

# **EXHIBIT 10**

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 8

9 IN THE UNITED STATES DISTRICT COURT  
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 11 SAN FRANCISCO DIVISION  
 12

13 **STATE OF CALIFORNIA, ex rel, XAVIER**  
 14 **BECCERRA, in his official capacity as**  
 15 **Attorney General of the State of California,**

16 Plaintiff,

17 v.

18 **JEFFERSON B. SESSIONS, in his official**  
 19 **capacity as Attorney General of the United**  
 20 **States; ALAN R. HANSON, in his official**  
 21 **capacity as Acting Assistant Attorney**  
 22 **General; UNITED STATES**  
 23 **DEPARTMENT OF JUSTICE; and DOES**  
 24 **1-100,**

25 Defendants.  
 26  
 27  
 28

3:17-cv-04701-WHO

**DECLARATION OF TOM K. WONG IN**  
**SUPPORT OF PLAINTIFF'S MOTION**  
**FOR SUMMARY JUDGMENT**

Date: September 5, 2018  
 Time: 2 p.m.  
 Courtroom: 2  
 Judge: Honorable William H. Orrick  
 Trial Date: January 28, 2019  
 Action Filed: August 14, 2017

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I, Tom K. Wong, declare as follows:

1. I have personal knowledge of the facts set forth in this declaration. If called as a witness, I could and would testify competently to the matters set forth below.
2. I am an Associate Professor with tenure at the University of California, San Diego (UCSD). I work in the political science department, which is consistently ranked by U.S. News & World Report as one of the top ten political science departments nationally. I am also the Director of the International Migration Studies Program Minor at UCSD.
3. I was asked to evaluate whether the State of California’s statutes that limit entanglement between state and local law enforcement officials and immigration authorities are beneficial to public safety, whether the State of California’s statutes that limit entanglement between state and local law enforcement officials and immigration authorities benefit immigrant communities seeking out government services, including police, health, and education services, and whether trust between immigrant communities and state and local law enforcement officials would erode if the State of California were forced to abandon these statutes.
4. I agree that limiting entanglement between state and local law enforcement officials and immigration authorities is beneficial to public safety. I agree that limiting entanglement between state and local law enforcement officials and immigration authorities benefits immigrant communities, as individuals are more likely to seek out and use vital government services, including police, health, and education services, and because the “chilling effects” of interior immigration enforcement are far reaching and have negative implications on a wide range of help-seeking behaviors, which not only affects undocumented immigrants, but also American citizen children in mixed-status families. I agree that trust between immigrant communities and state and local law enforcement officials would erode if the State of California were forced to abandon its statutes that limit entanglement between state and local law enforcement officials and immigration authorities, as undocumented immigrants are less likely to trust local law enforcement officials to keep them safe or their families safe, keep their communities safe, protect their rights, protect their confidentiality as witnesses, and protect them

1 from abuse or discrimination when local law enforcement officials are doing the work of federal  
2 immigration enforcement.

3 5. I am an expert on immigration policy and I use, and have expertise in, quantitative  
4 social science research methods. I have written two peer-reviewed books and several peer-  
5 reviewed journal articles, book chapters, and reports on immigration policy. For example, my  
6 most recent book, which was published by Oxford University Press (2017), analyzes 31,193 roll  
7 call votes on immigration-related legislation in Congress from 2005 to present making it the most  
8 comprehensive analysis to date on contemporary immigration policies in the United States.

9 6. I received a Ph.D. in political science at the end of the 2010-2011 academic year. I  
10 was a post-doctoral research fellow during the 2011-2012 academic year. I joined the political  
11 science department at UCSD during the 2012-2013 academic year. I served as an advisor to the  
12 White House Initiative on Asian Americans and Pacific Islanders (WHIAAPI), where I worked  
13 on the immigration portfolio, during the 2015-2016 academic year. I was promoted to the rank of  
14 Associate Professor with tenure at UCSD during the 2016-2017 academic year.

15 7. I have attached a true and complete copy of my curriculum vitae as Exhibit A to  
16 this Declaration, which lists all of my publications over the past decade.

17 8. In the past four years, I have testified as an expert at trial in the case of *El Cenizo*,  
18 *Texas, et al. v Texas* and have also testified as an expert by deposition in the case of *United States*  
19 *of America v. California*.

20 9. I am being paid \$4,500 for my work on this declaration.

### 21 **Sanctuary Policies**

22 10. Whereas there are no universally accepted definitions of what sanctuary policies  
23 are, these policies are generally understood to delimit the conditions under which local law  
24 enforcement agencies engage in the enforcement of federal immigration laws. Sanctuary policies  
25 can, for example, restrict local law enforcement agencies from using resources for the purposes of  
26 enforcing federal immigration law. Sanctuary policies can also restrict local law enforcement  
27 agencies from responding to notification requests, wherein Immigration and Customs  
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1 Enforcement (ICE) issues a request to a local law enforcement agency to notify ICE of the  
2 pending release of a suspected undocumented immigrant at least 48 hours prior to release.  
3 Sanctuary policies can also restrict local law enforcement agencies from responding to  
4 immigration detainers, wherein ICE issues a request to a local law enforcement agency to keep an  
5 individual in custody for up to 48 business hours (and potentially beyond the time they would  
6 have otherwise been released). Sanctuary policies can also delimit the conditions under which a  
7 local law enforcement agency can transfer an individual into ICE custody. Moreover, sanctuary  
8 policies can also delimit the conditions under which a local law enforcement agency can share  
9 non-publicly available information about an individual with ICE when doing so is not required by  
10 federal law.

11 11. SB 54, which consists of the California Values Act and the TRUST Act, states,  
12 “California law enforcement agencies shall not: Use agency or department moneys or personnel  
13 to investigate, interrogate, detain, or arrest persons for immigration enforcement purposes,” which  
14 includes detaining an individual on the basis of a hold request, responding to a notification  
15 request by providing a release date or other information unless that information is publicly  
16 available, and providing other personal information about an individual unless that information is  
17 publicly available, subject to certain specified exceptions in the statute. SB 54 is thus a policy that  
18 delimits the conditions under which local law enforcement agencies engage in the enforcement of  
19 federal immigration laws.

20 12. The TRUTH Act, which states, in part, “In advance of any interview between ICE  
21 and an individual in local law enforcement custody regarding civil immigration violations, the  
22 local law enforcement entity shall provide the individual with a written consent form that explains  
23 the purpose of the interview, that the interview is voluntary, and that he or she may decline to be  
24 interviewed or may choose to be interviewed only with his or her attorney present,” also delimits  
25 the conditions under which local law enforcement agencies engage in the enforcement of federal  
26 immigration laws by requiring that local law enforcement agencies make such information  
27 transparent.  
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1           13. California’s statutes that protect the confidentiality of undocumented immigrants  
2 and prohibit the disclosure of their personal information under certain circumstances (henceforth  
3 referred to as “California’s confidentiality statutes”), including California Welfare and  
4 Institutions Code 831, which states, in part, “It is the intent of the Legislature in enacting this  
5 section to clarify that juvenile court records should remain confidential regardless of the  
6 juvenile’s immigration status,” California Penal Code Section 679.10, which states, in part, “A  
7 certifying entity is prohibited from disclosing the immigration status of a victim or person  
8 requesting the Form I-918 [petition for U Nonimmigrant Status] Supplement B certification,  
9 except to comply with federal law or legal process, or if authorized by the victim or person,”  
10 California Penal Code Section 679.11, which states, in part, “A certifying entity is prohibited  
11 from disclosing the immigration status of a victim or person requesting the Form I-914 [petition  
12 for T Nonimmigrant Status] Supplement B declaration, except to comply with federal law or legal  
13 process, or if authorized by the victim or person,” California Civil Procedure Code Section  
14 155(c), which states, in part, “In any judicial proceedings in response to a request that the superior  
15 court make the findings necessary to support a petition for classification as a special immigrant  
16 juvenile, information regarding the child’s immigration status that is not otherwise protected by  
17 state confidentiality laws shall remain confidential,” and California Penal Code Section 422.93,  
18 which states, in part, “Whenever an individual who is a victim of or witness to a hate crime, or  
19 who otherwise can give evidence in a hate crime investigation, is not charged with or convicted of  
20 committing any crime under state law, a peace officer may not detain the individual exclusively  
21 for any actual or suspected immigration violation or report or turn the individual over to federal  
22 immigration authorities,” also delimits the conditions under which local law enforcement  
23 agencies engage in the enforcement of federal immigration laws.

### 24                           **The Effects of Sanctuary Policies on Crime and the Economy**

25           14. Debates over sanctuary policies tend to center on the impact that these policies  
26 have on crime. Those who are opposed to sanctuary policies often argue that these policies  
27 increase crime. However, there is currently no evidence that I am aware of that meets rigorous  
28

1 social science research standards that shows that sanctuary policies increase crime—evidence  
2 showing that sanctuary policies increase crime does not exist. In fact, the existing scholarly  
3 literature, including my own work, suggests that sanctuary policies can decrease crime, thereby  
4 improving public safety.

5  
6 15. I recently analyzed an Immigration and Customs Enforcement (ICE) dataset on  
7 sanctuary jurisdictions obtained via a Freedom of Information Act (FOIA) request. The FOIA  
8 request was filed by the Immigrant Legal Resource Center. Using these data, I examined the  
9 relationship between sanctuary policies and a broad range of indicators, including crime. My  
10 results were published in a report entitled, *The Effects of Sanctuary Policies on Crime and the  
11 Economy*.<sup>1</sup>

12 16. These data show that crime is statistically significantly lower in sanctuary counties  
13 compared to comparable non-sanctuary counties. Moreover, the data show that economies are  
14 stronger in sanctuary counties compared to comparable non-sanctuary counties—from higher  
15 median household income, less poverty, and less reliance on public assistance, to higher labor  
16 force participation, higher employment-to-population ratios, and lower unemployment.

17 17. The FOIA data include 2,492 counties nationwide that ICE distinguishes by their  
18 “Current Detainer/Notification Acceptance Status.”<sup>2</sup> Of the State of California’s fifty-eight  
19 counties, fifty-three are characterized by ICE as either not willing to accept notification or  
20 detainer requests. Of these fifty-three: one is characterized as not willing to accept notification  
21 and detainer requests; six are characterized as willing to accept detainer requests, but not  
22 notification requests; eleven are characterized as willing to accept notification requests, but not  
23 detainer requests; and thirty-five are characterized as “Considering, but (currently) not willing to  
24 accept (I-247N) Notifications and/or (I-247D) detainers.” The FOIA data were current as of  
25 December 2016, which precedes the introduction, passage, and enactment of SB 54. Altogether,  
26 out of these 2,492 counties, 608 are sanctuary jurisdictions, meaning jurisdictions that do not

27 <sup>1</sup> Wong, Tom K. 2017. *The Effects of Sanctuary Policies on Crime and the Economy*. Center for American  
28 Progress: Washington, DC.

<sup>2</sup> These counties are home to 92 percent of the total population in the United States and 95 percent of the  
total foreign-born population in the United States.

1 accept notification or detainer requests. Data on crime come from the FBI Uniform Crime  
 2 Reporting Program and data on social and economic indicators come from the American  
 3 Community Survey (ACS) 5-Year Estimates. I use coarsened exact matching (CEM) to  
 4 statistically match sanctuary counties to comparable non-sanctuary counties. CEM is a method  
 5 used for improving causal inferences that estimates the sample average treatment effect on the  
 6 treated, or SATT. CEM statistically matches sanctuary counties to comparable non-sanctuary  
 7 counties; compares differences in outcomes between sanctuary counties and the matched non-  
 8 sanctuary counties; allows us to evaluate these differences while controlling for differences in the  
 9 size of the total population, the foreign-born percentage of the population, and the percentage of  
 10 the population that is Hispanic/Latino; and then uses the results of the analysis to estimate the  
 11 effect that being a sanctuary county has on crime and our other outcomes of interest.

12 18. The table below reports the results of the CEM analysis. In the table, “SATT”  
 13 indicates the sample average treatment effect on the treated and “SE” indicates the standard error  
 14 of the estimate. A  $p$ -value of less than .05 is considered statistically significant.

	SATT	SE	$p$ -value
Crimes Per 10,000 People	-35.5	5.9	0.000

18 19. The data are clear: crime is lower in sanctuary counties compared to comparable  
 19 non-sanctuary counties. There are 35.5 fewer crimes per 10,000 people in sanctuary counties  
 20 compared to comparable non-sanctuary counties. This result is highly statistically significant ( $p <$   
 21  $.001$ ), which means that it is systematic and non-random.<sup>3</sup>

22 20. This result was reported in the *Washington Post* in a January 27, 2017 article  
 23 entitled, “Trump says sanctuary cities are hotbeds of crime. Data say the opposite.”<sup>4</sup> The finding  
 24 of 35.5 fewer crimes per 10,000 people in sanctuary counties compared to comparable non-  
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26 <sup>3</sup> Re-running the analysis using updated data on crime from the FBI Uniform Crime Reporting Program  
 27 yields qualitatively similar results, wherein crime continues to be statistically significantly lower in sanctuary  
 counties compared to comparable non-sanctuary counties.

28 <sup>4</sup> <https://www.washingtonpost.com/news/wonk/wp/2017/01/27/trump-says-sanctuary-cities-are-hotbeds-of-crime-data-say-the-opposite/?noredirect=on>.

1 sanctuary counties measures crime using both property crimes and violent crimes per the FBI  
2 Uniform Crime Reporting Program data. The *Washington Post* was also specifically interested in  
3 murders. After further analyzing the data, the data showed that there were approximately 1 fewer  
4 murders per 100,000 people in sanctuary counties compared to comparable non-sanctuary  
5 counties.

6 21. These results were also used by the *Washington Post* in a February 8, 2017 article  
7 that fact checked President Trump's statement that sanctuary policies "breed crime." The article  
8 concludes, "It's one thing to raise concerns about the impact of sanctuary policies, but Trump  
9 goes too far declaring that the cities 'breed crime.' He not only makes a correlation, but also  
10 ascribes a causation, without facts to support either."<sup>5</sup>

11 22. Whereas my work on the effects of sanctuary policies focuses at the county level,  
12 there is other research that shows that there is no statistically significant relationship between  
13 sanctuary policies and increased crime at the city level.<sup>6</sup> Regarding research on the effects of  
14 sanctuary policies at the city level, Attorney General Jeff Sessions, in remarks delivered on July  
15 12, 2017, stated, "According to a recent study from the University of California, Riverside, cities  
16 with these policies have more violent crime on average than those that don't."<sup>7</sup> After learning  
17 about these remarks, I helped bring them to the attention of the authors of the University of  
18 California, Riverside study. The authors quickly penned an article in *The Hill* writing, "As the  
19 lead authors of this study, we find it necessary to address this claim, since it is factually  
20 inaccurate [...] Our study found no relationship between sanctuary policies and crime [...] There  
21 was no statistically significant effect for these policies on property crime or violent crime."<sup>8</sup>

22 23. In addition to crime, my research also examined a range of social and economic  
23 indicators, which are reported in the table below.

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25 <sup>5</sup> [https://www.washingtonpost.com/news/fact-checker/wp/2017/02/08/trumps-claim-that-sanctuary-cities-breed-crime/?utm\\_term=.921292fbdf67](https://www.washingtonpost.com/news/fact-checker/wp/2017/02/08/trumps-claim-that-sanctuary-cities-breed-crime/?utm_term=.921292fbdf67).

26 <sup>6</sup> Gonzalez, Benjamin, Loren Collingwood, and Stephen Omar El-Khatib. "The politics of refuge: Sanctuary cities, crime, and undocumented immigration." *Urban Affairs Review* (2017): 1078087417704974.

27 <sup>7</sup> <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-las-vegas-federal-state-and-local-law>.

28 <sup>8</sup> <http://thehill.com/blogs/pundits-blog/immigration/342043-how-conservative-media-and-jeff-sessions-got-it-wrong-on>.

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	SATT	SE	<i>p</i> -value
Median Household Income	4352.7	575.1	0.000
Median Household Income—White, non-Latino	2836.1	568.3	0.000
Median Household Income—Latino	1328.9	736.4	0.000
Poverty	-2.337	0.306	0.000
Poverty—White, non-Latino	-1.361	0.222	0.000
Poverty—Latino	-2.966	0.721	0.000
Food Stamps/SNAP	-2.559	0.296	0.000
SSI	-0.879	0.127	0.000
Children Under 18 in Households w/Public Assistance	-4.967	0.548	0.000
Labor Force Participation	2.456	0.345	0.000
Labor Force Participation—White, non-Latino	2.546	0.339	0.000
Labor Force Participation—Latino	1.241	0.741	0.094
Employment-to-Population Ratio	3.103	0.369	0.000
Employment-to-Population Ratio—White, non-Latino	3.165	0.359	0.000
Employment-to-Population Ratio—Latino	0.939	0.733	0.200
Unemployment	-1.056	0.159	0.000
Unemployment—White, non-Latino	-0.829	0.129	0.000
Unemployment—Latino	1.015	0.425	0.017

24. Median household income is approximately \$4,353 higher in sanctuary counties compared to comparable non-sanctuary counties. This result is highly statistically significant ( $p < .001$ ). Median household income for White, non-Hispanic/Latino households is also statistically significantly higher in sanctuary counties compared to comparable non-sanctuary counties. Median household income for Hispanic/Latino households is also statistically significantly higher in sanctuary counties compared to comparable non-sanctuary counties.

25. The poverty rate is approximately 2.3 percent lower in sanctuary counties compared to comparable non-sanctuary counties. This result is highly statistically significant ( $p < .001$ ). The poverty rate for White, non-Hispanics/Latinos is also statistically significantly lower in sanctuary counties compared to comparable non-sanctuary counties. The poverty rate for Hispanics/Latinos is also statistically significantly lower in sanctuary counties compared to comparable non-sanctuary counties.

1           26.     Public benefits usage is also lower in sanctuary counties compared to comparable  
2 non-sanctuary counties. Supplemental Nutrition Assistance Program (SNAP)<sup>9</sup> usage is  
3 approximately 2.6 percent lower in sanctuary counties compared to comparable non-sanctuary  
4 counties. This result is highly statistically significant ( $p < .001$ ). Supplemental Security Income  
5 (SSI)<sup>10</sup> usage is approximately 0.9 percent lower in sanctuary counties compared to comparable  
6 non-sanctuary counties. This result is highly statistically significant ( $p < .001$ ). Moreover, the  
7 percentage of children under 18 in households with public assistance is approximately 4.9 percent  
8 lower in sanctuary counties compared to comparable non-sanctuary counties. This result is highly  
9 statistically significant ( $p < .001$ ).

10           27.     Labor force participation is approximately 2.5 percent higher in sanctuary counties  
11 compared to comparable non-sanctuary counties. This result is highly statistically significant ( $p <$   
12  $.001$ ). Labor force participation is calculated by dividing the number of people who are employed  
13 or who are currently looking for work by the working-age population (16 or older). Labor force  
14 participation among White, non-Hispanics/Latinos is also statistically significantly higher in  
15 sanctuary counties compared to comparable non-sanctuary counties. While labor force  
16 participation among Hispanics/Latinos is, on average, higher in sanctuary counties compared to  
17 comparable non-sanctuary counties, this result is not statistically significant ( $p = .094$ ).

18           28.     The employment-to-population ratio is approximately 3.1 percent higher in  
19 sanctuary counties compared to comparable non-sanctuary counties. This result is highly  
20 statistically significant ( $p < .001$ ). The employment-to-population ratio is calculated by dividing  
21 the number of people in the labor force who are employed by the working-age population. The  
22 employment-to-population ratio among White, non-Hispanics/Latinos is also statistically  
23 significantly higher in sanctuary counties compared to comparable non-sanctuary counties. While  
24 the employment-to-population ratio among Hispanics/Latinos is, on average, higher in sanctuary  
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27           <sup>9</sup> Supplemental Nutrition Assistance Program: [https://www.fns.usda.gov/snap/supplemental-nutrition-](https://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program-snap)  
28 assistance-program-snap.

<sup>10</sup> Supplemental Security Income: <https://www.ssa.gov/ssi/>.

1 counties compared to comparable non-sanctuary counties, this result is not statistically significant  
2 ( $p = .200$ ).

3 29. Unemployment is approximately 1.1 percent lower in sanctuary counties compared  
4 to comparable non-sanctuary counties. This result is highly statistically significant ( $p < .001$ ).  
5 Unemployment is the percentage of those who are in the labor force, but who are currently not  
6 employed. Unemployment among White, non-Hispanics/Latinos is also statistically significantly  
7 lower in sanctuary counties compared to comparable non-sanctuary counties. However,  
8 unemployment among Hispanics/Latinos is higher in sanctuary counties compared to comparable  
9 non-sanctuary counties, this result is not statistically significant ( $p = .017$ ).

10 30. Altogether, the data indicate that:

- 11 • Crime is statistically significantly lower in sanctuary counties compared to  
12 comparable non-sanctuary counties;
- 13 • Those who are opposed to sanctuary policies continue to argue that these policies  
14 increase crime; however, evidence showing that sanctuary policies increase crime does  
15 not exist;
- 16 • It is important to note that there is also no clear evidence that shows that crime is  
17 lower when local law enforcement officials are doing the work of federal immigration  
18 enforcement<sup>11</sup>;
- 19 • Local economies—from higher median household income, less poverty, and less  
20 reliance on public assistance, to higher labor force participation, higher employment-  
21 to-population ratios, and lower unemployment—are stronger in sanctuary counties  
22 compared to comparable non-sanctuary counties.

### 23 **The “Chilling Effects” of Interior Immigration Enforcement**

24 31. In 2005, the International Association of Chiefs of Police (IACP) articulated its  
25 position on the role of state, tribal, and local law enforcement agencies (LEAs) in enforcing  
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27 <sup>11</sup> Miles, Thomas J., and Adam B. Cox. “Does immigration enforcement reduce crime? Evidence from  
28 secure communities.” *The Journal of Law and Economics* 57, no. 4 (2014): 937-973. See also, Treyger, Elina, Aaron  
Chalfin, and Charles Loeffler. “Immigration Enforcement, Policing, and Crime.” *Criminology & Public Policy* 13,  
no. 2 (2014): 285-322.

1 federal immigration law as follows: “local law enforcement should not be involved in the  
2 enforcement of civil immigration laws since such involvement would likely have a chilling effect  
3 on both legal and illegal aliens reporting criminal activity or assisting police in criminal  
4 investigations.”<sup>12</sup>

5 32. In 2006, the immigration committee of the Major Cities Chiefs Association  
6 (MCCA), a professional association that includes many of the largest LEAs in the United States,  
7 concluded:

8 “Immigration enforcement by local police would likely negatively effect and  
9 undermine the level of trust and cooperation between local police and immigrant  
10 communities. If the undocumented immigrant’s primary concern is that they will  
11 be deported or subjected to an immigration status investigation, then they will not  
12 come forward and provide needed assistance and cooperation. Distrust and fear of  
13 contacting or assisting the police would develop among legal immigrants as well.  
14 Undoubtedly legal immigrants would avoid contact with the police for fear that  
15 they themselves or undocumented family members or friends may become subject  
16 to immigration enforcement. Without assurances that contact with the police  
17 would not result in purely civil immigration enforcement action, the hard won  
18 trust, communication and cooperation from the immigrant community would  
19 disappear. Such a divide between the local police and immigrant groups would  
20 result in increased crime against immigrants and in the broader community, create  
21 a class of silent victims and eliminate the potential for assistance from immigrants  
22 in solving crimes or preventing future terroristic acts.”<sup>13</sup>

23 33. Recent research provides evidence of the “chilling effects” described by the IACP  
24 and MCCA.

25  
26  
27 <sup>12</sup> <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=209673>.

28 <sup>13</sup> [https://www.majorcitieschiefs.com/pdf/MCC\\_Position\\_Statement.pdf](https://www.majorcitieschiefs.com/pdf/MCC_Position_Statement.pdf).

(continued...)

1           34. I recently conducted a representative survey of undocumented Mexican nationals  
2 in San Diego County.<sup>14</sup> The survey was fielded between September 2017 and November 2017  
3 and includes 594 respondents. In the survey, I embedded an experiment in order to better  
4 understand how interior immigration enforcement impacts undocumented immigrants. In the  
5 experiment, respondents were randomly assigned to one of two groups. In one group ( $n = 298$   
6 respondents), questions were prefaced with, “If the San Diego Police Department and the San  
7 Diego County Sheriff’s Department said they WILL NOT WORK WITH ICE on deportation  
8 raids, would you be more or less likely to...” In the second group ( $n = 296$  respondents),  
9 questions were prefaced with, “If the San Diego Police Department and the San Diego County  
10 Sheriff’s Department WERE WORKING TOGETHER WITH ICE on deportation raids, would  
11 you be more or less likely to...” An experiment such as this is superior to analyzing observational  
12 survey data (i.e., survey data that is not based on an experimental design) because asking  
13 respondents about one scenario is insufficient for determining how their behavior may or may not  
14 change based on the second scenario; asking respondents about one scenario and then the second  
15 scenario would likely produce biased results because responses related to the first scenario would  
16 likely influence responses to the second scenario (e.g., “I said I would do this in the first scenario,  
17 so maybe I should say I wouldn’t do that in the second scenario”); random assignment to one of  
18 the two groups balances the two groups across the broad range of covariates (e.g., age, gender,  
19 etc.) that need to be controlled for in observational analysis; and random assignment to one of the  
20 two groups means that differences in responses can be casually attributed to the variation in the  
21 two scenarios (i.e., the treatment effect that results when local law enforcement officials are doing  
22 the work of federal immigration enforcement). Respondents were asked about reporting a crime  
23 they witnessed to the police; reporting a crime they were a victim of to the police; using public  
24 services that require them to disclose their personal contact information; doing business that  
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26           <sup>14</sup> A survey is considered representative if the survey sample accurately reflects the larger population of  
27 interest. Representativeness results when the survey sample is randomly selected from the larger population of  
28 interest so that each respondent has an equal probability of selection. This requires creating a sample frame (i.e.,  
enumerating the larger population of interest). The sample frame from which respondents were randomly selected  
includes approximately 73,000 undocumented Mexican nationals in San Diego County.

1 requires them to disclose their personal contact information; participating in public events where  
 2 police may be present; placing their children in after-school or day-care programs (among those  
 3 with children); and looking for a new job. The table below provides the exact text.  
 4

5 If the San Diego Police Department and the San Diego County Sheriff's Department [said THEY WILL NOT WORK WITH ICE] / 6 [WERE WORKING TOGETHER WITH ICE] on deportation raids, would you be more or less likely to...
--

7 Report a crime that you witnessed to the police? Report a crime that you were a victim of to the police? 8 Use public services (e.g., go to City Hall) that required you to give your personal contact information? 9 Do business (e.g., open a bank account, get a loan) that required you to give your personal contact information? 10 Participate in public events where police may be present? Place your children in an after-school or day-care program? 11 Look for a new job?
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12 35. If local law enforcement officials “WERE WORKING TOGETHER WITH ICE”  
 13 to do the work of federal immigration enforcement, 60.8 percent of undocumented immigrants are  
 14 *less likely* to report a crime they witnessed to police ( $p < .001$ ) and 42.9 percent are *less likely* to  
 15 report being a victim of a crime to police ( $p < .001$ ).  
 16

17 36. If local law enforcement officials say “THEY WILL NOT WORK WITH ICE” to  
 18 do the work of federal immigration enforcement, 71.8 percent are *more likely* to report a crime  
 19 they witnessed to police ( $p < .001$ ) and 70.8 percent are *more likely* to report being a victim of a  
 20 crime to police ( $p < .001$ ).  
 21

22 37. These results appeared in the *Washington Post* in an April 27, 2018 article entitled,  
 “Sanctuary cities don’t ‘breed crime.’ They encourage people to report crime.”<sup>15</sup>

23 38. These results are consistent with the IACP and MCCA positions described above.  
 24 They are also consistent with previous research that shows that undocumented women who are  
 25 victims of violent crimes<sup>16</sup> and undocumented women who are victims of sexual assault or

26 <sup>15</sup> [https://www.washingtonpost.com/news/monkey-cage/wp/2018/04/24/sanctuary-cities-dont-breed-crime-they-encourage-people-to-report-crime/?noredirect=on&utm\\_term=.8360b5956ae5](https://www.washingtonpost.com/news/monkey-cage/wp/2018/04/24/sanctuary-cities-dont-breed-crime-they-encourage-people-to-report-crime/?noredirect=on&utm_term=.8360b5956ae5).

27 <sup>16</sup> Messing, Jill Theresa, David Becerra, Allison Ward-Lasher, and David K. Androff. “Latinas’ perceptions  
 28 of law enforcement: Fear of deportation, crime reporting, and trust in the system.” *Affilia* 30, no. 3 (2015): 328-340.

(continued...)

1 domestic violence<sup>17</sup> are less likely to report crimes if law enforcement officials are also doing the  
2 work of federal immigration enforcement.

3 39. Moreover, if local law enforcement officials “WERE WORKING TOGETHER  
4 WITH ICE” to do the work of federal immigration enforcement: 69.9 percent are *less likely* to  
5 “Use public services (e.g., go to City Hall) that required you to give your personal contact  
6 information”; 63.9 percent are *less likely* to “Do business (e.g., open a bank account, get a loan)  
7 that required you to give your personal contact information”; 68.3 percent are *less likely* to  
8 “Participate in public events where policy may be present”; 42.9 percent are *less likely* to “Place  
9 your children in an after-school or day-care program” (among those with children); and 52.1  
10 percent are *less likely* to “Look for a new job.”

11 40. These results are also consistent with a growing number of studies on how interior  
12 immigration enforcement impacts undocumented immigrants. Several of these studies examine  
13 the impact of state-level laws. For example, research on the State of California’s Proposition 187,  
14 which was passed in 1994, showed that tuberculosis patients who feared that going to a physician  
15 would result in an immigration enforcement action were four times more likely to delay seeking  
16 care.<sup>18</sup> Research on the State of Arizona’s SB 1070 showed that Mexican-origin adolescent  
17 mothers were less likely to take their babies to the doctor following the passage of the law in  
18 2010<sup>19</sup> and that SB 1070 negatively affected health-seeking behaviors among Hispanics/Latinos  
19 by increasing fear, decreasing resident’s mobility, and by decreasing trust in public institutions.<sup>20</sup>  
20 Similarly, research on the State of Alabama’s HB 56 showed a decline in the use of county public  
21 health services among undocumented immigrants in the wake of the passage of the law in 2011,  
22

23 <sup>17</sup> Vishnuvajjala, Radha. “Insecure communities: how an immigration enforcement program encourages  
battered women to stay silent.” *Boston College Journal of Law & Social Justice* 32, no. 1 (2011).

24 <sup>18</sup> Asch, Steven, Barbara Leake, and Lillian Gelberg. “Does fear of immigration authorities deter  
tuberculosis patients from seeking care?” *Western Journal of Medicine* 161, no. 4 (1994): 373.

25 <sup>19</sup> Toomey, Russell B., Adriana J. Umaña-Taylor, David R. Williams, Elizabeth Harvey-Mendoza, Laudan  
B. Jahromi, and Kimberly A. Updegraff. “Impact of Arizona’s SB 1070 immigration law on utilization of health care  
26 and public assistance among Mexican-origin adolescent mothers and their mother figures.” *American Journal of  
Public Health* 104, no. S1 (2014): S28-S34.

27 <sup>20</sup> Hardy, Lisa J., Christina M. Getrich, Julio C. Quezada, Amanda Guay, Raymond J. Michalowski, and  
Eric Henley. “A call for further research on the impact of state-level immigration policies on public  
28 health.” *American Journal of Public Health* 102, no. 7 (2012): 1250-1253.

(continued...)

1 including services for communicable diseases and sexually transmitted infections, even though  
2 the utilization of these services was allowed under the law.<sup>21</sup> Other studies have examined the  
3 impact of local policies, such as the 287(g) program. For example, a study of the public health  
4 effects of the local implementation of the 287(g) program found that Hispanic/Latino expectant  
5 mothers sought prenatal care later during pregnancy, and with lower quality care, than non-  
6 Hispanic/Latino expectant mothers.<sup>22</sup> More generally, research has shown how fear of separation  
7 due to deportation can have far-reaching and negative implications not only on undocumented  
8 immigrants, but also on American citizen children in mixed-status families. As it relates to health,  
9 research has shown that fear of deportation decreases Medicaid use among the eligible American  
10 citizen children of noncitizen parents.<sup>23</sup> As it relates to education, research has shown that  
11 children in mixed-status families face greater barriers to educational success<sup>24</sup>; that the American  
12 citizen children of undocumented parents often share the risks and limitations associated with  
13 undocumented immigration status<sup>25</sup>; and that the stress caused by immigration raids can sap the  
14 attention of students and thus affect their academic performance.<sup>26</sup>

15 41. I am currently conducting another survey experiment in order to better understand  
16 how entanglement with federal immigration enforcement officials impacts the trust that  
17 undocumented immigrants have in local law enforcement officials.<sup>27</sup> In the experiment,  
18

19 <sup>21</sup> White, Kari, Justin Blackburn, Bryn Manzella, Elisabeth Welty, and Nir Menachemi. "Changes in Use of  
20 County Public Health Services Following Implementation of Alabama's Immigration Law." *Journal of Health Care  
for the Poor and Underserved* 25, no. 4 (2014): 1844-1852.

21 <sup>22</sup> Rhodes, Scott D., Lilli Mann, Florence M. Simán, Eunyoung Song, Jorge Alonzo, Mario Downs, Emma  
Lawlor et al. "The impact of local immigration enforcement policies on the health of immigrant Hispanics/Latinos in  
the United States." *American Journal of Public Health* 105, no. 2 (2015): 329-337.

22 <sup>23</sup> Vargas, Edward D. "Immigration enforcement and mixed-status families: The effects of risk of  
deportation on Medicaid use." *Children and Youth Services Review* 57 (2015): 83-89.

23 <sup>24</sup> Mapp, Susan, and Emily Hornung. "Irregular immigration status impacts for children in the  
USA." *Journal of Human Rights and Social Work* 1, no. 2 (2016): 61-70.

24 <sup>25</sup> Enriquez, Laura E. "Multigenerational Punishment: Shared Experiences of Undocumented Immigration  
Status Within Mixed-Status Families." *Journal of Marriage and Family* 77, no. 4 (2015): 939-953.

25 <sup>26</sup> Capps, Randolph, Rosa Maria Castaneda, Ajay Chaudry, and Robert Santos. "Paying the price: The  
impact of immigration raids on America's children." (2007).

26 <sup>27</sup> I note here that a total  $n$  of 156 respondents does not lead to statistically underpowered results given the  
large effect sizes. In determining the appropriate sample size for a study, it is standard to aim for .80 power, which  
27 means an 80 percent chance of determining an effect with 95 percent confidence; in other words, in determining  
sample size, it is standard to ask how many respondents are needed to give the study an 80 percent chance of  
determining a statistically significant result. The result for "Keep you and your family safe" has .97 power, which is  
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(continued...)

1 respondents were randomly assigned to one of two groups. In one group ( $n = 83$  respondents),  
2 questions were prefaced with, “If the San Diego Police Department and the San Diego County  
3 Sheriff’s Department WERE NOT WORKING TOGETHER WITH ICE on immigration  
4 enforcement, how much trust would you have that police officers and sheriffs would...” In the  
5 second group ( $n = 73$  respondents), questions were prefaced with, “If the San Diego Police  
6 Department and the San Diego County Sheriff’s Department WERE WORKING TOGETHER  
7 WITH ICE on immigration enforcement, how much trust would you have that police officers and  
8 sheriffs would...” Reiterating the discussion above, an experiment such as this is superior to  
9 analyzing observational survey data (i.e., survey data that is not based on an experimental design)  
10 because asking respondents about one scenario is insufficient for determining how their attitudes  
11 may or may not change based on the second scenario; asking respondents about one scenario and  
12 then the second scenario would likely produce biased results because responses related to the first  
13 scenario would likely influence responses to the second scenario (e.g., “I said I would trust in the  
14 first scenario, so maybe I should say I wouldn’t trust in the second scenario”); random assignment  
15 to one of the two groups balances the two groups across the broad range of covariates (e.g., age,  
16 gender, etc.) that need to be controlled for in observational analysis; and random assignment to  
17 one of the two groups means that differences in responses can be casually attributed to the  
18 variation in the two scenarios (i.e., the treatment effect that results when local law enforcement  
19 officials are doing the work of federal immigration enforcement). Respondents were asked how  
20 much trust they would have that police officers and sheriffs would keep them and their families  
21 safe; keep their communities safe; protect the rights of all people, including undocumented  
22 immigrants; protect the confidentiality of witnesses to crimes even if they were undocumented;  
23 and protect undocumented immigrants from abuse or discrimination. The table below provides  
24 the exact text.

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27 higher than the standard .80 power. The result for “Keep your community safe” has .84 power. The result for “Protect  
28 the rights of all people, including undocumented immigrants, equally” has .96 power. The result for “Protect the  
confidentiality of witnesses to crime even if they were undocumented” has .99 power. The result for “Protect  
undocumented immigrants from abuse or discrimination” has .97 power.

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<p>If the San Diego Police Department and the San Diego County Sheriff's Department WERE [NOT] WORKING TOGETHER WITH ICE on immigration enforcement, how much trust would you have that police officers and sheriffs would...</p>
---

Keep you and your family safe?

Keep your community safe?

Protect the rights of all people, including undocumented immigrants, equally?

Protect the confidentiality of witnesses to crimes even if they were undocumented?

Protect undocumented immigrants from abuse or discrimination?

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42. If local law enforcement officials “WERE WORKING TOGETHER WITH ICE,” 26.6 percent of undocumented immigrants are *less likely* to trust “a great deal” or “a lot” that police officers and sheriffs would keep them and their families safe ( $p < .001$ ) and 22.9 percent are *less likely* to trust “a great deal” or “a lot” that police officers and sheriffs would keep their communities safe ( $p = .002$ ). The data also shows that just 9.6 percent of undocumented immigrants trust “a great deal” or “a lot” that police officers and sheriffs would keep them and their families safe if local law enforcement officials are doing the work of federal immigration enforcement and just 19.2 percent of undocumented immigrants trust “a great deal” or “a lot” that police officers and sheriffs would keep their communities safe if local law enforcement officials are doing the work of federal immigration enforcement.

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43. If local law enforcement officials “WERE WORKING TOGETHER WITH ICE,” 25.4 percent of undocumented immigrants are *less likely* to trust “a great deal” or “a lot” that police officers and sheriffs would protect the rights of all people, including undocumented immigrants, equally ( $p < .001$ ), 28.3 percent are *less likely* to trust “a great deal” or “a lot” that police officers and sheriffs would protect the confidentiality of witnesses to crimes even if they were undocumented ( $p < .001$ ), and 24.6 percent are *less likely* to trust “a great deal” or “a lot” that police officers and sheriffs would protect undocumented immigrants from abuse or discrimination ( $p < .001$ ). The data also shows that just 9.6 percent of undocumented immigrants trust “a great deal” or “a lot” that police officers and sheriffs would protect the rights of all people, including undocumented immigrants, equally if local law enforcement officials are doing

1 the work of federal immigration enforcement and just 5.5 percent of undocumented immigrants  
2 trust “a great deal” or “a lot” that police officers and sheriffs would protect the confidentiality of  
3 witnesses to crimes even if they were undocumented or would protect undocumented immigrants  
4 from abuse or discrimination if local law enforcement officials are doing the work of federal  
5 immigration enforcement.

6 44. Altogether, the data indicate that:

- 7
- 8 • When local law enforcement officials are doing the work of federal immigration  
9 enforcement, undocumented immigrants are *less likely* to report crimes to the police,  
10 even when they are victims;
  - 11 • The chilling effects that result when local law enforcement officials are doing the  
12 work of federal immigration enforcement are far reaching: 69.9 percent are *less likely*  
13 to “Use public services (e.g., go to City Hall) that required you to give your personal  
14 contact information”; 63.9 percent are *less likely* to “Do business (e.g., open a bank  
15 account, get a loan) that required you to give your personal contact information”; 68.3  
16 percent are *less likely* to “Participate in public events where policy may be present”;  
17 42.9 percent are *less likely* to “Place your children in an after-school or day-care  
18 program” (among those with children); and 52.1 percent are *less likely* to “Look for a  
19 new job;
  - 20 • A growing body of evidence makes clear that interior immigration enforcement has  
21 negative implications on a wide range of help-seeking behaviors—for example,  
22 inhibiting access to critical health services—which not only affects undocumented  
23 immigrants, but also affects American citizen children in mixed-status families; and
  - 24 • When local law enforcement officials are doing the work of federal immigration  
25 enforcement, undocumented immigrants are *less likely* to trust local law enforcement  
26 to keep them safe and their families safe, keep their communities safe, protect their  
27 rights, protect their confidentiality as witnesses, and protect them from abuse or  
28 discrimination.

**Conclusion**

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45. There is no clear evidence to suggest that sanctuary policies “breed crime” (or that crime is lower when local law enforcement officials are doing the work of federal immigration enforcement).

46. Instead, the data show that crime is lower in sanctuary counties compared to comparable non-sanctuary counties.

47. Moreover, local economies are also stronger in sanctuary counties compared to comparable non-sanctuary counties—from higher median household income, less poverty, and less reliance on public assistance, to higher labor force participation, higher employment-to-population ratios, and lower unemployment.

48. Also, when local law enforcement officials are not doing the work of federal immigration enforcement, undocumented immigrants are *more likely* to report crimes they witness, as well as crimes they are victims of, to police.

49. This affirms the position of the IACP and the MCCA: when undocumented immigrants feel secure enough to cooperate with law enforcement, it makes it easier for law enforcement officers to do their jobs.

50. When local law enforcement officials are doing the work of federal immigration enforcement, undocumented immigrants are *less likely* to use public services that require them to disclose their personal contact information, *less likely* to participate in public events where police may be present, *less likely* to place their children in after-school or day-care programs, and *less likely* to look for a new job.

51. This affirms a growing body of evidence that makes clear that the chilling effects of interior immigration enforcement are far reaching and have negative implications on a wide range of help-seeking behaviors, which not only affects undocumented immigrants, but also affects American citizen children in mixed-status families.

52. When local law enforcement officials are doing the work of federal immigration enforcement, undocumented immigrants are *less likely* to trust that police officers and sheriffs

1 will keep them and their families safe, keep their communities safe, protect their rights, protect  
2 their confidentiality as witnesses, and protect them from abuse or discrimination.

3 53. Altogether:

- 4
- 5 • I agree with the allegation in the State of California’s complaint that limiting  
6 entanglement between state and local law enforcement officials and immigration  
7 authorities is beneficial to public safety. I agree with paragraph 14, which states, in  
8 part, that the laws implicated in this suit, such as SB 54, the TRUTH Act, and  
9 California’s confidentiality statutes, “promote public safety for all people in  
10 California, regardless of immigration status, national origin, ancestry,” paragraph 30,  
11 which states, in part, that the laws implicated in this suit, such as SB 54, the TRUTH  
12 Act, and California’s confidentiality statutes, “strengthen community policing efforts  
13 by encouraging undocumented victims to report crimes to local law enforcement so  
14 that perpetrators are apprehended before harming others,” and paragraph 35, which  
15 states, in part, “immigrants who are victims or witnesses to crime, including domestic  
16 violence, are less likely to report crime or cooperate with law enforcement when any  
17 contact with law enforcement could result in deportation.” Crime is lower in sanctuary  
18 counties compared to comparable non-sanctuary counties. Local economies are also  
19 stronger in sanctuary counties compared to comparable non-sanctuary counties.  
20 Moreover, undocumented immigrants are *more likely* to report crimes they witness, as  
21 well as crimes they are victims of, to police when local law enforcement officials are  
22 not doing the work of federal immigration enforcement (and are *less likely* to do so  
23 when there is entanglement). Thus, by delimiting the conditions under which local law  
24 enforcement agencies engage in the enforcement of federal immigration laws, laws  
25 such as SB 54, the TRUTH Act, and California’s confidentiality statutes can improve  
26 public safety.
  - 27 • I agree with the allegation in the State of California’s complaint that limiting  
28 entanglement between state and local law enforcement officials and immigration

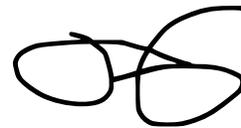
1 authorities benefits immigrant communities seeking out government services,  
2 including police, health, and education services. I agree with paragraph 41, which  
3 states, in part, that “trust is threatened when state and local agencies are entangled  
4 with federal immigration enforcement, with the result that immigrant community  
5 members fear approaching police when they are victims of, and witnesses to, crimes,  
6 seeking basic health services, or attending school, to the detriment of public safety and  
7 the well-being of all Californians.” Undocumented immigrants are *less likely* to use  
8 public services that require them to disclose their personal contact information, *less*  
9 *likely* to participate in public events where police may be present, *less likely* to place  
10 their children in after-school or day-care programs, and *less likely* to look for a new  
11 job when local law enforcement officials are doing the work of federal immigration  
12 enforcement. These results are consistent with a growing body of evidence that makes  
13 clear that the chilling effects of interior immigration enforcement are far reaching and  
14 have negative implications on a wide range of help-seeking behaviors. Furthermore, as  
15 research continues to uncover how interior immigration enforcement impacts not only  
16 undocumented immigrants, but also American citizen children in mixed-status  
17 families, it is becoming increasingly clear that laws such as SB 54, the TRUTH Act,  
18 and California’s confidentiality statutes can positively affect the lives of Californians  
19 beyond undocumented immigrants themselves.

- 20 • I agree with the allegation in the State of California’s complaint that trust between  
21 immigrant communities and state and local law enforcement officials would erode if  
22 the State of California were forced to abandon its statutes that limit entanglement  
23 between state and local law enforcement officials and immigration authorities. I agree  
24 with paragraph 41 in the State of California’s complaint, which states, in part, that ““a  
25 relationship of trust between California’s immigrant community and state and local  
26 agencies’ is ‘central to the public safety of the people of California’” and that this trust  
27 is threatened “when state and local agencies are entangled with federal immigrant  
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enforcement.” Similarly, I agree with paragraph 119 in the State of California’s complaint, which states, in part, that being forced to abandon policies that limit entanglement between state and local law enforcement officials and immigration authorities would “erode trust between the State and local governments and their immigrant communities.” Undocumented immigrants are *less likely* to trust local law enforcement officials to keep them safe or their families safe, keep their communities safe, protect their rights, protect their confidentiality as witnesses, and protect them from abuse or discrimination when local law enforcement officials are doing the work of federal immigration enforcement.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct and that this declaration was executed on July 8, 2018 in San Diego, California.



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Tom K. Wong

# **EXHIBIT 11**

1 XAVIER BECERRA  
 Attorney General of California  
 2 SATOSHI YANAI  
 Supervising Deputy Attorney General  
 3 SARAH E. BELTON  
 LISA C. EHRLICH  
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 8

9 IN THE UNITED STATES DISTRICT COURT  
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 11 SAN FRANCISCO DIVISION  
 12

13 **STATE OF CALIFORNIA, ex rel, XAVIER**  
 14 **BECCERRA, in his official capacity as**  
 15 **Attorney General of the State of California,**

16 Plaintiff,

17 v.

18 **JEFFERSON B. SESSIONS, in his official**  
 19 **capacity as Attorney General of the United**  
 20 **States; ALAN R. HANSON, in his official**  
 21 **capacity as Acting Assistant Attorney**  
 22 **General; UNITED STATES**  
 23 **DEPARTMENT OF JUSTICE; and DOES**  
 24 **1-100,**

25 Defendants.  
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3:17-cv-04701-WHO

**DECLARATION OF AMANDA WALL**  
**IN SUPPORT OF PLAINTIFF'S**  
**MOTION FOR SUMMARY JUDGMENT**

Date: September 5, 2018  
 Time: 2 p.m.  
 Courtroom: 2  
 Judge: Honorable William H. Orrick  
 Trial Date: January 28, 2019  
 Action Filed: August 14, 2017

1 I, Amanda Wall, declare as follows:

2 1. I am a resident of the State of Massachusetts. I have personal knowledge of the  
3 facts set forth in this declaration. If called as a witness, I could and would testify competently to  
4 the matters set forth below.

5 2. I am the Director of Support Services for the Lawrence Police Department, a  
6 position I have held since 2014. In this position I am responsible for the Department's Budget  
7 and other Finance issues. This includes responsibility for applying and executing the federal  
8 Byrne JAG Grant program. Prior to this position I worked as a Staff Attorney for the Boston  
9 Police Department for five years.

10 3. In my official capacity, I submitted the City of Lawrence's FY 2017 JAG Grant  
11 application electronically on September 5, 2017.

12 4. Lawrence Chief of Police James Fitzpatrick received a letter from the Department  
13 of Justice on November 15, 2017, regarding compliance with 8 U.S.C. § 1373. On December 6,  
14 2017, Lawrence provided a response to the letter. On January 24, 2018, Chief of Police Roy P.  
15 Vasque received a document request from the Department of Justice. In response to that letter,  
16 Lawrence timely produced documents on February 23, 2018.

17 5. Lawrence has not received any final determination on its award. The last  
18 communication I received regarding the grant application was an email on April 17, 2018, titled  
19 FY17 Byrne JAG Update. It notified applicants that the BJA had not awarded its FY2017 Byrne  
20 JAG grants due to the issuance of the nationwide injunction in September 15, 2017 (with the  
21 exception of two awards made prior to the issuance of the injunction).

22 6. The grant application proposed using the requested funding for replacement of  
23 sixteen (16) tactical vests for the Department's Entry Team and for the purchase and installation  
24 of approximately five (5) cameras in public locations throughout the City.

25 7. The Entry Team was formed in 2002, and team members were issued tactical vests  
26 shortly thereafter. The team members are still using these vests which are now over fifteen (15)  
27 years old. This project is important because it ensures that the team is outfitted with tactical  
28 equipment that utilizes current materials and industry standards. The cameras will be used to

1 assist the Department in monitoring and deterring criminal activity in targeted locations  
2 throughout the City.

3  
4 I declare under penalty of perjury under the laws of the State of Massachusetts and the  
5 United States that the foregoing is true and correct and that this declaration was executed on  
6 July 9<sup>th</sup> 2018, in Lawrence, Massachusetts.

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10 Amanda Wall

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# **EXHIBIT 12**

1 XAVIER BECERRA  
 Attorney General of California  
 2 SATOSHI YANAI  
 Supervising Deputy Attorney General  
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 8

9 IN THE UNITED STATES DISTRICT COURT  
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 11 SAN FRANCISCO DIVISION  
 12

13 **STATE OF CALIFORNIA, ex rel, XAVIER**  
 14 **BECCERRA, in his official capacity as**  
 15 **Attorney General of the State of California,**

16 Plaintiff,

17 v.

18 **JEFFERSON B. SESSIONS, in his official**  
 19 **capacity as Attorney General of the United**  
 20 **States; ALAN R. HANSON, in his official**  
 21 **capacity as Acting Assistant Attorney**  
 22 **General; UNITED STATES**  
 23 **DEPARTMENT OF JUSTICE; and DOES**  
 24 **1-100,**

25 Defendants.

3:17-cv-04701-WHO

**DECLARATION OF JEANNIE K.**  
**SPRINGER, FINANCIAL DIRECTOR,**  
**CITY AND COUNTY OF DENVER,**  
**DENVER POLICE DEPARTMENT IN**  
**SUPPORT OF PLAINTIFF'S MOTION**  
**FOR SUMMARY JUDGMENT**

Date: September 5, 2018  
 Time: 2 p.m.  
 Courtroom: 2  
 Judge: Honorable William H. Orrick  
 Trial Date: January 28, 2019  
 Action Filed: August 14, 2017

1 I, Jeannie K. Springer, declare as follows:

2 1. I am over 18 years of age. I have personal knowledge of the facts set forth in this  
3 declaration. If called as a witness, I could and would testify competently to the matters set forth  
4 below.

5 2. I have reviewed the FY 2017 Edward Byrne Memorial Justice Assistance Grant  
6 (“JAG”) Local Solicitation that is at issue in the Complaint and am familiar with its contents.

7 3. I am employed by the City and County of Denver Police Department (“DPD”), as  
8 the Finance Director, which includes responsibility for the financial administration of federal and  
9 state grants. I have served as the Finance Director for 10 years and 7 months and have career  
10 experience in the financial administration of federal and state grants since 1984.

11 4. DPD has a current portfolio of 9 state grants and 15 federal grant programs, with  
12 no financial or programmatic audit findings in the past 10 years. One of the federal grant  
13 programs is the JAG program that is administer by the Office of Justice Programs (“OJP”) in the  
14 U.S. Department of Justice (“USDOJ”).

15 5. On July 25, 2017, USDOJ announced the FY 2017 JAG Local Solicitation. DPD  
16 submitted its FY 2017 JAG Local Solicitation Application on August 31, 2017, for \$416,804 in  
17 funds that will be used for critical law enforcement functions, including technology that enables  
18 DPD to respond more quickly and accurately to gun violence, as well as support for crime victims  
19 and anti-trafficking efforts.

20 6. On November 15, 2017, DPD received a letter from USDOJ expressing USDOJ’s  
21 purported concern that Denver’s laws, policies, or practices violated 8 U.S.C. section 1373, and  
22 threatening to withhold Denver’s FY 2017 JAG funding as a result. Denver responded on  
23 December 8, 2017 and stated its position that Denver’s laws, policies, and practices comply with  
24 section 1373.

25 7. On January 24, 2018, the USDOJ sent DPD a second letter stating it was still  
26 concerned about Denver’s compliance with 8 U.S.C. section 1373 and demanded that Denver  
27 provide supporting documentation regarding its immigration laws, policies, and practices. USDOJ  
28 again threatened to withhold Denver’s FY 2017 JAG funds if USDOJ was not satisfied that

1 Denver's laws, policies, and practices comply with section 1373. Denver, on behalf of all law  
2 enforcement agencies, responded to USDOJ's request on February 23, 2018. DPD has not heard  
3 back from USDOJ in response to Denver's February 23, 2018 letter and document production.

4 8. To date, USDOJ has not issued these FY 2017 JAG funds to Denver.

5 9. JAG funds are used to support both the Denver Police Department ShotSpotter  
6 service and the Crime Victim Program in the Denver District Attorney's Office.

7 10. DPD JAG funds support the subscription fee for the ShotSpotter System in  
8 specified areas in Police Districts 1, 2 and 4. ShotSpotter is designed to identify gunshots in a  
9 specific geographical area by the use of acoustic surveillance. The combination of ShotSpotter  
10 technology, the local Crime Gun Intelligence Center and use of NIBIN (the National Integrated  
11 Ballistic Identification Network) has led to a significant increase in the number of recovered shell  
12 casing and firearms and an increased link of gun crimes and arrests.

13 11. In 2017, ShotSpotter technology documented 1,830 total alerts with 41 guns  
14 recovered; 206 associated NIBIN hits with 553 associated crimes. A total of 2,802 gun casings  
15 were recovered due to ShotSpotter alerts. DPD has established a metric entitled Were It Not for  
16 ShotSpotter (WINFSS) to gauge the impact of the system on gun crime in the target area. At the  
17 end of 2017, the data reflected that 78% of the time, DPD officers would not have made it to the  
18 exact crime scene without ShotSpotter; 43% of the arrests at or near the crime scene were due to  
19 ShotSpotter; 41% of the guns recovered at or near the crime scene were due to ShotSpotter; and  
20 68% of the ShotSpotter alerts had no corresponding calls for services or calls for shots fired.

21 12. Since implementation in April 2014 and continued expansion with JAG funds,  
22 ShotSpotter has allowed DPD officers to respond more quickly and accurately to gun crime. The  
23 presence of this technology in high gang and gun crime area has positively impacted the  
24 Department's ability to arrest and have successful prosecutions.

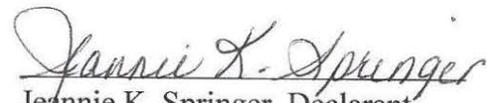
25 13. At this time, DPD has no other funding capability for this service and loss of  
26 funding for this critical force multiplier would result in termination of this vital program.

27 14. The Denver District Attorney's Office utilizes JAG funds to support two grant  
28 funded positions in the Crime Victim Program which includes the Victim Services and Advocacy

1 Network (VSN), Special Programs Unit (SPU) and Denver Anti-Trafficking Alliance  
2 (DATA). The VSN and SPU is a collaborative network that connects and supports agencies for  
3 the provision of seamless and integrated to victims and survivors of crime in Denver.

4 15. These positions include coordination of access to victim services at a one-stop  
5 center, support of the City Attorney's Elder Abuse Program, and support and coordination with  
6 agencies working to combat human trafficking in the Denver metro area. These two grant funded  
7 positions are critical to the mission of creation and coordination of victim services in the Denver  
8 area. Loss of JAG funds would significantly damage established partnerships which serve to  
9 provide important services to crime victims in the community.

10  
11 I declare under penalty of perjury under the laws of the State of Colorado and the United  
12 States that the foregoing is true and correct and that this declaration was executed on July 8  
13 2018, in Denver, Colorado.

14  
15  
16   
17 Jeannie K. Springer, Declarant  
18 Finance Director  
19 Denver Police Department  
20 City and County of Denver  
21  
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26  
27  
28

# EXHIBIT 13

1 XAVIER BECERRA  
 Attorney General of California  
 2 SATOSHI YANAI  
 Supervising Deputy Attorney General  
 3 SARAH E. BELTON  
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 Attorneys for Plaintiff State of California

8  
 9 IN THE UNITED STATES DISTRICT COURT  
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 11 SAN FRANCISCO DIVISION

13 **STATE OF CALIFORNIA, ex rel, XAVIER**  
 14 **BECCERRA, in his official capacity as**  
 15 **Attorney General of the State of California,**

16 Plaintiff,

17 v.

18 **JEFFERSON B. SESSIONS, in his official**  
 19 **capacity as Attorney General of the United**  
 20 **States; ALAN R. HANSON, in his official**  
 21 **capacity as Acting Assistant Attorney**  
 22 **General; UNITED STATES**  
 23 **DEPARTMENT OF JUSTICE; and DOES**  
 24 **1-100,**

25 Defendants.

3:17-cv-04701-WHO

**DECLARATION OF DEBORAH GRUMET, DEPUTY CHIEF FINANCIAL OFFICER, NEW YORK CITY MAYOR'S OFFICE OF CRIMINAL JUSTICE IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Date: September 5, 2018  
 Time: 2 p.m.  
 Courtroom: 2  
 Judge: Honorable William H. Orrick  
 Trial Date: January 28, 2019  
 Action Filed: August 14, 2017

1 I, Deborah Grumet, Deputy Chief Financial Officer, New York City Mayor's Office of  
2 Criminal Justice, declare as follows:

3 1. I am a resident of New York City ("City"). I have personal knowledge of the facts  
4 set forth in this declaration. If called as a witness, I could and would testify competently to the  
5 matters set forth below.

6 2. I am employed by the New York City Mayor's Office of Criminal Justice  
7 ("MOCJ"). The Mayor's Office of Criminal Justice advises the Mayor on public safety strategy  
8 and, together with partners inside and outside of government, develops and implements policies  
9 that promote safety and fairness and reduce unnecessary incarceration. I have served as the  
10 Budget Director from September 2016 through June 2018, and the Deputy Chief Financial  
11 Officer since July 2018.

12 3. MOCJ is responsible for managing 26 state and federal grant programs, including  
13 the JAG program that is administered by the Office of Justice Programs in the U.S. Department of  
14 Justice ("DOJ"). MOCJ is the City entity that applies for and receives the JAG program's formula  
15 grant funds allocated to New York City.

16 4. New York City has applied for and received JAG funds each and every year since  
17 the program's inception in 2005, as a direct grantee. Awards have ranged from \$2.2 million to  
18 \$8.7 million. In fiscal year ("FY") 2016, the City received \$4.3 million under its direct JAG  
19 Program award. Per the statutory formula, the City is entitled to a direct grant in the amount of  
20 \$4.1 million for FY 2017.

21 5. In connection with its FY 2016 JAG grant award, DOJ required that the City  
22 validate its compliance with Section 1373. Accordingly, on June 27, 2017, the City submitted to  
23 DOJ a legal opinion explaining that the City's laws, policies, and practices complied with and  
24 operated within the constitutional bounds of Section 1373. The City reserved its right to challenge  
25 the Section 1373 condition. A true and correct copy of this legal opinion is attached as Exhibit A.

26 6. New York City filed a timely application for the FY 2017 JAG grant on September  
27 5, 2017.

28 7. On October 11, 2017, DOJ formally responded to the City's legal opinion, stating

1 that, “based on a preliminary review, the Department has determined that your jurisdiction  
2 appears to have laws, policies, or practices that violate 8 U.S.C. § 1373.” DOJ directed the City  
3 to change its policies and to “certify that it has communicated this interpretation to its officers and  
4 employees.”

5 8. DOJ nevertheless asserted that it had yet to reach a “final” determination as to the  
6 City’s compliance or non-compliance with Section 1373.

7 9. On October 27, 2017, New York City replied to DOJ’s “preliminary” assessment  
8 of its compliance with Section 1373 and reiterated its legal opinion that its laws, policies, and  
9 practices complied with Section 1373, as lawfully applied. A true and correct copy of the City’s  
10 reply letter to DOJ is attached as Exhibit B.

11 10. Most recently, on January 24, 2018, DOJ sent the City a letter reiterating that it  
12 “remains concerned that your jurisdiction’s laws, policies, or practices may violate 1373” and  
13 requesting, under threat of subpoena, “[a]ll documents reflecting any orders, directives,  
14 instructions, or guidance to your law enforcement employees ... regarding whether and how these  
15 employees may, or may not, communicate with the Department of Justice, the Department of  
16 Homeland Security, and/or Immigration and Customs Enforcement, or their agents, whether  
17 directly or indirectly.” This letter further warned that, should DOJ determine that the City is out  
18 of compliance with Section 1373, it might claw back FY 2016 grant funds, require additional  
19 conditions for receipt of any FY 2017 funding, and/or deem the City ineligible for FY 2017 JAG  
20 funds.

21 11. The City sent DOJ a timely submission with responsive materials on February 23,  
22 2018. A true and correct copy of the cover letter for that submission is attached as Exhibit C.

23 12. The City has received no further communications from DOJ with respect to its  
24 JAG funding or its compliance with Section 1373 since it submitted its responsive materials in  
25 February 2018.

26 13. In June 2018, DOJ began to announce FY 2017 JAG grant awards to state and  
27 local recipients. New York City was not listed among the awardees. However, the City has  
28 received no formal denial from DOJ, nor any communication about the status of its application.

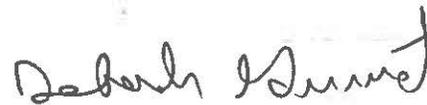
1           14.     The City uses JAG funds to support critical public safety personnel and programs  
2 aimed at reducing crime and promoting fairness in the criminal justice system.

3           15.     For instance, the New York City Police Department (“NYPD”) has drawn upon  
4 JAG funding to pay the salaries of 911 emergency responders.

5           16.     JAG funds are also used to help finance: diversion programs for nonviolent felony  
6 drug offenders run through the District Attorney’s Offices; efforts to fight cybercrime and identity  
7 theft; drug prosecutions by the City’s Office of the Special Narcotics Prosecutor; upgrades to the  
8 City’s criminal justice data collection, organization, and evaluation systems; interventions for  
9 individuals with mental and behavioral health needs; and school safety initiatives.

10  
11           I declare under penalty of perjury under the laws of the State of New York and the United  
12 States that the foregoing is true and correct and that this declaration was executed on July 6  
13 2018, in New York, New York.

14  
15             
16           KRISTEN ALEEN BURZYNSKI  
17           Notary Public, State of New York  
18           Reg. No. 02BU6364474  
19           Qualified in Kings County County  
20           Commission Expires 09/18/2021

21  
22           

23           Deborah Grumet  
24           Deputy Chief Financial Officer  
25           New York City Mayor’s Office of Criminal  
26           Justice

# Exhibit A



THE CITY OF NEW YORK  
**LAW DEPARTMENT**  
100 CHURCH STREET  
NEW YORK, N.Y. 10007-2601

ZACHARY W. CARTER  
*Corporation Counsel*

(212) 356-0800  
FAX: (212) 356-0809  
zcarter@law.nyc.gov

June 27, 2017

Alan R. Hanson  
Acting Assistant Attorney General  
Office of Justice Programs  
U.S. Department of Justice  
810 Seventh Street, NW  
Washington, DC 20531

Dear Acting Assistant Attorney General Hanson:

Pursuant to Special Condition 53 of its Fiscal Year ("FY") 2016 Edward Byrne Memorial Justice Assistance Grant ("JAG") Program award dated September 6, 2016, the Mayor's Office of Criminal Justice, an agency of New York City ("City"), agreed to "undertake a review to validate its compliance with 8 U.S.C. § 1373." This opinion provides the legal analysis to support the City's validation of compliance with § 1373.

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 guidance from the Office of Justice Programs (“OJP”) at the U.S. Department of Justice (“DOJ”) issued on July 7, 2016, § 1373 is an “applicable Federal law” for the purposes of the JAG program. U.S. Dep’t of Justice, Office of Justice Programs, Guidance Regarding Compliance with 8 U.S.C. § 1373.<sup>1</sup> Subsequent OJP guidance released on October 6, 2016 makes clear that “[n]o FY 2016 or prior year Byrne/JAG ... funding will be impacted” and encourages JAG recipients to examine relevant policies and procedures in preparation for the FY 2017 grant cycle. U.S. Dep’t of Justice, Office of Justice Programs, Additional Guidance Regarding Compliance with 8 U.S.C. § 1373.<sup>2</sup>

Notwithstanding the City’s position that § 1373 is not an applicable federal law with respect to the JAG program, and without waiving any of the City’s rights or objections to the OJP guidance or to § 1373, the City certifies that its laws and policies comply with and operate within the constitutional bounds of § 1373.

### **DETAINDER LAWS**

The City’s laws with respect to civil immigration detainer requests are consistent with § 1373. Section 1373 addresses the sharing of information regarding citizenship or immigration status between government entities or officials and the U.S. Immigration and Naturalization Service, now U.S. Immigration and Customs Enforcement (“ICE”). Section 1373 does not speak to the issue of civil immigration detainer requests, local compliance with which is completely voluntary. Nor does ICE rely upon § 1373 as its statutory authority to issue detainer requests. *See* U.S. Dep’t of Homeland Sec., Immigration and Customs Enforcement, Policy No. 10074.2: Issuance of Immigration Detainers by ICE Immigration Officers (effective Apr. 2, 2017).<sup>3</sup> The City’s laws pertaining to federal immigration detainers, N.Y.C. Admin. Code §§ 9-131 and 14-154, described below, do not prohibit or restrict communication between City agencies and ICE about an individual’s immigration or citizenship status and therefore comply with § 1373. Nevertheless, this legal opinion addresses detainer requests because the Inspector General at the DOJ focused on the handling of these requests in a May 31, 2016 memorandum assessing compliance with § 1373 by various OJP grant recipients, including the City. U.S. Dep’t of Justice, Office of the Inspector Gen., Department of Justice Referral of Allegations of Potential Violations of 8 U.S.C. § 1373 by Grant Recipients (May 31, 2016).<sup>4</sup>

<sup>1</sup> Available at <https://www.bja.gov/funding/8uscsection1373.pdf>. The Edward Byrne Memorial JAG Program is named for a 22-year-old New York City Police Officer who was killed in the line of duty. Officer Edward Byrne was assigned to protect a Guyanese immigrant who had been threatened repeatedly and whose house had been firebombed twice because he was cooperating with the New York City Police Department and reporting criminal activity in his neighborhood. That is, the JAG program is named after a police officer killed in the course of protecting an immigrant who was trying to make the City safer. It would therefore be ironic to apply § 1373 in a way that strips JAG funds from any jurisdiction with a confidentiality policy that encourages cooperation between law enforcement and immigrants.

<sup>2</sup> Available at <https://www.bja.gov/funding/Additional-BJA-Guidance-on-Section-1373-October-6-2016.pdf>.

<sup>3</sup> Available at <https://www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf>.

<sup>4</sup> Available at <https://oig.justice.gov/reports/2016/1607.pdf>.

The New York City Department of Correction (“DOC”) and the New York City Police Department (“NYPD”) receive detainer requests from ICE for persons in local custody accused or convicted of committing criminal offenses. *See* 8 C.F.R. § 287.7(d), (e). The U.S. Department of Homeland Security and several courts have determined that the cooperation of local law enforcement with such detainer requests is voluntary. *See, e.g., Galarza v. Szalczyk*, 745 F.3d 634, 645 (3d Cir. 2014). Additionally, courts have held that detaining an individual in response to a detainer request without probable cause may implicate liability under the Fourth Amendment. *See, e.g., Morales v. Chadbourne*, 996 F. Supp. 2d 19, 39 (D.R.I. 2014), *aff’d in part and appeal dismissed in part*, 793 F.3d 208, 215-16 (1st Cir. 2015).

The City has two laws that set out its procedure for responding to detainer requests. Section 9-131 of the New York City Administrative Code states the conditions under which the DOC will hold an individual subject to a detainer request or share certain categories of information with ICE. Section 14-154 imposes similar conditions under which the NYPD will hold an individual subject to a detainer request. The City’s laws pertaining to immigration detainees are designed to advance public safety and protect the City’s finances.

The DOC may honor a detainer request by holding an individual for up to 48 hours after he or she would otherwise be released only if ICE produces a judicial warrant and the subject has been convicted of a “violent or serious crime,” as defined by local law, or is identified as a possible match in the terrorist screening database. N.Y.C. Admin. Code § 9-131(b)(1). The law also provides that DOC personnel shall not expend time or agency resources disclosing to federal immigration authorities information regarding any person’s incarceration status, release dates, court appearance dates, or any other information that pertains to the person, unless an enumerated exception applies. *Id.* at § 9-131(h)(1). One such exception authorizes the DOC to respond to an ICE request for release date and time, if the subject of the request is “a person convicted of a violent or serious crime or identified as a possible match in the terrorist screening database.” *Id.* at § 9-131(h)(1)(i). DOC policy in such cases is to share such information and participate in an orderly transfer of custody in response to the request if it is supported by specified documentation of probable cause. Moreover, the law explicitly excludes information related to a person’s citizenship or immigration status from the category of information that DOC personnel are prohibited from disclosing to federal immigration authorities. *Id.*

The NYPD may honor a detainer request under the same conditions as the DOC. *Id.* at § 14-154(b)(1). The NYPD may also honor a detainer request by holding a person for up to 48 hours beyond the time such person would otherwise be released, in advance of ICE obtaining a judicial warrant, if the person was convicted of a violent or serious crime and has re-entered the country illegally after a previous removal or return, or if the person is identified as a possible match in a terrorist screening database. *Id.* at § 14-154(b)(2). The law does not prohibit or restrict the NYPD from sharing citizenship or immigration status information with federal immigration authorities.

Additionally, both local laws specify that “[n]othing in this local law shall be construed to prohibit any city agency from cooperating with federal immigration authorities when required

under federal law. Nothing in this local law shall be interpreted or applied so as to create any power, duty or obligation in conflict with any federal or state law.” *Id.* at §§ 9-131(d), 14-154(d).

Thus, the City’s laws pertaining to federal immigration detainers comply with § 1373. To the extent local law restricts the DOC from sharing certain information with federal immigration authorities, the law explicitly excludes from this restriction information related to a person’s citizenship or immigration status and does not prohibit or restrict the DOC from sharing such information with federal immigration authorities. Local law also does not prohibit or restrict the NYPD from sharing information regarding citizenship or immigration status with ICE.

### **GENERAL CONFIDENTIALITY POLICY**

The City’s general confidentiality policy complies with § 1373 insofar as § 1373 may constitutionally be applied. The City has identified significant constitutional limits on the application of § 1373 to its general confidentiality policy.

As an initial matter, § 1373 may not properly be construed to abrogate a state or local confidentiality policy that is general both as to the information covered and the disclosures regulated. Before a statute will be understood to alter the usual constitutional balance between the federal government and the States, Congress must make its intent to do so “unmistakably clear.” *Gregory v. Ashcroft*, 501 U.S. 452, 460-61 (1991) (quotation marks omitted); *see also Bond v. United States*, 134 S. Ct. 2077, 2083 (2014). This is true even when the proposed incursion may fall within constitutional bounds. *Gregory*, 501 U.S. at 464. *Gregory*’s clear-statement principle applies here to compel a strict construction of § 1373, since a broad reading would sever state and local governments’ control over their own employees in a manner that is unprecedented in our federalist tradition.

While it is plain that the statute means to bar state and local laws and policies that are targeted at restricting disclosures of information about citizenship or immigration status to ICE (or other governmental entities), it is not clear that Congress intended to compel that such disclosures receive favored treatment when a state or locality has adopted a general confidentiality policy. Indeed, the DOJ’s Office of Legal Counsel has opined that § 1373’s legislative history “suggests that a narrow construction is appropriate,” noting that Congress’s focus appeared to be ensuring that ICE “would not be placed at a comparative disadvantage,” rather than “privileging” the agency. Memorandum from Dep’t of Justice to General Counsel, Dep’t of Commerce, Relationship Between Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”) and Statutory Requirement for Confidentiality of Census Information, at 12-13 (May 18, 1999) (citing H.R. Rep. No. 104-469, pt. 1, at 277 (1996)) (hereafter “OLC Memo”). Thus, neither the text nor legislative history indicates clear congressional intent that § 1373 should abrogate a general confidentiality policy such as that of New York City—or that Congress intended to condition the receipt of any federal grants or funds on compliance with this section. *See* Pub. L. No. 104-208, 110 Stat. 3009 (Sept. 1996); *see also* Conference Report, IIRIRA, H.R. Rep. No. 104-828, at 199-252 (1996) (Conf. Rep.) (evincing no Congressional intent to support a funding condition vis-à-vis § 1373).

Since 2003, the City has had a general confidentiality policy that protects all residents' confidential information from disclosure to third parties. N.Y.C. Office of the Mayor, Exec. Order No. 41 (Sept. 17, 2003) (hereafter referred to as the "general confidentiality policy").<sup>5</sup> The general confidentiality policy is an integral part of the architecture of laws, policies, and protocols that protect sensitive, private, and confidential information in the City, including individuals' personally identifiable information. *See* N.Y.C. Admin. Code § 10-501 (defining "personal identifying information" for purposes of security breaches). Such policies and protocols are deeply embedded in the City's regular business practices, both at a citywide and local agency level, and are essential to efficient day-to-day operations. For instance, under the Citywide Data Privacy and Security Protocol, all City agencies must follow a detailed procedure for handling third-party information requests. Adherence to this Protocol ensures that agencies disclose requested information only when appropriate and comply with all applicable statutory, regulatory, or contractual restrictions on disclosure. Further, City agencies assiduously endeavor to protect sensitive information through policies such as the Department of Information Technology and Telecommunications' Citywide Information Security Policies, which facilitate the overall security of City data.

Situated within this extensive legal and policy architecture, the general confidentiality policy defines "confidential information" broadly to include an individual's sexual orientation, status as a victim of domestic violence, status as a victim of sexual assault, status as a crime witness, receipt of public assistance, immigration status, and information contained in income tax returns. Exec. Order No. 41, at § 1. The City's policy generally prevents disclosure of this information, while allowing for such disclosure in enumerated circumstances. *Id.* at § 2. City officers or employees may disclose confidential information relating to immigration status where: such disclosure has been authorized in writing by the individual to whom such information pertains; such disclosure is required by law; such disclosure is to another City officer or employee and is necessary to fulfill the purpose or achieve the mission of any City agency; the individual to whom such information pertains is suspected of engaging in illegal activity; the dissemination of such information is necessary to apprehend a person suspected of engaging in illegal activity; or such disclosure is necessary in furtherance of an investigation of potential terrorist activity. *Id.* "Illegal activity" is defined as unlawful activity, other than mere status as an undocumented alien. *Id.*

The City's general confidentiality policy is necessary to the performance of its legitimate municipal functions. In 2001, City voters authorized such a policy, deciding that "it is essential to the workings of city government that the city retain control over information obtained by city employees in the course of their duties." N.Y.C. Charter § 8(g). The voters approved a referendum amending the City Charter to empower the Mayor to "requir[e] that information obtained by city employees be kept confidential to the extent necessary to preserve the trust of individuals who have business with city agencies." *Id.* Pursuant to that authority, the Mayor issued Executive Order 41, which memorializes the City's general confidentiality policy and bars its officers and employees, with narrow exceptions, from disclosing a wide variety of personal information. The general confidentiality policy seeks to "promote the utilization of [the City's]

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<sup>5</sup> Available at <http://www.nyc.gov/html/dfta/downloads/pdf/EO41.pdf>.

services by all of its residents who are entitled to and in need of them” with the goal of encouraging individuals to “obtain the assistance of City agencies regardless of personal or private attributes, without negative consequences to their personal lives.” Exec. Order No. 41, at Whereas Clauses. The preamble notes that the “obtaining of pertinent information, which is essential to the performance of a wide variety of governmental functions, may in some cases be difficult or impossible if some expectation of confidentiality is not preserved, and preserving confidentiality in turn requires that governments regulate the use of such information by their employees.” *Id.*

Second Circuit jurisprudence reflects the tension between § 1373 and Tenth Amendment principles of federalism as applied to New York City’s general confidentiality policy. *See City of New York v. United States*, 179 F.3d 29, 36 (2d Cir. 1999), *cert. denied*, 528 U.S. 1115 (2000). This conflict with well-accepted notions of federalism should be avoided under Supreme Court doctrine that is particularly salient in the federalism context, by construing § 1373 to reflect a more limited scope of application that accommodates the federalism concerns recognized by the Second Circuit. *See Clark v. Suarez Martinez*, 543 U.S. 371, 381-83 (2005) (invoking the constitutional avoidance principle when interpreting a provision of federal immigration law); *Bond*, 134 S. Ct. at 2086-94 (interpreting a federal statute narrowly to avoid a “dramatic departure” from the federalist structure). Specifically, in *City of New York*, the Second Circuit recognized the importance of preserving residents’ expectations that confidential information they provide to the City will be protected. 179 F.3d at 36. The court acknowledged that gathering information “is essential to the performance of a wide variety of state and local governmental functions” and that discharging those essential functions may “be difficult or impossible if some expectation of confidentiality is not preserved.” *Id.* Despite the City’s “not insubstantial” concerns with respect to control over confidential information, the court upheld the constitutionality of § 1373 as applied to a previous mayoral executive order, which was directed solely towards prohibiting City officers and employees from voluntarily providing federal immigration authorities with information concerning any alien. *Id.*; *see also* N.Y.C. Office of the Mayor, Exec. Order No. 124 (Aug. 7, 1989).<sup>6</sup> The Second Circuit concluded that the City had failed to show that § 1373 impermissibly intruded on local control over information obtained in the course of official business or over its employees’ use of such information because the executive order at issue was “not a general policy ... [but rather] single[d] out a particular federal policy for non-cooperation while allowing City employees to share freely the information in question with the rest of the world.” *City of New York*, 179 F.3d at 36-37. In so holding, the Second Circuit upheld the constitutionality of § 1373 as applied to a confidentiality policy targeted specifically at immigration-related information. New York City petitioned for certiorari, which was denied, and does not concede the facial constitutionality of § 1373.

The Second Circuit deliberately declined to resolve whether § 1373 “would survive a constitutional challenge” in the context of “generalized confidentiality policies that are necessary to the performance of legitimate municipal functions.” *Id.* at 37. The court’s reticence on this point echoes a substantially similar observation by the DOJ: “[T]he legislative history may suggest that 8 U.S.C. § 1373(a) is not intended to apply to any provision of law, whether federal,

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<sup>6</sup> Available at [http://www.nyc.gov/html/records/pdf/executive\\_orders/1989EO124.PDF](http://www.nyc.gov/html/records/pdf/executive_orders/1989EO124.PDF).

state, or local, that imposes a confidentiality requirement that applies to bar disclosures not simply to the INS, but to government agencies generally.” OLC Memo, at 13, n.10.

Unlike the executive order analyzed by the court in *City of New York*, the City’s current general confidentiality policy protects a broad swath of sensitive information about individuals who happen to come into contact with City employees. The policy prescribes how City employees should interact with members of the public in order to build and maintain civic trust. In so doing, the policy aids the City in protecting the public health, safety, and general welfare of its residents by facilitating access to services by all, including but not limited to immigrants.

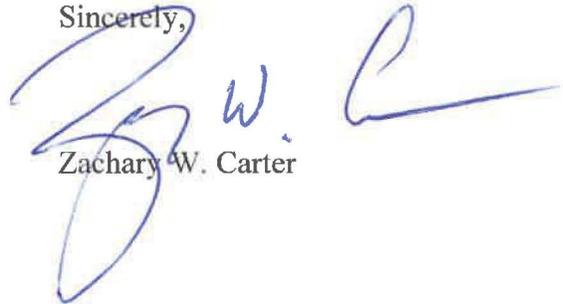
Moreover, application of § 1373 to impede the City’s general confidentiality policy would not only undermine the integrity of the policy, but also violate the federalist structure of the Constitution by interfering with the City’s control over its own officers and employees. *See Reno v. Condon*, 528 U.S. 141, 149 (2000) (noting that the Supreme Court has “held federal statutes invalid, not because Congress lacked legislative authority over the subject matter, but because those statutes violated the principles of federalism contained in the Tenth Amendment”). A government can only exercise power through its officers and employees and it is through this structure “and the character of those who exercise government authority, [that] a State defines itself as a sovereign.” *Gregory*, 501 U.S. at 460. Section 1373 specifically targets the City’s ability to control its workforce of over 300,000 people by turning City officers and employees, who would otherwise act uniformly in accordance with controlling federal, state, and local laws, into free agents who may or may not report immigration-related information about select individuals to the federal government. If construed to force the City to either aid federal enforcement efforts or give its officers and employees free agency status—a recipe for arbitrariness and inconsistency—application of § 1373 would deliberately and impermissibly interfere with the City’s sovereign power. *See Printz v. United States*, 521 U.S. 898, 928 (1997) (explaining that a sovereign government is one that is “independent and autonomous” within its own “sphere of authority”); *see also* *The Federalist* No. 51, at 323 (Clinton Rossiter ed., 1961) (explaining that out of the “compound republic of America ... a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.”). Additionally, application of § 1373 to inhibit control over the manner in which City officers and employees handle sensitive information could lead to misuse of City resources in violation of ethics provisions of the City Charter, for example, where an individual discloses immigration status in furtherance of the employee’s private interest. *See* N.Y.C. Charter § 2604(b). It could also create the appearance that City employees are engaged in profiling on the basis of race or national origin, or even lead to unlawful detention in furtherance of federal immigration enforcement, particularly where incomplete or inaccurate information is shared by an unregulated employee. *See Morales*, 996 F. Supp. 2d at 39.

The City does not dispute that the federal government has “broad, undoubted power over the subject of immigration.” *Arizona v. United States*, 132 S. Ct. 2492, 2498 (2012). However, § 1373 simply cannot be read to override the City’s general confidentiality policy and thereby unconstitutionally interfere with the City’s right to control its officers and employees and assign their duties. As the Fifth Circuit has explained, “[w]hatever the outer limits of state sovereignty may be, it surely encompasses the right to set the duties of office for state-created officials.” *See Koog v. United States*, 79 F.3d 452, 460 (5th Cir. 1996). The Second Circuit agreed with this

sentiment in *City of New York*, noting that broad municipal control over confidential information is necessary to the performance of local governmental functions. 179 F.3d at 37. Any application of § 1373 that wrests away the City's sovereign power to maintain the confidentiality of information obtained by its officers and employees in the regular course of business would violate the system of dual sovereignty that is "grounded in the very structure of the Constitution." *Bond*, 134 S. Ct. at 2091.

For all of these reasons, New York City validates its compliance with § 1373 and certifies that its laws and policies comply with and operate within the constitutional bounds of that section.

Sincerely,

A handwritten signature in blue ink, appearing to read "Zachary W. Carter". The signature is stylized and cursive, with a large initial "Z" and a long horizontal stroke at the end.

Zachary W. Carter

# Exhibit B



THE CITY OF NEW YORK  
**LAW DEPARTMENT**  
100 CHURCH STREET  
NEW YORK, N.Y. 10007-2601

**ZACHARY W. CARTER**  
*Corporation Counsel*

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October 27, 2017

Alan R. Hanson  
Acting Assistant Attorney General  
Office of Justice Programs  
U.S. Department of Justice  
810 Seventh Street, NW  
Washington, DC 20531

Dear Acting Assistant Attorney General Hanson:

This letter constitutes New York City's response to the preliminary assessment of the U.S. Department of Justice ("DOJ") that the City "appears to have laws, policies, or practices that violate 8 U.S.C. § 1373." As explained in its June 27, 2017 legal opinion, the City's laws, policies, and practices comply with and operate within the constitutional bounds of Section 1373.

The City of New York is committed to lawfully protecting the health, safety, and general welfare of all of its residents, including immigrants. To advance that commitment, the City has enacted laws and policies that build civic trust, encourage public interactions with local government, and promote widespread use of critical services. These include the City's laws governing cooperation with civil immigration detainers and the City's general confidentiality policy protecting residents' personal information. As a result of these and other legal and policy choices, the City is the safest big city in the country, while it continues to welcome New Yorkers from every corner of the world.

In its October 11, 2017 preliminary assessment, DOJ asserts that provisions of the City's detainer laws and general confidentiality policy violate Section 1373. As an initial matter, we refer DOJ to the City's June 27, 2017 legal opinion, which we incorporate by reference here. The City's legal opinion, which DOJ acknowledged but did not substantively address, explains at length how these provisions comply with Section 1373. Troublingly, DOJ's preliminary assessment mischaracterizes the scope of Section 1373 and the City's laws and policies, and attempts to impose new certification requirements that have no basis in law.

DOJ's determination that New York City Administrative Code § 9-131 violates Section 1373 is predicated on an unsupported view of the scope of Section 1373. Section 1373 is about "information regarding the citizenship or immigration status, lawful or unlawful, of any individual." 8 U.S.C. § 1373(a). Section 1373 is *not* about information regarding the release date and time of a person in City custody, or a person's incarceration status. Indeed, DOJ has conceded as much in open federal court; during a hearing on the City of Chicago's motion for a preliminary injunction against the new immigration-related conditions on FY 2017 Byrne JAG funding, DOJ agreed with the court that Section 1373 "does not specifically authorize" notification to federal immigration authorities of release date. *City of Chicago v. Sessions*, Transcript of Proceedings – Preliminary Injunction Hearing Before the Honorable Harry D. Leinenweber, September 11, 2017, at pp. 53-55. *See also Steinle v. City and Cty. of S.F.*, 230 F. Supp. 3d 994, 1015-16 (N.D. Cal. 2017) ("Nothing in 8 U.S.C. 1373(a) addresses information concerning an inmate's release date.").

As the City has already explained in its legal opinion, Section 9-131 does not prohibit or restrict the New York City Department of Correction ("DOC") from sharing information related to a person's citizenship or immigration status with federal immigration authorities. DOC may share information related to release date and time or incarceration status – neither of which DOC is required to share pursuant to any federal law – under specified circumstances.

DOJ's preliminary assessment also misreads Executive Order No. 41 and constitutes an unlawful application of Section 1373. Section 4 of the Executive Order prohibits law enforcement officers from asking individuals about their immigration status unless investigating illegal activity. Section 3 of the Executive Order prohibits all other City officers or employees from asking individuals about their immigration status unless an exception applies. Neither section conflicts with Section 1373. Furthermore, as previously explained, the City's general confidentiality policy, Section 2 of the Executive Order, complies with Section 1373 insofar as Section 1373 may be applied consistent with the federalist structure of the Constitution. In short, Section 1373 cannot be read to override the City's general confidentiality policy and unconstitutionally interfere with the City's right to exert control over its officers and employees.

DOJ's preliminary assessment also requires the City to certify that it has communicated to its officers and employees DOJ's interpretations of Section 1373 and the City's laws and policies. There is no congressional authority whatsoever to support these new certifications, which are not required to comply with Section 1373.

As explained in its June 27, 2017 legal opinion and this response, the City has in good faith met the conditions of its FY 2016 Byrne JAG award and reiterates its validation of compliance with Section 1373.

\* \* \*

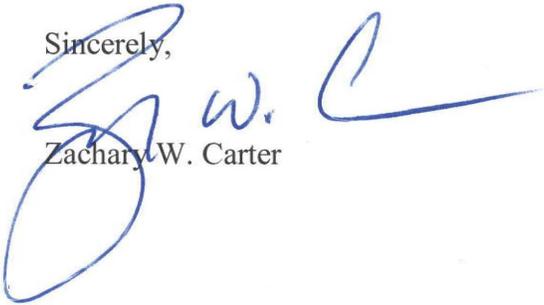
Notwithstanding the City's efforts, DOJ's required certifications with respect to Section 1373 are unlawful.

First, Congress did not authorize conditioning the receipt of Byrne JAG funds on compliance with Section 1373. Under the Spending Clause, funding conditions upon state and local governments must be set forth explicitly by Congress. *See, e.g., South Dakota v. Dole*, 483 U.S. 203, 207 (1987) (quoting *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 17 (1981)) (“[W]e have required that if Congress desires to condition the States’ receipt of federal funds, it ‘must do so unambiguously..., enabl[ing] the States to exercise their choice knowingly, cognizant of the consequences of their participation.’”). This “clear statement” doctrine dictates that DOJ may not act by executive fiat where Congress has not explicitly created a condition on federal funding. Neither the statutory text nor legislative history support the idea that Section 1373 was intended by Congress to function as a condition upon federal funding.

Second, Section 1373 is not an “applicable Federal law” under the Byrne JAG authorizing statute. *See* 42 U.S.C. § 3752(a)(5)(D). There is no indication that Congress intended to link the requirements of Section 1373 to Byrne JAG funding. The absence of any substantive relationship between the Byrne JAG program, which supports local law enforcement and criminal justice operations, and the immigration-specific focus of 8 U.S.C. § 1373, is further evidence that Congress never intended that this statute be considered an applicable federal law for the purposes of this formula-based grant program.

We hope DOJ will reconsider its views and we look forward to its final determination.

Sincerely,

  
Zachary W. Carter

# Exhibit C



THE CITY OF NEW YORK  
**LAW DEPARTMENT**

100 CHURCH STREET  
NEW YORK, N.Y. 10007-2601

ZACHARY W. CARTER  
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February 23, 2018

Jon Adler  
Director  
Bureau of Justice Assistance  
Office of Justice Programs  
810 7<sup>th</sup> Street NW  
Washington, DC 20531

Re: Document Request for Grant 2016-DJ-BX-0178, New York City Mayor's  
Office of Criminal Justice

Dear Director Adler:

In response to your request for documents dated January 24, 2018, I am providing the attached documents and privilege log on behalf of the New York City Mayor's Office of Criminal Justice.

This production is made as part of New York City's ongoing cooperation with the Department of Justice's inquiries concerning 8 U.S.C. § 1373. As explained in its June 27, 2017 legal opinion and October 27, 2017 letter, the City's laws, policies and practices comply with and operate within the constitutional bounds of Section 1373. These policies have helped New York City become the safest big city in the country by building civic trust and encouraging public interactions with local government, especially local law enforcement.

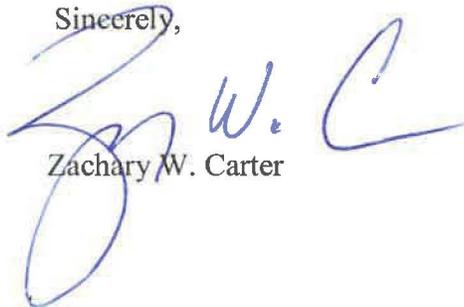
This production is not intended to, and does not, constitute any representation, admission, or waiver as to the City's rights or responsibilities under the Byrne JAG program or as to the meaning, scope, or effect of Section 1373. The City reserves all rights to challenge the Department's requests for documents and legal interpretations, as appropriate. Subject to and without waiving these or any other objections or rights, we are providing documents that reflect orders, directives, instructions, or guidance to our law enforcement employees, whether formal or informal, that were distributed, produced, and/or in effect between September 30, 2015 and January 24, 2018, regarding whether and how those employees may, or may not, communicate with the Department of Justice, the Department of Homeland Security, and/or Immigration and

Customs Enforcement, or their agents, whether directly or indirectly, with respect to “the citizenship or immigration status, lawful or unlawful, of any individual.” 8 U.S.C. § 1373.

We are providing a link to these documents, bearing Bates numbers NYC0000001 to NYC0000083, and a privilege log by email to Chris Casto in your department. Provision of these materials is not intended to and does not waive any applicable privilege or other legal basis under which information may not be subject to production. Additionally, the provision of material without redaction is not intended to and does not indicate that such material is responsive to your request; some non-responsive material is included for the sake of completeness.

Please do not hesitate to contact me at (212) 356-0800 if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Zachary W. Carter', is written over the typed name. The signature is stylized and cursive.

Zachary W. Carter

ZWC:ay

Attachments