

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 TARA M. STEELEY, State Bar #231775
 SARA J. EISENBERG, State Bar #269303
 6 AILEEN M. McGRATH, State Bar #280846
 Deputy City Attorneys
 7 City Hall, Room 234
 1 Dr. Carlton B. Goodlett Place
 8 San Francisco, California 94102-4602
 Telephone: (415) 554-4748
 9 Facsimile: (415) 554-4715
 E-Mail: brittany.feitelberg@sfcityatty.org

10 Attorneys for Plaintiff
 11 CITY AND COUNTY OF SAN FRANCISCO

12
 13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA

15 CITY AND COUNTY OF SAN
 16 FRANCISCO,

17 Plaintiff,

18 vs.

19 JEFFERSON B. SESSIONS III, Attorney
 General of the United States, LAURA L.
 20 ROGERS, Acting Assist. Attorney General of
 the United States, UNITED STATES
 21 DEPARTMENT OF JUSTICE, DOES 1-100,

22 Defendants.

Case No. 3:18-cv-05146-WHO

**FIRST AMENDED COMPLAINT FOR
 DECLARATORY AND INJUNCTIVE RELIEF**

INTRODUCTION

1
2 1. During his campaign, President Trump pledged to end federal funding to sanctuary
3 cities. Despite the determination by these cities that their sanctuary laws and policies make their own
4 communities safer, healthier and stronger, his Administration has spent more than eighteen months
5 trying to coerce them to abandon those laws and policies by threatening to defund them. The Trump
6 Administration's two attempts to do so have been rebuffed by the federal courts.

7 2. First, President Trump signed an executive order directing the Attorney General and
8 Secretary of Homeland Security to ensure that "sanctuary jurisdictions" did not receive federal
9 funds. This Court struck it down. Next, the Department of Justice ("DOJ") attempted to impose
10 immigration-related requirements on FY 2017 Byrne JAG funds. Every single court that has
11 examined the validity of these requirements—including this Court—has found them to be
12 unconstitutional.

13 3. DOJ's latest effort should fare no better. DOJ recently announced that it is again
14 attempting to coerce sanctuary jurisdictions into changing their laws and policies by imposing
15 unconstitutional requirements on important criminal justice grant funding. Some of the new
16 requirements DOJ has imposed on the FY 2018 Byrne JAG funds (*e.g.*, those that require jurisdictions
17 to give immigration authorities both unfettered access to their jails and 48 hours' notice before
18 releasing an individual believed to be in the country illegally) are nothing more than repackaged
19 versions of the FY 2017 requirements that courts across the country have struck down. But others go
20 much further. Indeed, the new requirements cast a threatening pall over sanctuary jurisdictions by
21 implying that they may be violating federal criminal laws simply by having laws or policies that limit
22 entanglement with federal immigration policies.

23 4. These extortive requirements are unlawful. As a threshold matter, DOJ lacks the
24 statutory authority to impose them. The Constitution establishes a balance of power between the state
25 and federal governments, as well as among the coordinate branches of the federal government, to
26 prevent the excessive accumulation of power in any single entity and reduce the risk of tyranny and
27 abuse from any government office. An executive branch agency of the federal government may not
28 seize for itself the power that the Constitution reserves for Congress. Nor may it intrude on authority

1 that the Constitution has preserved for state and local governments. The FY 2018 grant requirements
2 violate both of these precepts. DOJ is improperly attempting to wield powers that only Congress is
3 entitled to invoke, and is seeking to compel San Francisco to bend its considered policy judgments,
4 which the Constitution allows it to make for its community, to the federal government's will.

5 5. And even if DOJ has the authority to impose *some* conditions on the FY 2018 Byrne
6 JAG funds, each of the challenged requirements at issue here relating to federal immigration
7 enforcement would still be unlawful under other constitutional limits. Those limits prevent DOJ from
8 requiring compliance with the funding requirements because (1) they leave localities unclear about
9 how to comply with each of the requirements, and (2) they lack a nexus between the congressionally
10 mandated purpose of Byrne JAG funds and immigration enforcement.

11 6. San Francisco faces the immediate prospect of losing over \$1.4 million in this fiscal
12 year if it does not receive FY 2018 Byrne JAG funds. San Francisco uses these funds for a variety of
13 important law enforcement purposes, including programs designed to reduce recidivism, provide
14 alternative forms of prosecution, or enable drug treatment for underserved populations.

15 7. San Francisco faces an unacceptable choice that is precisely what the Trump
16 Administration wishes it to have: either comply with DOJ's unconstitutional new grant conditions and
17 abandon local policies that San Francisco adopted to promote public safety and foster trust and
18 cooperation between law enforcement and the public; or, maintain these policies but forfeit critical
19 funds that it relies on to provide essential services to San Francisco residents.

20 8. San Francisco is not obligated to enforce federal immigration law. San Francisco seeks
21 declaratory and injunctive relief to ensure that San Francisco and other sanctuary jurisdictions
22 continue to be eligible for these funds, instead of being coerced into accepting conditions that on their
23 face violate bedrock constitutional principles of separation of powers, as well as constitutional
24 vagueness and germaneness restrictions on grant requirements.

25 JURISDICTION AND VENUE

26 9. The Court has jurisdiction under 28 U.S.C. Sections 1331 and 1346. This Court has
27 further remedial authority under the Declaratory Judgment Act, 28 U.S.C. Sections 2201(a) and 2202
28 *et seq.*

1 10. Venue properly lies within the Northern District of California because Plaintiff,
2 San Francisco, resides in this judicial district and a substantial part of the events or omissions giving
3 rise to this action occurred in this District. 28 U.S.C. § 1391(e)(1).

4 INTRADISTRICT ASSIGNMENT

5 11. Assignment to the San Francisco or Oakland Division of this District is proper pursuant
6 to Civil Local Rule 3-2(c)-(d) because a substantial part of the acts or omissions that give rise to this
7 action occurred in the City and County of San Francisco.

8 PARTIES

9 12. Plaintiff San Francisco is a municipal corporation organized and existing under and by
10 virtue of the laws of the State of California, and is a charter city and county.

11 13. Defendant Jefferson B. Sessions III is the Attorney General of the United States. He is
12 sued in his official capacity. The Attorney General is the federal official leading the DOJ, which is
13 responsible for the governmental actions at issue in this lawsuit.

14 14. Defendant Laura L. Rogers is Acting Assistant Attorney General of the United States in
15 charge of the Office of Justice Programs, which administers Byrne JAG funding. She is sued in her
16 official capacity.

17 15. Defendant DOJ is an executive department of the United States of America that is
18 responsible for administering the Byrne JAG program.

19 16. Doe 1 through Doe 100 are sued under fictitious names. Plaintiff San Francisco does
20 not now know the true names or capacities of said Defendants, who were responsible for the alleged
21 violations, but pray that the same may be alleged in this complaint when ascertained.

22 FACTUAL ALLEGATIONS

23 **I. The Byrne JAG Program Provides Important Criminal Justice Funds To San Francisco.**

24 **A. The Byrne JAG Program**

25 17. The Byrne JAG program is “the leading source of federal justice funding to state and
26 local jurisdictions.” Office of Justice Programs, *Welcome to BJA’s Edward Byrne Memorial Justice*
27 *Assistance Grant (JAG) Program*, <https://www.bja.gov/jag/> (last visited Nov. 1, 2018). The program
28 provides state and local governments with “critical funding necessary to support a range of program

1 areas including law enforcement, prosecution, indigent defense, courts, crime prevention and
2 education, corrections and community corrections, drug treatment and enforcement, . . . crime victim
3 and witness initiatives and mental health programs.” *Id.*

4 18. The program is structured as a formula grant, awarding funds to all eligible grantees
5 according to a prescribed metric. Unlike discretionary grants, which agencies award under agency
6 discretion, “‘formula’ grants . . . are not awarded at the discretion of a state or federal agency, but are
7 awarded pursuant to a statutory formula.” *City of Los Angeles v. McLaughlin*, 865 F.2d 1084, 1088
8 (9th Cir. 1989). Specifically, the Bureau of Justice Assistance (“BJA”)—a department within the
9 Office of Justice Programs (“OJP”)—awards Byrne JAG funds to all eligible grantees in amounts
10 based on Bureau of Justice Statistics (“BJS”) calculations derived from the Byrne JAG statutory
11 formula. *See* 34 U.S.C. § 10156(d)(2)(A) (providing that the Attorney General “*shall* allocate to each
12 unit of local government” funds consistent with the established formula) (emphasis added).

13 19. The formula for state allocations is a function of population and violent crime. *See id.*
14 § 10156(a). For local governments, the allocation is based on the state’s allocation and the ratio of
15 violent crime in the locality to violent crime in the state. *See id.* § 10156(d). For example, in FY
16 2018, California’s total allocation is \$28.9 million. Of this, \$17.4 million (60 percent) is allocated to
17 the State (*see id.* § 10156(b)-(d))—but a minimum of 62.9 percent of these funds must be passed
18 through to local jurisdictions.¹ The other \$11.6 million (40 percent) is allocated for direct grants to
19 local jurisdictions. *See id.* § 10156(b)-(d).

20 20. Congress imposed only a limited number of requirements on Byrne JAG applicants.

21 21. First, Congress has required applicants to supply information about their intended use
22 of grant funding, to demonstrate that they will spend the money on programs supporting one of the
23 eight statutory purpose areas. *See* 34 U.S.C. § 10153(a)(2) & (a)(5)(A)-(C). Those purpose areas are:
24 (1) law enforcement, (2) prosecution and courts, (3) prevention and education, (4) corrections and
25

26 ¹ U.S. Dep’t of Justice, *Edward Byrne Memorial Justice Assistance Grant (JAG) Program*
27 *Frequently Asked Questions (FAQs)—Updated August 2017*, at 2,
28 <https://www.bja.gov/Funding/JAGFAQ.pdf>; *see also* U.S. Dep’t of Justice, *FY 2014 Justice Assistance*
Grant (JAG) Program Variable Pass-through (VPT) Percentages,
<https://www.bja.gov/Funding/JAGvpt.pdf>.

1 community corrections, (5) drug treatment, (6) planning, evaluation, and technology improvement, (7)
2 crime victim and witness programs, and (8) mental health programs, including behavioral programs
3 and crisis intervention. 34 U.S.C. § 10152(a)(1)(A)-(H). None of these program purposes include
4 federal immigration enforcement.

5 22. Second, Congress requires applicants to maintain and be prepared to report information
6 demonstrating that they possess programmatic and financial integrity. *Id.* § 10153(a)(4).

7 23. Finally, Congress requires applicants to “certif[y]” that they “will comply with all
8 provisions of this part and all other applicable Federal laws.” *Id.* § 10153(a)(5)(D).

9 24. Not one of these requirements relates to immigration. Indeed, over a decade ago,
10 Congress removed the only requirement in the Byrne JAG statute that touched on immigration-related
11 issues. In 2006, Congress specifically eliminated a funding requirement that recipients make “[a]n
12 assurance that the State has established a plan under which the State will provide without fee to the
13 Immigration and Naturalization Service, within 30 days of the date of their conviction, notice of
14 conviction of aliens who have been convicted of violating the criminal laws of the State and under
15 which the State will provide the Service with the certified record of such a conviction within 30 days
16 of the date of a request by the Service for such record.” 42 U.S.C. § 3753(a)(11) (2002).

17 25. Given the limited discretion Congress has bestowed upon DOJ under the Byrne JAG
18 statute for these formula grants, the Attorney General has no authority to withhold or reduce federal
19 grant funding that a state or local government is entitled to receive. DOJ officials acknowledged as
20 much in the recent past, when then-Assistant Attorney General Peter Kadzik wrote a letter to Senator
21 Richard Shelby regarding the Senator’s request that DOJ tie federal grant funding to federal
22 immigration priorities. Kadzik stated that DOJ could not do so because “many Department grant
23 funds are formula based” such that “the Department does not have the discretion to suspend funding at
24 all.”²

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26
27
28 ² Defs’ Administrative Record, *City and County of San Francisco v. Sessions*, No. 3:17-cv-4642-WHO (“*San Francisco v. Sessions*”) (N.D. Cal. Mar. 23, 2018), ECF No. 84-2 at AR00113.

1 **B. San Francisco Uses Byrne JAG Funding To Support Important City Programs.**

2 26. The San Francisco Department of Children, Youth and Their Families (“DCYF”)
3 applies for local Byrne JAG funds and state pass-through funds on behalf of the City. DCYF keeps a
4 portion of the grant and also administers grant funds to the following departments: the Adult Probation
5 Department, District Attorney, Public Defender, Police Department, and Sheriff. DCYF also passes
6 through funds from the local grant to the San Francisco Superior Court and a third-party evaluator.

7 27. Before FY 2017, San Francisco received state and local Byrne JAG funds every year
8 for well over a decade.

9 28. San Francisco submitted its FY 2017 Byrne JAG application on September 5, 2017, but
10 OJP has not yet taken action on it.³

11 29. San Francisco submitted its FY 2018 Byrne JAG application on August 21, 2018, but
12 OJP has not yet taken action on it.⁴

13 30. For FY 2018, San Francisco is entitled to a direct Byrne JAG formula grant of
14 \$489,966. San Francisco also expects to receive a state pass-through of Byrne JAG funds in the
15 amount of \$941,915.

16 31. Consistent with the Byrne JAG statute, San Francisco uses its Byrne JAG funds to
17 support critical law enforcement programs designed to reduce criminal behavior and improve public
18 safety. Specific programs funded with this grant include: (1) Law Enforcement Assisted Diversion, an
19 innovative approach that seeks to accomplish the goals of reduced criminal behavior and improved
20 public safety by connecting appropriate low-level drug offenders with services; (2) Focused Drug
21 Deterrence, short and long term proactive activities including targeted investigations and enforcement
22 and social network analysis to increase the identification of individuals involved in high-level drug
23 markets; (3) Drug Court Prosecution, which seeks to connect criminal defendants who suffer from a

24 ³ DOJ has, on information and belief, awarded FY 2017 Byrne JAG grants to hundreds of other
25 jurisdictions—“jurisdictions that share the Department’s commitment to keeping criminal aliens off
26 our streets and our law abiding citizens safe.” Press Release, U.S. Dep’t of Justice, *DOJ Releases
27 FY17 JAG Funding* (June 27, 2018), [https://content.govdelivery.com/accounts/USDOJOJP/bulletins/
28 1fa6e57](https://content.govdelivery.com/accounts/USDOJOJP/bulletins/1fa6e57). Now that this Court has declared the FY 2107 grant conditions unconstitutional, DOJ has
represented that San Francisco will receive its award soon.

⁴ DOJ has, on information and belief, awarded FY 2018 Byrne JAG grants to hundreds of other
jurisdictions. *See* ¶ 56, *infra*.

1 substantial substance abuse problem to treatment services in the community in order to enhance public
2 safety, reduce recidivism, and find appropriate dispositions to the criminal charges; (4) Targeted Drug
3 Treatment for Underserved Populations, a treatment intervention conducted by the Sheriff's
4 Department for individuals in custody; (5) Intensive Probation Supervision, a targeted caseload of
5 probationers with substance abuse and/or mental health issues; (6) Reentry Social Work through the
6 Public Defender's Office, which provides legal and wraparound support to help indigent clients
7 charged with felony drug cases and other felony offenses successfully exit the criminal justice system;
8 and (7) Citywide Justice-Involved Youth Planning, which examines current criminal justice trends
9 impacting youth and young adults and strengthens partnerships and collaboration at various levels to
10 create a continuum of support for youth and young adults.

11 32. San Francisco uses Byrne JAG pass-through funds to support a Young Adult Court
12 aimed at reducing recidivism for youth ages 18-25. This Court was designed in response to a growing
13 body of neuroscience research showing that young adults are fundamentally different from both
14 juveniles and older adults in how they process information and make decisions. Our traditional justice
15 system is not well-equipped to address cases involving these individuals, who are qualitatively
16 different in development, skills, and needs from both children and older adults. The Young Adult
17 Court fills this gap by providing case management and other support for eligible young adult offenders
18 from high-risk backgrounds.

19 33. These City programs span six departments, and a total of approximately ten full-time
20 equivalent positions for these programs are funded with Byrne JAG funds. Without local and state
21 Byrne JAG funds, San Francisco could be forced to reduce or eliminate these programs, including
22 eliminating staff positions, unless other funding sources could be identified.

23 **II. The Trump Administration Has Engaged In Ongoing Attempts To Coerce Sanctuary**
24 **Jurisdictions To Change Their Policies By Threatening To Withhold Federal Funding.**

25 34. President Trump's Administration has engaged in a longstanding campaign to
26 unlawfully withhold federal funding from so-called sanctuary jurisdictions. Despite the Byrne JAG
27 program being a formula grant—which means that Congress alone can decide who receives federal
28 funding, and how much—and in disregard of the important local purposes that Byrne JAG funding

1 serves, the Attorney General has furthered the Trump Administration’s effort by adding an ever-
 2 expanding set of immigration-related requirements to Byrne JAG funding. These requirements are
 3 designed to coerce state and local jurisdictions to participate in enforcing federal immigration law and
 4 abandon any state or local policies that limit or prohibit such participation. That is, the requirements
 5 aim to eradicate sanctuary cities, consistent with President Trump’s longstanding threats.

6 **A. President Trump First Attempted To Act By Executive Fiat.**

7 35. San Francisco is one of many jurisdictions across the country that has enacted sanctuary
 8 policies that seek to promote public safety locally and build trusting and supportive relationships with
 9 immigrant communities. Many jurisdictions believe—and studies have shown⁵—that communities are
 10 stronger, healthier, and safer when state and local employees decline to participate in the federal
 11 government’s responsibility to enforce federal immigration law.

12 36. Nevertheless, the Trump Administration has made it their mission to eradicate
 13 sanctuary cities. President Trump frequently promised to “defund” sanctuary cities, and to use the
 14 threat of withholding federal funds as “a weapon” to coerce local jurisdictions to change their
 15 policies.⁶ Shortly after President Trump took office, his press secretary confirmed that “[w]e are going
 16 to strip federal grant money from the sanctuary states and cities that harbor illegal immigrants. The
 17 American people are no longer going to have to be forced to subsidize this disregard for our laws.”⁷

18 37. The Attorney General echoed this position. Soon after taking office, the Attorney
 19 General suggested that he would use every means necessary to withhold federal funding from
 20 “sanctuary cities.”⁸ He has broadly described sanctuary city “policies” as those requiring local law

21 ⁵ See Tom K. Wong, *The Effects of Sanctuary Policies on Crime and the Economy*, Ctr. for
 22 Am. Progress (Jan. 26, 2017),
 23 [https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-
 sanctuary-policies-on-crime-and-the-economy/](https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy/) (concluding that crime rates in sanctuary counties are
 statistically significantly lower than crime rates in non-sanctuary counties).

24 ⁶ Alexander Mallin and Lissette Rodriguez, *Trump Threatens Defunding Sanctuary States as*
 25 *‘Weapon’*, ABC News (Feb. 5, 2017), [http://abcnews.go.com/Politics/trump-threatens-%20defunding-
 sanctuary-states-weapon/story?id=45286642](http://abcnews.go.com/Politics/trump-threatens-%20defunding-sanctuary-states-weapon/story?id=45286642).

26 ⁷ The White House, *1/25/17: White House Press Briefing*, YouTube (Jan. 25, 2017),
<https://www.youtube.com/watch?v=OaPriMVvtZA>.

27 ⁸ Press Release, U.S. Dep’t of Justice, *Attorney General Jeff Sessions Delivers Remarks on*
 28 *Sanctuary Jurisdictions* (Mar. 27, 2017), [https://www.justice.gov/opa/speech/attorney-general-jeff-
 sessions-delivers-remarks-sanctuary-jurisdictions](https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-sanctuary-jurisdictions).

1 enforcement officials to “refuse to cooperate with federal immigration authorities regarding illegal
2 aliens who commit crimes.”⁹

3 38. The Administration tried to carry through on these threats during President Trump’s
4 first week in office. President Trump issued Executive Order 13,768, which called for denying all
5 federal funding to sanctuary jurisdictions and further authorized the Attorney General to take
6 unspecified enforcement action against sanctuary cities.

7 39. The Administration touted the Executive Order as a means to achieving the President’s
8 goal of “ending sanctuary cities [T]he President has been very clear through his executive order
9 that federal funds, paid for by hardworking taxpayers, should not be used to help fund sanctuary
10 cities.”¹⁰ The Administration vowed that “the President is going to do everything he can within the
11 scope of the executive order to make sure that cities who don’t comply with it—counties and other
12 institutions that remain sanctuary cities don’t get federal government funding in compliance with the
13 executive order.”¹¹

14 40. The Administration’s efforts here were stopped by this Court, which permanently
15 enjoined Section 9(a) of the Executive Order for violating the Constitution. *Cty. of Santa Clara v.*
16 *Trump*, 275 F. Supp. 3d 1196 (N.D. Cal. 2017), *aff’d in part, vacated in part, remanded sub nom. City*
17 *and Cty. of San Francisco v. Trump*, 897 F.3d 1225 (9th Cir. 2018). The Court held, *inter alia*, that
18 the President—and in turn, the Attorney General and the Secretary of DHS—lacked the authority “to
19 place a new condition on federal funds . . . not authorized by Congress,” and thus had violated the
20 “fundamental constitutional structure” of the separation of powers. *Id.* at 1213. And the Court further
21 held that even if the executive branch could exercise that spending power, the Executive Order was
22

23 ⁹ Press Release, U.S. Dep’t of Justice, *Attorney General Jeff Sessions Delivers Remarks in Las*
24 *Vegas to Federal, State and Local Law Enforcement About Sanctuary Cities and Efforts to Combat*
Violent Crime (July 12, 2017), [https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-](https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-las-vegas-federal-state-and-local-law)
25 [delivers-remarks-las-vegas-federal-state-and-local-law](https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-las-vegas-federal-state-and-local-law).

26 ¹⁰ Press Release, The White House, Office of the Press Secretary, *Press Briefing by Press*
Secretary Sean Spicer, 2/1/2017, #6 (Feb. 1, 2017), [https://www.whitehouse.gov/briefings-](https://www.whitehouse.gov/briefings-statements/press-briefing-press-secretary-sean-spicer-020117/)
27 [statements/press-briefing-press-secretary-sean-spicer-020117/](https://www.whitehouse.gov/briefings-statements/press-briefing-press-secretary-sean-spicer-020117/).

28 ¹¹ Press Release, The White House, Office of the Press Secretary, *Press Briefing by Press*
Secretary Sean Spicer, 2/8/2017, #10 (Feb. 8, 2017), [https://www.whitehouse.gov/briefings-](https://www.whitehouse.gov/briefings-statements/press-briefing-press-secretary-sean-spicer-020817/)
[statements/press-briefing-press-secretary-sean-spicer-020817/](https://www.whitehouse.gov/briefings-statements/press-briefing-press-secretary-sean-spicer-020817/).

1 unconstitutional because it (1) used vague language that left localities unclear how to comply with the
2 funding conditions; (2) lacked any nexus between the funds at issue and immigration enforcement; and
3 (3) sought to compel local governments to “adopt certain policies” that they had determined, in their
4 considered judgment, to be unwise. *Id.* at 1214–16.

5 41. The Ninth Circuit Court of Appeals affirmed the merits of this Court’s order. *City and*
6 *County of San Francisco v. Trump*, 897 F.3d 1225 (9th Cir. 2018). The Ninth Circuit affirmed that
7 “[t]he Separation of Powers was an integral part of the Founders’ design.” *Id.* at 1232. And it found
8 that “the Administration ha[d] not even attempted to show that Congress authorized it to withdraw
9 federal grant moneys from jurisdictions that do not agree with the current Administration’s
10 immigration strategies.” *Id.* at 1234. The Ninth Circuit remanded the cases for additional factual
11 findings about the proper scope of relief. *Id.* at 1245.

12 **B. The Attorney General Unilaterally Imposes Immigration-Related Requirements**
13 **On The FY 2017 Byrne JAG Program.**

14 42. With its initially broad efforts to withhold federal funds to sanctuary cities put in check
15 by the courts, the Administration adopted a more targeted approach focusing on the Byrne JAG
16 program and similar grant programs that DOJ administers. As relevant here, the Attorney General
17 unilaterally imposed three new immigration-related requirements on the 2017 Byrne JAG awards—
18 requirements designed to coerce Byrne JAG recipients into enforcing federal immigration law.

19 43. **First**, the FY 2017 Byrne JAG Local Solicitation provided that OJP would require
20 grant applicants to “provide at least 48 hours’ advance notice to DHS regarding the scheduled release
21 date and time of an alien in the jurisdiction’s custody when DHS requests such notice in order to take
22 custody of the alien under the Immigration and Nationality Act.” FY 2017 Local Solicitation at 30
23 (attached as Exh. 1).

24 44. In the FY 2017 award documents that DOJ eventually issued, DOJ expanded on this
25 requirement (the “FY 2017 Notice Requirement”), explaining that:

26 A State statute, or a State rule, -regulation, -policy, or -practice, must be in place that is
27 designed to ensure that, when a State (or State-contracted) correctional facility receives
28 from DHS a formal written request authorized by the Immigration and Nationality Act
that seeks advance notice of the scheduled release date and time for a particular alien in

1 such facility, then such facility will honor such request and—as early as practicable
(see para. 4.B. of this condition)—provide the requested notice to DHS.

2 Decl. of Alan R. Hanson at ¶¶ 5-6 & Exh. B at 18, *San Francisco v. Sessions*, ECF No. 46-1 (“Hanson
3 Decl.”).

4 45. **Second**, the FY 2017 Local Solicitation provided that OJP would require grant
5 applicants to “permit personnel of the U.S. Department of Homeland Security (DHS) to access any
6 correctional or detention facility in order to meet with an alien (or an individual believed to be an
7 alien) and inquire as to his or her right to be or remain in the United States.” FY 2017 Local
8 Solicitation at 30 (attached as Exh. 1).

9 46. In the FY 2017 award documents, DOJ described this requirement regarding access to
10 correctional facilities (the “FY 2017 Access Requirement”) as requiring that:

11 A State statute, or a State rule, -regulation, -policy, or -practice, must be in
12 place that is designed to ensure that agents of the United States acting under
13 color of federal law in fact are given to access any State (or State-
14 contracted) correctional facility for the purpose of permitting such agents to
meet with individuals who are (or are believed by such agents to be) aliens
and to inquire as to such individuals’ right to be or remain in the United
States.

15 Hanson Decl. at ¶¶ 5-6 & Exh. B at 18.

16 47. **Third**, DOJ stated that it would require jurisdictions to certify their compliance with
17 8 U.S.C. Section 1373, which provides that a “local government entity or official may not prohibit, or
18 in any way restrict, any government entity or official from sending to, or receiving from, [federal
19 immigration officials] information regarding the citizenship or immigration status . . . of any
20 individual.” 8 U.S.C. § 1373(a). Although DOJ’s move toward requiring jurisdictions to certify
21 compliance with this section had been in progress since 2016, it was not until the FY 2017 Byrne JAG
22 application that DOJ expressly applied this requirement (the “FY 2017 Section 1373 Requirement”) to
23 all jurisdictions.

24 48. Critically, since the Trump Administration has come into office, DOJ has declared that
25 it interprets Section 1373 much more broadly than local jurisdictions like San Francisco could have
26 previously imagined—specifically, that it reads “information regarding the citizenship or immigration
27 status” to include all information that would assist federal immigration authorities to determine a
28

1 person's immigration status and take that individual into custody, if appropriate.¹² (The FY 2017
2 Section 1373 Requirement, FY 2017 Notice Requirement, and FY 2017 Access Requirements are
3 referred to collectively as the "FY 2017 Requirements.")

4 49. DOJ claimed that two different general statutory provisions gave the Attorney General
5 the authority to impose these FY 2017 Requirements on Byrne JAG recipients. DOJ claimed that 34
6 U.S.C. § 10153(a)(5)(D), which requires Byrne JAG grant recipients to certify that they "will comply
7 with all provisions of this part and all other applicable Federal laws" (*see* ¶ 23, *supra*), allowed the
8 Attorney General to require that grant recipients comply with Section 1373. Defs.' Mot. for Summ. J.
9 at 17-18, *San Francisco v. Sessions*, ECF No. 113.

10 50. DOJ took a different approach with respect to the FY 2017 Notice and Access
11 Requirements. DOJ did not argue that either Requirement stemmed from an existing statutory
12 obligation, and thus did not assert that Section 10153(a)(5)(D)'s "all applicable laws" language
13 allowed the Attorney General to impose them. Instead, DOJ relied on a different statutory provision,
14 34 U.S.C. § 10102(a)(6)—which allows the Assistant Attorney General overseeing OJP to "exercise
15 such other powers and functions as may be vested in [him or her] pursuant to this chapter or by
16 delegation of the Attorney General, including placing special conditions on all grants, and determining
17 priority purposes for formula grants." *See* Defs.' Mot. for Summ. J. at 9-14, *San Francisco v.*
18 *Sessions*, ECF No. 113. DOJ asserted that the FY 2017 Notice and Access Requirements were special
19 conditions covered by this provision.

20 51. The new FY 2017 Requirements elicited a wave of legal challenges, and several courts,
21 including this Court, have already struck them down. Indeed, to date all the federal courts that have
22 considered those requirements have found them unlawful. *See City and Cty. of San Francisco v.*
23 *Sessions*, No. 17-CV-04642-WHO, 2018 WL 4859528 (N.D. Cal. Oct. 5, 2018); *City of Chicago v.*
24 *Sessions*, 888 F.3d 272, 276 (7th Cir. 2018) (invalidating FY 2017 Notice and Access Requirements);
25 *see also City of Philadelphia v. Sessions*, 309 F. Supp. 3d 289, 321 (E.D. Pa. 2018) (striking down all
26

27 ¹² Defs.' Mot. for Summ. J. at 26, *San Francisco v. Sessions*, ECF No. 113 (asserting that
28 Section 1373 "reach[es] the types of information critical in applying the 'immigration laws,' including
the 'removal of aliens.'")

1 three FY 2017 Requirements); *City of Chicago v. Sessions*, 321 F. Supp. 855, 874 (N.D. Ill. 2018)
2 (striking down all three FY 2017 Requirements).

3 **III. The Attorney General Imposes New Requirements On FY 2018 Byrne JAG Recipients.**

4 52. Now that its previous efforts to withhold federal grant funds have been held unlawful
5 by courts around the country, President Trump's Administration is trying another approach to turn the
6 Byrne JAG program into a weapon against sanctuary jurisdictions.

7 53. On July 20, 2018, DOJ posted the State and Local Solicitations for the FY 2018 Byrne
8 JAG grants, in which it announced that it would impose a number of immigration-related requirements
9 on jurisdictions seeking 2018 Byrne JAG funding.¹³

10 54. Some of the new requirements set forth in the 2018 Solicitation were little more than a
11 dressed up version of the Administration's earlier efforts: The 2018 Local Solicitation includes a
12 Section 1373 Requirement that is virtually indistinguishable from the FY 2017 version—even though
13 that Certification has now been held invalid by multiple courts. *See* ¶ 51, *supra*. And it includes
14 repackaged efforts to require jurisdictions to provide notice of an inmate's release and access to
15 correctional facilities when immigration officials request it—requirements that DOJ now attempts to
16 tie to a statutory obligation, despite its inability to do so over the previous year of litigation regarding
17 the FY 2017 Notice and Access Requirements.

18 55. But other new requirements in the 2018 Solicitation went much further. DOJ added
19 several new requirements that imply that sanctuary jurisdictions interfere with various federal laws and
20 regulations—even though those laws and regulations impose *no obligations whatsoever* on states and

21 ¹³ DOJ has also announced that it will impose similar grant requirements on a number of other
22 public safety grants, including (1) Supporting Innovation: Field-Initiated Programs to Improve Officer
23 and Public Safety; (2) Justice Accountability Initiative: Pilot Projects Using Data-driven Systems to
24 Reduce Crime; (3) Gang Suppression Planning: Build Capacity for a Multilateral Data-Driven
25 Strategy to Promote Public Safety; and (4) A Law Enforcement and Prosecutorial Approach To
26 Address Gang Recruitment of Unaccompanied Alien Children program. Press Release, U.S. Dep't of
27 Justice, *Department of Justice Announces New Immigration Compliance Requirements for FY 2018*
28 *Grants* (June 28, 2018), <https://www.justice.gov/opa/pr/department-justice-announces-new-immigration-compliance-requirements-fy-2018-grants>. In addition to imposing these requirements, DOJ has also stated that it will “allow for preferential consideration of a grant application where the applicant plans to use immigration-cooperation tactics to address public safety in their jurisdiction.” *Id.* In the course of announcing those new requirements, the Attorney General stated that they are designed to “encourage these ‘sanctuary’ jurisdictions to change their policies that undermine public safety.” *Id.*

1 local jurisdictions. And they further suggest that sanctuary jurisdictions may violate federal criminal
 2 laws simply by having laws that limit entanglement with federal immigration policies. This is a
 3 considerable escalation in the Trump Administration’s threats against sanctuary jurisdictions.

4 56. In October 2018, DOJ sent award documents (“Grant Award Documents”) to several
 5 hundred jurisdictions—not including San Francisco—whose Byrne JAG grant applications had been
 6 approved.¹⁴ For example, New Jersey received award documents, which are attached hereto as
 7 Exhibit 3. The Grant Award Documents contain several immigration-related “Special Conditions.”

8 57. Some of the Special Conditions restate the requirements anticipated by the 2018
 9 Solicitations and described above; for instance, the Award Documents include the same Section 1373
 10 Requirement. Others, however, deviate from the requirements as described previously. *See, e.g.,*
 11 ¶¶ 91-95, *infra*.

12 58. Each of the Immigration-Related FY 2018 Requirements is unlawful because DOJ
 13 lacks the statutory authority to impose it. And even if DOJ had that authority, constitutional limits
 14 would still prevent it from requiring compliance with these particular conditions.

15 **A. The FY 2018 Section 1373 Requirement**

16 59. Although multiple courts have found the FY 2017 Section 1373 Requirement invalid,
 17 DOJ is attempting to impose a virtually identical requirement on 2018 Byrne JAG funds.¹⁵ *See* FY
 18 2018 Local Solicitation at 36 (attached as Exh. 2); FY 2018 Grant Award Documents at 12-14
 19 (attached as Exh. 3).

22 ¹⁴ *See* Office of Justice Programs, *Awards Made for ‘BJA FY 18 Edward Byrne Memorial*
 23 *Justice Assistance Grant (JAG) Program – Local Solicitation,*
 24 [https://external.ojp.usdoj.gov/selector/title?](https://external.ojp.usdoj.gov/selector/title?solicitationTitle=BJA%20FY%2018%20Edward%20Byrne%20Memorial%20Justice%20Assistance%20Grant%20(JAG)%20Program%20-%20Local%20Solicitation&po=BJA)
 solicitationTitle=BJA%20FY%2018%20Edward%20Byrne%20Memorial%20Justice%20Assistance%
 20Grant%20(JAG)%20Program%20-%20Local%20Solicitation&po=BJA (last visited Nov. 1, 2018).

25 ¹⁵ The FY 2018 Section 1373 Requirement differs from the FY 2017 version in only two ways.
 26 First, the FY 2018 Section 1373 Requirement also requires that Byrne JAG recipients certify that they
 27 do not violate 8 U.S.C. § 1644 (“Section 1644”), which imposes identical obligations to those that
 28 Section 1373 itself mandates. FY 2018 Local Solicitation at 36 (attached as Exh. 2); *see also id.* at 42
 (attached as Exh. 2). Second, the FY 2018 Section 1373 Requirement demands that jurisdictions
 seeking to accept a FY 2018 Byrne JAG award provide OJP with “[i]nformation regarding
 Communications with the Department of Homeland Security (DHS) and/or Immigration and Customs
 Enforcement (ICE).” *Id.* at 27 (attached as Exh. 2).

1 60. As it did for FY 2017, DOJ is requiring San Francisco to certify that, as to the “program
2 or activity” funded with Byrne JAG dollars, San Francisco does not have in effect, purport to have in
3 effect, or is subject to or bound by “any prohibition or any restriction . . . that deals with either (1) a
4 government entity or –official sending or receiving information regarding citizenship or immigration
5 status as described in 8 U.S.C. §§ 1373(a) and 1644; or (2) a government entity or agency sending to,
6 requesting or receiving from, maintaining, or exchanging information of the types (and with respect to
7 the entities) described in 8 U.S.C. § 1373(b).” FY 2018 Local Solicitation at 43 (attached as Exh. 2);
8 FY 2018 Grant Award Documents at 12-14 (attached as Exh. 3); *see also* FY 2017 Local Solicitation
9 at 38 (attached as Exh. 1).

10 61. Although a FY 2018 Byrne JAG applicant is not required to execute the Section 1373
11 Certification to *apply* for a FY 2018 Byrne JAG award, OJP has stated that an applicant will be unable
12 to *accept* an award until the certification is completed by the grant recipient and received by OJP. FY
13 2018 Local Solicitation at 27 (emphasis added) (attached as Exh. 2).

14 62. The Grant Award Documents confirm that prospective grant recipients must submit the
15 required certification of compliance with 8 U.S.C. 1373, executed by the Chief Legal Officer of the
16 State or local jurisdiction, in order to make a valid acceptance of the grant. *See* FY 2018 Grant Award
17 Documents at 12 (attached as Exh. 3).

18 63. This Court has already held that DOJ lacks the authority to impose the Section 1373
19 Requirement on Byrne JAG recipients. *See City and Cty. of San Francisco v. Sessions*, No. 17-CV-
20 04642-WHO, 2018 WL 4859528 (N.D. Cal. Oct. 5, 2018). The Court enjoined DOJ from “[u]sing the
21 Section 1373 certification condition, and the access and notice conditions (“Challenged Conditions”)
22 as funding restrictions for any Byrne JAG awards.” Judgment and Order, *City and Cty of San*
23 *Francisco v. Sessions*, No. 17-cv-04642-WHO (C.D. Cal. Oct. 5, 2018), ECF No. 146.

24 64. Imposing the Section 1373 Requirement on San Francisco in connection with the FY
25 2018 Byrne JAG grant violates this Court’s order.

26 65. Moreover, the Section 1373 Requirement is invalid for several reasons.

27 66. As an initial matter, Section 1373 is unconstitutional on its face.

28

1 67. And even if the provision were constitutional, nothing in the Byrne JAG statute—or
2 any other federal law—gives the Attorney General the authority to impose this condition on the Byrne
3 JAG grant.

4 68. The Section 1373 Requirement also violates the Spending Clause because (a) it is
5 ambiguous as to what jurisdictions must do to be in compliance, and (b) it is not germane to the
6 purposes of the Byrne JAG program.

7 **B. The Notice Requirement**

8 69. OJP also stated in the Local Solicitation that it will require Byrne JAG recipients to
9 make certifications related to a host of other federal laws contained in the Immigration and Nationality
10 Act. Specifically, Byrne JAG applicants' Chief Legal Officer will have to execute a document called
11 "State or Local Government: FY 2018 Certification Relating to 8 U.S.C. §§ 1226(a) & (c), 1231(a),
12 1324(a), 1357(a), & 1366(1) & (3)" (hereafter, "Immigration-Related Certification").

13 70. The Grant Award Documents do not specifically reference the Immigration-Related
14 Certification; however, the Immigration-Related Certification is still listed on OJP's website as one of
15 the "required certifications from applicant to the FY 2018 Byrne JAG Local program." *See*
16 <https://ojp.gov/funding/Explore/SampleCertifications-8USC1373.htm> (last visited Nov. 1, 2018). As
17 of the date of this filing, the document was most recently revised on October 25, 2018. A copy of the
18 October 25 version is attached as Exhibit 4. According to the Local Solicitation, an "applicant will be
19 unable to make a valid award acceptance" until the certification is completed and "received by OJP on
20 or before the day the unit of local government submits an executed award document." FY 2018 Local
21 Solicitation at 27 (emphasis omitted) (attached as Exh. 2).

22 71. Among other things, the Immigration-Related Certification requires the Chief Legal
23 Officer—in San Francisco's case, City Attorney Dennis J. Herrera—to certify that San Francisco has
24 no policies or practices that would or do impede federal officers' exercise of authority relating to 8
25 U.S.C. Sections 1226, 1231, or 1366. *See* Immigration-Related Certification (attached as Exh. 4).
26 Specifically, City Attorney Herrera has to certify:

27 a. that he has conducted a "careful[] review[]" of Sections 1226(a) & (c), 1231(a),
28 and 1366(1) & (3);

1 b. that he has conducted (or caused to be conducted) a diligent inquiry and review
2 of “the ‘program or activity’ to be funded (in whole or in part) with the federal financial assistance
3 sought by the applicant entity under this FY 2018 OJP Program” as well as “any laws, rules, policies,
4 or practices . . . that implicate any of the requirements related to” these sections; and

5 c. that, as to the “program or activity” funded with Byrne JAG dollars, San
6 Francisco does not have in effect or purport to have in effect, and is not subject to or bound by, “any
7 law, rule, policy, or practice . . . that would or does . . . impede the exercise by federal officers of
8 authority relating to 8 U.S.C. § 1226(a) or (c), 8 U.S.C. § 1231(a), or 8 U.S.C. 1366(1) or (3).” *See id.*

9 72. In the body of the FY 2018 Local Solicitation, OJP has given one example of conduct
10 that it believes “impedes” federal officials’ exercise of their duties under these provisions. OJP states
11 that grant recipients will be required to not “impede” the exercise of the authority of the federal
12 government under Section 1226 “*specifically by requiring such recipients to provide (where feasible)*
13 *at least 48 hours’ advance notice to DHS regarding the scheduled release date and time of an alien in*
14 *the recipient’s custody* when DHS requests such notice in order to take custody of the alien pursuant to
15 the Immigration and Nationality Act.” FY 2018 Local Solicitation at 36-37 (emphasis added)
16 (attached as Exh. 2).

17 73. The Grant Award Documents also incorporate this concept in an enumerated special
18 condition. Special Condition 46 (“Noninterference . . . with federal law enforcement: Notice of
19 scheduled release”) requires grant recipients to agree that “[c]onsonant with” Sections 1226, 1231, and
20 1366, the recipient will provide “advance notice to DHS of the scheduled release date and time” for an
21 immigrant “as early as practicable.” FY 2018 Grant Award Documents at 17 (attached as Exh. 3).

22 74. Failure to comply with this special condition is considered a violation of the terms of
23 the Byrne JAG grant and may result in the termination of the award or other legal action. *Id.* at 2.

24 75. This requirement (the “FY 2018 Notice Requirement”) is thus nothing more than a
25 repackaged version of the FY 2017 Notice Requirement, which DOJ now for the first time attempts to
26 connect to statutory provisions. But these provisions impose no such requirement.

27 76. Section 1231 provides that “when an alien is ordered removed, the Attorney
28 General shall remove the alien from the United States within a period of 90 days” and that if the alien

1 is “detained or confined,” the removal period begins on “the date the alien is released from . . .
2 confinement.” 8 U.S.C. § 1231(a).

3 77. Section 1226 authorizes arresting and detaining certain undocumented immigrants, and
4 provides that the federal government “shall take into custody” certain criminal aliens “when the alien
5 is released, without regard to whether the alien is released on parole, supervised release, or
6 probation” 8 U.S.C. § 1226(a) & (c)(1).

7 78. Section 1366 requires the Attorney General to submit an annual report to the House and
8 Senate Judiciary Committees detailing (1) “the number of illegal aliens incarcerated in Federal and
9 State prisons for having committed felonies,” and (2) the “programs and plans underway in the
10 Department of Justice to ensure the prompt removal from the United States of criminal aliens subject
11 to removal.” 8 U.S.C. § 1366(1) & (3).

12 79. By their own terms, these sections’ terms apply solely to the federal government—
13 indeed, solely to the Attorney General himself. They do not impose *any obligations whatsoever* on
14 local governments.

15 80. Nonetheless, OJP is attempting to use these sections as a hook to require state and local
16 jurisdictions to provide notice to DHS regarding the scheduled release date and time of an alien in the
17 jurisdiction’s custody.

18 81. This attempt violates the separation of powers because DOJ lacks the authority to
19 impose the FY 2018 Notice Requirement on Byrne JAG recipients. Nothing in the Byrne JAG
20 statute—or any other federal law—gives the Attorney General the authority to impose this condition.

21 82. Furthermore, the FY 2018 Notice Requirement violates the Spending Clause because:
22 a. it is ambiguous as to what jurisdictions must do to be in compliance [*e.g.*, San
23 Francisco has no way to know whether OJP might consider other practices to “impede” federal
24 officials in performing their duties under Sections 1226, 1231, and 1366)]; and

25 b. it is not germane to the purposes of the Byrne JAG program [the FY 2018
26 Notice Requirement and the referenced US code provisions are federal civil immigration requirements
27 that have nothing to do with local criminal justice, or with any of the other purposes of the Byrne JAG
28 program].

1 **C. The Access Requirement**

2 83. The Immigration-Related Certification also requires Byrne JAG recipients to make
3 assurances “relating to” 8 U.S.C. § 1357(a). It requires the Chief Legal Officer to certify that San
4 Francisco has no policies or practices that would or do impede federal officers’ exercise of authority
5 relating to Section 1357. *See* Immigration-Related Certification (attached as Exh. 4). Specifically, the
6 City Attorney Herrera will have to certify:

- 7 a. that he has conducted a “careful[] review[]” of Section 1357(a);
8 b. that he has conducted (or caused to be conducted) a diligent inquiry and review
9 of “the ‘program or activity’ to be funded (in whole or in part) with the federal financial assistance
10 sought by the applicant entity under this FY 2018 OJP Program” as well as “any laws, rules, policies,
11 or practices . . . that implicate any of the requirements related to” Section 1357(a); and
12 c. that, as to the “program or activity” funded with Byrne JAG dollars, San
13 Francisco does not have in effect or purport to have in effect, and is not subject to or bound by, “any
14 law, rule, policy, or practice . . . that would or does . . . impede the exercise by federal officers of
15 authority under 8 U.S.C. § 1357(a).” *See id.*

16 84. Section 1357 provides, *inter alia*, that “[a]ny officer or employee of the [federal]
17 Service . . . shall have power without warrant . . . to interrogate any alien or person believed to be an
18 alien as to his right to be or to remain in the United States.” 8 U.S.C. § 1357(a)(1).

19 85. By its own terms, this section does not impose any obligations at all on local
20 governments. It applies solely to the federal government—specifically to federal immigration officers
21 and federal immigration employees. Nonetheless, OJP attempts to use it as a hook to require state and
22 local jurisdictions to permit personnel of the Department of Homeland Security to access correctional
23 facilities.

24 86. As reflected in the Local Solicitation, DOJ reads Section 1357 in conjunction with 8
25 C.F.R. § 287.5(a)(1)—which states that an immigration officer can exercise this interrogation power
26 “anywhere in or outside the United States”—to mean that immigration officials have a right to
27 interrogate anyone believed to be an alien any place and any time, without obtaining any form of
28 warrant. *See* FY 2018 Local Solicitation at 37 (attached as Exh. 2).

1 87. The Grant Award Documents also incorporate this concept in an enumerated special
2 condition. Special Condition 45 (“Noninterference . . . with federal law enforcement: Interrogation of
3 certain aliens”) requires grant recipients to agree that “[c]onsonant with” federal law, including
4 Section 1357 and 8 C.F.R. 287.5(a)(1), the recipient will not “imped[e] access to any State or local
5 government (or government-contracted) correctional facility by [federal] agents for the purpose of
6 ‘interrogat[ing] any alien or person believed to be an alien as to his [or her] right to be or to remain in
7 the Unites States.’” FY 2018 Grant Award Documents at 16 (attached as Exh. 3) (second and third
8 alterations in original).

9 88. This requirement (the “FY 2018 Access Requirement”) is nothing more than a
10 repackaged version of the FY 2017 Access Requirement, which DOJ now—for the first time—
11 attempts to connect directly to a statutory provision rather than to the general authority for “special
12 conditions.”

13 89. The FY 2018 Access Requirement violates the separation of powers because DOJ lacks
14 the authority to impose the FY 2018 Access Requirement on Byrne JAG recipients. Nothing in the
15 Byrne JAG statute—or any other federal law—gives the Attorney General the authority to impose this
16 condition.

17 90. Furthermore, the FY 2018 Access Requirement violates the Spending Clause because:

18 a. it is ambiguous as to what jurisdictions must do to be in compliance [*e.g.*, San
19 Francisco has no way to know whether OJP might consider other practices to “impede” federal
20 officials in performing their Section 1357 duties]; and

21 b. it is not germane to the purposes of the Byrne JAG program [the FY 2018
22 Access Requirement and Section 1357 are federal civil immigration requirements that have nothing to
23 do with local criminal justice, or with any of the other purposes of the Byrne JAG program].

24 **D. The Section 1324 Requirement**

25 91. The Local Solicitation indicated that DOJ was also imposing a new requirement on
26 grant recipients relating to 8 U.S.C. Section 1324. Section 1324 forbids any “person,” in “knowing or
27 in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in
28 violation of law,” to “conceal[], harbor[], or shield[] from detection or attempt[] to conceal, harbor, or

1 shield from detection, such alien in any such place, including any building or any means of
2 transportation” or to “engage in any conspiracy to commit any of the preceding acts, or . . . aid[] or
3 abet[] the commission of any of the preceding acts.” 8 U.S.C. § 1324(a).

4 92. The Local Solicitation stated that “generally speaking,” the award conditions would
5 require recipients to agree “[n]ot to violate, or aid or abet any violation of” Section 1324(a). FY 2018
6 Local Solicitation at 36 (attached as Exh. 2).

7 93. Similarly, the version of the Immigration-Related Certification attached to the Local
8 Solicitation would have required the recipient’s Chief Legal Officer to certify that, as to the “program
9 or activity” funded with Byrne JAG dollars, San Francisco does not have in effect or purport to have in
10 effect, and is not subject to or bound by, “any law, rule, policy, or practice . . . that would or does . . .
11 violate, or aid or abet any violation of, 8 U.S.C. § 1324(a).” *Id.* at 45.

12 94. In the Grant Award Documents, however, DOJ shifted focus. Special Condition 44
13 (“Noninterference . . . with federal law enforcement: No public disclosure of certain law enforcement
14 sensitive information”) states that “[c]onsistent with the purposes and objectives” of federal laws,
15 including Section 1324:

16 no public disclosure may be made of any federal law enforcement information
17 in a direct or indirect attempt to conceal, harbor, or shield from detection . . .
18 any alien who has come to, entered, or remains in the United States in violation
19 of 8 U.S.C. ch. 12 – without regard to whether such disclosure would constitute
20 (or could form a predicate for) a violation of [Section 1324].

21 Grant Award Documents at 15 (attached as Exh. 3).

22 95. Reflecting this change, the October 25, 2018 version of the Immigration-Related
23 Certification no longer contains a freestanding requirement of general compliance with Section 1324.
24 Rather, it requires City Attorney Herrera—as the Chief Legal Officer of San Francisco—to certify:

25 I (and also the applicant entity) understand that USDOJ will—by award
26 condition—require States and local governments . . . not to publicly disclose
27 federal law enforcement information in an attempt to conceal, harbor, or shield
28 certain individuals from detection, whether or not in violation of 8 U.S.C. §
1324(a) or other laws.

Immigration-Related Certification ¶ 3 (attached as Exh. 4).

1 96. DOJ lacks the statutory authority to impose this Requirement (the “Section 1324
2 Requirement”) on Byrne JAG recipients. Nothing in the Byrne JAG statute—nor any other federal
3 law—gives the Attorney General the authority to impose this condition.

4 97. Furthermore, the FY 2018 Access Requirement violates the Spending Clause because:

5 a. it is ambiguous as to what jurisdictions must do to be in compliance [*e.g.*, the
6 special condition states that disclosure of information may be a violation of the Requirement “*without*
7 *regard to* whether such disclosure would constitute (or could form a predicate for) a violation” of
8 Section 1324, but provides no guidance on what conduct that does not violate Section 1324 would
9 nonetheless constitute a violation of the Section 1324 Requirement];

10 b. it is not germane to the purposes of the Byrne JAG program [the Section 1324
11 Requirement is a federal civil immigration requirement that has nothing to do with local criminal
12 justice, or with any of the other purposes of the Byrne JAG program].

13 98. Collectively, this Complaint refers to the FY 2018 Section 1373 Requirement, the FY
14 2018 Notice Requirement, the FY 2018 Access Requirement, and the Section 1324 Requirement as the
15 “Challenged FY 2018 Requirements.”

16 **IV. San Francisco Faces Immediate Injury From The Challenged FY 2018 Byrne JAG**
17 **Requirements.**

18 **A. San Francisco Cannot Certify Compliance With The Challenged FY 2018 Byrne**
19 **JAG Requirements Without Changing Its Laws And Policies.**

20 99. San Francisco is unable to execute the Immigration-Related Certification.
21 San Francisco’s existing laws and policies prevent it from certifying that it complies with several of
22 the new requirements that DOJ has imposed. And as to others, the ambiguity regarding the meaning
23 and scope of the requirements creates significant uncertainty for San Francisco—uncertainty that
24 makes it impossible for San Francisco to execute the Immigration-Related Certification.¹⁶

25 ¹⁶ Based on this Court’s ruling that San Francisco’s current laws and policies comply with
26 Section 1373 (*see City and Cty. of San Francisco v. Sessions*, No. 17-CV-04642-WHO, 2018 WL
27 4859528, at *28-30 (N.D. Cal. Oct. 5, 2018)), San Francisco believes it *could* sign the Section 1373
28 certification. But it should not have to. San Francisco should not be forced to comply with an
unconstitutional grant requirement—much less an unconstitutional law. It should be able to change its
laws as it deems appropriate without concern that this will cause it to be deprived of important Byrne
JAG funds.

1 100. For example, the San Francisco Sheriff’s Department (“SFSD”) has policies regarding
 2 access to jails for ICE officials enforcing civil immigration laws. Specifically, the Sheriff’s
 3 Department policy prohibits Sheriff’s Department employees from providing ICE agency
 4 representatives, or any other individual conducting civil immigration enforcement, access to inmates
 5 in jail, access to SFSD computers, databases and logs, release dates and times for inmates, and home
 6 or work contact information.¹⁷

7 101. These policies make it difficult, if not impossible, for San Francisco to comply with the
 8 FY 2018 Access Requirement. *See* ¶¶ 83-86, *supra*.

9 102. Similarly, San Francisco has laws regarding City employees’ authority to provide
 10 advance notification of an individual in custody’s release date. Specifically, Chapter 12I of
 11 San Francisco’s Administrative Code—part of San Francisco’s Sanctuary City laws—prohibits San
 12 Francisco law enforcement officials from responding to a federal immigration officer’s request for
 13 advance notification of the date and time an individual in San Francisco’s custody is being released,
 14 unless the individual in custody meets certain criteria. *See* S.F. Admin. Code § 12I.3(c)-(d).¹⁸

15 103. This law makes it difficult, if not impossible, for San Francisco to comply with the FY
 16 2018 Notice Requirement. *See* ¶¶ 69-73, *supra*.

17
 18
 19
 20
 21 _____
¹⁷ ICE requests for assistance with criminal investigations are directed to the Sheriff, who
 directs any assistance to ICE agents as she deems appropriate.

22 ¹⁸ These laws serve important public purposes, as the legislative findings set forth in Chapter
 12I confirm. The Board of Supervisors has declared:

23 Fostering a relationship of trust, respect, and open communication between City
 24 employees and City residents is essential to the City’s core mission of ensuring
 25 public health, safety, and welfare, and serving the needs of everyone in the
 26 community, including immigrants. The purpose of this Chapter 12I, as well as
 27 of Administrative Code Chapter 12H, is to foster respect and trust between law
 enforcement and residents, to protect limited local resources, to encourage
 cooperation between residents and City officials, including especially law
 enforcement and public health officers and employees, and to ensure
 community security, and due process for all.

28 *See* Section 12I.1.

1 **B. The Challenged FY 2018 Requirements Put San Francisco To An Unconstitutional**
2 **Choice.**

3 104. The Challenged FY 2018 Requirements create an untenable choice for San Francisco,
4 when it is faced with the decision whether to accept the FY 2018 Byrne JAG award. San Francisco
5 must choose between amending its laws and policies to allow it to execute the Immigration-Related
6 Certification, or forgoing hundreds of thousands of dollars in important criminal justice funding.

7 105. As described above, San Francisco cannot sign the Immigration-Related Certification in
8 light of various ambiguities and potential conflicts with San Francisco's laws and policies. If San
9 Francisco maintains those laws and policies and declines to execute the Immigration-Related
10 Certification, it will have to forgo direct FY 2018 Byrne JAG funding. This is because recipients are
11 required to certify that they comply with all applicable award conditions and execute all necessary
12 certifications in order to accept a FY 2018 Byrne JAG award.¹⁹

13 106. San Francisco will also have to forgo the pass-through grant it expects to receive from
14 the State of California.

15 107. On information and belief, the State of California has applied for FY 2018 Byrne JAG
16 funds. Once the State of California receives Byrne JAG funds, it issues a request for proposals
17 ("RFP") for local jurisdictions to apply for pass-through funds. San Francisco has applied for, and
18 received, pass-through Byrne JAG funds in the past pursuant to this RFP process. But to receive pass-
19 through Byrne JAG funds, San Francisco would be required to submit assurances that it will comply
20 with all award requirements.

21 108. The loss of this funding will have significant negative impacts on San Francisco. The
22 variety of programs that Byrne JAG funding supports will be placed in jeopardy. San Francisco could
23 be forced to reduce or eliminate these programs, and the staff positions they support, unless additional
24 funding sources could be identified.

25
26
27 ¹⁹ When it submitted its application for FY 2018 Byrne JAG funding, San Francisco included a
28 reservation of rights regarding the Challenged FY 2018 Requirements. San Francisco made clear that
it was not certifying that it would comply with the Challenged FY 2018 Requirements, and stated that
it was planning to challenge those requirements in litigation.

1 109. Alternatively, San Francisco could change its local laws and policies to attempt to
2 comply with the Challenged FY 2018 Requirements—a difficult endeavor given the significant
3 ambiguities about the scope and meaning of many of those Requirements.

4 110. More significantly, changing its local laws and policies would also harm San Francisco
5 by forcing it to abandon its considered and constitutionally protected policy judgments.
6 San Francisco’s Sanctuary City laws and policies reflect lawmakers’ considered judgment that public
7 safety, public health, and community cohesion are best served by limiting local employees’
8 entanglement with federal immigration priorities to the extent possible under federal law. By
9 threatening to withhold funds, DOJ seeks to intrude on San Francisco’s sovereign authority to make
10 such policy choices.

11 **COUNT ONE: SEPARATION OF POWERS**

12 **THE CHALLENGED FY 2018 CONDITIONS VIOLATE SEPARATION OF POWERS**

13 111. Plaintiff repeats and incorporates by reference each allegation of the prior paragraphs as
14 if fully set forth herein.

15 112. In July 2018, Defendants issued a solicitation seeking applications for the FY 2018
16 Byrne JAG program.

17 113. San Francisco has applied for the FY 2018 Byrne JAG program.

18 114. In October 2018, Defendants sent grant award documents to several hundred
19 jurisdictions, which include several immigration-related special conditions.

20 115. The Constitution vests Congress with legislative powers, *see* U.S. Const. art. 1, § 1, and
21 the spending power, *see* U.S. Const. art. 1, § 8, cl. 1. Absent a statutory provision or an express
22 delegation, only Congress is entitled to attach conditions to federal funds.

23 116. Congress has not enacted the Challenged FY 2018 Requirements as part of any
24 statutory scheme.

25 117. Congress has not enacted the Challenged FY 2018 Requirements as applicable to Byrne
26 JAG funds.

27 118. Congress has not delegated to Defendants the authority to impose the Challenged FY
28 2018 Requirements on Byrne JAG funds.

1 119. Defendants are unilaterally imposing the Challenged FY 2018 Requirements without
2 authorization from Congress.

3 120. For these reasons, DOJ in imposing the Challenged FY 2018 Requirements
4 unconstitutionally intrudes upon and usurps powers that belong to Congress, violating principles of
5 separation of powers.

6 **COUNT TWO: SPENDING CLAUSE**

7 **THE CHALLENGED FY 2018 CONDITIONS VIOLATE THE SPENDING CLAUSE**

8 121. Plaintiff repeats and incorporates by reference each allegation of the prior paragraphs as
9 if fully set forth herein.

10 122. As described above, the Challenged FY 2018 Requirements violate separation of
11 powers principles because they are not authorized by Congress, expressly or impliedly.

12 123. Even if Congress had delegated its authority to impose conditions on Byrne JAG funds,
13 the Challenged FY 2018 Requirements would violate the Spending Clause by:

14 a. imposing conditions that are ambiguous, *see Pennhurst State Sch. & Hosp. v.*
15 *Halderman*, 451 U.S. 1, 17 (1981) (“The legitimacy of Congress’ power to legislate under the
16 spending power . . . rests on whether the State voluntarily and knowingly accepts [Congress’
17 conditions]... There can, of course, be no knowing acceptance if a State is unaware of the conditions
18 or is unable to ascertain what is expected of it... [I]f Congress intends to impose a condition on the
19 grant of federal moneys, it must do so unambiguously.”) (citations omitted); and

20 b. imposing conditions that are not germane to the stated purposes of the Byrne
21 JAG funds, *see South Dakota v. Dole*, 483 U.S. 203, 207 (1987) (“[C]onditions on federal grants
22 might be illegitimate if they are unrelated ‘to the federal interest in particular national projects or
23 programs.’”) (citation omitted).

24 **COUNT THREE: TENTH AMENDMENT**

25 **8 U.S.C. § 1373(a) IS UNCONSTITUTIONAL**

26 124. Plaintiff repeats and incorporates by reference each allegation of the prior paragraphs as
27 if fully set forth herein.

28

1 Dated: November 1, 2018

2 DENNIS J. HERRERA
3 City Attorney
4 JESSE C. SMITH
5 RONALD P. FLYNN
6 YVONNE R. MERÉ
7 TARA M. STEELEY
8 SARA J. EISENBERG
9 AILEEN M. McGRATH
10 Deputy City Attorneys

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

14 Attorneys for Plaintiff
15 CITY AND COUNTY OF SAN FRANCISCO
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