

1 DENNIS J. HERRERA, State Bar #139669  
 City Attorney  
 2 JESSE C. SMITH, State Bar #122517  
 Chief Assistant City Attorney  
 3 RONALD P. FLYNN, State Bar #184186  
 Chief Deputy City Attorney  
 4 YVONNE R. MERÉ, State Bar #173594  
 Chief of Complex and Affirmative Litigation  
 5 CHRISTINE VAN AKEN, State Bar #241755  
 TARA M. STEELEY, State Bar #231775  
 6 MOLLIE M. LEE, State Bar #251404  
 SARA J. EISENBERG, State Bar #269303  
 7 AILEEN M. McGRATH, State Bar #280846  
 MATTHEW S. LEE, State Bar #295247  
 8 NEHA GUPTA, State Bar #308864  
 Deputy City Attorneys  
 9 City Hall, Room 234  
 1 Dr. Carlton B. Goodlett Place  
 10 San Francisco, California 94102-4602  
 Telephone: (415) 554-4748  
 11 Facsimile: (415) 554-4715  
 E-Mail: brittany.feitelberg@sfgov.org

12 Attorneys for Plaintiff  
 13 CITY AND COUNTY OF SAN FRANCISCO

14  
 15 UNITED STATES DISTRICT COURT  
 16 NORTHERN DISTRICT OF CALIFORNIA

17 CITY AND COUNTY OF SAN  
 18 FRANCISCO,

19 Plaintiff,

20 vs.

21 DONALD J. TRUMP, President of the United  
 States, UNITED STATES OF AMERICA,  
 22 ELAINE DUKE, Acting Secretary of United  
 States Department of Homeland Security,  
 23 JEFFERSON B. SESSIONS III, Attorney  
 General of the United States, DOES 1-100,

24 Defendants.  
 25

Case No. 3:17-cv-00485-WHO

**PLAINTIFF CITY AND COUNTY OF SAN  
 FRANCISCO'S ADMINISTRATIVE MOTION  
 TO CONSIDER POST-HEARING  
 DEVELOPMENTS**

Date Filed: January 31, 2017  
 Trial Date: April 23, 2018

**ARGUMENT**

1  
2 Plaintiff the City and County of San Francisco respectfully requests that the Court consider two  
3 developments that have occurred since the Court heard argument on San Francisco's Motion for  
4 Summary Judgment, or in the Alternative for Partial Summary Judgment, on October 23, 2017  
5 ("Summary Judgment Hearing").

6 First, Defendants filed a Motion for Summary Judgment ("Motion") on October 31, 2017, in  
7 the related case of *City and County of San Francisco v. Sessions*, Case No. 3-17-cv-04642-WHO  
8 (*Sessions*). The Motion is attached as Exhibit A to the accompanying declaration of Mollie M. Lee  
9 ("Lee Decl."). The Motion is relevant to the federal government's argument that San Francisco's  
10 claim for declaratory relief regarding 8 U.S.C. § 1373 should be addressed in the *Sessions* case. Dkt.  
11 No. 172 (Opp. to Pltf.'s Mot. for Summary Judgment) at 9; Summary Judgment Hearing Tr. at 12:7-10  
12 ("[T]hose issues will be ripe in another lawsuit if the City continues to pursue that grant, and we do  
13 agree with the Court's thinking that it would be better off to address those issues in that case."). The  
14 Motion, however, demonstrates a contrary position—namely, that *Sessions* should be resolved without  
15 adjudicating San Francisco's Section 1373 claim.

16 Second, San Francisco requests that the Court consider that discovery in this matter has now  
17 closed, and Defendants have not sought to take any discovery of San Francisco on matters related to  
18 Section 1373, or any other matters. Lee Decl. ¶ 5. This contrasts with Defendants' assertion that  
19 further factual development would assist in resolution of this claim. Dkt. No. 172 at 10. Further, it  
20 demonstrates that the Section 1373 claim will most likely be presented to the Court as a purely legal  
21 question, regardless of the case in which it is litigated. This accords with Defendants' consistent  
22 treatment of the question of other cities' compliance with Section 1373: In every instance in which  
23 Defendants have sent compliance letters, they have done so purely on the basis of state and local laws  
24 and written policies. Dkt. 184-1.

25 //

26 //

27 //

28 //

**CONCLUSION**

San Francisco respectfully requests that the Court consider two post-hearing developments: Defendants' filing of a Motion for Summary Judgment in the *Sessions* case, and Defendants' decision not to seek any discovery from San Francisco in the instant case.

Dated: November 2, 2017

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

Deputy City Attorneys

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

Attorneys for Plaintiff  
CITY AND COUNTY OF SAN FRANCISCO