, and none explicitly restricts the sharing of immigration status with ICE, based on our discussions with ICE officials about the impact these laws and policies were having on their ability to interact with local officials, as well as the information we have reviewed to date, we believe these policies and others like them may be causing local officials to believe and apply the policies in a manner that prohibits or restricts cooperation with ICE in all respects.[11] That, of course, would be inconsistent with and prohibited by Section 1373.[12]

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

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

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

Effect on Department of Justice 2016 Grant Funding

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

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

- Provide clear guidance to grant recipients regarding whether Section 1373 is an "applicable federal law" that recipients would be expected to comply with in order to satisfy relevant grant rules and regulations;[13]

- Require grant applicants to provide certifications specifying the applicants' compliance with Section 1373, along with documentation sufficient to support the certification.

- Consult with the Department's law enforcement counterparts at ICE and other agencies, prior to a grant award, to determine whether, in their view, the applicants are prohibiting or restricting employees from sharing with ICE information regarding the citizenship or immigration status of individuals, and are therefore not in compliance with Section 1373.

- Ensure that grant recipients clearly communicate to their personnel the provisions of Section 1373, including those

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

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

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

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

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

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

APPENDIX

OIG Approach

At the outset, we determined it would be impractical for the OIG to promptly assess compliance with Section 1373 by the more than 140 jurisdictions that were listed on the spreadsheet accompanying your referral. Accordingly, we judgmentally selected a sample of state and local jurisdictions from the information you provided for further review. We started by comparing the specific jurisdictions cited in the CIS report you provided to us with the jurisdictions identified by ICE in its draft *Declined Detainer Outcome Report,* dated December 2, 2014.[14] Additionally, we compared these lists with a draft report prepared by ICE that identified 155 jurisdictions and stated that "all jurisdictions on this list contain policies that limit or restrict cooperation with ICE and, as of Q3 FY 2015, have declined detainers."[15] From this narrowed list of jurisdictions, we determined, using the spreadsheet that you provided with your e-mail, which jurisdictions had active OJP and OVW awards as of March 17, 2016, the date through which you provided award information, and received fiscal year (FY) 2015 State Criminal Alien Assistance Program (SCAAP) payments. Lastly, we considered, based on the spreadsheet, the total dollars awarded and the number of active grants and payments made as of March 17, 2016, and sought to ensure that our list contained a mix of state and local jurisdictions. Using this process we selected the 10 jurisdictions listed in the following table for further review. The dollar figure represents 63 percent of the active OJP awards as of March 17, 2016, and FY 2015 SCAAP payments made by the Department.

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

Source: OJP

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

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

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

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

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

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

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

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

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

EXHIBIT 11

U.S. Department of Justice

Office of Justice Programs

Office of the Assistant Attorney General

Washington, D.C. 20531

July 7, 2016

MEMORANDUM

TO: Michael Horowitz
Inspector General
U.S. Department of Justice

FROM: Karol V. Mason KVM
Assistant Attorney General
Office of Justice Programs

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

We appreciate the review undertaken by the Department of Justice (DOJ or the Department), Office of the Inspector General (OIG) regarding compliance with 8 U.S.C. § 1373 (Section 1373) by the Department's grant recipients. In conducting this review, OIG selected 10 state and local jurisdictions for further review. For these jurisdictions, OIG researched the local laws and policies that govern their interactions with U.S. Immigration and Customs Enforcement (ICE) and compared these local laws and policies with Section 1373. OIG then provided this report to the Department to assist the Department in determining the appropriate next steps to ensure compliance with Section 1373.

The Office of Justice Programs (OJP) has determined that Section 1373 is an applicable federal law for the purposes of the Edward Byrne Memorial Justice Assistance Grant (JAG) program and the State Criminal Alien Assistance Program (SCAAP). To ensure that grantees comply with Section 1373, OJP has provided the attached guidance to all JAG and SCAAP grantees. Notably, this guidance provides grantees and applicants with clear direction on the requirements of Section 1373:

> Title 8, United States Code, Section 1373 addresses the exchange of information regarding citizenship and immigration status among federal, state, and local government entities and officials. Subsection (a) prevents federal, state and local government entities and officials from "prohibit[ing] or in any way restrict[ing]" government officials or entities from sending to, or receiving from, federal immigration officers information concerning an individual's citizenship or immigration status. Subsection (b) provides that no person or agency may

"prohibit, or in any way restrict," a federal, state, or local government entity from (1) sending to, or requesting or receiving from, federal immigration officers information regarding an individual's immigration status, (2) maintaining such information, or (3) exchanging such information with any other federal, state, or local government entity. Section 1373 does not impose on states and localities the affirmative obligation to collect information from private individuals regarding their immigration status, nor does it require that states and localities take specific actions upon obtaining such information. Rather, the statute prohibits government entities and officials from taking action to prohibit or in any way restrict the maintenance or intergovernmental exchange of such information, including through written or unwritten policies or practices.

To ensure that grantees comply with Section 1373 and all other applicable federal law, OJP already requires all applicants for any grant program electronically to acknowledge and accept the conditions contained in two attached documents titled "Standard Assurances" and "Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements" as preconditions to a grant award. The Standard Assurances document currently states: "The applicant hereby assures and certifies compliance with all applicable Federal statutes, regulations, policies, guidelines, and requirements ...." These assurances and certifications are required for participation in the SCAAP repayment program as well.

Accompanying this letter are Q&As in response to questions received from Bureau of Justice Assistance grantees regarding compliance with Section 1373. Additionally, OJP has requested that grantees ensure that the Department's guidance is clearly communicated to their personnel and subrecipients, as well as other relevant partners and/or other entities. We believe that these steps will help ensure that grantees are complying with Section 1373.

Attachments

cc: The Honorable Peter J. Kadzik
Assistant Attorney General
Office of Legislative Affairs

EXHIBIT 12

OFFICE OF JUSTICE PROGRAMS GUIDANCE REGARDING COMPLIANCE WITH 8 U.S.C. § 1373

1. Q. What does 8 U.S.C. § 1373 require?

A. Title 8, United States Code, Section 1373 (Section 1373) addresses the exchange of information regarding citizenship and immigration status among federal, state, and local government entities and officials. Subsection (a) prevents federal, state and local government entities and officials from "prohibit[ing] or in any way restrict[ing]" government officials or entities from sending to, or receiving from, federal immigration officers information concerning an individual's citizenship or immigration status. Subsection (b) provides that no person or agency may "prohibit, or in any way restrict," a federal, state, or local government entity from (1) sending to, or requesting or receiving from, federal immigration officers information regarding an individual's immigration status, (2) maintaining such information, or (3) exchanging such information with any other federal, state, or local government entity. Section 1373 does not impose on states and localities the affirmative obligation to collect information from private individuals regarding their immigration status, nor does it require that states and localities take specific actions upon obtaining such information. Rather, the statute prohibits government entities and officials from taking action to prohibit or in any way restrict the maintenance or intergovernmental exchange of such information, including through written or unwritten policies or practices.

Your personnel must be informed that notwithstanding any state or local policies to the contrary, federal law does not allow any government entity or official to prohibit the sending or receiving of information about an individual's citizenship or immigration status with any federal, state or local government entity and officials.

2. Q. May a state make a subgrant to a city that the state knows to be violating an applicable law or regulation (e.g. Section 1373), or a programmatic requirement?

A. No. A JAG grantee is required to assure and certify compliance with all applicable federal statues, including Section 1373, as well as all applicable federal regulations, policies, guidelines and requirements. This requirement passes through to any subgrants that may be made and to any subgranteees that receive funds under the grant.

3. Q. Is there a specific report or source BJA is using to determine whether a jurisdiction has violated an applicable Federal law (e.g. Section 1373)?

A. The Office of Justice Programs (OJP) will take seriously credible evidence of a violation of applicable Federal law, including a violation of Section 1373, from any source. In the ordinary course, OJP will refer such evidence to the Department of Justice's Office of the Inspector General for appropriate action.

4. Q. How would a determination that a subgrantee is in violation of federal law affect the state's designation and ability to receive future awards?

A. A grantee is responsible to the federal government for the duration of the award. As the primary recipient of the award, the grantee is responsible for ensuring that subgrantees assure and certify compliance with federal program and grant requirements, laws, or regulations (*e.g.* Section 1373). If a grantee or subgrantee has policies or practices in effect that violate Section 1373, the grantee or subgrantee will be given a reasonable amount of time to remedy or clarify such policies to ensure compliance with applicable law. Failure to remedy any violations could result in the withholding of grant funds or ineligibility for future OJP grants or subgrants, or other administrative, civil, or criminal penalties, as appropriate. Our goal is to ensure that JAG grantees and subgrantees are in compliance with all applicable laws and regulations, including Section 1373, not to withhold vitally important criminal justice funding from states and localities.

5. Q. Does the "JAG Sanctuary Policy Guidance" notice apply to all active grants?

A. The Policy Guidance applies to all JAG grantees and subgrantees.

6. Q. What should a state be doing to ensure that subgrantees are complying with the legal requirements for receiving JAG funds?

A. The state must comply with all of the requirements of 2 C.F.R. § 200.331. See also Section 3.14 (Subrecipient Monitoring) of the Department of Justice Financial Guide.

7. Q. The "JAG Sanctuary Policy Guidance" cited Section 1373. Are there other components of Title 8 of the United States Code that are required for compliance?

A. All grantees are required to assure and certify compliance with all applicable federal statutes, regulations, policies, guidelines, and requirements. States may wish to consult with their legal counsel if they have any questions or concerns as to the scope of this requirement.

EXHIBIT 13

OFFICE OF JUSTICE PROGRAMS
ADDITIONAL GUIDANCE REGARDING COMPLIANCE WITH 8 U.S.C. § 1373

1. ***Why is OJP using Byrne/JAG grant funds to enforce 8 U.S.C. § 1373?***

Authorizing legislation for the Byrne/JAG grant program requires that all grant applicants certify compliance both with the provisions of that authorizing legislation and all other applicable federal laws. The Office of Justice Programs has determined that 8 U.S.C. § 1373 (Section 1373) is an applicable federal law under the Byrne/JAG authorizing legislation. Therefore, all Byrne/JAG grant applicants must certify compliance with all applicable federal laws, including Section 1373, as part of the Byrne/JAG grant application process.

2. ***Does OJP's guidance on 8 U.S.C. § 1373 impact FY 2016 funding?***

No FY 2016 or prior year Byrne/JAG or SCAAP funding will be impacted. However, OJP expects that JAG and SCAAP recipients will use this time to examine their policies and procedures to ensure they will be able to submit the required assurances when applying for JAG and SCAAP funding in FY 2017. As previously stated, our goal is to ensure that our JAG and SCAAP recipients are in compliance with all applicable laws and regulations, including Section 1373, not to withhold vitally important criminal justice funding from states and localities like yours.

3. ***What is the process of determining if a recipient of JAG or SCAAP funds is not in compliance with 8 U.S.C. § 1373?***

As OJP has previously stated, our goal is to ensure that JAG and SCAAP recipients are in compliance with all applicable laws and regulations, including Section 1373. If OJP becomes aware of credible evidence of a violation of Section 1373, the recipient must agree to undertake a review to validate its compliance with 8 U.S.C. § 1373. If the recipient determines that it is in compliance with Section 1373 at the time of review, then it must submit documentation that contains a validation to that effect and includes an official legal opinion from counsel (including related legal analysis) adequately supporting the validation. If the recipient determines that it is not in compliance with Section 1373 at the time of review, then it must take sufficient and effective steps to bring it into compliance and submit documentation that details the steps taken, contains a validation that the recipient has come into compliance, and includes an official legal opinion from counsel (including related legal analysis) adequately supporting the validation. Failure to remedy any violations could result in a referral to the Department of Justice Office of the Inspector General, the withholding of grant funds or ineligibility for future OJP grants or subgrants, or other administrative, civil, or criminal penalties, as appropriate.

4. ***What will happen if a recipient of JAG or SCAAP funds is found to be out of compliance with 8 U.S.C. § 1373?***

If a recipient is found out of compliance with Section 1373, the recipient must take sufficient and effective steps to bring it into compliance and submit documentation that details the steps taken, contains a validation that the recipient has come into compliance, and includes an official legal opinion from counsel (including related legal analysis) adequately supporting the validation. Failure to remedy any violations could result in a referral to the Department of Justice Inspector

General, the withholding of grant funds or ineligibility for future OJP grants or subgrants, suspension or termination of the grant, or other administrative, civil, or criminal penalties, as appropriate.

As previously stated, our goal is to ensure that our JAG and SCAAP recipients are in compliance with all applicable laws and regulations, including Section 1373, not to withhold vitally important criminal justice funding from states and localities like yours.

5. ***Does OJP expect State Administering Agencies or their subgrantees to submit additional certifications specific to 8 U.S.C. § 1373?***

No, OJP does not expect grantees to submit additional assurances in FY 2016, nor does OJP expect grantees to require additional assurances from subgrantees, unless the grantees choose to do so. However, OJP expects that JAG grantees and subgrantees will use this time to examine their policies and procedures to ensure they will be able to submit the required assurances when applying for JAG funding in FY 2017.

6. ***Will a locality risk its entire Byrne/JAG funding if it refuses to certify compliance with federal law, including 8 U.S.C. § 1373?***

Yes, a JAG grantee is required to assure and certify compliance with all applicable federal statutes, including Section 1373, as well as all applicable federal regulations, policies, guidelines and requirements, as a prerequisite to obtaining funding. OJP expects that JAG recipients will use this time to examine their policies and procedures to ensure they will be able to submit the required assurances when applying for JAG funding in FY 2017. By providing this additional guidance and the prior guidance on 8 U.S.C. § 1373, the Department has made clear that its goal is to ensure that our JAG and SCAAP recipients are in compliance with all applicable laws and regulations, including Section 1373, not to withhold vitally important criminal justice funding from states and localities like yours.

7. ***Will a State risk its entire Byrne/JAG funding if a subgrantee is found to be out of compliance?***

No, only the jurisdiction that fails to comply with Section 1373 is at risk for not being funded after being provided an opportunity to correct its policies or practices. It is the State's legal responsibility as the prime grantee to monitor its subgrantees adequately and take appropriate action if 1) a subgrantee does not certify compliance with Section 1373, or 2) the State becomes aware (after making the subaward) of credible evidence of a violation of Section 1373 by a subgrantee. In general, however, a subgrantee's continuing violation would not ordinarily result in imposition of penalties against the State, or put the State's entire Byrne/JAG funding at risk. If the State disburses funds to an ineligible subgrantee, however, such that the State itself could be said to have participated in the violation (e.g. by having made the subaward knowing that the subgrantee was ineligible) or failed to take appropriate action to remedy a violation, then that State would be responsible for repayment of the dispersed funding.

In addition, if OJP becomes aware of credible evidence that a subgrantee may be in violation of Section 1373, OJP will forward that evidence to the State, and the State will need to take steps to determine if the subgrantee is in violation, and (if it is) to require the subgrantees to take

sufficient and effective steps to bring it into compliance and submit documentation that details the steps taken, contains a validation that the subgrantee has come into compliance, and includes an official legal opinion from counsel (including related legal analysis) adequately supporting the validation.

Additional guidance regarding compliance with Section 1373 can be found at:

Question and Answer document provided to all JAG grantees and SCAAP recipients on July 7, 2016: https://www.bja.gov/ProgramDetails.aspx?Program_ID=59.

DOJ Office of the Inspector General Memorandum posted on July 28, 2016 at: https://oig.justice.gov/reports/2016/1607.pdf.

EXHIBIT 14

CITY OF PHILADELPHIA

LAW DEPARTMENT
One Parkway
1515 Arch Street
Philadelphia, PA 19102-1595

SOZI PEDRO TULANTE
City Solicitor
(215) 683-5003 (Tel)
(215) 683-5069 (Fax)

June 22, 2017

VIA ELECTRONIC SUBMISSION

Tracey Trautman
Acting Director, Bureau of Justice Assistance
Office of Justice Programs
United States Department of Justice
810 Seventh Street, N.W.
Washington D.C., 20531

Dear Acting Director Trautman:

The City of Philadelphia submits this letter in response to the request by the United States Department of Justice's Office of Justice Programs (Bureau of Justice Assistance), as part of Philadelphia's 2016 Justice Assistance Grant ("JAG") Program Award, that the City certify its compliance with 8 U.S.C. § 1373. The City reaffirms its commitment to using JAG grants to reduce crime in Philadelphia, as well as to improve the administration of criminal justice. These grants have become a staple of the City's law enforcement programs; in recent years, they have supported innovations in everything from courtroom technology, to prisoner reentry, to youth violence prevention. Philadelphia is proud that, in part because of these interventions, violent crime in the City has fallen precipitously: In 2016, property crimes were at their lowest since 1971, robberies were at their lowest since 1969, and violent crime was lower than at any point since 1979. But these developments are also the story of tireless and effective community-building by the Philadelphia Police Department, including through the methods discussed in this Memorandum. Philadelphia believes that the foundation of a safe city is a strong community. Our officers have worked hard to gain the trust and cooperation of City residents, crime victims, and witnesses—regardless of their immigration status—and these efforts are showing results. Day by day, they are making our community stronger and our streets safer.

Section 1373 of Title 8 ("Section 1373") contains a single mandate: A State and/or locality cannot prohibit its officials from exchanging information with U.S. Immigration and Customs Enforcement ("ICE") about immigration or citizenship status. *See* 8 U.S.C. § 1373(a). Philadelphia complies with this mandate.

First, the City does not violate Section 1373 because the City's policy restricting asking about or collecting immigration status information from people it encounters is fully consistent with Section 1373: The federal statute does not require cities to inquire about or collect immigration status information, but only prohibits cities from restricting the sharing of that information *if they have it*. *See* Part II, *infra*.

Second, the City complies with Section 1373 because its policies explicitly allow local law enforcement to cooperate with federal authorities and to share with them identifying information about criminal suspects in the City—including immigration status information, to the extent it inadvertently comes into the City's possession. Indeed, through various routine law enforcement databases to which the federal government (including ICE) has access, the City makes available the names and fingerprint data of criminal suspects, arrestees, and detainees, irrespective of their immigration status. *See* Part III, *infra*. These routine and longstanding practices show that the City does not prohibit information-exchange with the federal government when it comes to criminal suspects, detainees, or arrestees. That is the heart of Section 1373's concern, and Philadelphia complies with the statute's instruction, both in the text of its policies and in the practice of its officers and employees.

Third, as the City does not seek or collect immigration status information from witnesses and victims of crimes or from law-abiding persons seeking City benefits and services, the City's policy prohibiting the disclosure of any such information is largely inconsequential. *See* Part IV, *infra*. This policy ensures that basic and critical services are available to the City's undocumented immigrant residents, and promotes cooperation between members of the immigrant community and law enforcement. Indeed, our residents who fear that they will be ensnared in immigration proceedings by cooperating with police are more likely to remain in the shadows and less likely to contact or cooperate with police. Moreover, protecting those persons' confidential information is consistent with Section 1373 because if the statute were construed otherwise—and were interpreted to somehow regulate the City's conduct with respect to these individuals—it would exceed the federal government's authority under the Constitution.

Finally, the City's policies on ICE detainer requests are not relevant to the present certification analysis. *See* Part V, *infra*.

While the City certifies that it complies with Section 1373, it reserves any arguments it might make at a later date regarding the legality of the imposition of requirements related to Section 1373, including the Department of Justice's decision to impose a certification or compliance requirement on the City as a condition of receiving JAG grants. *See* Part VI, *infra*.

I. Background.

The City has two policies that are directly relevant to this certification.

Confidentiality Order

Executive Order No. 8-09, entitled "Policy Concerning Access of Immigrants to City Services," was executed by then-Mayor Michael A. Nutter on November 10, 2009 ("Confidentiality Order") and remains in effect.[1] Executive Order 8-09 instructs City officials to protect the confidentiality of individuals' immigration status and citizenship information to "promote the utilization of [City] services by all City residents and visitors who are entitled to and in need of them, including immigrants." *See* Confidentiality Order preamble. The intent is that undocumented immigrants should equally come forward to access City services to which they are entitled, without having to fear "negative consequences to their personal lives" by revealing their identities to the City. *Id.* The Order defines "confidential information" as "any information obtained and maintained by a City agency related to an individual's immigration status." *Id.* § 3A.

Section 2 of the Confidentiality Order directs City officers and employees to refrain from affirmatively collecting information about immigration status, unless that information is necessary to their specific task or the collection is otherwise required by law. The Order states: "No City officer or employee, other than law enforcement officers, shall inquire about a person's immigration status unless: (1) documentation of such person's immigration status is legally required for the determination of program, service or benefit eligibility . . . or (2) such officer or employee is required by law to inquire about such person's immigration status." *Id.* § 2A.

The Confidentiality Order has additional mandates for law enforcement officers with regard to affirmative collection, directing that officers "shall not" stop, question, detain, or arrest an individual solely because of his perceived immigration status; shall not "inquire about a person's immigration status, unless the status itself is a necessary predicate of a crime the officer is investigating or unless the status is relevant to identification of a person who is suspected of committing a crime"; and shall not "inquire regarding immigration status for the purpose of enforcing immigration laws." *Id.* §§ 2B(1), (2), (4). Witnesses and victims are afforded special protection: Law enforcement officers "shall not . . . inquire about the immigration status of crime victims, witnesses, or others who call or approach the police seeking help." *Id.* § 2B(3).

The Confidentiality Order also requires City officers and employees to avoid making unnecessary disclosures of immigration status information that may inadvertently come into their possession. *Id.* § 3B ("No City officer or employee shall disclose confidential information[.]").

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[1] A copy of the Confidentiality Order is attached to this letter as Exhibit A.

It permits disclosure, however, both by City "officer[s] or employee[s]," when "such disclosure is required by law," or when the subject individual "is suspected . . . of engaging in criminal activity." *Id.* § 3B(2)-(3).

Philadelphia's Confidentiality Order is motivated by concerns among officials across local government—from the City's social services departments to its law enforcement departments—that members of Philadelphia's immigrant community would otherwise not access the services to which they and their families are entitled, and would avoid reporting crimes to the police, for fear of exposing themselves or their family members to adverse immigration consequences. When members of the immigrant community are too afraid to come forward and interact with City service providers, and are too afraid to speak with law enforcement officials, the City's health, safety, and public welfare suffer. For instance, when immigrant parents do not enroll in or claim the health, education, nutrition, and other benefits to which they and their children are entitled, it is not just those families and children who suffer, but the entire City. Philadelphia has an interest in seeing that every child achieves his or her greatest potential in school, that every member of its community receives preventative healthcare, and that every person is safe from domestic abuse and violent crime. Similarly, when members of the immigrant community do not report crimes to the police or are too afraid to participate as witnesses in criminal proceedings, it is more likely that crimes will not be resolved, criminals will reoffend, and communities will live in greater fear and greater danger. The City's Confidentiality Order thus plays an important role in mitigating these undesired outcomes.

Memorandum 01-06

The other policy relevant to this certification is Philadelphia's Police Department Memorandum 01-06, entitled "Departmental Policy Regarding Immigrants," which was issued by then-Police Commissioner John F. Timoney on May 17, 2001 ("Memorandum 01-06").[2] Memorandum 01-06 states that its overarching goal is for "the Police Department [to] preserve the confidentiality of all information regarding law abiding immigrants to the maximum extent permitted by law." Memorandum 01-06 ¶ 2B. The policy thus prohibits police officers in Philadelphia from disclosing individuals' immigration status information to other entities, unless doing so is necessary for criminal law enforcement purposes, the subject individual has requested such transmission, or the disclosure is otherwise required by law. The Memorandum sets out this non-disclosure instruction, and its three exceptions, explicitly: "In order to safeguard the confidentiality of information regarding an immigrant, police personnel will transmit such information to federal immigration authorities only when: (1) required by law, or (2) the immigrant requests, in writing, that the information be provided, to verify his or her immigration status, or (3) the immigrant is suspected of engaging in criminal activity, including attempts to

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2 A copy of Memorandum 01-06 is attached to this letter as Exhibit B.

obtain public assistance benefits through the use of fraudulent documents." Memorandum 01-06 ¶¶ 3A-3B.

Furthermore, notwithstanding the instruction to maintain confidentiality in Section 3A, Memorandum 01-06 directs police officers to continue adhering to typical law enforcement protocols for the reporting and investigating of crimes. This mandate applies irrespective of the criminal suspect's identity. *See id.* ¶ 3B ("Sworn members of the Police Department who obtain information on immigrants suspected of criminal activity will comply with normal crime reporting and investigating procedures."). It also instructs that "[t]he Philadelphia Police Department will continue to cooperate with federal authorities in investigating and apprehending immigrants suspected of criminal activities." *Id.* ¶ 3C.

The rationale behind the Philadelphia Police Department's confidentiality policy is similar to that behind Executive Order No. 8-09: to encourage immigrants to make use of City services available to them without fear of negative repercussions, and to encourage victims and witnesses of crimes to cooperate with the police. *See id.* ¶ 2B ("All immigrants should be encouraged to utilize these City services without fear of any reprisals because the city has no obligation to report any illegal immigrants to the federal government as long as they are law abiding."); *id.* ¶ 3C ("[I]mmigrants who are victims of crimes will not have their status as an immigrant transmitted in any manner."). Indeed, an essential tenet of modern policing is that police departments should engender trust from the communities they serve, including immigrant communities, so members of those communities will come forward with reports of criminal wrongdoing.[3] By assuring victims and witnesses that they will not suffer adverse immigration consequences as a result of sharing information with law enforcement officials, the policy helps police officers collect necessary information and cooperation to combat crime.

Even predating Memorandum 01-06, the longstanding policy of the Philadelphia Police Department has been to not collect information related to immigration status at any point in the detention, arrest, or booking process of an individual. This policy, which is part of Philadelphia Policy Academy training, reflects the Police Department's considered judgment that collecting immigration status simply does not assist in or promote community policing.

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[3] *See, e.g., President's Task Force on 21st Century Policing*, Recommendation 1.9 (explaining that, among other things, "law enforcement agencies should build relationships based on trust with immigrant communities. This is central to overall public safety. Immigrants often fear approaching police officers when they are victims of and witnesses to crimes and when local police are entangled with federal immigration enforcement"), *available at* https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

II. Philadelphia's Policies Concerning Information Collection Do Not Conflict with Section 1373.

Philadelphia's policy of directing City officials or employees to refrain from actively collecting immigration status information, unless necessary for their specific task or required by law (as memorialized in Section 2 of the Confidentiality Order), is consistent with Section 1373.

Section 1373 simply does not speak to affirmative information collection. *See* 8 U.S.C. § 1373(a)-(b); *accord Exxon Mobile Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005) ("[T]he authoritative statement is the statutory text[.]"). Moreover, nothing in the provision's legislative history suggests that Congress meant to impose such a requirement on states and localities. Rather, Congress was concerned with preserving open channels of voluntary communication among state, local, and federal officials, not with commandeering local officers to perform federal immigration functions.

Courts adjudicating challenges to state and local policies brought under Section 1373, premised on an argument that the locality was failing either to affirmatively provide or to affirmatively collect immigration status information, have consistently rejected such arguments. *See, e.g., Doe v. City of New York*, 860 N.Y.S.2d 841, 844 (N.Y. Sup. Ct. 2008) (holding that, "while said provision [Section 1373] prohibits state and local governments from placing restrictions on the reporting of immigration status, it does not impose an affirmative duty to make such reports"); *Sturgeon v. Bratton*, 95 Cal. Rptr. 3d 718, 731-732 (Cal. App. 2009) (Los Angeles Police Department's policy of not initiating police action "where the objective is to discover the alien status of a person" did not "fatal[ly] conflict" with Section 1373); *cf. Bologna v. City & Cnty. of San Francisco*, 192 Cal. App. 4th 429, 433, 439-40 (Cal. Ct. App. 2011) (rejecting a negligence claim brought against the City of San Francisco on the premise that the City violated its "mandatory duties" under Section 1373 by not reporting an undocumented individual to ICE after his prior arrests).

III. Philadelphia Complies with 8 U.S.C. § 1373 Because the City Shares Information About Criminal Suspects.

Three features of the City's policies and practices concerning criminal suspects in the City's custody demonstrate why, and how, the City of Philadelphia complies with the mandate of Section 1373.

First, both the Confidentiality Order and Police Department Memorandum 06-01 (1) mandate the continued cooperation between local officers and federal authorities in combating crime, and (2) allow for the disclosure of immigration status information that an officer might inadvertently obtain when the individual is suspected of engaging in criminal activity. Again, Section 2C of the Confidentiality Order provides: "Law enforcement officers shall continue to

cooperate with state and federal authorities in investigating and apprehending individuals who are suspected of criminal activity." Confidentiality Order § 2C. And Section 3B of the Order further instructs that disclosure of confidential information is authorized when "the individual to whom such information pertains is suspected by such officer or employee . . . of engaging in criminal activity (other than mere status as an undocumented alien)."

In similar fashion, Part 3 of Memorandum 06-01 states that "the Philadelphia Police Department will continue to cooperate with federal authorities in investigating and apprehending immigrants suspected of criminal activities," and that "[s]worn members of the Police Department who obtain information on immigrants suspected of criminal activity will comply with normal crime reporting and investigating procedures." Memorandum 06-01 ¶¶ 3B-3C. And, like the Confidentiality Order, Memorandum 06-01 instructs that Philadelphia police officers may "transmit [otherwise confidential immigration-related information] to federal authorities . . . when . . . the immigrant is suspected of engaging in criminal activity." *Id.* ¶ 3B(3).

Taken together, these clauses of the Confidentiality Order and Memorandum 06-01 illustrate that Philadelphia officers are instructed to cooperate with federal authorities in the enforcement of criminal law—regardless of the suspect's immigration status— and they are not prohibited from sharing immigration information regarding a criminal suspect.

Second, Philadelphia's use of the FBI's National Crime Information Center ("NCIC") database, its sharing access with ICE to certain information in the City's Preliminary Arraignment System ("PARS") database, and its use of the Automated Fingerprint Identification System ("AFIS"),[4] enable federal immigration authorities to access information, including an individual's name, about persons stopped, detained, arrested, or convicted of a crime in the City. In fact, Philadelphia's use of these databases provides federal authorities with information about people in Philadelphia's custody even though Philadelphia likely would not know anything about that individual's immigration status.

> NCIC: Philadelphia police officers are trained to use the NCIC database as they engage in criminal law enforcement. For instance, Philadelphia police officers are trained to run an NCIC "look-up" for all individuals who are subjected to "investigative detention" by the police, for the purpose of determining if an outstanding warrant has been issued for the individual, whether in Philadelphia or another jurisdiction. If the officer is able to collect the person's date of birth or license plate information, NCIC protocols mandate that that information will also be entered into NCIC. To the City's awareness and

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[4] Philadelphia recently transitioned to the Multimodal Biometric Identification System ("MBIS"), which is the next generation to AFIS. But because the FBI refers to the Integrated Automated Fingerprint Identification System ("IAFIS"), we will use AFIS in this memorandum.

understanding, the names searched by Philadelphia officers are recorded by the NCIC system, which the FBI maintains. ICE can freely use the NCIC database and make additional requests of the FBI to conduct searches or look-ups for individuals of interest to the agency, and to determine whether such persons were detained by authorities in Philadelphia. This regular use of NCIC is important because it puts the federal government on notice of any person in Philadelphia who becomes a criminal suspect, detainee, or arrestee, regardless of their background or immigration status.

PARS: The "Preliminary Arraignment System," also knows as "PARS," is a database maintained by the First Judicial District of Pennsylvania, the Philadelphia Police Department, and the Philadelphia District Attorney. The purpose of the database is to give information that the police collect upon an arrest directly to the District Attorney's Office. Based upon an end-user license agreement signed with ICE in 2008 and amended in 2010, ICE has access to criminal information in the PARS database, *i.e.*, to information about people suspected of criminal activity and entered into the system. ICE can use its access to look up a person of interest and determine whether the Philadelphia police have arrested that individual and/or whether that individual is in custody. ICE *does not*, however, have access to victim and witness information through PARS. The fact that ICE has agreed not to receive PARS victim and witness information is evidence that by sharing criminal suspect information, the City is satisfying both entities' mutual law enforcement purposes.

AFIS: As part of a routine and longstanding protocol, at the time a person in Philadelphia is arrested, his or her fingerprints are inputted into Philadelphia's AFIS platform. Use of the AFIS database enables City law enforcement authorities to determine whether arrested individuals have existing criminal history records and as well as to confirm the identification of wanted suspects. AFIS feeds automatically into Pennsylvania's identification bureau and then to the FBI. The FBI in turn has the capacity to run fingerprints against the Integrated Automated Fingerprint Identification System ("IAFIS")—a national fingerprint and criminal history system maintained by the FBI—and the Automated Biometric Identification System ("IDENT")—a DHS-wide system for storing and processing biometric data for national security and border management purposes. The City does not have visibility into the FBI's sharing practices with other federal entities but, through the IAFIS system, the federal government has access to the fingerprint identities of individuals the City arrests and fingerprints.

Given the above, Section 1373—when read properly—should be construed as entirely *neutral* towards local protocols like Philadelphia's Confidentiality Order or Memorandum 06-01. The concern of Section 1373 is that States and localities not enact policies that "*prohibit*" or ultimately "*restrict*" governmental entities or officials from sending to or receiving from ICE immigration-status information. 8 U.S.C. § 1373(a). Section 1373 does not speak to the *manner*

in which local officials exchange information with ICE. And that is what Philadelphia's Confidentiality Policy and Memorandum 06-01 do: They instruct police officers to "safeguard" and avoid the unnecessary "disclosure" of immigrants' confidential information, *see* Confidentiality Order § 3B; Memorandum 01-06 ¶ 3A, while, at the same time, instructing the officers to cooperate with federal authorities in investigating crimes, exchange pertinent information about criminal suspects, and adhere to "normal crime reporting and investigating procedures." Confidentiality Order §§ 2C & 3B(3); Memorandum 01-06 ¶¶ 3A(3), 3B. In operation, this results in information-sharing with the federal government about criminal suspects or detainees in the City's custody, and in the protection of confidential information about individuals who are of no criminal concern. That is entirely consistent with Section 1373.

Third, the City complies with Section 1373 because its official policies concerning immigration-status information also contain savings clauses that assume the continued operation of other relevant laws, such as Section 1373 to the extent it is determined to be applicable and enforceable. The Confidentiality Order has two provisions that function as "savings clauses," which permit both inquiry into or disclosure of immigration status if "required by law." *See* Confidentiality Order §§ 2A(2), 3B(2). Memorandum 06-01 has a similar savings clause at Part 3A(1): "[P]olice personnel will transmit such [confidential] information to federal immigration authorities only when *required by law.*" When the plain text of a law or policy contains a savings clause, that text should control. *Chamber of Commerce of U.S. v. Whiting*, 563 U.S. 582, 599 (2011) (the legislature's "authoritative statement is the statutory text" and the "plain text of . . . [the] savings clause" controls). Here, the plain text of Philadelphia's Confidentiality Order and Memorandum 06-01 permit City employees to obtain and transmit immigration status information when "required by law"—including Section 1373 to the extent it is determined to be applicable and enforceable—while otherwise directing employees to protect individuals' confidential information from exposure to third parties.

IV. Philadelphia's Policies Concerning Witnesses, Victims, and Persons Seeking City Services Do Not Conflict with Section 1373.

Philadelphia's policies affirming the confidentiality of immigration status information of witnesses and victims of crimes, as well as of individuals who seek public benefits, are also consistent with Section 1373. First, as a practical matter, given the City's lawful policy against the affirmative collection of such information, upon which Section 1373 has no bearing, there will be few, if any, cases of Philadelphia officers or employees even being in a position to "transmit" or "disclose" this sort of information to federal authorities about witnesses, victims, or persons seeking City services. *See* Confidentiality Order § 2A(1) ("No City officer or employee . . . shall inquire about a person's immigration status" unless it is "legally required for the determination of program, service or benefit eligibility[.]"); *id.* § 2B(3) (law enforcement officers "shall not . . . inquire about the immigration status of crime victims, witnesses, or others

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who call or approach the police seeking help"). Thus, there will be very few—if any—instances in which these nondisclosure provisions are triggered.

Second, Section 1373 could not be construed to require the City to disclose information about persons seeking services, witnesses, and victims (whether volunteered by the individual or collected inadvertently) because that would pose serious constitutional problems. Not only would such a construction conflict with anti-commandeering principles, it would also undermine the ability of the City to administer its core police and *parens patriae* powers under the Constitution. And even as a theoretical delegate of Congress's spending power, the Department of Justice has no authority to attach such a condition to the grants for which this certification is being required.

The Constitution preserves the fundamental role of the States in our democracy as the entities that "enact legislation for the public good—what [the Supreme Court] ha[s] often called a 'police power.'" *Bond v. United States*, 134 S. Ct. 2077, 2086 (2014); *see also id.* ("The Federal Government, by contrast, has no such authority[.]"). The States are reserved the power to create and enforce the criminal law, as well as to protect the health and welfare of their citizens by the means they deem appropriate. *See Gonzales v. Oregon*, 546 U.S. 243, 270 (2006) ("[T]he structure and limitations of federalism . . . allow the States great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons."); *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 607 (1982) ("[A] State has a quasi-sovereign interest in the health and well-being—both physical and economic—of its residents in general."). Accordingly, "when construing federal statutes that touc[h] on . . . areas of traditional state responsibility," the Supreme Court will "appl[y] the background principle" that "it is incumbent upon the federal courts to be certain of Congress' intent before finding that federal law overrides the usual constitutional balance of federal and state powers." *Bond*, 134 S. Ct. at 2089 (quotation marks and citations omitted); *see also United States v. Morrison*, 529 U.S. 598, 615 (2000) (construing Congress' power under the Commerce Clause to enact a gender-violence private remedy against the backdrop of "the Constitution's distinction between national and local authority" and the States' "traditional" authority to "regulate . . . crime").

Here, that "background principle" requires a construction of Section 1373 that excludes compelled information-sharing about witnesses and victims of crimes and law-abiding persons seeking City services. A federal command that States and localities disclose information about such persons to ICE—even if the State or locality concludes that doing so would chill law enforcement and undermine community health and safety—would "intrude[] on the police power of the States" and compromise their ability to ensure the health and safety of their populations. *Bond*, 134 S. Ct. at 2090. At the very least, courts would need a "clear statement" from Congress that it meant to "radically readjust the balance of state and national authority" in such a

way before adopting that reading. *Id.* (citations omitted). There is no such clear statement here, either in the text of Section 1373 or in its legislative history.

Moreover, for Congress to try to use its Spending Clause power to abrogate these federalism principles in the case of the JAG grant (assuming Congress even did so, which the City contests, *see* Part VI, *infra*) would be unconstitutional in its own right. Congress surely can use federal grants to try to induce States and localities to do things that it could not directly compel: *i.e.*, it can encourage States and localities to raise the drinking age, *South Dakota v. Dole*, 483 U.S. 203, 206 (1987), or it can require that state officials whose employment is financed with federal funds adhere to the Hatch Act, *Oklahoma v. Civil Service Comm'n*, 330 U.S. 127 (1947). But it is a bedrock principle that Congress cannot make a federal grant contingent on an activity that lacks a "relationship" or subject matter connection to the purpose of the federal spending. *New York v. United States*, 505 U.S. 144, 167 (1992) (the attached "conditions must . . . bear some relationship to the purpose of the federal spending"). As the Court put it in *Dole*: The "conditions on federal grants" have to be "reasonably calculated to address th[e] particular . . . purpose for which the funds are expended." *South Carolina v. Dole*, 483 U.S. 203, 207 (1987); *see, e.g., Cutter v. Wilkinson*, 423 F.3d 570, 586 (4th Cir. 2005) (conditions imposed by the Religious Land Use and Institutionalized Persons Act, requiring States that receive federal funds for prisons to respect inmates' free exercise rights, were "reasonably calculated to address the federal government's interest in the rehabilitation of state prisoners"); *Kansas v. United States*, 214 F.3d 1196, 1199-2000 (10th Cir. 2000) (condition imposed by TANF, requiring States that receive funding to operate "child support enforcement programs," was "clearly related" to the TANF program's goal of "provid[ing] financial support for low-income families").

Here, had Congress sought to use its Spending Clause power to make the JAG grant conditional on localities sharing information with ICE about witnesses, victims, and law-abiding persons who apply for City services, Congress would have had to demonstrate some connection between that compelled activity and the purpose of federal spending. In other words, it would have had to show that the "*condition*" being imposed, of compelled information-sharing about these specific individuals, was "reasonably calculated to address . . . [the] *purpose* for which the funds are expended," which is to strengthen cities' criminal justice systems. *See* 42 U.S.C. § 3752(a)(6) (authorizing JAG grants to be given to improve the "administration of the criminal justice system" in the States). That is precisely the problem: JAG grants were enacted to support criminal justice programming and make cities safer, and compelled information-sharing about victims, witnesses, and law-abiding persons is a policy that many cities, including Philadelphia, have determined *undermines* public safety. No one—not Congress, the Justice Department, or any other entity—has suggested otherwise. The result would be that Congress was using its Spending Clause power to induce cities like Philadelphia to sacrifice the health, wellness, and safety of its own community, through a grant program that was purportedly enacted to *promote* those very outcomes. That clearly runs afoul of *Dole*.

V. Philadelphia's Detainer Policies Are Not Relevant to Section 1373.

Philadelphia does not violate Section 1373 by declining to detain individuals pursuant to an ICE detainer request unless the request is accompanied by a judicial warrant. Philadelphia's policy on detainer requests is memorialized in Mayor James F. Kenney's Executive Order No. 5-16, entitled "Policy Regarding U.S. Immigration and Customs Enforcement Agency Detainer Requests" and issued on January 4, 2016. Philadelphia's detainer policy is not relevant to the present certification analysis because Section 1373 says nothing about detainer requests or detention at all. It speaks only to prohibitions and restrictions on the sending, receiving, and exchanging of "information" regarding citizenship or immigration status with the federal government. 8 U.S.C. § 1373(a)-(b). Nor does the legislative history of Section 1373 indicate that Congress intended the statute to require State and local governments to hold people in detention upon a simple request from ICE.

Indeed, recent statements and positions by the Department of Justice and the Trump Administration confirm that Section 1373 does not cover detention requests currently. On May 22, 2017, the Administration proposed a budget to Congress that included language *changing* Section 1373 to require that local jurisdictions hold undocumented persons in jail for up to 48 hours upon receipt of an ICE detainer request, and to provide that, if jurisdictions do not comply with such ICE requests, they could lose Homeland Security and Justice Department grants. The Department of Justice's budget proposal table also states that the Department is thereby "requesting an amendment to 8 U.S.C. 1373 to . . . *expand the scope* to prevent State and local government officials from prohibiting or restricting any government entity or official from complying with a lawful civil immigration detainer request." Dep't of Justice, Summary of General Provisions contained in the FY2018 President's Budget, note 7 (emphasis added).[5] After the budget announcement, a spokesperson from the Department of Justice confirmed that the Memorandum sent by Attorney General Sessions to several localities one day earlier, on May 21, 2017, and insisting that they comply with Section 1373 so as to not be deemed sanctuary jurisdictions, "reflects the current law, which as now written doesn't relate to detainer requests." L. Meckler, *Trump Administration Proposes Tougher Line on 'Sanctuary Cities' Over Detainer Requests*, Fox Business (May 23, 2017).[6]

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[5] *See* https://www.justice.gov/jmd/page/file/968406/download.

[6] Philadelphia also reserves the argument that reading Section 1373 or any other federal statute or regulation to impose a duty on States and municipalities to detain people at ICE's request would raise serious concerns under the Tenth Amendment. *See Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014); *Cnty. of Santa Clara v. Trump*, No. 17-cv-00485, 2017 WL 1459081, at *4 (N.D. Cal. Apr. 25, 2017); *Mercado v. Dallas Cnty., Texas*, No. 15-cv-3481, 2017 WL 169102, at *9 (N.D. Tex. Jan. 17, 2017); *Flores v. City of Baldwin Park*, 2015 WL 756877, at *4 (C.D. Cal. Feb. 23, 2015); *Lucatero v. Haynes*, 2014 WL 6387560, at *2 (W.D.N.C. Nov. 14,

VI. The Department of Justice's Insistence that Localities Certify Compliance with Section 1373 is Itself Unlawful.

Although Philadelphia submits the present certification in good faith, it reserves the argument that this certification requirement itself, as well as the underlying attachment of the condition of compliance with Section 1373 to criminal law enforcement grants, constitutes unlawful agency action for several reasons. *See* 5 U.S.C. § 706(2)(A)-(B) (agency action is "unlawful" when it is "not in accordance with law," "contrary to constitutional right, power, privilege or immunity," or "arbitrary, capricious [or] an abuse of discretion").

First, Philadelphia reserves the argument that the Department's decision to mandate that localities certify compliance in order to apply for new JAG grants is "not in accordance with law." *Id.* § 706(2)(A). When Congress created the JAG grant program, appropriated funds, and authorized the Department of Justice to distribute the grants, its purpose was to strengthen cities and States' criminal justice systems. Localities can apply for funds to support a range of local programming—such as "law enforcement programs, prosecution and court programs, prevention and education programs, corrections and community corrections programs, drug treatment and enforcement programs," and "crime victim and witness programs." 42 U.S.C. § 3751(a)(1).

The authorizing statute for the JAG grant program provides that "[t]o request a grant under this part," an applicant shall include a "certification, made in a form acceptable to the Attorney General . . . that . . . the applicant will comply with all provisions of this part and other *applicable Federal laws*." *Id.* § 3752(a)(5)(D) (emphasis added). In turn, the statute authorizes the "Attorney General [to] issue rules to carry out this part." *Id.* § 3754. There is no suggestion that Section 1373, which has nothing to do with the criminal justice system, is or should be considered an "applicable Federal law." Nowhere did Congress indicate in the underlying statute that it intended for the receipt of grants administered by the *Justice Department* to be conditioned on jurisdictions' compliance with Section 1373, a statute having to do with immigration policy, and administered by the *Department of Homeland Security*. Given the lack of any substantive connection between Section 1373 and the programs that JAG supports, the Attorney General exceeded his authority when determining that statute to be "applicable."

Second, making the receipt of JAG grants contingent on compliance with Section 1373 is "not in accordance with [federal] law" because, for reasons similar to why it is not an "applicable Federal law," it would violate the Constitution's Spending Clause. Again, the Supreme Court's Spending Clause jurisprudence establishes that Congress cannot make a federal grant contingent on an activity that lacks a rational connection to the purpose of the federal spending. *See New*

2014); *Moreno v. Napolitano*, 2014 WL 4911938, at *5 (N.D. Ill. Sept. 30, 2014); *Miranda-Olivares v. Clackamas Cnty.*, No. 12-cv-02317, 2014 WL 1414305, at *6 (D. Or. Apr. 11, 2014).

York, 505 U.S. at 167 (the attached "conditions must . . . bear some relationship to the purpose of the federal spending"); *Dole*, 483 U.S. at 207 (the condition imposed on a federal grant must be "reasonably calculated" to achieve the underlying purpose of the grant). Here, there is no subject matter linkage or "discernible relationship" between JAG grants, which seek to support localities' criminal justice systems, and Section 1373, which deals with removing theoretical barriers to the sharing of immigration-status information with ICE. Civil immigration enforcement and criminal law enforcement are two different things. *See generally Arizona v. United States*, 132 S. Ct. 2492, 2505 (2012) ("As a general rule, it is not a crime for a removable alien to remain present in the United States."). Policies that effectuate civil immigration enforcement are *not* coterminous with policies that ensure a strong criminal justice system. Numerous cities— like Philadelphia—have determined that it *promotes* the public safety and *enhances* the enforcement of criminal law when witnesses and victims, irrespective of their immigration status, feel safe reporting crimes and participating (where appropriate) in criminal proceedings. Congress nowhere overrode that judgment when it decided to disburse JAG grants to support localities' criminal justice systems, nor could it have.

Yet another reason that the Department's imposition of this new Section 1373 certification requirement on localities violates the APA is that it is arbitrary and capricious. The agency's new position reflects a departure from its prior practice of granting Department of Justice funds free from a contingency of compliance with that statute. And, problematically, the agency changed its longstanding position without sufficient reason or explanation. *See Encino Motorcars, LLC v. Navarro*, 579 U.S. __, Slip. Op. 9 (2016) ("Agencies are free to change their existing policies as long as they provide a reasoned explanation for the change. . . . [T]he agency must at least 'display awareness that it is changing position' and 'show that there are good reasons for the new policy.' In explaining its changed position, the agency must also be cognizant that longstanding policies may have 'engendered serious reliance interests that must be taken into account.'" (citations omitted)); *National Cable & Telecommunications Assn. v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005) (an "unexplained inconsistency" in an agency's policy is "a reason for holding an interpretation to be an arbitrary and capricious change from agency practice"). "[S]ince 1996, the United States government has never sought to enforce [Section 1373] against a state or local government," and neither the DOJ nor any other agency has made compliance with Section 1373 a requirement of receiving a federal discretionary grant. E. McCormick, *Federal Anti-Sanctuary Law: A Failed Approach to Immigration Enforcement and a Poor Substitute for Real Reform*, 20 Lewis & Clark L. Rev. 165, 170 (2016).

The report by the DOJ's Office of Inspector General in May 2016 is an insufficient explanation for the Department's change in policy because it did not explain why *any* DOJ grant funding—which support localities' criminal justice systems—should be contingent on the specific contours of a locality's policies on sharing immigration-status information with ICE. Specifically, and importantly, the Report did not show that policies which protect the confidentiality of individuals' immigration status information result in any greater incidence of

crime. Indeed, Philadelphia, like most other major U.S. cities that have considered the issue, determined that policies which delicately limit information-sharing as to witnesses, victims, and persons seeking City services *enhance and support* its crime-fighting efforts.

* * *

Philadelphia respectfully submits the above legal analysis and certification that the City's policies, by their text and operation, comply with 8 U.S.C. § 1373.

Sincerely,

Sozi Pedro Tulante

Sozi Pedro Tulante
City Solicitor

Exhibit A

EXECUTIVE ORDER NO. 8-09

POLICY CONCERNING ACCESS OF IMMIGRANTS TO CITY SERVICES

WHEREAS, immigrants make significant contributions to every facet of The City of Philadelphia's economic, educational and cultural life;

WHEREAS, immigrants are critical to the economic, cultural and social fabric of not only The City of Philadelphia, but also the greater Philadelphia region;

WHEREAS, the City's policy is to promote the utilization of its services by all City residents and visitors who are entitled to and in need of them, including immigrants;

WHEREAS, all individuals should know that they may seek and obtain the assistance of City departments and agencies regardless of their personal status, without negative consequences to their personal lives;

WHEREAS, meeting the needs of the City's immigrant population is important to maintaining public trust and confidence in City government; and

WHEREAS, the City's ability to obtain pertinent information, which may be essential to the performance of governmental functions, is sometimes made difficult or even impossible if some expectation of confidentiality is not preserved;

NOW, THEREFORE, I, Michael A. Nutter, Mayor of The City of Philadelphia, by the powers vested in me by the Philadelphia Home Rule Charter, do hereby order as follows:

Section 1. Access to City Services.

All City services, including but not limited to the following listed services, shall be made available to all City of Philadelphia residents, consistent with applicable law, regardless of the person's citizenship or legal immigration status:

- Police and Fire services;
- Medical services, such as emergency medical services, general medical care at Community Health Centers and immunization, testing and treatment with respect to communicable diseases;
- Mental health services;
- Children's protective services; and

- Access to City facilities, such as libraries and recreation centers.

Section 2. Inquiries Regarding Immigration Status

A. No City officer or employee, other than law enforcement officers, shall inquire about a person's immigration status unless:

(1) documentation of such person's immigration status is legally required for the determination of program, service or benefit eligibility or the provision of services; or

(2) such officer or employee is required by law to inquire about such person's immigration status.

B. Law enforcement officers shall not:

(1) stop, question, arrest or detain an individual solely because of the individual's ethnicity, national origin, or perceived immigration status;

(2) inquire about a person's immigration status, unless the status itself is a necessary predicate of a crime the officer is investigating or unless the status is relevant to identification of a person who is suspected of committing a crime (other than mere status as an undocumented alien);

(3) inquire about the immigration status of crime victims, witnesses, or others who call or approach the police seeking help; or

(4) inquire regarding immigration status for the purpose of enforcing immigration laws.

C. Law enforcement officers shall continue to cooperate with state and federal authorities in investigating and apprehending individuals who are suspected of criminal activity.

Section 3. Confidentiality of Information

A. As used herein, "confidential information" means any information obtained and maintained by a City agency relating to an individual's immigration status.

B. No City officer or employee shall disclose confidential information unless:

(1) such disclosure has been authorized in writing by the individual to whom such information pertains, in a language that he or she understands or, if such

individual is a minor or is otherwise not legally competent, by such individual's parent or legal guardian;

(2) such disclosure is required by law; or

(3) the individual to whom such information pertains is suspected by such officer or employee or such officer's or employee's agency of engaging in criminal activity (other than mere status as an undocumented alien).

Section 4. EFFECTIVE DATE

This Order shall take effect immediately.

November 10, 2009
DATE

MICHAEL A. NUTTER, MAYOR

Exhibit B

PHILADELPHIA POLICE DEPARTMENT

MEMORANDUM (01-06)
MAY 17, 2001

SUBJECT: DEPARTMENTAL POLICY REGARDING IMMIGRANTS

I. PURPOSE

A. The purpose of this memorandum is to advise all Philadelphia Police Department personnel of the policy concerning the treatment of legal and illegal immigrants. The definition of "immigrant" as it applies to this memorandum is as follows:

"Any person who is not a citizen or a national of the United States".

II. POLICY

A. While the City has various services available to immigrants, few take advantage of These services because they fear that any contact with these agencies may bring their immigration status to the attention of the federal authorities.

B. All immigrants should be encouraged to utilize these City services without fear of any reprisals because the city has no obligation to report any illegal immigrants to the federal government as long as they are law abiding. The Police Department will preserve the confidentiality of all information regarding law abiding immigrants to the maximum extent permitted by law.

C. Additionally, sworn members shall not arbitrarily exclude immigrants from eligibility for services that are available to all.

III. PROCEDURE

A. In order to safeguard the confidentiality of information regarding an immigrant, police personnel will transmit such information to federal immigration authorities only when:

1. Required by law, **or**

2. The immigrant requests, in writing, information be provided, to verify his or her

immigration status, **or**

3. The immigrant is suspected of engaging in criminal activity, including attempts to obtain public assistance benefits through the use of fraudulent documents.

B. Sworn members of the Police Department who obtain information on immigrants suspected of criminal activity will comply with normal crime reporting and investigating procedures (refer to Directive 11, "Aliens/Military Personnel in Police Custody and Requests for Political Asylum" dated 6-24-92).

C. The Philadelphia Police Department will continue to cooperate with federal authorities in investigating and apprehending immigrants suspected of criminal activities. However, immigrants who are victims of crimes will not have their status as an immigrant transmitted in any manner.

JOHN F. TIMONEY
Commissioner

EXHIBIT 15

Funding Resource Center

Explore

Current Funding Opportunities
Past Funding Opportunities
Legal Overview - FY2017 Awards
DOJ Program Plan
OJP Award Data

Apply

Implement

Not finding what you need? Contact us!

Financial Questions?

- 1-800-458-0786 (TTY: 202-616-3867)
- Email the Customer Service Branch
- 2015 DOJ Grants Financial Guide
- 2014 OJP Financial Guide

Grant System Questions?

- 202-514-2024
- Email the Grants Management System (GMS) Help Desk

Overview of Legal Requirements Generally Applicable to OJP Grants and Cooperative Agreements - FY 2017 Awards

Updated as of July 2017

Each recipient of an OJP grant or cooperative agreement must comply with all federal statutes and regulations applicable to the award, as well as the particular award conditions included in the award document.

The webpages accessible at the links listed below are intended to give applicants for OJP awards a **general overview** of important statutes, regulations, and award conditions that apply to many (or in some cases, all) OJP grants and cooperative agreements awarded in 2017. Every recipient is expected to review and understand each condition included in the award document. OJP encourages applicants for OJP awards to review this general overview prior to submitting an application.

- "General Conditions" for OJP Awards in FY 2017
- Financial Requirements
- Organizational Requirements
- Civil Rights Requirements
- Requirements related to Research
- Reporting Requirements and Certain Other Requirements

Alert: New Requirements for Certain FY 2017 Programs

Consistent with OJP's statutory authority to impose grant conditions, including 42 U.S.C. 3712, OJP will include -- in an award document sent to a prospective FY 2017 Edward Byrne Justice Assistance Grant ("Byrne JAG") recipient for acceptance – express award conditions concerning ongoing compliance with 8 U.S.C. 1373, throughout the award period, in the "program or activity" funded by the award. (In general, section 1373 bars restrictions on communication between State and local agencies and officials and the Department of Homeland Security (and certain other entities) with respect to information regarding the citizenship or immigration status of any individual.) States and units of local government that apply for awards under the FY 2017 Byrne JAG Program will be required -- prior to award acceptance -- to submit a specific certification from the chief legal officer of the jurisdiction regarding the applicant's compliance with 8 U.S.C. 1373(a) and (b). Interested applicants may view a sample certification document at https://ojp.gov/funding/Explore/SampleCertifications-8USC1373.htm .

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

Criminal Penalty for False Statements

False statements or claims made in connection with OJP grants may result in fines, imprisonment, and debarment from participating in federal grants and contracts, and/or other remedies available by law.

EXHIBIT 16

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

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

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

Edward Byrne Memorial Justice Assistance Grant Program

FY 2017 Local Solicitation

Applications Due: September 5, 2017

Eligibility

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

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

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

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

Deadline

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

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

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

Contact Information

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

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

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

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

Release date: August 3, 2017

Contents

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

A. Program Description

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

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

Program-Specific Information

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

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

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

Limitations on the use of JAG funds

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- Body Armor

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

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

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

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

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

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

- Interoperable Communication

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

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

Required compliance with applicable federal laws

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

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

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

BJA areas of emphasis

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

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

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

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

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

  BJA sees a vital need to focus not only on tactical officer safety concerns but also on health and wellness as they affect officer performance and safety. It is important for law enforcement to have the tactical skills necessary, and also be physically and mentally well, to perform, survive, and be resilient in the face of the demanding duties of the

profession. BJA encourages units of local government to use JAG funds to address these needs by providing training, including paying for tuition and travel expenses related to attending trainings such as VALOR training, as well as funding for health and wellness programs for law enforcement officers.

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

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

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

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

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

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

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

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

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

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

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

B. Federal Award Information

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

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

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

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

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

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

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

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

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

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

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

Financial Management and System of Internal Controls

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

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

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

[1] For purposes of this solicitation, the phrase "pass-through entity" includes any recipient or subrecipient that provides a subaward ("subgrant") to carry out part of the funded award or program.

[2] The "Part 200 Uniform Requirements" refers to the DOJ regulation at 2 C.F.R Part 2800, which adopts (with certain modifications) the provisions of 2 C.F.R. Part 200.

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

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

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

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

Budget and Financial Information

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Eligibility Information

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

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

D. Application and Submission Information

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Note on Project Evaluations

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

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

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

4. Budget and Associated Documentation

(a) Budget Detail Worksheet

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

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

(b) Budget Narrative

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

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

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

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

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

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

federal administrative rules and requirements that apply to "subawards" and procurement "contracts" under awards differ markedly.

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

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

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

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

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

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

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

If an applicant proposes to make one or more subawards to carry out the federal award and program, and those subawards are not specifically authorized (or required) by statute or regulation, the applicant should: (1) identify (if known) the proposed subrecipient(s), (2) describe in detail what each subrecipient will do to carry out the federal award and federal program, and (3) provide a justification for the

subaward(s), with details on pertinent matters such as special qualifications and areas of expertise. Pertinent information on subawards should appear not only in the Program Narrative but also in the Budget Detail Worksheet and budget narrative.

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

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

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

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

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

(d) Pre-Agreement Costs

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

5. Indirect Cost Rate Agreement (if applicable)

Indirect costs may be charged to an award only if:

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

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

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

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

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

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

6. Tribal Authorizing Resolution (if applicable)

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

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

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

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

8. Applicant Disclosure of High Risk Status

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

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

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

9. Disclosure of Lobbying Activities

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

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

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

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

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

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

As discussed further below, a unit of local government (other than an Indian tribal government) applicant will be *unable to make a valid award acceptance* of an FY 2017 JAG

award unless and until a properly executed certification by its chief legal officer is received by OJP on or before the day the unit of local government submits an executed award document.

12. Additional Attachments

(a) Applicant Disclosure of Pending Applications

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

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

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

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

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

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

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

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

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

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

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

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

   OR

   b. A specific description of actual or potential apparent conflicts of interest that the applicant has identified—including through review of pertinent information on the principal investigator, any co-principal investigators, and any subrecipients—that could affect the independence or integrity of the research, including the design, conduct, or reporting of the research. These conflicts may be personal (e.g., on the part of investigators or other staff), financial, or organizational (related to the applicant or any subrecipient entity). Some examples of potential investigator (or other personal) conflict situations are those in which an investigator would be in a position to evaluate a spouse's work product (actual conflict), or an investigator would be in a position to evaluate the work of a former or current colleague (potential apparent conflict). With regard to potential organizational conflicts of interest, as one example, generally an organization would not be given an award to evaluate a project, if that organization had itself provided substantial prior technical assistance to that specific project or a location implementing the project (whether funded by OJP or other sources), because the organization in such an

instance might appear to be evaluating the effectiveness of its own prior work. The key is whether a reasonable person understanding all of the facts would be able to have confidence that the results of any research or evaluation project are objective and reliable. Any outside personal or financial interest that casts doubt on that objectivity and reliability of an evaluation or research product is a problem and must be disclosed.

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

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

OR

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

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

(c) Local Governing Body Review

Applicants must submit information via the Certification and Assurances by the Chief Executive (See Appendix I) which documents that the JAG application was made available for review by the governing body of the unit of local government, or to an organization designated by that governing body, for a period that was not less than 30

days before the application was submitted to BJA. The same Chief Executive Certification will also specify that an opportunity to comment on this application was provided to citizens prior to the application submission to the extent applicable law or established procedures make such opportunity available. In the past, this has been accomplished via submission of specific review dates; now OJP will only accept a chief executive's certification to attest to these facts. Units of local government may continue to submit actual dates of review should they wish to do so, in addition to the submission of the Chief Executive Certification.

How to Apply

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

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

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

All applicants should complete the following steps:

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

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

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

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

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

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

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

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

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

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

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

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

Note: OJP does not automatically approve requests to submit a late application. After OJP reviews the applicant's request, and contacts the GMS Help Desk to verify the reported technical issues, OJP will inform the applicant whether the request to submit a late application

has been approved or denied. If OJP determines that the untimely application submission was due to the applicant's failure to follow all required procedures, OJP will deny the applicant's request to submit its application.

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

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

E. Application Review Information

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

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

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

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

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

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

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

F. Federal Award Administration Information

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

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

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

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

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

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

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

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

- Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements

- OJP Certified Standard Assurances (attached to this solicitation as Appendix IV*)*

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

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

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

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

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

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

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

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

G. Federal Awarding Agency Contact(s)

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

For contact information for GMS, see the title page.

H. Other Information

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

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

circumstances, OJP will request the views of the applicant/recipient that submitted a responsive document.

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

Provide Feedback to OJP

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

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

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

Application Checklist

Edward Byrne Memorial Justice Assistance Grant (JAG) Program:

FY 2017 Local Solicitation

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

What an Applicant Should Do:

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

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

Overview of Post-Award Legal Requirements:

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

Scope Requirement:

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

What an Application Should Include:

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

Appendix I

Certifications and Assurances by the Chief Executive of the Applicant Government

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

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

U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS

Edward Byrne Justice Assistance Grant Program
FY 2017 Local Solicitation

Certifications and Assurances
by the Chief Executive of the Applicant Government

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

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

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

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

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

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

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

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

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

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

_____
Date of Certification

_____
Printed Name of Chief Executive

_____
Title of Chief Executive

_____
Name of Applicant Unit of Local Government

Appendix II

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

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

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

U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Appendix III

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

Communication between government agencies and the Immigration and Naturalization Service

(a) In general

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

(b) Additional authority of government entities

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

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

(c) Obligation to respond to inquiries

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

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

Appendix IV

OJP Certified Standard Assurances

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

U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS

CERTIFIED STANDARD ASSURANCES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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