

Nos. 18-17308; 18-17311

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

CITY AND COUNTY OF SAN FRANCISCO,
Plaintiff-Appellee,

v.

WILLIAM P. BARR, et al.
Defendants-Appellants.

STATE OF CALIFORNIA,
Plaintiff-Appellee,

v.

WILLIAM P. BARR, et al.
Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of California

**BRIEF OF AMICI CURIAE 43 COUNTIES, CITIES, AND MUNICIPAL
AGENCIES; THE NATIONAL LEAGUE OF CITIES; INTERNATIONAL
MUNICIPAL LAWYERS ASSOCIATION; AND THE INTERNATIONAL
CITY/COUNTY MANAGEMENT ASSOCIATION**

**IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE OF
THE DISTRICT COURT'S JUDGMENT**

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City of Albuquerque, New Mexico	International Municipal Lawyers Association ²
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City of Berkeley, California	City of Ithaca, New York
City of Boulder, Colorado	King County, Washington
City of Burlington, Vermont	City of Lawrence, Massachusetts
City of Cambridge, Massachusetts	City of Los Angeles, California
City of Chelsea, Massachusetts	County of Los Angeles, California
City of Chicago, Illinois	City of Madison, Wisconsin
City of Chula Vista, California	Metropolitan Area Planning Council ³
County of Contra Costa, California	City of Minneapolis, Minnesota
City of Davis, California	County of Monterey, California
City of Dayton, Ohio	City of Morgan Hill, California
City and County of Denver, Colorado	National League of Cities ⁴

¹ The International City/County Management Association (“ICMA”) is a nonprofit professional and educational organization of over 9,000 appointed chief executives and assistants serving cities, counties, towns, and regional entities. ICMA’s mission is to create excellence in local governance by advocating and developing professional management of local governments throughout the world.

² The International Municipal Lawyers Association (“IMLA”) has been an advocate and resource for local government attorneys since 1935. Owned solely by its more than 3,000 members, IMLA serves as an international clearinghouse for legal information and cooperation on municipal legal matters.

³ The Metropolitan Area Planning Council is the public Regional Planning Agency serving the people who live and work in the 101 cities and towns of Metropolitan Boston. *See* Massachusetts General Laws Ch. 40B Section 24. The agency provides extensive technical assistance to cities and towns in the Greater Boston region, and supports the ability of cities and towns to adopt and implement best practices for maintaining a productive relationship with all residents of their communities, regardless of their immigration status.

⁴ The National League of Cities (“NLC”) is dedicated to helping city leaders build better communities. NLC is a resource and advocate for 19,000 cities, towns, and villages, representing more than 218 million Americans.

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City of Sacramento, California
City of Salinas, California

City of San José, California
City of Santa Ana, California
County of Santa Cruz, California
City of Santa Fe, New Mexico
County of Santa Fe, New Mexico
City of Seattle, Washington
City of Somerville, Massachusetts
City of Tucson, Arizona

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), amicus curiae the International City/County Management Association, International Municipal Lawyers Association, and the National League of Cities state that they are nonprofit corporations that have no parent corporations and issues no stock, therefore no publicly held corporation owns more than 10% or more of their stock. All other amici curiae are political subdivisions or government agencies for whom no corporate disclosure is required.

Dated: May 29, 2019

By: /s H. Luke Edwards
H. Luke Edwards

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INTEREST OF AMICI CURIAE⁵

Amici are 43 counties, cities, and municipal agencies, and three major associations of local governments and their officials. Amici cities and counties, like all local governments, bear responsibility for providing essential services to the residents of our communities and safeguarding their health, safety, and welfare. Our law enforcement officials patrol our streets, operate our jails, investigate and prosecute crimes, and secure justice for victims. To fulfill these responsibilities, amici cities and counties must build and maintain the trust of our residents, regardless of their immigration status, and must be able to adopt policies that meet our communities' unique needs.

Amici represent a broad spectrum of localities from across the county with diverse populations and varying approaches to local policy. In creating the Edward Byrne Memorial Justice Assistance Grant (“Byrne JAG”) program to provide states and localities with a steady source of funding for law enforcement policies and programs, Congress expressly recognized the import of ensuring localities can tailor law enforcement practices to local needs. Amici have a shared interest in ensuring that congressional intent is not overridden by unconstitutional executive branch overreach.

⁵ All parties have consented by stipulation to the filing of this amicus brief. No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici or their counsel made a monetary contribution to this brief's preparation or submission.

INTRODUCTION

Since its outset, the Trump Administration has targeted local officials and jurisdictions, like amici cities and counties, that have decided that public safety in their communities is best served by limiting local involvement with enforcement of federal immigration law. This Court previously rebuffed the Administration's efforts to financially coerce localities to participate in immigration enforcement. *City & Cty. of San Francisco v. Trump*, 897 F.3d 1225, 1234-35 (9th Cir. 2018) (holding unconstitutional an executive order that would have withheld all funding from "sanctuary" jurisdictions). And it explained that "[a]bsent congressional authorization, the Administration may not redistribute or withhold properly appropriated funds in order to effectuate its own policy goals." *Id.* at 1235. Yet, the Department of Justice ("DOJ") continues to attempt to deny federal funds to localities that choose to limit their participation in federal immigration enforcement.

DOJ's conditions on Byrne JAG program funding violate the Constitution, usurp local control over public safety policies, and erode the community trust on which local law enforcement depends. Recognizing this, the district court permanently enjoined enforcement of these conditions nationwide. *See* ER at 60-65.⁶ Affirmance of the nationwide injunction is required to protect San Francisco, California, and

⁶ The district court stayed nationwide application of the injunction, pending this Court's review. ER at 65.

localities around the United States from irreparable harm to their law enforcement efforts and, in turn, to public safety in their communities.

BACKGROUND

Hundreds of cities and counties around the country and across the political spectrum have decided that to enhance the safety and well-being of their communities they will limit local involvement in immigration enforcement. *See, e.g.*, Jasmine C. Lee, *What Are Sanctuary Cities*, N.Y. Times (Feb. 6, 2017), www.nytimes.com/interactive/2016/09/02/us/sanctuary-cities.html. Although these jurisdictions are just as safe as, if not safer than, those that devote local resources to enforcing federal immigration law, *see infra* at 11, President Trump has promised to “end . . . [s]anctuary” jurisdictions by cutting off federal funding. *Transcript of Donald Trump’s Immigration Speech*, N.Y. Times (Sept. 1, 2016), www.nytimes.com/2016/09/02/us/politics/transcript-trump-immigration-speech.html.

Days after his inauguration, President Trump issued Executive Order 13768, directing the Attorney General and the Secretary of Homeland Security to ensure that so-called “sanctuary jurisdictions” do not receive any federal funds. Exec. Order 13768, 82 Fed. Reg. 8799, §§ 2(c), 9(a) (Jan. 30, 2017). Shortly thereafter, the County of Santa Clara and the City and County of San Francisco filed related lawsuits in the Northern District of California challenging the Executive Order. The district court issued a preliminary injunction blocking the Order’s broad funding ban. *Cty. of Santa Clara v. Trump*, 250 F. Supp. 3d 497, 516-17, 540 (N.D. Cal. 2017). And it then

permanently enjoined the Order nationwide, holding the Order violates separation of powers principles, the Spending Clause, and the Fifth and Tenth Amendments. *City of Santa Clara v. Trump*, 275 F. Supp. 3d 1196, 1211-18 (N.D. Cal. 2017). On appeal, this Court agreed an injunction was necessary to block the Administration's unconstitutional efforts, *San Francisco*, 897 F.3d at 1234-35, but remanded for the district court to conduct further factual inquiry into the proper scope of the injunction, *id.* at 1245.

Barred from withholding *all* federal funds from states and localities that choose not to devote their resources to immigration enforcement, the Attorney General shifted to a grant-by-grant approach. On July 25, 2017, DOJ announced three conditions for the Byrne JAG program that require recipients to (1) certify compliance with 8 U.S.C. § 1373, which prohibits restrictions on the sharing of immigration status information (“Compliance Condition”), (2) “permit personnel of [Department of Homeland Security (“DHS”)] to access any detention facility in order to meet with an alien . . . and inquire as to his or her right to be or remain in the United States” (“Access Condition”), and (3) “provide at least 48 hours’ advance notice to DHS regarding the scheduled release date and time of an alien in the jurisdiction’s custody when DHS requests such notice in order to take custody of the alien” (“Notice Condition”) (collectively, “FY 2017 conditions”). ER at 269-270; 300.

Within weeks of DOJ's announcement, San Francisco, California, Chicago, Philadelphia, and Los Angeles filed separate lawsuits challenging these conditions.⁷ Chicago quickly obtained a nationwide preliminary injunction prohibiting enforcement of the Notice and Access Conditions. *City of Chicago v. Sessions*, 264 F. Supp. 3d 933, 951 (N.D. Ill. 2017). After the issuance of the nationwide injunction, DOJ withheld all funding so it could retain the right to issue awards imposing the challenged conditions. But DOJ told the district court that if the nationwide scope of injunction were stayed, it would issue the awards immediately. *See City of Chicago v. Sessions*, No. 17-2991, ECF No. 44 at 1162-63 (7th Cir. 2018).

The Seventh Circuit affirmed the preliminary injunction, *City of Chicago v. Sessions*, 888 F.3d 272 (7th Cir. 2018), but after DOJ sought en banc reconsideration solely on the scope of relief, the court stayed nationwide application of the injunction, *Chicago*, No. 17-2991, ECF No. 134. The next day, DOJ did as promised, announcing it would “begin the distribution of nearly \$200 million in Byrne JAG funds to

⁷ *City & Cty. of San Francisco v. Sessions*, No. 17-4642 (N.D. Cal.); *State of Cal. v. Sessions*, No. 17-4701 (N.D. Cal.); *City of Chicago v. Sessions*, No. 17-5720 (N.D. Ill.); *City of Philadelphia v. Sessions*, No. 17-3894 (E.D. Pa.); *City of Los Angeles v. Sessions*, No. 17-7215 (C.D. Cal.). In June 2018, a district court permanently enjoined the conditions as to the City of Philadelphia. *See City of Philadelphia v. Sessions*, 309 F. Supp. 3d 289, 345 (E.D. Pa. 2018). And the Third Circuit affirmed the district court's ruling that the Attorney General lacked authority to impose the challenged conditions. *City of Philadelphia v. Attorney Gen. of United States of Am.*, 916 F.3d 276, 293 (3d Cir. 2019). In September 2018, a district court likewise issued an injunction protecting the City of Los Angeles. *Los Angeles*, No. 17-7215, ECF No. 93 (Sept. 13, 2018).

jurisdictions that share” its policy preferences on immigration enforcement. U.S.

Dep’t of Justice, Office of Justice Programs, *DOJ Releases FY 17 JAG Funding* (Jul. 26, 2018), <https://content.govdelivery.com/accounts/USDOJOJP/bulletins/1fa6e57>.

Eleven more jurisdictions then sued, challenging the FY 2017 conditions.⁸ In the absence of an active nationwide injunction,⁹ DOJ continues to attach immigration-related conditions to FY 2017 JAG awards. Indeed, so far it has issued more than 900 FY 2017 awards, requiring compliance with the conditions everywhere it is not barred by court order from doing so.¹⁰ See U.S. Dep’t of Justice, Office of Justice Programs,

⁸ *State of Illinois v. Sessions*, No. 18-4791 (N.D. Ill.); *City of Evanston and the U.S. Conference of Mayors v. Sessions*, No. 18-4853 (N.D. Ill.); *States of New York, Connecticut, New Jersey, and Washington and Commonwealths of Massachusetts and Virginia v. Department of Justice*, No. 18-6471 (S.D.N.Y.); *City of New York v. Sessions*, No. 18-6474 (S.D.N.Y.); *City of Providence and City of Central Falls v. Sessions*, No. 18-437 (D.R.I.). The district courts have issued preliminary injunctions in *Evanston*, No. 18-4853, ECF No. 23 and *Illinois*, No. 18-4791, ECF No. 25, and a permanent injunction in *States of New York* and *City of New York*, 343 F. Supp. 3d 213 (S.D.N.Y. 2018).

⁹ The district courts here and in *Chicago* both issued nationwide permanent injunctions but stayed nationwide application pending appellate review. ER at 65; *City of Chicago v. Sessions*, 321 F. Supp. 3d 855, 882 (N.D. Ill. 2018).

¹⁰ Undeterred by federal courts’ unanimous and repeated holdings that the FY 2017 conditions are invalid, DOJ has announced that for 2018 Byrne JAG grants it will require compliance with the FY 2017 conditions and two additional immigration-related conditions. See U.S. Dep’t of Justice, Office of Justice Programs, *JAG Program FY 2018 Local Solicitation* (2018), www.bja.gov/Funding/JAGLocal18.pdf. More lawsuits have now been filed challenging those conditions. See *San Francisco v. Sessions*, No. 18-5146 (N.D. Cal.); *City of Chicago v. Sessions*, No. 18-6859 (N.D. Ill.); *City of Los Angeles v. Sessions*, No. 18-7347 (C.D. Cal). And two district courts have already enjoined them. See *San Francisco*, 2019 WL 1024404, at *17 (Mar. 4, 2019); *Los Angeles*, No. 18-7347, ECF 62 (Feb. 15, 2019). DOJ has also announced its intent to apply the expanded conditions to four more grants. See U.S. Dep’t of Justice, *Dep’t of Justice*

Bureau of Justice Assistance 2017 Grant Awards, <https://external.ojp.usdoj.gov/selector/main> (select “State/Territory”; “Fiscal Year” “2017”; and “Bureau of Justice Assistance (BJA)”; then click “Submit”). But these conditions violate the Constitution, usurp local control over public safety policy, and erode the community trust on which local police depend. Recognizing this, five district courts and two courts of appeals have held the conditions unconstitutional and enjoined their enforcement against five major cities,¹¹ all 1,400 cities that are members of the U.S. Conference of Mayors,¹² and nine states. Because the Byrne JAG conditions are unconstitutional as to *all* grant recipients, this Court should block their application nationwide.

Announces New Immigration Compliance Requirements for FY 2018 Grants (2018), www.justice.gov/opa/pr/department-justice-announces-new-immigration-compliance-requirements-fy-2018-grants. And in April 2019, the Department announced that 2019 Byrne JAG grants will again be subject to similar conditions. *See* U.S. Dep’t of Justice, *Edward Byrne Memorial Justice Assistance Grant (JAG) Program Fiscal Year 2019 State Solicitation*, <https://www.bja.gov/funding/JAGState19.pdf>.

¹¹ *See* ER at 65; *Chicago*, 321 F. Supp. 3d 855; *Philadelphia*, 309 F. Supp. 3d 289; *City of Los Angeles*, No. 17-7215, ECF No. 93; *New York*, 343 F. Supp. 3d at 244.

¹² *See U. S. Conference of Mayors v. Sessions*, No. 18-2734, ECF 13 (7th Cir. Aug. 29, 2018).

ARGUMENT

I. Congress Created the Byrne JAG Program to Support and Promote Local Discretion and Flexibility.

In creating the Byrne JAG program, Congress recognized the critical importance of local control over law enforcement policy and structured the program to maximize each state and local recipient's flexibility to meet its community's needs. The Byrne JAG program is largely a formula grant,¹³ available for use in eight broad areas: law enforcement; prosecution and courts; prevention and education; corrections and community corrections; drug treatment and enforcement; planning, evaluation, and technology improvement; crime victim and witness programs; and mental health. *See* 34 U.S.C. § 10152(a)(1). An applicant is entitled to an award so long as it uses the funds to support its efforts in “any” of these areas. *Id.* Congress set up the grant in this manner to “give State and local governments more flexibility to spend money for programs that work for them rather than to impose a ‘one size fits all’ solution.” H.R. Rep. No. 109-233, at 89 (2005). State and local control over their own policy choices is thus a central principle of the Byrne JAG program.

Local jurisdictions, including many amici, put Byrne JAG funds to diverse uses, reflecting the varied law enforcement needs of different communities. For example:

¹³ A formula grant is a non-competitive grant in which funds are allocated based upon a statutory formula, without a competitive process. *See* Office of Justice Programs, *OJP Grant Process*, archived at <https://perma.cc/U5AA-FRYL>. A small portion of the funds available under the Byrne JAG Program may be awarded under a competitive process. *See* 34 U.S.C. § 10157(b)(1).

- Albuquerque, New Mexico (population 558,545) has used Byrne JAG funds purchase a forensic comparison microscope, a traffic crash investigation system, a horse trailer for the mounted unit, and other equipment and technology.
- Burlington, Vermont (population 42,239) has used Byrne JAG funds to help fund a new criminal analyst position, purchase cutting-edge video surveillance and evidence handling equipment, and launch programmatic restorative justice programming in its school system.
- Iowa City, Iowa (population 74,398) has used Byrne JAG funds to promote traffic safety, establish a search and rescue program aimed at individuals at risk for wandering, and partially fund a drug task force.
- Monterey County, California (population 435,232) has used Byrne JAG funds to launch a Day Reporting Center that provides probationers with services designed to increase employment rates and reduce recidivism.
- Philadelphia, Pennsylvania (population 1,567,872) has used Byrne JAG funds to pay for, among other things, police overtime and Narcan—a lifesaving medication that counteracts the effects of an opioid overdose.
- Portland, Oregon (population 639,863) has used Byrne JAG funds to support its New Options for Women (NOW) program, which provides services to women who have experienced sexual exploitation while working in the commercial sex industry.
- Sacramento, California (population 493,025) has used Byrne JAG funds to support ongoing maintenance and operation of its Police Department’s helicopter program.

An active nationwide injunction would protect local governments from having to choose between losing critical funding for these diverse programs or giving up control over inherently local law enforcement policy. That result would not only undermine the express intent of the Byrne JAG program but would also allow the executive branch to wield powers vested exclusively in Congress. Under the Spending Clause, only Congress—whose members are elected by and accountable to local communities—can place substantive conditions on federal funds. *South Dakota v. Dole*,

483 U.S. 203, 206 (1987). DOJ has no authority to upend Congress’s plan to preserve and promote local discretion through the Byrne JAG program.

Indeed, our constitutional structure is premised on the notion that states and localities, as the governments closest to the people, bear primary responsibility for protecting the health and safety of their residents. *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475 (1996). The duty to protect residents from crime lies at the heart of this locally vested power. *See United States v. Morrison*, 529 U.S. 598, 618 (2000). In carrying out this duty, cities and counties possess—and must be allowed to exercise without federal interference—broad discretion to develop and implement law enforcement and public safety policies tailored to the needs of their communities.

This is a matter not only of constitutional law, but of sound policy. Police chiefs and sheriffs across the country agree that “decisions related to how local law enforcement agencies allocate their resources, direct their workforce and define the duties of their employees to best serve and protect their communities”—including decisions about whether to devote local resources to immigration enforcement—“must be left in the control of local governments.” Major Cities Chiefs Ass’n, *Immigration Policy*, 2 (2013), archived at <https://perma.cc/JV3FT9UH>; see also Int’l Ass’n of Chiefs of Police, *Enforcing Immigration Law: The Role of State, Tribal and Local Law Enforcement*, 1, 5 (2005), archived at <https://perma.cc/M2J2-LDSL> (“[L]ocal law enforcement’s participation in immigration enforcement is an inherently local decision that must be made by a police chief, working with their elected officials, community

leaders and citizens,” and attempts to coerce participation by withholding federal funds are “unacceptable.”).

II. Policies Restricting Local Involvement in Immigration Enforcement Protect Public Safety.

San Francisco and California have determined that devoting their resources to federal immigration enforcement would undermine local public safety. They are not alone in this judgment. More than 600 counties and numerous cities—including many amici—have opted to limit their involvement in immigration enforcement efforts. *See* Tom K. Wong, Ctr. for Am. Progress, *The Effects of Sanctuary Policies on Crime and the Economy*, ¶ 12 (2017) (hereinafter “*Effects of Sanctuary Policies*”), archived at <https://perma.cc/42JG-Q2UD>; *see also* Immigrant Legal Resource Center, *Detainer Policies* (2015), www.ilrc.org/detainer-policies. The policies of these counties and cities are themselves diverse, reflecting the varied needs and judgments of each jurisdiction.¹⁴

Policies that restrict local entanglement with U.S. Immigration and Customs Enforcement (“ICE”) reflect local judgments that community trust is vital to public safety. Local law enforcement agencies rely on *all* community members—regardless of immigration status—to report crimes, serve as witnesses, and assist in investigations

¹⁴ *See, e.g.*, County of Santa Clara, Bd. of Supervisors Policy No. 3.54, www.sccgov.org/sites/bos/legislation/bos-policy-manual/documents/bospolicychap3.pdf; King County Code § 2.15.010-2.15.020, [http://aqua.kingcounty.gov/council/clerk/code/05 Title 2.pdf](http://aqua.kingcounty.gov/council/clerk/code/05_Title_2.pdf); Tucson Police Dep’t Gen. Orders, Gen. Order 2300, www.tucsonaz.gov/files/police/general-orders/2300IMMIGRATION.pdf; USCM Reso. Opposing punitive Sanctuary Jurisdiction Policies, Jan. 26, 2017, *Chicago*, No. 17-2991, ECF No. 44 at 1147-49, 1151-52, 1154-55.

and prosecutions. *See, e.g.,* Police Exec. Research Forum, *Advice from Police Chiefs and Community Leaders on Building Trust: “Ask for Help, Work Together, and Show Respect”* (2016), archived at <https://perma.cc/66PN-SULW> (emphasizing the importance of community trust to effective policing). Immigrants to the United States are *less* likely to commit crimes than native-born residents. Cato Institute, *Criminal Immigrants: Their Numbers, Demographics, and Countries of Origin*, 1-2 (2017), archived at <https://perma.cc/VDU9-R9V6>. But “[t]he moment [immigrant] victims and witnesses begin to fear that their local police will deport them, cooperation with their police then ceases.” *Border Insecurity: The Rise of MS-13 and Other Transnat’l Criminal Orgs.*, Hearing before the S. Comm. on Homeland Sec. and Govt. Affairs, 115th Cong. (2017) (statement of J. Thomas Manger, Chief of Police, Montgomery County, Maryland). Local police chiefs attribute this deterioration to fear that interactions with police could lead to deportation. *See* Rob Arthur, *Latinos In Three Cities Are Reporting Fewer Crimes Since Trump Took Office* (2017), archived at <https://perma.cc/3ZFX-4HRK>.

Recent data bear out this concern. Since President Trump took office and promised to ramp up deportations, Latinos have reported fewer crimes relative to reports by non-Latinos. *See id.* Disturbingly, “reporting of crimes like sexual assault and domestic violence are down by one-quarter in immigrant communities” in some localities. *See, e.g.,* CNN Wire, *ICE Agents Will Continue to Make Arrests at Courthouses, Trump Administration Says*, KTLA 5 (Mar. 31, 2017), archived at <https://perma.cc/>

[5U5K-K2UY](#).¹⁵ And more than half of police officers and prosecutors report that crimes such as domestic violence, sexual assault, and human trafficking have become harder to investigate and prosecute under the Trump Administration due to an increased fear of deportation in immigrant communities. American Civil Liberties Union, *Freezing Out Justice* (2018), <https://www.aclu.org/report/freezing-out-justice>.

In amici cities and counties' experience, even the *perception* that local law enforcement is assisting with immigration enforcement can create fear that erodes trust, disrupts lines of communication, and makes law enforcement more difficult. Thus, DOJ's assertion that Byrne JAG recipients should be willing to accede to these supposedly "modest conditions" in exchange for grant funds, *see* Brief for Appellant 3, is misguided at best, and highlights the need to leave local officials in charge of setting local law enforcement policies. DOJ fundamentally fails to appreciate that once lost, community trust in local law enforcement is difficult to regain. *See* Nat'l Immigration Law Ctr., *Austin Police Chief: Congress Should Consider Good Policy, Not Politics* (2013), *archived at* <https://perma.cc/TJ9R-HTNS> ("[I]mmigrants will never help their local police to fight crime once they fear [local police] have become immigration officers.").

¹⁵ *See also* Brooke A. Lewis, *HPD chief announces decrease in Hispanics reporting rape and violent crimes compared to last year*, *Houston Chron.* (Apr. 6, 2017), *archived at* <https://perma.cc/U5WP-GYSA>; James Queally, "Latinos are reporting fewer sexual assaults amid a climate of fear in immigrant communities, LAPD says," *Los Angeles Times* (Mar. 21, 2017), *archived at* <https://perma.cc/S765-HYEZ>.

In contrast, local policies that limit entanglement with ICE help mitigate community members' fear, facilitate engagement between immigrant communities and law enforcement, and ultimately improve public safety by ensuring that those who commit crimes are brought to justice. Research has shown that policies limiting cooperation with federal immigration authorities are associated with *lower* crime rates: 35.5 fewer crimes per 10,000 people on average; and as many as 65.4 fewer in counties with large urban centers. *See Effects of Sanctuary Policies*, ¶¶ 15-16. For these reasons, even some localities that previously cooperated with ICE have decided those efforts undermine community safety and abandoned the practice. *See* Darcy Costello, *New LMPD policy: No working with immigration officials to enforce federal laws*, *The Courier-Journal* (Sept. 22, 2017), archived at <https://perma.cc/89BG-7JQD>.

III. Enjoining the Challenged Conditions Nationwide is Necessary to Remedy Nationwide Harm.

This court and numerous others have granted nationwide injunctions in the context of federal actions relating to immigration, undertaken both by the current administration and its predecessor. *See, e.g., Regents of the Univ. of California v. U.S. Dep't of Homeland Sec.*, 908 F.3d 476, 512 (9th Cir. 2018); *Int'l Refugee Assistance Project v. Trump*, 857 F.3d 554, 605 (4th Cir. 2017) (hereinafter *IRAP*) *vacated as moot* 876 F.3d 116, 119 (4th Cir. 2017); *Texas v. United States*, 809 F.3d 134, 187-88 (5th Cir. 2015). These decisions emphasize that a nationwide injunction is appropriate—and indeed necessary—where, as here, the action is facially unconstitutional and its harm is

widespread. *See IRAP*, 857 F.3d at 605 (nationwide injunction is appropriate when the “challenged conduct caused irreparable harm in myriad jurisdictions across the country” and “enjoining it only as to Plaintiffs would not cure the constitutional deficiency, which would endure in all [its] applications.” (citation omitted)).

This case requires a nationwide remedy. The Byrne JAG conditions strike at the core of cities’ and counties’ responsibility to operate effective and fair criminal justice agencies and affect *all* potential grant applicants that choose to exercise their local policymaking discretion in a manner that DOJ dislikes. And without a nationwide injunction even those jurisdictions protected by localized injunctions cannot achieve full relief.

A. A Nationwide Injunction Would Preserve Judicial Resources and Protect All Localities from DOJ’s Unconstitutional Efforts.

Without a nationwide injunction in effect, nearly a dozen additional jurisdictions are being required to litigate—and courts required to manage—lawsuits seeking to enjoin the same conditions based on the same constitutional deficiencies already identified in several cases. The strain on judicial resources from these additional individual lawsuits is substantial, and the benefit minimal. Development of the law through consideration in multiple cases has not proved especially beneficial here: while localities put Byrne JAG funds to a variety of uses, the conditions DOJ seeks to impose are identical as to every locality and are identically unconstitutional as

to every locality.¹⁶ And the invalidity of the Byrne JAG conditions is so clear that all seven courts to rule on the issue to date have agreed that some or all of the conditions are unlawful. *See supra* at 7. Indeed, since the Supreme Court issued its decision in *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461 (2018), every court to consider all of the conditions has found them all unlawful.¹⁷ A nationwide injunction could put an end to this duplicative litigation.

In addition—as the district court found, *see* ER at 63—even if individualized litigation made sense in some situations, filing suit to enjoin the Byrne JAG conditions would be all but impossible for many would-be grantees, including some amici. For these entities, the cost of litigating the validity of the conditions would easily outweigh the amount they receive in funds. Without a mechanism for nationwide relief, these localities would be stuck either foregoing the grant, thus missing out on an important funding stream they may struggle to make up with scarce local resources, or acceding to the unlawful conditions and relinquishing their right to local control. A nationwide injunction would prevent DOJ from trampling the Constitution by coercing such localities to give in to its demands.

¹⁶ The conditions are invalid even as to jurisdictions with policies aligned with DOJ's preferences. Adopting and implementing such policies is well within those jurisdictions' discretion. But that has no bearing on DOJ's authority to establish funding conditions under the Byrne JAG program.

¹⁷ *See* ER at 65; *Chicago*, 321 F. Supp. 3d 855; *Philadelphia*, 916 F.3d 276; *States of New York*, 343 F. Supp. 3d 213; *City of Los Angeles*, No. 18-cv-7347, ECF 62.

B. Because the Byrne JAG Program is an Interconnected, Nationwide Scheme, Only a Nationwide Injunction Can Adequately Protect Appellees.

Because of the interrelated nature of the Byrne JAG program, an injunction barring application of the unlawful grant conditions against only one applicant, or a few applicants, is insufficient to prevent injury even to those specific applicants. In upholding the nationwide scope of the preliminary injunction issued in *Chicago*, the Seventh Circuit panel explained that the Byrne JAG program provides for redistribution and “an impact to one recipient can have a ripple effect on others.” *Chicago*, 888 F.3d at 292. It concluded that under a formula grant program “in which the states and local governments are intertwined, and where the conditions imposed preclude all funding to those who refuse to comply, piecemeal relief is ineffective to redress the injury, and only nationwide relief can provide proper and complete relief.” *Id.* While the Seventh Circuit vacated that portion of the panel opinion pending en banc rehearing, *City of Chicago v. Sessions*, No. 17-2991, 2018 WL 4268817, at *1 (7th Cir. June 4, 2018),¹⁸ this Court has cited the panel’s decision as an instance where a nationwide injunction was appropriate, *see San Francisco*, 897 F.3d at 1244. And the Seventh Circuit panel’s observations apply with just as much force here.

¹⁸The Seventh Circuit then vacated its decision to rehear the appeal of the preliminary injunction en banc after the district court entered a permanent injunction. *City of Chicago v. Sessions*, No. 17-2991, 2018 WL 4268814 (7th Cir. Aug. 10, 2018).

Further, the patchwork of injunctions presently in place creates a confusing situation in which jurisdictions do not clearly understand what they must do to secure Byrne JAG funds. Currently, DOJ states on its website that, unlike other applicants for Byrne JAG funding, jurisdictions covered by certain injunctions, including political subdivisions of nine states and members of the U.S. Conference of Mayors, are not required to submit compliance certifications. U.S. Dep't of Justice, Office of Justice Programs, *FY 2017 and FY 2018 JAG Award Special Notices*, www.bja.gov/jag/award-conditions.html. But the notice also states that “[i]f the posture of the pending litigation changes,” then DOJ will provide notice of its “intent to use or enforce” the enjoined conditions. *Id.* And there is no way for protected jurisdictions to sign award documents that do not include the conditions. *See id.* This leaves jurisdictions confused about what to do to accept the awards without the enjoined conditions and what consequences might stem from accepting funding. Additionally, in the absence of a nationwide injunction, DOJ delayed awarding FY 2017 Byrne JAG funds by over a year to scores of localities protected by injunctions. *See* Dave Nyczepir, *DOJ Slowly Releasing 2017 Public Safety Funds to ‘Sanctuary Cities’*, Route Fifty (Oct. 15, 2018), www.routefifty.com/public-safety/2018/10/doj-sanctuary-city-funds/152049/.

A nationwide injunction is necessary to end confusion about which localities are protected by which injunctions and to prevent DOJ from effectively penalizing jurisdictions protected by injunctions by delaying the issuance of just those localities' awards. *See Regents of the Univ. of California*, 908 F.3d at 511 (“An injunction is not

necessarily made over-broad by extending benefit or protection to persons other than prevailing parties in the lawsuit—even if it is not a class action—if such breadth is necessary to give prevailing parties the relief to which they are entitled.” (quoting *Bresgal v. Brock*, 843 F.2d 1163, 1170-71 (9th Cir. 1987)).

CONCLUSION

Congress created the Byrne JAG program specifically to support state and local governments’ “flexibility” in designing public safety programs and policies tailored to their jurisdictions. The conditions imposed by the Attorney General upend congressional intent and violate foundational constitutional principles favoring local control. Instead of preserving flexibility for local law enforcement operations, the FY 2017 Byrne JAG conditions constrain localities’ policy choices and require them to adopt federally mandated policies that will make local communities across the country *less* safe. And instead of preserving a reliable stream of funding, DOJ has forced

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localities nationwide to guess at when, under what circumstances, and with what conditions attached DOJ will release their funding. A nationwide injunction is needed to halt DOJ's unlawful efforts.

Dated: May 29, 2019

Respectfully Submitted,

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