

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

CITY OF CHICAGO,

Plaintiff-Appellee,

v.

JEFFERSON B. SESSIONS III, ATTORNEY
GENERAL OF THE UNITED STATES,

Defendant-Appellant.

No. 17-2991

**DEFENDANT-APPELLANT'S MOTION FOR PARTIAL STAY OF
PRELIMINARY INJUNCTION PENDING APPEAL**

INTRODUCTION

Defendant-appellant respectfully asks this Court to stay, pending appeal, the preliminary injunction issued in this case on September 15, 2017, insofar as it applies to entities other than the City of Chicago. The government sought a stay in district court on September 26, 2017. The district court denied the motion on October 13, 2017. Stay Op., Dkt. 98 (Attachment 1).

In a case involving a single plaintiff—the City of Chicago—the district court issued a nationwide injunction affecting the grant applications of hundreds of other jurisdictions. This request for a partial stay does not ask the Court to consider the the district court’s ruling on the merits of the underlying dispute. It asks only that the Court apply settled principles of standing and equity and limit the application of the injunction to the plaintiff.

Each year the Department of Justice (“DOJ”) makes grants to states and localities to provide additional funding for law enforcement purposes through the Edward Byrne Memorial Justice Assistance Grant Program (“Byrne JAG Program”). The district court held that two of the conditions on grants for the coming year are not authorized by the statute establishing the Byrne JAG Program. The first condition is that the grantee notify the Department of Homeland Security (“DHS”) of the scheduled release date of an incarcerated alien after receiving a formal request for notification from DHS. The second condition is that the grantee allow federal agents to meet with an incarcerated alien in order to inquire about the alien’s right to remain in the United

States. The district court preliminarily enjoined the application of these two conditions to the City of Chicago. It then went further and made the injunction “nationwide in scope.” Merits Op., Dkt. 78, at 41 (Attachment 2).

The district court did not suggest that extending its injunction to other entities was necessary to avoid injury to Chicago, and Chicago “lack[s] standing to seek—and the district court therefore lacks authority to grant—relief that benefits third parties,” *McKenzie v. City of Chicago*, 118 F.3d 552, 555 (7th Cir. 1997). It is likewise axiomatic “that injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.” *Madsen v. Women’s Health Ctr., Inc.*, 512 U.S. 753, 765 (1994) (quotation marks omitted).

A partial stay will cause no injury to Chicago and will avoid intrusion into the operation of a program under which DOJ had planned to award law enforcement grants in the immediate future. The injunction precludes DOJ from including conditions that ensure a basic level of cooperation between governments in their respective law enforcement efforts. If DOJ issues awards while the injunction is in effect, its ability to include the conditions in this grant year will, at a minimum, be seriously hampered. Alternatively, delaying issuance of awards for an extended period will operate to the detriment of applicants across the country. The district court erred in forcing the Department to choose between these options, and we respectfully ask for a partial stay to correct that error.

STATEMENT

A. Grants Under the Byrne JAG Program

1. Congress created the Byrne JAG Program in 2006 to provide additional funding to state and local law enforcement agencies. *See* Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960 (2006) (“DOJ Reauthorization Act”). The statute provides that “[f]rom amounts made available to carry out” the program, “the Attorney General may,” in accordance with a statutory formula, “make grants to States and units of local government” for certain criminal justice purposes. 34 U.S.C. § 10152(a)(1). The grant funds are divided among grantees based on a statutory formula, largely premised on population and crime statistics. *Id.* § 10156. States and localities that seek funding under the program must submit an application to the Attorney General, “in such form as the Attorney General may require.” *Id.* § 10153(A). Among other things, applicants must certify that they “will comply with all provisions of this part and all other applicable Federal laws.” *Id.* § 10153(A)(5)(D).

Congress created the Byrne JAG Program within the Bureau of Justice Assistance, which reports to the Assistant Attorney General for the Office of Justice Programs (“OJP”). *See* 34 U.S.C. §§ 10101-02, 10141, 10151-58. In the same bill that created the program, Congress amended the statute that enumerates the powers of the Assistant Attorney General for OJP. The statute had previously authorized the Assistant Attorney General for OJP to “exercise such other powers and functions as

may be vested in the Assistant Attorney General pursuant to this chapter or by delegation of the Attorney General.” *Id.* § 10102(a)(6). In the amendment, Congress specified that those powers “includ[e] placing special conditions on all grants, and determining priority purposes for formula grants.” DOJ Reauthorization Act, Pub. L. No. 109-162, § 1152(b), 119 Stat. 2960, 3113; 34 U.S.C. § 10102(a)(6).

In accordance with that authority, Byrne JAG awards have historically contained various discretionary conditions that are not compelled by any federal statute, but promote DOJ’s law enforcement and public safety goals. DOJ has, for example, prohibited the use of award funds to purchase certain types of equipment and weapons, imposed training requirements, and required compliance with certain guidelines and recommendations that promote information sharing. *See* Hanson Decl., Dkt. 32-1, Ex. C, ¶¶ 26, 32, 49 (Attachment 3).

When OJP approves a Byrne JAG grant application, it sends a grant award document to the applicant, which enumerates, among other things, the “special conditions” applicable to the award. *See* Hanson Decl., Dkt. 32-1, Exs. A-C; OJP Grant Process Overview, *available at* <https://ojp.gov/funding/Apply/GrantProcess.htm>. Applicants then typically have 45 calendar days to review the special conditions and accept the award documents. *See* OJP Grant Process Overview.

2. The Office of Justice Programs has received nearly 1,000 applications from state and local jurisdictions seeking fiscal year 2017 Byrne JAG Program funds. Hanson Second Decl., Dkt. 82 ¶ 4 (Attachment 4). Prior to the entry of the nationwide

preliminary injunction, OJP had aimed to issue fiscal year 2017 Byrne JAG Program awards by September 30, 2017, which is the end of the relevant fiscal year. *Id.* ¶¶ 7-8. OJP had issued two award documents prior to the entry of the preliminary injunction, but all other applications remain pending. *Id.* ¶ 5.

B. District Court Proceedings

1. On August 8, 2017, the City of Chicago filed this lawsuit to challenge three conditions that the Office of Justice Programs intended to place in Chicago's Byrne JAG Program award documents for fiscal year 2017. *See* Compl., Dkt. 1. The first condition, which was previously accepted by Chicago in fiscal year 2016, requires grant recipients to certify compliance with 8 U.S.C. § 1373. *See* Hanson Decl., Dkt. 32-1, Ex. C, ¶ 52. Section 1373 states, in part, that “[n]otwithstanding 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, [Immigration and Customs Enforcement] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.” 8 U.S.C. § 1373(a).

The other two conditions were announced this year when OJP solicited applications for the fiscal year 2017 grant program. *See* Byrne JAG Program FY 2017 Local Solicitation, Dkt. 26-11. OJP later issued award documents to the County of Greenville, South Carolina and the City of Binghamton, New York on August 23, 2017, which included the precise text of the two conditions. *See* Hanson Decl., Dkt. 32-1,

Exs. A-B. The first condition, which the district court referred to as the “notice” condition, requires that, with respect to any “program or activity” funded by the grant, the grantee must have a policy designed to ensure that, when DHS provides a formal written request for advance notice of the scheduled release date and time for a particular alien at a particular facility, the facility will “as early as practicable” provide the notice to DHS. Hanson Decl., Dkt. 32-1, Ex. A, ¶ 56.1.B.¹ The second condition, which the district court referred to as the “access” condition, requires that, with respect to any “program or activity” funded by the grant, the grantee must have a policy designed to ensure that federal agents are “given access” to correctional facilities for the purpose of meeting with aliens and to “inquire as to such individuals’ right to be or remain in the United States.” Hansen Decl., Dkt. 32-1, Ex. A, ¶ 56.1.A.

Chicago claimed that all three conditions were unlawful and sought a preliminary injunction against their imposition nationwide. Chicago alleged that complying with the conditions would destroy the City’s goodwill with the immigrant community. *See* Compl., Dkt. 1, ¶ 70; Prelim. Inj. Mot., Dkt. 21, ¶ 3; Mem. in Support of Prelim. Inj. Mot., Dkt. 23, at 7-9, 21-24. Chicago did not claim that it is harmed by application of the conditions to other grant applicants. Nevertheless, the City sought a nationwide injunction against imposition of the conditions on all grant applicants. *See* Reply in Support of Prelim. Inj. Mot., Dkt. 69, at 15.

¹ The term “program or activity” has the same meaning as that phrase under 42 U.S.C. § 2000d-4a. *See* Hanson Decl., Dkt. 32-1, Ex. A, ¶ 53.5.A(3).

2. The district court concluded that Chicago was likely to succeed on the merits of its challenges to the notice and access conditions because, in the district court's view, the statute establishing the Byrne JAG Program does not provide authority for those conditions. Merits Op., Dkt. 78, at 13. The court recognized that Congress has explicitly authorized the Assistant Attorney General authority to "plac[e] special conditions on all grants." 34 U.S.C. § 10102(a)(6); Merits Op., Dkt. 78, at 13-19. The court believed, however, that the provision did not apply to the Byrne JAG Program, Merits Op., Dkt. 78, at 14, and that it would not in any event provide authority to impose conditions beyond the authority elsewhere vested in the Attorney General, *id.* at 18.

The district court accepted Chicago's claim that Chicago would suffer irreparable harm if it accepted grants containing the notice and access conditions. Merits Op., Dkt. 78, at 36-37. The court found that the balance of the equities and the public interest favored neither party because both parties "have strong public policy arguments." *Id.* at 40.

The court granted Chicago a "preliminary injunction against the Attorney General's imposition of the notice and access conditions on the Byrne JAG grant." Merits Op., Dkt. 78, at 40-41. As relevant here, the court then declared that "[t]his injunction against imposition of the notice and access conditions is nationwide in scope, there being no reason to think that the legal issues present in this case are restricted to

Chicago or that the statutory authority given to the Attorney General would differ in another jurisdiction.” *Id.* at 41.

The district court rejected Chicago’s claim regarding the condition requiring compliance with 8 U.S.C. § 1373. The court found that the condition was constitutional and was authorized by the statutory requirement that Byrne JAG Program grant applicants certify that they “will comply with all provisions of this part and all other applicable Federal laws,” 34 U.S.C. § 10153(A)(5)(D). Merits Op., Dkt. 78, at 20-35.

3. On September 26, 2017, the government filed a motion in the district court seeking a stay pending appeal of the preliminary injunction as it applies to grant applicants other than Chicago. On October 13, the district court denied the motion. The court stated that it had broad remedial authority to address a constitutional violation, and that the legal issues would not differ from jurisdiction to jurisdiction. Stay Op., Dkt. 98, at 4-6.

Turning to equitable considerations, the court declared that its injunction was preserving the status quo, and expressed the view that “judicial economy counsels against” requiring other jurisdictions who wished to challenge the rulings “to file their own lawsuits,” particularly because some of them had filed amicus briefs. Stay Op., Dkt. 98, at 11. The court declared that if the Attorney General wishes to impose the condition on other jurisdictions that are not parties to this case, “he must await a decision that upholds his authority to do so.” *Id.* at 12.

ARGUMENT

In determining whether to issue a stay pending appeal, this Court considers “the moving party’s likelihood of success on the merits, the irreparable harm that will result to each side if the stay is either granted or denied in error, and whether the public interest favors one side or the other.” *In re A & F Enters., Inc. II*, 742 F.3d 763, 766 (7th Cir. 2014).

All factors support issuance of a partial stay of the injunction insofar as it applies to entities other than the City of Chicago. As for the merits, the district court assumed that it could dictate the terms of grants to states and localities that had not claimed irreparable harm or sought an injunction. That assumption was legally incorrect. First, Chicago lacks standing to assert injuries of other entities. Second, injunctive relief must be limited to redressing the plaintiff’s own cognizable injuries. The City did not argue, and the district court did not find, that applying the injunction to jurisdictions across the country was necessary to avoid irreparable harm to Chicago.

The balance of harms and the public interest likewise strongly favor the entry of a partial stay. Chicago will suffer no harm at all by the issuance of a stay. But absent a stay, the Department of Justice will be faced with the choice of delaying awards, to the detriment of states and localities across the country, or else forgoing grant conditions intended to guarantee that the incarceration of aliens by states and localities does not impede the federal government’s efforts to enforce the immigration laws.

I. Principles of Article III Standing and Limitations on a Court's Equitable Authority Preclude Extension of the Injunction to Entities Other than Chicago.

A. To establish standing, a plaintiff “must allege personal injury fairly traceable to the defendant’s allegedly unlawful conduct and likely to be redressed by the requested relief.” *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 (2006) (quotation marks omitted). “[S]tanding is not dispensed in gross,” and the plaintiff must establish standing “separately for each form of relief sought.” *Town of Chester, N.Y. v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1650 (2017) (quotation marks omitted). It is fundamental that “plaintiffs lack standing to seek—and the district court therefore lacks authority to grant—relief that benefits third parties.” *McKenzie v. City of Chicago*, 118 F.3d 552, 555 (7th Cir. 1997). *See also Warth v. Seldin*, 422 U.S. 490, 499 (1975) (“The Art. III judicial power exists only to redress or otherwise to protect against injury to the complaining party, even though the court’s judgment may benefit others collaterally.”). As this Court has emphasized, “[t]he general rule is that a plaintiff has standing to sue only for injuries to his *own* interests that can be remedied by a court order.” *Laskowski v. Spellings*, 546 F.3d 822, 825 (7th Cir. 2008).

Applying this principle in *McKenzie*, this Court reversed an injunction that precluded the City of Chicago from operating a demolition program with respect to entities other than the plaintiffs. This Court noted the district court’s conclusion “that it was appropriate to enjoin the entire program, despite the lack of class certification, in order to prevent the City from violating the Constitution.” *McKenzie*, 118 F.3d at 555.

As this Court explained, the district court’s statement “assume[d] an affirmative answer to the question at issue: whether a court may grant relief to non-parties. The right answer is no.” *Id.*

A corollary of that principle is that where no class has been certified, no justiciable controversy exists when the injury to the actual plaintiffs has been remedied. As this Court explained in *McKenzie*, where “a class has not been certified, the only interests at stake are those of the named plaintiffs.” 118 F.3d at 555 (citing *Baxter v. Palmigiano*, 425 U.S. 308, 310 n. 1 (1976)). Thus, in *Alvarez v. Smith*, 558 U.S. 87, 92 (2009), plaintiffs lacked standing to seek declaratory and injunctive relief against the State’s practice of keeping property in custody without a prompt post-seizure hearing because the plaintiffs had already received the seized property or forfeited their claims to it. The Supreme Court explained that since class certification had been denied, the “only disputes relevant here are those between these six plaintiffs and the State’s Attorney . . . and those disputes are now over.” *Id.* at 93; see also *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 163 (2010) (the plaintiffs “d[id] not represent a class, so they could not seek to enjoin [an agency order] on the ground that it might cause harm to other parties”).

The same principles inform the Supreme Court’s repeated admonition that the standing requirements of Article III preclude a court from granting relief that is not directed to remedying the injury asserted by the plaintiff. Thus, for example, in *Summers v. Earth Island Institute*, 555 U.S. 488 (2009), the Supreme Court held that the plaintiffs

lacked standing to challenge Forest Service regulations after the parties had resolved the controversy regarding the application of the regulations to the project that had caused the plaintiffs' injury. Noting that the plaintiffs' "injury in fact with regard to that project ha[d] been remedied," *id.* at 494, the Court held that to allow the plaintiffs to challenge the regulations "apart from any concrete application that threatens imminent harm to [their] interests" would "fly in the face of Article III's injury-in-fact requirement." *Id.* See also *Scherr v. Marriott Int'l*, 703 F.3d 1069 (7th Cir. 2013) (plaintiff's standing to challenge safety conditions at one hotel did not provide standing to sue with respect to the same conditions at other hotels in the chain).

These cases make clear that Chicago does not have standing to seek an injunction broader than necessary to remedy its own asserted injury. Chicago properly does not claim that an injunction that extends to all grant applicants is necessary to remedy the City's claimed harm, which is based entirely on the imposition of the notice and access conditions on Chicago itself. Having granted relief to Chicago, the district court had no authority to extend its ruling to jurisdictions across the country.

In its order denying a partial stay pending appeal, the district court declared that, having found a "constitutional violation," Stay Op., Dkt. 98, at 4, it had discretion to correct that violation with respect to cities across the country. As an initial matter, the "constitutional violation" found by the court is the purported lack of authority to include the two grant conditions. Although the district court described this in passing as a "separation of powers" violation, Merits Op., Dkt. 78, at 19, that characterization

would transform every case about agency authority into constitutional litigation; in all such cases, the asserted lack of statutory authority would be deemed a violation of the separation of powers. The district court misperceived the distinctions between a statutory dispute, such as that involved with regard to the two conditions, and cases involving structural limitations on the three branches of government.

In any event, *McKenzie* makes clear that rules of standing and equity are not suspended even when a court finds a constitutional violation. Cases cited in the order denying a partial stay did not address the relevant issues of standing and limitations on equitable authority. For example, the court cited *Koo v. McBride*, 124 F.3d 869, 873 (7th Cir. 1997), a habeas case about the proper remedy for discriminatory jury selection based on gender, for the proposition that “[o]nce a constitutional violation has been shown, ‘the nature of the remedy must be determined by the nature and the scope of the constitutional violation.’” Stay Op., Dkt. 98, at 4; *see also Zamecnik v. Indian Prairie Sch. Dist. # 204*, 636 F.3d 874, 879 (7th Cir. 2011) (finding case was not moot because injunction extended to nonparties and noting that Federal Rules of Civil Procedure authorize such relief in appropriate cases). In *Decker v. O'Donnell*, 661 F.2d 598, 617-18 (7th Cir. 1980), also relied on by the district court, this Court rejected the argument that a nationwide injunction was inappropriate “because factfinding focused on Milwaukee County.” *See also United States v. Capitol Serv., Inc.*, 756 F.2d 502, 507 (7th Cir. 1985) (discussing “[g]eographical limitations regarding the issues at trial”). And this Court’s 1971 decision in *Sprogis v. United Air Lines, Inc.*, 444

F.2d 1194, 1201-02 (7th Cir. 1971), discussed a “specialized rule” in Title VII cases whose “continued validity” has been called into question in light of subsequent Supreme Court case law. *Peritz v. Liberty Loan Corp.*, 523 F.2d 349, 353 n.3 (7th Cir. 1975).

B. Even apart from the requirements of Article III, the district court’s injunction runs afoul of fundamental limitations on a court’s exercise of its equitable powers. Equitable principles require that injunctions “be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.” *Madsen v. Women’s Health Ctr., Inc.*, 512 U.S. 753, 765 (1994) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979)); see *United States Dep’t of Defense v. Meinhold*, 510 U.S. 939 (1993) (granting stay of Armed-Forces-wide injunction except as to individual plaintiff).

Applying this principle, the Fourth Circuit in *Virginia Society for Human Life, Inc. v. Federal Election Commission*, 263 F.3d 379 (4th Cir. 2001), vacated an injunction that precluded the Federal Election Commission from enforcing, against any entity, a regulation found to have violated the First Amendment. The court explained that an injunction covering the plaintiff “alone adequately protects it from the feared prosecution,” and that “[p]reventing the FEC from enforcing [the regulation] against other parties in other circuits does not provide any additional relief to [the plaintiff].” *Id.* at 393. Recognizing the same restraint on the exercise of equitable powers, in *Los Angeles Haven Hospice, Inc. v. Sebelius*, 638 F.3d 644 (9th Cir. 2011), although the Ninth Circuit agreed with the district court that a Department of Health and Human Services

regulation was facially invalid, the court vacated an injunction insofar as it barred the Department of Health and Human Services from enforcing the regulation against entities other than the plaintiff. *See id.* at 664 (“[I]njunctive relief generally should be limited to apply only to named plaintiffs where there is no class certification”) (quoting *Easyriders Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d 1486, 1501 (9th Cir. 1996)). These principles apply with even greater force to a preliminary injunction, an equitable tool designed merely to “preserve the relative positions of *the parties* until a trial on the merits can be held.” *University of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981) (emphasis added).

The portion of the district court’s injunction that applies to jurisdictions other than Chicago plainly exceeds the court’s equitable authority. Chicago is the only grant applicant in this lawsuit, and an injunction limited to the City provides it with full relief.

C. The district court misperceived its role in expanding the scope of its injunction on the theory that there is “no reason to think that the legal issues present in this case are restricted to Chicago or that the statutory authority given to the Attorney General would differ in another jurisdiction.” Merits Op., Dkt. 78, at 41; *see also* Stay Op., Dkt. 98, at 4-5. The district court’s finding that Chicago was likely to succeed on its argument that the imposition of the conditions was facially invalid does not entitle Chicago to a nationwide injunction. The district court’s conclusion conflated the scope of Chicago’s legal argument with the scope of relief necessary to remedy Chicago’s alleged injury. *See Los Angeles Haven Hospice*, 638 F.3d at 665 (reversing nationwide injunction despite upholding district court’s conclusion that regulation was facially

invalid). A district court has no general authority to go beyond the relief necessary to remedy a plaintiff's injury and also purport to settle the law for the entire nation. Permitting a court to do so "would 'substantially thwart the development of important questions of law by freezing the first final decision rendered on a particular legal issue.'" *Virginia Soc'y for Human Life*, 263 F.3d at 393 (quoting *United States v. Mendoza*, 464 U.S. 154, 160 (1984)). See also *Los Angeles Haven Hospice*, 638 F.3d at 664 ("nationwide injunctions 'have a detrimental effect by foreclosing adjudication by a number of different courts and judges'" (quoting *Califano*, 442 U.S. at 702); *id.* ("[A]llowing only one final adjudication deprives the Supreme Court of the benefit it receives from permitting multiple courts of appeals to explore a difficult question before it grants certiorari") (citing *Mendoza*, 464 U.S. at 160)).

The district court's error is underscored by the asymmetry inherent in its view of its equitable powers. A denial of an injunction in this case would not foreclose any other grant applicant from bringing suit on the same legal grounds urged here by Chicago. Nevertheless, the court deemed it equitable to foreclose the United States from enforcing the grant conditions regardless of whether it would be able to prevail in other courts. In other words, insofar as the City prevails, the district court issues the relief that might have been appropriate if it had certified a class of all grant applicants.

But insofar as the federal government prevails, it gains none of the benefits of prevailing in a class action.²

In extending its injunction beyond Chicago, the district court relied on the scope of the injunction approved in *International Refugee Assistance Project v. Trump*, 857 F.3d 554, 605 (4th Cir.), *cert. granted*, 137 S. Ct. 2080, 2086 (2017). (That decision has since been vacated as moot by the Supreme Court. *See Trump v. International Refugee Assistance Project*, No. 16-1436, 2017 WL 4518553 (U.S. Oct. 10, 2017).) The Fourth Circuit's decision cannot be squared with this Court's precedent or, indeed, the precedent of the Fourth Circuit. And the Fourth Circuit's decision is inapposite even on its own terms. The Fourth Circuit gave three reasons for the nationwide injunction there, and none of them apply here. First, the Fourth Circuit found it significant that the "[p]laintiffs are dispersed throughout the United States," 857 F.3d at 605, which is of course not true for the City of Chicago. Second, the Fourth Circuit believed that "nationwide injunctions are especially appropriate in the immigration context, as Congress has made clear that the immigration laws of the United States should be enforced vigorously and uniformly." *Id.* (quotation marks omitted). This case does not involve the application of immigration law to foreign nationals. Third, the Fourth Circuit believed that limiting

² In response to the government's motion for a stay in district court, the U.S. Conference of Mayors moved to intervene in this litigation. Dkt. 91. The Conference of Mayors does not purport to have authority to file suit on behalf of any city. And, if the federal government prevails in this lawsuit, it may be assumed that no municipality other than Chicago will consider itself bound by the judgment.

the injunction to the plaintiffs would not cure their asserted injury under the Establishment Clause because enforcement against others would “reinforce the message that Plaintiffs are outsiders, not full members of the political community.” *Id.* (quotation marks omitted). The Establishment Clause is not implicated here; nor does Chicago’s asserted injury stem from any message resulting from application of the grant conditions to other jurisdictions.

The district court’s reliance on the Supreme Court’s grant of a partial stay of the injunction in *International Refugee Assistance Project* was equally misplaced. *See* Stay Op., Dkt. 98, at 7-9 (citing *Trump v. International Refugee Assistance Project*, 137 S. Ct. 2080 (2017)). There, the dissenting Justices would have reached the issues presented here and sided with the government’s position, *id.* at 2090 (Thomas, J., dissenting), but the majority declined to discuss the issues at all.

In sum, the settled Article III and equitable limits on the scope of injunctions apply with full force here.

II. The Balance of Harms and the Public Interest Further Demonstrate That a Partial Stay Is Warranted.

Whereas a partial stay will result in no injury at all to Chicago, for the reasons already discussed, the stay is necessary to avoid interference with the operation of a nationwide grant program at a crucial point in the grant cycle. The Office of Justice Programs has received nearly 1,000 applications from state and local jurisdictions for more than \$250 million in available FY 2017 Byrne JAG Program funds. Hanson

Second Decl., Dkt. 82 ¶ 4. Prior to the entry of the nationwide preliminary injunction, OJP had aimed to issue fiscal year 2017 Byrne JAG Program awards by September 30, 2017. *Id.* ¶¶ 7-8. In light of the injunction, however, DOJ cannot issue the grants with two conditions designed to promote a basic level of cooperation between governments in fulfilling their respective law enforcement responsibilities, a cooperation very much in the public interest.

If the federal government issues the grants subject to the terms of the injunction, it may well lose the ability to include the conditions this year even if this Court later holds the injunction to be improper. States and localities can spend the funds as soon as they are distributed, and attempts to include the conditions at a later date will face many difficulties. Although the Department could, in theory, delay issuance of grants, a lengthy delay “would hinder the reasonably timely and reliable flow of funding” to support law-enforcement activity around the country, Hanson Second Decl., Dkt. 82 ¶ 10, impose particular burdens for localities with relatively small budgets, *id.* ¶ 11, and disrupt state grant-making processes under which states issue sub-awards of Byrne JAG Program funds, *id.* ¶ 12. In denying a partial stay pending appeal, the district court stated that it was “sympathetic to the Attorney General’s quandary,” but concluded that “[b]ecause the Attorney General is not able to meet its threshold burden of showing some likelihood of success on its motion to stay nationwide application of the preliminary injunction, no further analysis is necessary.” Stay Op., Dkt. 98, at 16-17.

For the reasons discussed above, the court's assessment of the strength of the government's arguments is quite wrong.

In sum, a stay will avoid irreparable harm to the federal government and will cause no injury to Chicago.

CONCLUSION

For the foregoing reasons, the preliminary injunction should be stayed insofar as it applies beyond plaintiff, the City of Chicago.

Respectfully submitted,

CHAD A. READLER

Acting Assistant Attorney General

JOEL R. LEVIN

Acting United States Attorney

MARK B. STERN

s/ Daniel Tenny

DANIEL TENNY

KATHERINE TWOMEY ALLEN

(202) 514-1838

Attorneys, Appellate Staff

Civil Division

U.S. Department of Justice

950 Pennsylvania Ave., N.W.

Room 7215

Washington, DC 20530

OCTOBER 2017

CERTIFICATE OF COMPLIANCE

I hereby certify that this motion satisfies the type-volume limitation in Rule 27(d)(2)(A) because it contains 5,087 words. This motion was prepared using Microsoft Word 2013 in Garamond, 14-point font, a proportionally-spaced typeface.

s/ Daniel Tenny

Daniel Tenny

CERTIFICATE OF SERVICE

I hereby certify that on October 13, 2017, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

s/ Daniel Tenny

Daniel Tenny

ATTACHMENT 1

ORDER DENYING STAY

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE CITY OF CHICAGO,

Plaintiff,

v.

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

Defendant.

Case No. 17 C 5720

Judge Harry D. Leinenweber

MEMORANDUM OPINION AND ORDER

The Attorney General moves to stay the nationwide application of this Court's preliminary injunction against imposition of certain conditions on the 2017 Byrne JAG grant pending resolution of the Attorney General's appeal to the Seventh Circuit Court of Appeals. For the reasons stated herein, Defendant's Motion to Stay Nationwide Application of Preliminary Injunction [ECF No. 80] is denied.

I. BACKGROUND

The Court assumes familiarity with the underlying facts of this case as recited in its opinion granting in part the City of Chicago's motion for a preliminary injunction. *See, generally, City of Chicago v. Sessions*, No. 17 C 5720, 2017 U.S. Dist. LEXIS 149847 (N.D. Ill. Sep. 15, 2017). In support of the instant motion, the Attorney General has pointed to additional

facts that merit discussion here. The Attorney General's office has received nearly a thousand applications for Byrne JAG funding for FY 2017, and nearly all those applications await award notifications from the Department of Justice (the "Department"). (See, ECF No. 82, Second Decl. of Alan R. Hanson, ¶ 4.) In prior years, the majority of Byrne JAG awards were already issued by this time of the year. (*Id.* ¶ 9.) The Attorney General argues that this Court's nationwide preliminary injunction prevents the Department from issuing the Byrne JAG award notifications because, even if the appeal is successful, the Attorney General will be unable to add the notice and access conditions after the award notifications issue. The Attorney General urges that a significant delay in the grant-making process past September of this year raises the prospect of imposing heavy burdens on localities with relatively small budgets (*id.* ¶ 11), disrupting state grant-making processes under which states issue sub-awards of Byrne JAG funds (*id.* ¶ 12), and undermining recovery efforts in jurisdictions that have recently suffered natural disasters (*id.* ¶ 13). To avoid this delay and the attendant burdens, the Attorney General requests a stay of the preliminary injunction.

II. LEGAL STANDARD

The analysis for "granting a stay pending appeal mirrors that for granting a preliminary injunction." *In re A & F Enters., Inc. II*, 742 F.3d 763, 766 (7th Cir. 2014). In determining whether to grant a stay, the court should consider "the moving party's likelihood of success on the merits, the irreparable harm that will result to each side if the stay is either granted or denied in error, and whether the public interest favors one side or the other." *Ibid.* Whether the movant can demonstrate the first two factors is a threshold issue. *See, In re Forty-Eight Insulations*, 115 F.3d 1294, 1300 (7th Cir. 1997). "If the movant can make these threshold showings, the court then moves on to balance the relative harms considering all four factors using a 'sliding scale' approach." *Id.* at 1300-01. A stay pending appeal is intended "to minimize the costs of error" and "to mitigate the damage that can be done during the interim period before a legal issue is finally resolved on its merits." *In re A & F Enters.*, 742 F.3d at 766. As the Supreme Court recently stated, "[c]rafting a preliminary injunction is an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents." *Trump v. Int'l*

Refugee Assistance Project ("IRAP"), 137 S.Ct. 2080, 2087 (2017) (citations omitted).

III. ANALYSIS

The Attorney General argues that the City of Chicago (the "City") lacks Article III standing for any remedy that goes beyond its alleged injury-in-fact. (The Court notes that this argument may be mooted by the U.S. Conference of Mayors' pending Motion to Intervene, but in this Opinion does not consider the effect of such an intervention.) There is no dispute that the City has standing vis-à-vis the notice and access conditions. Nonetheless, the Attorney General contends that the City's standing is cut off at its jurisdictional boundaries, preventing the Court from fashioning a remedy any broader in scope than that required to redress the City's injury. The Court disagrees. Once a constitutional violation has been shown, "the nature of the remedy must be determined by the nature and the scope of the constitutional violation." *Koo v. McBride*, 124 F.3d 869, 873 (7th Cir. 1997); see also, *Missouri v. Jenkins*, 515 U.S. 70, 89 (1995) ("The nature of the . . . remedy is to be determined by the nature and scope of the constitutional violation.") (quotation omitted). The City has demonstrated a likely constitutional violation. It is the "nature and scope of the constitutional violation" that defines the remedy for this

violation, not the particular plaintiff. *Ibid.* Here, the constitutional transgression is national in scope because the notice and access conditions, shown to be likely unconstitutional, were imposed nationwide. Thus, a preliminary injunction may "bind" the "part[y]" before the Court, in this case the Attorney General, to prevent the constitutional violations at issue regardless of where they may occur. FED. R. Civ. P. 65(d). "[O]nce a constitutional violation is demonstrated, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." *Preston v. Thompson*, 589 F.2d 300, 303 (7th Cir. 1978) (quoting *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971)). The Constitution vests a district court with "the judicial Power of the United States." U.S. Const. art. III, § 1. This power is not limited to the jurisdiction in which the district court sits: "[i]t is not beyond the power of a court, in appropriate circumstances, to issue a nationwide injunction." *Texas v. U.S.*, 809 F.3d 134, 188 (5th Cir. 2015), *as revised* (Nov. 25, 2015), *aff'd by equally divided court*, 136 S.Ct. 2271 (2016).

The circumstances here are appropriate. Because the Attorney General's authority, or lack thereof, will not vary by jurisdiction, the cases cited in support of a stay are

inapposite. In *Lewis v. Casey*, 518 U.S. 343 (1996), the evidence failed to show systemic violations necessary to justify a state-wide injunction in Arizona's prison libraries, as the challenged conduct could have been present in some prisons but not others. *Id.* at 359-60. This case, on the other hand, implicates a facial challenge to a federal statute; the Attorney General's authority to impose Byrne JAG conditions on the City will not differ from his authority to do so elsewhere. No additional evidence is needed to justify the nationwide scope of the injunction because the Attorney General's authority does not vary state by state like the conditions of access to legal libraries may vary prison to prison. See, *id.* *Town of Chester, N.Y. v. Laroe Estates, Inc.*, 137 S.Ct. 1645, 1648-49 (2017), is also unavailing. There, the Court analyzed whether an intervenor as a matter of right has standing to claim a remedy separate from that sought by the plaintiff. This Court has found no case extending *Town of Chester's* rationale to the proposition advanced by the Attorney General - that, regardless of the likely constitutional violation shown, a party with standing is barred from injunctive relief broader than that which directly impacts it.

Next, the Attorney General argues that equitable principles require that the injunction be no more burdensome than necessary

to resolve a plaintiff's injury. While true that an injunction should be "no more burdensome than necessary to provide complete relief," *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 778 (1994), a nationwide injunction is necessary to provide complete relief from the likely constitutional violation at issue here. See, *McBride*, 124 F.3d at 873; see also, *Bailey v. Patterson*, 323 F.2d 201, 206 (5th Cir. 1963) ("The very nature of the rights appellants seek to vindicate requires that the decree run to the benefit not only of appellants but also for all persons similarly situated."). As the City's cited authority indicates, nationwide injunctions have been upheld numerous times where the remedy provided relief to non-parties as well as the plaintiff. See, e.g., *Decker v. O'Donnell*, 661 F.2d 598, 618 (7th Cir. 1980); *Texas v. U.S.*, 809 F.3d at 187-88 n. 211 (upholding nationwide scope of preliminary injunction and collecting cases).

Most significantly, a recent Supreme Court decision validates the nationwide application of the preliminary injunction here. In *International Refugee Assistance Project v. Trump*, 857 F.3d 554 (4th Cir. 2017), vacated as moot, 583 U.S. __ (2017), the Fourth Circuit upheld the nationwide scope of a preliminary injunction enjoining, *inter alia*, portions of the President's executive order barring certain foreign nationals

from entering the United States. The government appealed and, while the appeal was pending, moved for a stay of the injunction. *See, Trump v. IRAP*, 137 S.Ct. 2080, 2083 (2017). The Supreme Court granted in part and denied in part the motion to stay the nationwide injunction. *Id.* at 2089. Although the Supreme Court narrowed the categories of persons to whom the injunction applied, the nationwide application of the injunction was upheld "with respect to parties similarly situated to [the plaintiffs]." *Id.* at 2088. Consistent with the Supreme Court's analysis, the scope of the nationwide preliminary injunction at issue here includes similarly situated states and local governments. In fact, the dissenting Justices made the exact argument the Attorney General advances here, specifically criticizing the majority for upholding the scope of the injunction for other similarly situated persons and ignoring that "a court's role is to provide relief only to claimants." *Id.* at 2090 (Thomas, J., dissenting) (quotations and alterations omitted) ("But the Court takes the additional step of keeping the injunctions in place with regard to an unidentified, unnamed group of foreign nationals abroad."). The Attorney General's argument to stay the injunction parallels that adopted by the dissent but clearly rejected by the majority of the Supreme

Court. *See, id.* at 2088. Thus, the Court is duty-bound to reject it here as well.

Similarly, the Seventh Circuit has upheld a nationwide injunction where the evidence before the court primarily involved one jurisdiction. In *Decker*, the appellant argued that the district court erred by entering a nationwide injunction where the fact-finding had focused on Milwaukee County. *See, Decker*, 661 F.2d at 617-18. The court affirmed the nationwide scope of the preliminary injunction, reasoning that the court's "analysis . . . relied primarily on the statute and regulation and ha[d] used the evidence on funding in Milwaukee County merely as illustration." *Id.* at 618.

The Attorney General's authority for cabining injunctive relief to only the plaintiff's injury is distinguishable. In *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139 (2010), the Supreme Court reviewed a permanent injunction based on a violation of the National Environmental Policy Act where a federal agency failed to complete an environmental impact statement prior to deregulating alfalfa. The Supreme Court overturned the injunction, emphasizing that the agency could lawfully approve a partial deregulation of alfalfa before completing the new environmental impact statement without harming the plaintiffs. *Id.* at 165-66. Because the district

court had enjoined the agency from approving not just a complete but also a partial deregulation, the injunction was overbroad. *Ibid.* *Monsanto* does not apply here. In *Monsanto*, the injunction prevented the agency from using its lawful authority to impose a partial deregulation that had not been shown to harm the plaintiffs. See, *ibid.* Here, the Attorney General likely has no lawful authority to impose the notice and access conditions. An injunction is not overbroad where it merely inhibits the Attorney General from acting beyond his likely statutory authority. *Madsen v. Women's Health Center*, 512 U.S. 753 (1994), is also inapplicable. Because the injunction there restricted the defendants' First Amendment rights, *Madsen* applied a different standard. See, *id.* at 765. There, the Court assessed "whether the challenged provisions of the injunction burden no more speech than necessary to serve a significant government interest." *Ibid.* No similar First Amendment concern is present here.

With respect to equitable considerations, the Attorney General argues that staying the nationwide sweep of the injunction would allow the Department to include the notice and access conditions in award notifications while a decision on the merits is reached, thus preventing burdens on localities that might attend a significant delay in Byrne JAG funding. The

difficulty with this proposition is that, in essence, the proposed "fix" would allow the Attorney General to impose what this Court has ruled are likely unconstitutional conditions across a number of jurisdictions prior to a decision on the merits. This is not an equitable result, particularly where the Court's preliminary injunction merely preserves the status quo to await a final decision. See, Wright & Miller, FEDERAL PRACTICE AND PROCEDURE § 65.20 (2017); see also, *Am. Med. Ass'n v. Weinberger*, 522 F.2d 921, 926 (7th Cir. 1975) (upholding preliminary injunction that preserved status quo for resolution on the merits).

Finally, the Attorney General argues that applicants who contest the conditions may file their own lawsuits while jurisdictions that do not contest the conditions may receive immediate funding by acceding to the notice and access conditions while the appeal is pending. Considering that thirty-seven cities and counties have signed on as *amicus curiae* in support of the City, judicial economy counsels against requiring all these jurisdictions (and potentially others) to file their own lawsuits to decide the same legal question before this Court. (See, generally, ECF No. 51, Brief of Amici Curiae County of Santa Clara, 36 Additional Cities, Counties and Municipal Agencies, the U.S. Conference of Mayors, the National

League of Cities, the National Association of Counties, the International Municipal Lawyers Association, and the International City/County Management Association ("Amicus Brief of Counties, Cities, and Others").) Furthermore, all jurisdictions remain free to adopt the substance of the notice and access conditions if they wish to do so. The injunction only prevents the Attorney General from imposing them as conditions on the Byrne JAG funds. If, however, the Attorney General wishes to reserve his right to tether the notice and access conditions to eligibility for these funds, he must await a decision that upholds his authority to do so.

Although not specifically raised by the Attorney General, there are reasons to be cautious when imposing a nationwide injunction. Recent legal scholarship has identified significant concerns related to the use of nationwide injunctions at the district court and circuit court levels. *See, generally*, Samuel L. Bray, *Multiple Chancellors: Reforming the National Injunction* (February 9, 2017) (forthcoming publication), available at SSRN: <https://ssrn.com/abstract=2864175>; Michael T. Morley, *De Facto Class Actions? Plaintiff- and Defendant-Oriented Injunctions in Voting Rights, Election Law, and Other Constitutional Cases*, 39 Harv. J.L. & Pub. Pol'y 487 (2016); Maureen Carroll, *Aggregation for Me, but Not for Thee: The Rise of Common Claims in Non-*

Class Litigation, 36 Cardozo L. Rev. 2017 (2015). Nationwide injunctions may increase forum shopping, lead to conflicting injunctions, and stymie the development of the law within the Circuits prior to Supreme Court review. These concerns are not insignificant but fail to overcome the benefits of a nationwide injunction in this specific instance. First and foremost, there has been no evidence of forum shopping here and neither party has argued as such. Second, as explained above, judicial economy favors avoiding "a flood of duplicative litigation" from other Byrne JAG applicants who want the same protections as the City of Chicago. *Nat'l Mining Ass'n v. United States Army Corps of Eng'rs*, 145 F.3d 1399, 1409 (D.C. Cir. 1998). Certainly, it would at least include the thirty-seven cities and counties that filed briefs in support of the City of Chicago as amici. See, ECF No. 51, Amicus Brief of Counties, Cities, and Others; see also, *A-1 Cigarette Vending, Inc. v. U.S.*, 49 Fed. Cl. 345, 358 (2001) ("It would be senseless to require the relitigation of the validity of a regulation in all federal district courts").

Nevertheless, issuing a nationwide injunction should not be a default approach. It is an extraordinary remedy that should be limited by the nature of the constitutional violation and subject to prudent use by the courts. See, *Califano v. Yamaski*, 442 U.S. 682, 702 (1979) (noting that injunctive relief is

limited to the "extent of the violation established"). In this case, the Court finds it an appropriate remedy based on the need for federal uniformity and the unfairness resulting from disparate applications.

The rule of law is undermined where a court holds that the Attorney General is likely engaging in legally unauthorized conduct, but nevertheless allows that conduct in other jurisdictions across the country. The Courts have a "well-recognized interest in ensuring that federal courts interpret federal law in a uniform way." *Williams v. Taylor*, 529 U.S. 362, 389–90 (2000). Further, the public interest and perception of the law supports "having congressional enactments properly interpreted and applied. . . . As it is principally the protection of the public interest with which [the court is] concerned, no artificial restrictions of the court's power to grant equitable relief in the furtherance of that interest can be acknowledged." *Wirtz v. Baldor Elec. Co.*, 337 F.2d 518, 534–35 (D.C. Cir. 1963) (internal quotations and citations omitted). All similarly-situated persons are entitled to similar outcomes under the law, and as a corollary, an injunction that results in unequal treatment of litigants appears arbitrary. See, *id.* at 534 ("[Where] a lower court . . . has spoken, that court would ordinarily give the same relief to any individual who comes to

it with an essentially similar cause of action. . . . The rule of law requires no less."); see also, *Sandford v. R. L. Coleman Realty Co.*, 573 F.2d 173, 178 (4th Cir. 1978) ("[T]he settled rule is that whether plaintiff proceeds as an individual or on a class suit basis, the requested injunctive relief generally will benefit not only the claimant but all other persons subject to the practice or the rule under attack.") (internal quotations and alterations omitted). An injunction more restricted in scope would leave the Attorney General free to continue enforcing the likely invalid conditions against all other Byrne JAG applicants. This state of affairs flies in the face of the rule of law and the role of the courts to ensure the rule of law is enforced.

This is especially true considering the judiciary has an important role to play in enforcing the separation of powers. See, *NLRB v. Canning*, 134 S.Ct. 2550, 2559-60 (2014) ("[T]he separation of powers . . . serve[s] to safeguard individual liberty, and . . . it is the duty of the judicial department – in a separation-of-powers case as in any other – to say what the law is.") (internal quotations and citations omitted). "When the court believes the underlying right to be highly significant, it may write injunctive relief as broad as the right itself." *Zamecnik v. Indian Prairie Sch. Dist. # 204*, 636

F.3d 874, 879 (7th Cir. 2011) (Posner, J.) (quotations omitted). District courts are given broad authority to determine the appropriate scope of an injunction. *See, United States v. Capitol Serv., Inc.*, 756 F.2d 502, 507 (7th Cir. 1985) ("Geographical limitations regarding the issues at trial do not alter the court's broad remedial powers."); *Sprogis v. United Air Lines, Inc.*, 444 F.2d 1194, 1201-02 (7th Cir. 1971) (affirming the "district court's power to consider extending relief beyond the named plaintiff" "where justice requires such action"). If this Court is incorrect, the appellate process is the vehicle to correct the error.

The Court is sympathetic to the Attorney General's quandary and agrees that, ideally, a final decision on the merits would be reached before practical constraints force a surrender of his policy position (at least for FY 2017). However, this concern is better dealt with through expedited proceedings than a stay that would likely result in imposition of unconstitutional conditions on Byrne JAG applicants. The Court notes that the Attorney General opposed the City's Motion for Expedited Briefing that would have resulted in an earlier decision on the City's Motion for a Preliminary Injunction. (See, ECF No. 28, Def.'s Opp. to Pl.'s Mot. to Expedite Briefing Schedule.)

Applicants for a stay have a threshold burden to demonstrate both a likelihood of success on the merits and that irreparable harm will result if the stay is denied. *Matter of Forty-Eight Insulations, Inc.*, 115 F.3d at 1300-01. Where the applicant "does not make the requisite showings on either of [the threshold] factors, the court's inquiry into the balance of harms is unnecessary, and the stay should be denied without further analysis." *Id.* at 1301. Because the Attorney General is not able to meet its threshold burden of showing some likelihood of success on its motion to stay nationwide application of the preliminary injunction, no further analysis is necessary. See, *ibid.*

IV. CONCLUSION

For the reasons stated herein, the Attorney General's Motion to Stay Nationwide Application of Preliminary Injunction [ECF No. 80] is denied.

IT IS SO ORDERED.



Harry D. Leinenweber, Judge
United States District Court

Dated: October 13, 2017

ATTACHMENT 2

PRELIMINARY INJUNCTION ORDER

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE CITY OF CHICAGO,

Plaintiff,

v.

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

Defendant.

Case No. 17 C 5720

Judge Harry D. Leinenweber

MEMORANDUM OPINION AND ORDER

This case involves the intersection between federal immigration policies and local control over policing. Defendant Jefferson Beauregard Sessions III, the Attorney General of the United States, seeks to impose new conditions on an annual federal grant relied on by the City of Chicago for law enforcement initiatives. These conditions require additional cooperation with federal immigration officials and directly conflict with Chicago's local policy, codified in its Welcoming City Ordinance, which restricts local officials' participation in certain federal immigration efforts. Chicago claims its policies engender safer streets by fostering trust and cooperation between the immigrant community and local police. Chicago's policies are at odds with the immigration enforcement

priorities and view of public safety espoused by the Attorney General.

Against this backdrop, the City of Chicago claims that these new conditions are unlawful and unconstitutional, and implores this Court to grant a preliminary injunction enjoining their imposition. For the reasons described herein, the Court grants in part, and denies in part, the City of Chicago's Motion for a Preliminary Injunction.

I. FACTUAL BACKGROUND

A. The Edward Byrne Memorial Justice Assistance Grant Program

The federal grant at issue is awarded by the Edward Byrne Memorial Justice Assistance Grant Program (the "Byrne JAG grant"). See, 34 U.S.C. § 10151 (formerly 42 U.S.C. § 3750). Named after a fallen New York City police officer, the Byrne JAG grant supports state and local law enforcement efforts by providing additional funds for personnel, equipment, training, and other criminal justice needs. See, 34 U.S.C. § 10152 (formerly 42 U.S.C. § 3751). The Byrne JAG grant is known as a formula grant, which means funds are awarded based on a statutorily defined formula. See, 34 U.S.C. § 10156 (formerly 42 U.S.C. § 3755). Each state's allocation is keyed to its population and the amount of reported violent crimes. *Ibid.* The

City of Chicago (the "City") has received Byrne JAG funds since 2005, including \$2.33 million last year on behalf of itself and neighboring political entities. (See, Decl. of Larry Sachs, ¶¶ 3, 11-12.) The City has used these funds to buy police vehicles and to support the efforts of non-profit organizations working in high crime communities. (See, *id.* ¶ 4.)

B. New Conditions on the Byrne JAG Grant

In late July 2017, the Attorney General announced two new conditions on every grant provided by the Byrne JAG program. (See, Byrne JAG Program, FY 2017 Local Solicitation, Ex. 11 to Def.'s Br.) The two new conditions require, first, that local authorities provide federal agents advance notice of the scheduled release from state or local correctional facilities of certain individuals suspected of immigration violations, and, second, that local authorities provide immigration agents with access to City detention facilities and individuals detained therein. Additionally, a condition on Byrne JAG funds was added last year that requires the City to certify compliance with a federal statute, 8 U.S.C. § 1373, which prohibits local government and law enforcement officials from restricting the sharing of information with the Immigration and Naturalization Service ("INS") regarding the citizenship status of any individual. (See, FY 2016 Chicago/Cook County JAG Program Grant

Award, dated Sept. 7, 2017, at 2-13, Ex. C to Decl. of Alan Hanson ("Hanson Decl.")) The condition to certify compliance is also imposed on 2017 Byrne JAG funds. (See, Byrne JAG Program, FY 2017 Local Solicitation, Ex. 11 to Def.'s Br.) The exact text of the three conditions is as follows:

(1) A State statute, or a State rule, - regulation, -policy, or -practice, must be in place that is designed to ensure that, when a State (or State-contracted) correctional facility receives from DHS a formal written request authorized by the Immigration and Nationality Act that seeks advance notice of the scheduled release date and time for a particular alien in such facility, then such facility will honor such request and -- as early as practicable -- provide the requested notice to DHS.

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

(3) The applicant local government must submit the required 'Certification of Compliance with 8 U.S.C. 1373' (executed by the chief legal officer of the local government).

(Byrne JAG Program Grant Award for County of Greenville, Special Conditions ("Byrne Conditions"), ¶¶ 53, 55-56, Ex. A to Hanson Decl.; see also Hanson Decl., ¶ 6.) These conditions will be

referred to respectively as the notice condition, the access condition, and the compliance condition. The City claims all three conditions are unlawful and unconstitutional, even though it acquiesced to the compliance condition when accepting the 2016 Byrne JAG funds.

The compliance condition requires the City to certify compliance with Section 1373. (Byrne Conditions ¶ 53.) Section 1373 is titled "Communication between government agencies and the Immigration and Naturalization Service" and provides as follows, 8 U.S.C. § 1373:

(a) In General

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

(b) Additional Authority of Government Entities

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

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

(2) Maintaining such information.

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

(c) Obligation to Respond to Inquiries

The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.

C. The City's Welcoming Ordinance

Chicago's Welcoming City Ordinance (the "Ordinance") is a codified local policy that restricts the sharing of immigration status between residents and police officers. See, Chicago, Illinois, Municipal Code § 2-173-005 *et seq.* The explicit purpose of the Ordinance is to "clarify what specific conduct by City employees is prohibited because such conduct significantly harms the City's relationship with immigrant communities." *Id.* § 2-173-005. The Ordinance reflects the City's belief that the "cooperation of the City's immigrant communities is essential to prevent and solve crimes and maintain public order, safety and security in the entire City" and that the "assistance from a person, whether documented or not, who is a victim of, or a witness to, a crime is important to promoting the safety of all its residents." *Ibid.* Since the mid-1980s, the City has had in place some permutation of this policy, typically in the form of executive orders that prohibited City agents and agencies from

requesting or disseminating information about individuals' citizenship. (See, Executive Order 85-1, 89-6, Exs. A-B to Pl.'s Br.) First codified in Chicago's Municipal Code in 2006, the Ordinance was augmented in 2012 to refuse immigration agents access to City facilities and to deny immigration detainer requests unless certain criteria were met. See, Chicago, Illinois Municipal Code § 2-173-005. An immigration detainer request is a request from Immigration and Customs Enforcement ("ICE"), asking local law enforcement to detain a specific individual for up to 48 hours to permit federal assumption of custody.

The Ordinance prohibits any "agent or agency" from "request[ing] information about or otherwise investigat[ing] or assist[ing] in the investigation of the citizenship or immigration status of any person unless such inquiry or investigation is required by Illinois State Statute, federal regulation, or court decision." *Id.* § 2-173-020. It goes on to forbid any agent or agency from "disclos[ing] information regarding the citizenship or immigration status of any person." *Id.* § 2-173-030. The Ordinance specifically characterizes "[c]ivil immigration enforcement actions" as a "[f]ederal responsibility," and provides as follows:

a. Except for such reasonable time as is necessary to conduct the investigation specified in subsection (c) of this section, no agency or agent shall:

1. arrest, detain or continue to detain a person solely on the belief that the person is not present legally in the United States, or that the person has committed a civil immigration violation;

2. arrest, detain, or continue to detain a person based on an administrative warrant entered into the Federal Bureau of Investigation's National Crime Information Center database, or successor or similar database maintained by the United States, when the administrative warrant is based solely on a violation of a civil immigration law; or

3. detain, or continue to detain, a person based upon an immigration detainer, when such immigration detainer is based solely on a violation of a civil immigration law.

b.

1. Unless an agency or agent is acting pursuant to a legitimate law enforcement purpose that is unrelated to the enforcement of a civil immigration law, no agency or agent shall:

A. permit ICE agents access to a person being detained by, or in the custody of, the agency or agent;

B. permit ICE agents use of agency facilities for investigative interviews or other investigative purpose; or

C. while on duty, expend their time responding to ICE inquiries or communicating with ICE regarding a person's custody status or release date.

2. An agency or agent is authorized to communicate with ICE in order to determine whether any matter involves enforcement based solely on a violation of a civil immigration law.

c. This section shall not apply when an investigation conducted by the agency or agent indicates that the subject of the investigation:

1. has an outstanding criminal warrant;

2. has been convicted of a felony in any court of competent jurisdiction;

3. is a defendant in a criminal case in any court of competent jurisdiction where a judgment has not been entered and a felony charge is pending; or

4. has been identified as a known gang member either in a law enforcement agency's database or by his own admission.

Id. § 2-173-042. The Ordinance is thus irreconcilable with the notice and access conditions the Attorney General has imposed on the 2017 Byrne JAG grant.

After receiving notice of the Attorney General's new conditions on the Byrne JAG grant program, the City filed suit alleging that the conditions were unconstitutional and unlawful. Throughout this litigation, the City has strenuously argued for

its prerogative to allocate scarce local police resources as it sees fit - that is, to areas other than civil immigration enforcement - and for the soundness of doing so based on the integral role undocumented immigrant communities play in reporting and solving crime. (See, Pl.'s Br. at 2-4.) Before the Court is the City's Motion for a Preliminary Injunction, requesting the Court enjoin the Attorney General from imposing the three above-described conditions on FY 2017 Byrne JAG funds.

The Court grants the City a preliminary injunction against the imposition of the notice and access conditions on the Byrne JAG grant. The Court declines to grant the preliminary injunction with respect to the compliance condition.

II. ANALYSIS

A. Legal Standard

To warrant the entry of a preliminary injunction, the City "must establish that it is likely to succeed on the merits, that it is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of the equities tips in its favor, and that an injunction is in the public interest." *Higher Soc'y of Indiana v. Tippecanoe Cty., Indiana*, 858 F.3d 1113, 1116 (7th Cir. 2017) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). Where the Government is the opposing party, the last two factors merge. *Nken v. Holder*,

556 U.S. 418, 435 (2009). Further, under Seventh Circuit precedent, the Court must also “weigh the harm the plaintiff will suffer without an injunction against the harm the defendant will suffer with one.” *Harlan v. Scholz*, 866 F.3d 754, 758 (7th Cir. 2017).

B. Likelihood of Success on the Merits

This case presents three questions: Did Congress authorize the Attorney General to impose substantive conditions on the Byrne JAG grant? If so, did Congress have the power to authorize those conditions under the Spending Clause? And finally, does Section 1373 violate the Tenth Amendment? We take these questions in turn.

1. Executive Authority under the Byrne JAG Statute

Whether the new conditions on the Byrne JAG grant are proper depends on whether Congress conferred authority on the Attorney General to impose them. Congress may permissibly delegate authority and discretion to the Executive Branch through statute. See, *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 472 (2001). The contours of the Executive Branch's authority are circumscribed by statute because the “power to act . . . [is] authoritatively prescribed by Congress.” *City of Arlington, Tex. v. F.C.C.*, 569 U.S. 290, 297–98 (2013). Accordingly, we must look to the statute to determine the

authority of the Attorney General to impose conditions on the Byrne JAG grant. In determining the scope of a statute, we look first to its language. See, *United States v. Berkos*, 543 F.3d 392, 396 (7th Cir. 2008). "If the statutory language is unambiguous, in the absence of a clearly expressed legislative intent to the contrary, that language must ordinarily be regarded as conclusive." *Russello v. United States*, 464 U.S. 16, 20 (1983) (internal quotations omitted). The language and design of the statute as a whole may guide the Court in determining the plain meaning of the text. *Berkos*, 543 F.3d at 396.

The Byrne JAG program was created in 2006 and is codified at 34 U.S.C. §§ 10151-10158 (formerly 42 U.S.C. §§ 3750-3757). These provisions are housed in Subchapter V of Chapter 101 entitled "Justice System Improvement." Subchapter V enumerates the various "Bureau of Justice Assistance Grant Programs" in three parts: Part A covering the Byrne JAG program, Part B covering "Discretionary Grants," and Part C discussing "Administrative Provisions." The authority explicitly granted to the Attorney General within the Byrne JAG statute is limited. The Attorney General is authorized to: determine the "form" of the application, 34 U.S.C. § 10153(a); "reasonably require" "the applicant [to] maintain and report . . . data, records, and

information (programmatic and financial)," 34 U.S.C. § 10152(a)(4); and "develop[] guidelines" for "a program assessment" "in coordination with the National Institute of Justice," 34 U.S.C. § 10152.

In light of the limited express authority the statute confers on the Attorney General, the City argues that Congress did not authorize the Attorney General to place substantive conditions on the Byrne JAG grant. The fact that Congress *did* authorize the Attorney General to place substantive conditions on *other* grants, the City contends, indicates an express reservation of that authority. See, 34 U.S.C. § 10142 (formerly 42 U.S.C. § 3742). By failing to direct the Court to any textual authority within the Byrne JAG statute itself, the Attorney General appears to concede the point.

However, the Attorney General argues that Congress expressly authorized imposition of the challenged conditions through a provision of Subchapter I establishing the Office of Justice Programs, which provision allows the Assistant Attorney General to "plac[e] special conditions on all grants" and to "determin[e] priority purposes for formula grants." 34 U.S.C. § 10102(a)(6) (formerly 42 U.S.C. § 3712(a)(6)). The difficulty with the Attorney General's reading of the statute is that this grant of authority to the Assistant Attorney General is located

in an entirely different subchapter governing Office of Justice Programs, whereas Congress codified the later-in-time Byrne JAG program under the aegis of Bureau of Justice Assistant Grant Programs. The statute contains no textual reference that applies this section to the rest of the chapter or specifically to the Byrne JAG program. In fact, Chapter 101 comprises 38 subchapters implicating a broad swath of federal programs and subject matter, ranging from grants for residential substance abuse treatment, *see*, 34 U.S.C. §§ 10421-10426, to criminal child support enforcement, *see*, 34 U.S.C. §§ 10361-10367.

Even assuming that § 10102(a) applies to the Byrne JAG grant, reading the statute as the Attorney General advises results in multiple incongruities within the text.

First, it renders superfluous the explicit statutory authority Congress gave to the Director to impose conditions on *other* Bureau of Justice Assistance grants housed within the same subchapter as the Byrne JAG statute. Congress explicitly provides the Director of the Bureau of Justice Assistance with authority to "determine[]" "terms and conditions" for the discretionary grants itemized in Part B of the statute:

The Director shall have the following duties:

[. . .]

(2) *Establishing programs in accordance with part B of subchapter V of this chapter and, following public announcement of such programs, awarding and allocating funds and technical assistance in accordance with the criteria of part B of subchapter V of this chapter, and on terms and conditions determined by the Director to be consistent with part B of subchapter V of this chapter.*

34 U.S.C. § 10142 (emphases added). As noted earlier, the Byrne JAG grant is a formula grant located in Part A of Subchapter V. The most natural reading of the statute, then, is that Congress endowed the Director with authority to impose conditions on the discretionary grants under Part B, but specifically withheld that authorization for the formula grant, the Byrne JAG grant, in Part A. See, *ibid.* The Attorney General's reading of the statute therefore ignores the ostensibly clear decision by Congress to withhold comparable authority in the Byrne JAG provisions. See, *N.L.R.B. v. SW General, Inc.*, 137 S.Ct. 929, 940 (2017) (noting the *expressio unius* canon's application when "circumstances support a sensible inference that the term left out must have been meant to be excluded") (quotations and alterations omitted). Regardless, it would be quite odd for Congress to give the Attorney General authority to impose conditions on the discretionary grants if it had already provided the Attorney General authority to impose conditions on all grants through Section 10102(a)(6). See, 34 U.S.C. §

10102(a)(6). This reading would render superfluous the explicit statutory grant of authority to impose conditions on the discretionary grants in Part B. *See, Marquez v. Weinstein, Pinson & Riley, P.S.*, 836 F.3d 808, 811 (7th Cir. 2016) ("It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.") (quotations and citations omitted).

This conclusion is supported by the fact that Congress specifically conferred authority to impose conditions on other grants housed in the same chapter. Where Congress did so, it did so clearly. For example, Subchapter XIX of Chapter 101 provides federal funds for efforts designed to combat violence against women. *See*, 34 U.S.C. § 10446-10453 (formerly 42 U.S.C. §§ 3796gg-0 to 3796gg-11). There, Congress expressly authorized the Attorney General to impose conditions when administering the grant:

In disbursing grants under this subchapter, the Attorney General may impose reasonable conditions on grant awards to ensure that the States meet statutory, regulatory, and other program requirements.

34 U.S.C. § 10446(e)(3) (emphasis added). Further, Congress expressly limited its delegation of authority to apply only to funds awarded under that specific subchapter. *Ibid.* "Where

Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello*, 464 U.S. at 23. What is more, "[w]e do not lightly assume that Congress has omitted from its adopted text requirements that it nonetheless intends to apply, and our reluctance is even greater when Congress has shown elsewhere in the same statute that it knows how to make such a requirement manifest." *Jama v. Immigration & Customs Enf't*, 543 U.S. 335, 341 (2005).

Second, even if there were a basis for importing § 10102(a) into the Byrne JAG statute, it is suspect to ground the Attorney General's authority to impose the challenged conditions via the power Congress conferred on the Assistant Attorney General. See, 34 U.S.C. § 10102(a)(6); *Whitman*, 531 U.S. at 468 ("Congress . . . does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes."). Furthermore, § 10102(a)(6) provides that the Assistant Attorney General shall exercise "such other powers and functions as *may* be vested in the Assistant Attorney General pursuant to this chapter or by delegation of the Attorney General." 34 U.S.C. § 10102(a)(6) (emphasis added). The language of the statute,

including its use of the term "may," implies that any authority of the Assistant Attorney General to place special conditions on grants must flow either from the statute itself or from a delegation of power independently possessed by the Attorney General. See, *Jama*, 543 U.S. at 346 ("The word 'may' customarily connotes discretion."). Yet the Attorney General in this litigation has pointed to no provision other than § 10102(a)(6) to ground its purported authority to condition Byrne JAG grants.

The Attorney General's reliance on 34 U.S.C. § 10102(a)(6) is persuasive only to the extent one scrutinizes the provision without the illumination of the rest of the statute. See, *Gonzales v. Oregon*, 546 U.S. 243, 273 (2006) (statutes "should not be read as a series of unrelated and isolated provisions"). Viewed in its context, however, § 10102(a)(6) is better understood as allowing the Attorney General to delegate powers to the Assistant Attorney General to aid in administering the Office of Justice Programs - whereas the Byrne JAG grant is a Bureau of Justice Assistance Program that is both housed in a distinctly different subchapter of Chapter 101 and isolated from other discretionary grants within its own subchapter. Reading § 10102(a)(6) to authorize the Attorney General to impose substantive conditions on all grants under the entire chapter is

discordant with the specific and clear grants of authority in other sections of the statute.

This conclusion rests on principles of statutory interpretation. It does not imply that Congress *cannot* impose the conditions at issue. See, *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981) ("[O]ur cases have long recognized that Congress may fix the terms on which it shall disburse federal money to the States."). On the contrary, Congress may well have Spending Clause power to impose the conditions or delegate to the Executive Branch the power to impose them, including the notice and access condition, but it must exert that power through statute. The Executive Branch cannot impose the conditions without Congressional authority, and that authority has not been conferred through Section 10102.

The notice and access conditions therefore exceed statutory authority, and, consequently, the efforts to impose them violate the separation of powers doctrine and are *ultra vires*. The City has shown a likelihood of success on the merits as to these conditions. We do not reach the question whether the notice and access conditions violate the Spending Clause because, regardless, Congress did not authorize the Attorney General to impose them.

The Attorney General points to one other statutory provision, 34 U.S.C. § 10153 (formerly 42 U.S.C. § 3752), for the authority to impose the compliance condition specifically. Section 10153(a) lays out the Byrne JAG application requirements, which read in relevant part:

(A) In general

To request a grant under this part, the chief executive officer of a State or unit of local government shall submit an application to the Attorney General within 120 days after the date on which funds to carry out this part are appropriated for a fiscal year, in such form as the Attorney General may require. *Such application shall include the following:*

[. . .]

(5) *A certification, made in a form acceptable to the Attorney General and executed by the chief executive officer of the applicant (or by another officer of the applicant, if qualified under regulations promulgated by the Attorney General), that—*

[. . .]

(D) *the applicant will comply with all provisions of this part and all other applicable Federal laws.*

34 U.S.C. § 10153(a) (emphases added). Specifically, the Attorney General argues that § 10153(a)(5)(D) furnishes the authority to require a Byrne JAG applicant's compliance with federal law, including Section 1373. *See, ibid.* Undeniably, Section 1373 is a federal law that, by its terms, is applicable

to the City. The City responds that "all other applicable Federal laws" merely refers to compliance with the narrow body of law governing federal grant-making. *See, e.g.,* 42 U.S.C. § 2000d; 29 U.S.C. § 794(a); 42 U.S.C. § 6102. Both positions are plausible, but for the reasons discussed below, the Attorney General's position is more consistent with the plain language of the statute.

We, as always, begin with the plain language of the statute. *See, Jackson v. Blitt & Gaines, P.C.,* 833 F.3d 860, 863 (7th Cir. 2016). We "must look to the particular statutory language at issue, as well as the language and design of the statute as a whole." *K Mart Corp. v. Cartier, Inc.,* 486 U.S. 281, 291 (1988). "If the statutory language is unambiguous, in the absence of a clearly expressed legislative intent to the contrary, that language must ordinarily be regarded as conclusive." *Russello,* 464 U.S. at 20.

The statutory language at issue here is "all other applicable Federal laws." Black's Law Dictionary defines "applicable" as "[c]apable of being applied; fit and right to be applied" or "affecting or relating to a particular person, group, or situation; having direct relevance." *Black's Law Dictionary* (10th ed. 2014). This definition embraces both parties' interpretations. However, the prefatory term in

§ 10153(a)(5)(D), "all other," implies a broader meaning than that tolerated by the City's interpretation. Furthermore, if Congress intended to have the applicant only certify compliance with a limited body of Federal grant-making law, it could have so stated. The City seeks to read into § 10153(a)(5)(D) references to specific federal statutes that are not there.

The City argues that the word "applicable" must have a narrowing effect. (Pl.'s Brief at 19.) However, it is equally reasonable to read "applicable" as referring to the noun, in other words, to refer to the federal laws applicable to the *applicant* - in this case, Chicago. 34 U.S.C. § 10153(a)(5)(D).

The Court will not stretch the natural meaning of the text, especially here where the City offers no case law or other authority to support its straitjacketed interpretation of "all other applicable Federal laws." 34 U.S.C. § 10153; *see also*, *Sandifer v. U.S. Steel Corp.*, 134 S.Ct. 870, 876 (2014) ("It is a fundamental canon of statutory construction that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning.") (quotations omitted).

The Court found no directly analogous case, but when interpreting similar constructions, the Supreme Court has broadly interpreted the term "applicable laws." *See, e.g.*, *Dep't of Treasury v. Fed. Labor Relations Auth.*, 494 U.S. 922,

930 (1990) (interpreting the statutory term "applicable laws" as "laws outside the Act"); see also, *Bennett Enters., Inc. v. Domino's Pizza, Inc.*, 45 F.3d 493, 497 (D.C. Cir. 1995) (noting that "all applicable laws" is "not reasonably or fairly susceptible to an interpretation that does not encompass compliance with state and federal tax laws"); *United States Dep't of Health & Human Servs. v. F.L.R.A.*, 844 F.2d 1087, 1094-95 (4th Cir. 1988) (finding statutory requirement that Executive Branch managers follow "applicable laws" to exclude Office of Management and Budget circulars but to encompass a broad panoply of statutory law); *United States v. Odneal*, 565 F.2d 598, 600 (9th Cir. 1977) (reference to "all applicable laws" relating to admiralty grants "very broad statutory authority").

With no authority to support a more narrow reading of "applicable . . . laws" in a statutory context, and some authority (albeit in a different context) to support a broad reading of the phrase, combined with the plain meaning of the language, the Court finds that "all other applicable Federal laws" encompasses Section 1373 as applicable to the Byrne JAG applicant - in this case, the City of Chicago. Here, it is the City's burden as the movant to show otherwise, and it fails to meet that burden on this record. See, *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) ("It frequently is observed that a

preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.").

This interpretation leads to a rational reading of the statute, as Congress could expect an entity receiving federal funds to certify its compliance with federal law, as the entity is - independent of receiving federal funds - obligated to comply. At oral argument, the City argued that this interpretation is limitless, allowing the Attorney General to pick from the United States Code like a menu at a restaurant. For several reasons, the City's consternation can be assuaged. First, the default assumption is that states and localities do comply with all federal laws. Second, the discretion to demand certifications of compliance is not limitless. The limitations on federal grant conditions announced in *South Dakota v. Dole*, 483 U.S. 203, 207-08 (1987), require that a particular condition, such as a compliance certification, bear some relation to the purpose of the federal funds. And further, as noted at oral argument, any condition attached to federal grants that is too burdensome defeats itself because a state or local government could reject the funds and thus undermine the Attorney General's attempt to induce compliance with the condition.

The City argues that previous conditions have all been tethered to statutes that by their terms apply to federal grant recipients. This may be true, but the fact that the Attorney General has not exercised authority does not necessarily speak to whether he possesses it, especially where the statutory terms embrace such an authorization.

The City has not met its burden to show a likelihood of success on the merits regarding the lack of statutory authority for the compliance condition. The most natural reading of the statute authorizes the Attorney General to require a certification of compliance with all other applicable federal laws, which by the plainest definition includes Section 1373. The City offers no statutory or case law authority to support its narrower reading. Because the lack of authority supporting a narrower interpretation and the plain language of the statute counsel against the City's interpretation of "all other applicable Federal laws," the Court finds that the Attorney General has statutory authority to impose the compliance condition on the Byrne JAG grant.

2. Constitutionality of Section 1373

Even with Congressional authorization, the compliance condition must be proper under the Spending Clause, and Section 1373 must pass constitutional muster. As the City has

not argued that the compliance condition violates the Spending Clause, the Court now turns to the Section 1373 question.

Although Congressional power is substantial, Congress may not simply "commandeer the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program." *Travis v. Reno*, 163 F.3d 1000, 1003 (7th Cir. 1998). It also cannot require states "to govern according to Congress' instructions" or circumvent the rule by "conscripting the State's officers directly." *Printz v. United States*, 521 U.S. 898, 935 (1997); *New York v. United States*, 505 U.S. 144, 162 (1992). These prohibitions derive from principles of federalism ingrained in our constitutional system, under which "both the National and State Governments have elements of sovereignty the other is bound to respect." *Arizona v. United States*, 567 U.S. 387, 398 (2012); see also, *Gregory*, 501 U.S. at 459 ("In the tension between federal and state power lies the promise of liberty.").

With the existence of two sovereigns comes occasional conflict. The Supremacy Clause provides the clear rule that federal law "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding." Art. VI, cl. 2. "As long as it is acting

within the powers granted it under the Constitution, Congress may impose its will on the States [and] . . . may legislate in areas traditionally regulated by the States." *Gregory*, 501 U.S. at 459-60. Further, the presumption attached to every statute is that it is a constitutional exercise of legislative power. *Reno*, 528 U.S. at 148. We start there, attaching the presumption of constitutionality to Section 1373. Section 1373, in relevant part, provides that "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." 8 U.S.C. § 1373(b).

It is undisputed that Congress has plenary power to legislate on the subject of aliens. *See, Takahashi v. Fish and Game Commission*, 334 U.S. 410, 419 (1948) ("The Federal Government has broad constitutional powers in determining what aliens shall be admitted to the United States, the period they may remain, regulation of their conduct before naturalization,

and the terms and conditions of their naturalization."). Indeed, immigration regulation and enforcement are federal functions. *See, Arizona*, 567 U.S. at 396-97. Nonetheless, the City argues that Section 1373 violates the Tenth Amendment because it "requires state and local officers to provide information that belongs to Chicago and is available to them only in their official capacity" and requires "state officials to assist in the enforcement of federal statute by regulating private individuals." (Pl.'s Brief at 20 (internal quotations omitted).) Specifically, the City contends that Section 1373 commandeers state and local governments by "controlling the actions of their employees." *Ibid*.

The constitutionality of Section 1373 has been challenged before. The Second Circuit in *City of New York v. United States*, 179 F.3d 29 (2d Cir. 1999), addressed a facial challenge to Section 1373 in similar circumstances. By executive order, New York City prohibited its employees from voluntarily providing federal immigration authorities with information concerning the immigration status of any alien. *Id.* at 31-32. The city sued the United States, challenging the constitutionality of Section 1373 under the Tenth Amendment. *Id.* at 32.

The Second Circuit found that Section 1373 did not compel state or local governments to enact or administer any federal regulatory program or conscript local employees into its service, and therefore did not run afoul of the rules gleaned from the Supreme Court's *Printz* and *New York* decisions. *City of New York*, 179 F.3d at 35. Rather, the court held that Section 1373 prohibits local governmental entities and officials only from directly restricting the voluntary exchange of immigration information with the INS. *Ibid.* The Court found that the Tenth Amendment, normally a shield from federal power, could not be turned into "a sword allowing states and localities to engage in passive resistance that frustrates federal programs." *Ibid.* The Second Circuit concluded that Congress may forbid state and local governments from outlawing their officials' voluntary cooperation with the INS without violating the Tenth Amendment. *Ibid.* As such, the court nullified New York City's executive order mandating non-cooperation with federal immigration authorities to the extent it conflicted with Section 1373. *Id.* at 37.

The City argues that *City of New York v. United States* contravenes the Seventh Circuit's decision in *Travis v. Reno*, 163 F.3d 1000 (7th Cir. 1998), by impermissibly applying a balancing analysis to encroachments on federalism. We agree

with the City that balancing the weight of a federalism infringement is inappropriate, not only under this Circuit's precedent in *Travis*, 163 F.3d at 1003, but Supreme Court precedent as well. See, *Printz*, 521 U.S. at 932 (noting that, where "it is the whole object of the law to direct the functioning of the state executive, and hence to compromise the structural framework of dual sovereignty, such a 'balancing' analysis is inappropriate . . . [N]o comparative assessment of the various interests can overcome that fundamental defect.") (emphasis omitted). However, the logic of *City of New York's* holding is not indebted to an impermissible balancing test. Rather, *City of New York* relies on the distinction between an affirmative obligation and a proscription:

In the case of Sections 434 and [1373], Congress has not compelled state and local governments to enact or administer any federal regulatory program. Nor has it affirmatively conscripted states, localities, or their employees into the federal government's service. These Sections do not directly compel states or localities to require or prohibit anything. Rather, they prohibit state and local governmental entities or officials only from directly restricting the voluntary exchange of immigration information with the INS.

City of New York, 179 F.3d at 34-35 (citation omitted). The improper balancing the City highlights occurs where the Second Circuit addressed a secondary question yet found the record insufficient to supplant its prior analysis. *Id.* at 36-37. The

prior analysis was its holding - free from any inappropriate balancing - that states do not have the power "to command passive resistance to federal programs." *Id.* at 37. Granted, *City of New York* does not fully address or answer two arguments that are presented in this case: first, that the federal government cannot demand information belonging to the state; and second, that it cannot (even indirectly) control the scope and nature of the duties of state and local employees. *Id.* at 36. The Second Circuit merely deemed the record insufficient on both scores. *Ibid.* Regardless, Supreme Court precedent does not command a different result.

The City relies on *Printz*, but there, the statute at issue required state officers to perform mandatory background checks on prospective handgun purchasers - an affirmative act foisted on local officials by Congress. See, 521 U.S. at 933. The Supreme Court held that the statute violated the Tenth Amendment, because the federal government cannot "command the States' officers . . . to administer or enforce a federal regulatory program." *Id.* at 935. However, Section 1373 does not require the "forced participation" of state officers to "administer or enforce a federal regulatory program." *Id.* at 917-18. It merely precludes a state or local government from "prohibit[ing], or in any way restrict[ing], any . . . official"

from sending, requesting, maintaining, or exchanging "information regarding the immigration status . . . of any individual." 8 U.S.C. § 1373. In other words, it prohibits prohibitions on local officials' voluntary participation.

For similar reasons, other cases cited by the City do not advance the ball either. See, e.g., *Reno*, 528 U.S. at 151 (finding the Driver's Privacy Protection Act constitutional because "[i]t does not require the [state] Legislature to enact any laws or regulations, and it does not require state officials to assist in the enforcement of federal statutes regulating private individuals"); *New York*, 505 U.S. at 188 (finding a "take title" provision on nuclear waste unconstitutional because it forced a state to "enact or administer a federal regulatory program" by affirmatively requiring it to legislate a certain way or take ownership of nuclear waste); *F.E.R.C. v. Mississippi*, 456 U.S. 742, 765 (1982) (finding no Tenth Amendment violation in provisions of the Public Utilities Regulatory Policies Act permitting states to regulate public utilities on the condition that they entertain federal proposals, as the statute contained nothing "directly compelling" states to enact a legislative program).

At its core, this case boils down to whether state and local governments can restrict their officials from voluntarily

cooperating with a federal scheme. The Court has not been presented with, nor could it uncover, any case holding that the scope of state sovereignty includes the power to forbid state or local employees from voluntarily complying with a federal program. Like the statute at issue in *Reno*, Section 1373 "does not require" the City "to enact any laws or regulations, and it does not require state officials to assist in the enforcement of federal statutes regulating private individuals." *Reno*, 528 U.S. at 151. Without a doubt, Section 1373 restricts the ability of localities to prohibit state or local officials from assisting a federal program, but it does not *require* officials to assist in the enforcement of a federal program. This distinction is meaningful. In this distinction, Section 1373 is consistent with the constitutional principles enunciated in *New York* and *Printz*. See, *Printz*, 521 U.S. at 935; *New York*, 505 U.S. at 161-63. Because no case has gone so far as to prohibit the federal government from restricting actions that directly frustrate federal law, the Court finds that Congress acts constitutionally when it determines that localities may not prevent local officers from *voluntarily* cooperating with a federal program or discipline them for doing so.

It is worth noting, however, that this case poses a unique and novel constitutional question. The characterization of

Section 1373 as a prohibition that requires no affirmative state action accurately conveys the literal text of the statute, but it does not accurately portray its practical import. Section 1373 mandates that state and city employees have the option of furnishing to the INS information on individuals' immigration status while the employee is acting in his or her capacity as a state or local official. The corollary is that local governments cannot both comply with Section 1373 and discipline an employee for choosing to spend his or her time assisting in the enforcement of federal immigration laws. If a state or local government cannot control the scope of its officials' employment by limiting the extent of their paid time spent cooperating with the INS, then Section 1373 may practically limit the ability of state and local governments to decline to administer or enforce a federal regulatory program. In this way, Section 1373 may implicate the logic underlying the *Printz* decision more than it does the *Reno* rationale. See, *Printz*, 521 U.S. at 929-30.

Read literally, Section 1373 imposes no affirmative obligation on local governments. But, by leaving it up to local officials whether to assist in enforcement of federal immigration priorities, the statute may effectively thwart policymakers' ability to extricate their state or municipality

from involvement in a federal program. Under current case law, however, only affirmative demands on states constitute a violation of the Tenth Amendment. Here, we follow binding Supreme Court precedent and the persuasive authority of the Second Circuit, neither of which elevates federalism to the degree urged by the City here. A decision to the contrary would require an expansion of the law that only a higher court could establish.

Accordingly, the City has not shown a likelihood of success on the merits on the constitutionality of Section 1373.

C. Irreparable Harm

The City has demonstrated the second factor of the preliminary injunction analysis - irreparable harm. In assessing irreparable harm, courts must analyze whether the "harm . . . cannot be prevented or fully rectified by the final judgment after trial." *Roland Mach. Co. v. Dresser Indus., Inc.*, 749 F.2d 380, 386 (7th Cir. 1984). Injury to reputation or goodwill is not easily measurable in monetary terms, and so often is deemed irreparable. *Stuller, Inc. v. Steak N Shake Enterprises, Inc.*, 695 F.3d 676, 680 (7th Cir. 2012). Here, the City contends that, in the absence of an injunction, it must either forego the Byrne JAG grant funds it has specifically earmarked for life-saving technology that detects when and where

gunshots are fired (P.I. Hrg. Tr. at 31:8-32:9) or accede to the new conditions the Attorney General has placed on the funds and suffer the collapse of trust between local law enforcement and immigrant communities that is essential to ferreting out crime.

Two recent cases have dealt with preliminary injunctions regarding facts similar to those before the Court. Though the legal issues presented in these cases are different than those at bar, the harms alleged are sufficiently analogous. In both cases, the district court found that the plaintiff established irreparable injury. In *City of El Cenizo v. State*, the court entered a preliminary injunction and credited the plaintiff's assertion that it would suffer two forms of irreparable harm: (1) "Trust between local law enforcement and the people they serve, which police departments have worked so hard to promote, will be substantially eroded and result in increased crime rates"; and (2) "Local jurisdictions face severe economic consequences . . . including . . . the loss of grant money." *City of El Cenizo v. State*, No. SA-17-CV-404-OLG, 2017 WL 3763098, at *39 (W.D. Tex. Aug. 30, 2017). In *County of Santa Clara v. Trump*, the court found that the plaintiff established a "constitutional injury" and irreparable harm "by being forced to comply with an unconstitutional law or else face financial injury." *County of Santa Clara v. Trump*, No. 17-CV-00485-WHO,

2017 WL 1459081, at *27 (N.D. Cal. Apr. 25, 2017), *reconsideration denied*, No. 17-CV-00485-WHO, 2017 WL 3086064 (N.D. Cal. July 20, 2017).

The harm to the City's relationship with the immigrant community if it should accede to the conditions is irreparable. Once such trust is lost, it cannot be repaired through an award of money damages, making it the type of harm that is especially hard to "rectif[y] by [a] final judgment." *Roland Mach.*, 749 F.2d at 386.

The Attorney General minimizes the impact of the relatively modest Byrne JAG funds on public safety and argues that the City could, by simply declining the funds, avoid any loss of trust between local law enforcement and the immigrant communities. However, a "Hobson's choice" can establish irreparable harm. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 381 (1992). In *Morales*, the Supreme Court held that a forced choice between acquiescing to a law that the plaintiff believed to be unconstitutional and violating the law under pain of liability was sufficient to establish irreparable injury. *Ibid.* In the same way, forcing the City either to decline the grant funds based on what it believes to be unconstitutional conditions or accept them and face an irreparable harm, is the type of "Hobson's choice" that supports irreparable harm. Further, a

constitutional violation may be sufficient to establish irreparable injury as a matter of law. See, 11A Charles Alan Wright et al., Federal Practice & Procedure § 2948.1 (2d ed. 1995) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary."); see also, *Ezell v. City of Chicago*, 651 F.3d 684, 698–700 (7th Cir. 2011); *Doe v. Mundy*, 514 F.2d 1179, 1183 (7th Cir. 1975).

The lack of injury afflicting the Attorney General in the absence of an injunction buttresses the City's showing of irreparable harm. The Seventh Circuit has described this factor as follows:

In deciding whether to grant a preliminary injunction, the court must also consider any irreparable harm that the defendant might suffer from the injunction—harm that would not be either cured by the defendant's ultimately prevailing in the trial on the merits or fully compensated by the injunction bond that Rule 65(c) of the Federal Rules of Civil Procedure requires the district court to make the plaintiff post. The cases do not usually speak of the defendant's *irreparable* harm, but the qualification is implicit; if the defendant will not be irreversibly injured by the injunction because a final judgment in his favor would make him whole, the injunction will not really harm him. But since the defendant may suffer irreparable harm from the entry of a preliminary injunction, the court must not only determine that the plaintiff will suffer irreparable harm if the preliminary injunction is denied—a threshold requirement for granting a preliminary injunction—but also weigh that harm against any irreparable harm that

the defendant can show he will suffer if the injunction is granted.

Roland Mach., 749 F.2d at 387 (emphasis in original). Although harm to federal interests should not be diminished, a delay in the imposition of new conditions that have yet to go into effect will likely not cause any harm akin to that alleged by the City. The Attorney General has put forth no comparable claim that a delay in imposition of the new Byrne JAG conditions would permanently harm community relationships or any other interest that would be difficult to remedy through money damages. See, *Kansas v. United States*, 249 F.3d 1213, 1227 (10th Cir. 2001) (noting that maintaining the status quo was unlikely to affect a substantial public interest in the short time of the injunction).

Thus, the Court finds that the City has established that it would suffer irreparable harm if a preliminary injunction is not entered.

D. Balancing of Equities and the Public Interest

The remaining two factors in the preliminary injunction analysis merge where the Government is a party. *Nken*, 556 U.S. at 435. These two factors are not outcome-determinative here. Both sides can claim that concerns of public safety justify their positions.

The City and *amici* strongly emphasize the studies and other evidence demonstrating that sanctuary cities are safer than their counterparts. Although both parties before the Court have emphatically stressed the importance of their policy choice to decrease crime and support law enforcement - with Chicago emphasizing the benefits that flow from immigrant communities freely reporting crimes and acting as witnesses, and the Attorney General emphasizing the need to enforce federal immigration law - choosing between competing public policies is outside the realm of judicial expertise and is best left to the legislative and executive branch. *See, Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 538 (2012) (noting that the courts are "vested with the authority to interpret the law; [they] possess neither the expertise nor the prerogative to make policy judgments").

Accordingly, the final two factors favor neither party. Both parties have strong public policy arguments, the wisdom of which is not for the Court to decide. Accordingly, the Court finds that balancing the equities and weighing the public interest do not tip the scale in favor of either party.

III. CONCLUSION

For the reasons stated herein, the Court grants the City a preliminary injunction against the Attorney General's imposition

of the notice and access conditions on the Byrne JAG grant. The City has established a likelihood of success on the merits as to these two conditions and irreparable harm if an injunction does not issue, and the other two preliminary injunction factors do not sway the analysis. This injunction against imposition of the notice and access conditions is nationwide in scope, there being no reason to think that the legal issues present in this case are restricted to Chicago or that the statutory authority given to the Attorney General would differ in another jurisdiction. *See, Int'l Refugee Assistance Project v. Trump*, 857 F.3d 554, 605 (4th Cir. 2017).

The Court denies the City's Motion for a Preliminary Injunction with respect to the compliance condition, because the City has failed to establish a likelihood of success on the merits.

IT IS SO ORDERED.



Harry D. Leinenweber, Judge
United States District Court

Dated: September 15, 2017

ATTACHMENT 3

FIRST HANSEN DECLARATION

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

THE CITY OF CHICAGO,

Plaintiff,

v.

JEFF SESSIONS, Attorney General of the
United States,

Defendant.

Civil Action No. 1:17-cv-05720

Hon. Harry D. Leinenweber

DECLARATION OF ALAN R. HANSON

Pursuant to 28 U.S.C. § 1746, I, Alan R. Hanson, declare as follows:

1. I am the Acting Assistant Attorney General for the Office of Justice Programs (“OJP”) at the U.S. Department of Justice. I have held this position since January 30, 2017. As Acting Assistant Attorney General, I am the head of OJP.
2. OJP administers the Edward Byrne Memorial Justice Assistance Grant (“Byrne JAG”) program.
3. Attached as **Exhibit A** is a true and correct copy of an award document transmitted on August 23, 2017 (as part of an award package) to the County of Greenville, South Carolina, an applicant to and prospective recipient under the FY 2017 Byrne JAG - Local Solicitation (Dkt. No. 26-11).
4. Attached as **Exhibit B** is a true and correct copy of an award document transmitted on August 23, 2017 (as part of an award package) to the City of Binghamton, New York, an applicant to and prospective recipient under the FY 2017 Byrne JAG - Local Solicitation (Dkt. No. 26-11).
5. In each of Exhibits A and B, the award document sets out the various conditions (“special conditions”) that will apply to the FY 2017 Byrne JAG award, if the

prospective recipient chooses to accept the award. *See, e.g.*, Exhibit A at 1, Box 12; Exhibit B at 1, Box 12.

6. Conditions 1 through 58 are identical in each of Exhibits A and B and are being included in each award document being generated within OJP for awards under the FY 2017 Byrne JAG - Local Solicitation, including any such award document that would be generated for the City of Chicago, Illinois.

7. Attached as **Exhibit C** is a true and correct copy of an award document transmitted on September 7, 2016 (as part of an award package), to the City of Chicago, Illinois under the FY 2016 Byrne JAG - Local Solicitation. Chicago subsequently accepted the award (with the various conditions contained therein).

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 24, 2017

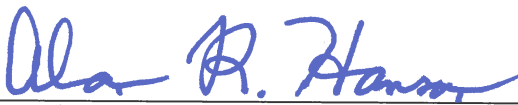



Alan R. Hanson

Exhibit A*

* In the document that follows, on the page labeled "1 of 20," information in the original document has been redacted in fields 2a ("GRANTEE IRS/VENDOR NO") and 2b ("GRANTEE DUNS NO").

 <p>U.S. Department of Justice Office of Justice Programs Bureau of Justice Assistance</p>		Grant		PAGE 1 OF 20																	
1 RECIPIENT NAME AND ADDRESS (Including Zip Code) County of Greenville 301 University Ridge, Suite 600 Greenville, SC 29601		4 AWARD NUMBER: 2017-DJ-BX-0002																			
		5 PROJECT PERIOD: FROM 10/01/2016 TO 09/30/2020 BUDGET PERIOD: FROM 10/01/2016 TO 09/30/2020																			
		6 AWARD DATE 08/23/2017		7 ACTION Initial																	
2a GRANTEE IRS/VENDOR NO [REDACTED]		8 SUPPLEMENT NUMBER 00																			
2b GRANTEE DUNS NO [REDACTED]		9 PREVIOUS AWARD AMOUNT \$ 0																			
3 PROJECT TITLE Judicial Support and Law Enforcement Enhancements 2017		10 AMOUNT OF THIS AWARD \$ 163,164																			
		11 TOTAL AWARD \$ 163,164																			
12 SPECIAL CONDITIONS THE ABOVE GRANT PROJECT IS APPROVED SUBJECT TO SUCH CONDITIONS OR LIMITATIONS AS ARE SET FORTH ON THE ATTACHED PAGE(S)																					
13 STATUTORY AUTHORITY FOR GRANT This project is supported under FY17(BJA - JAG State and JAG Local) Title I of Pub L No 90-351 (generally codified at 42 U S C 3711 - 3797ff-5), including subpart 1 of part E (codified at 42 U S C 3750 - 3758); see also 28 U S C 530C(a)																					
14 CATALOG OF DOMESTIC FEDERAL ASSISTANCE (CFDA Number) 16 738 - Edward Byrne Memorial Justice Assistance Grant Program																					
15 METHOD OF PAYMENT GPRS																					
AGENCY APPROVAL			GRANTEE ACCEPTANCE																		
16 TYPED NAME AND TITLE OF APPROVING OFFICIAL Alan R Hanson Acting Assistant Attorney General			18 TYPED NAME AND TITLE OF AUTHORIZED GRANTEE OFFICIAL Joseph M Kernell County Administrator																		
17 SIGNATURE OF APPROVING OFFICIAL 			19 SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL		19A DATE																
AGENCY USE ONLY																					
20 ACCOUNTING CLASSIFICATION CODES <table border="1"> <thead> <tr> <th>FISCAL YEAR</th> <th>FUND CODE</th> <th>BUD ACT</th> <th>OFC</th> <th>DIV REG</th> <th>SUB</th> <th>POMS</th> <th>AMOUNT</th> </tr> </thead> <tbody> <tr> <td>X</td> <td>B</td> <td>DJ</td> <td>80</td> <td>00</td> <td>00</td> <td></td> <td>163164</td> </tr> </tbody> </table>				FISCAL YEAR	FUND CODE	BUD ACT	OFC	DIV REG	SUB	POMS	AMOUNT	X	B	DJ	80	00	00		163164	21 SDJUGT0339	
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U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Assistance

**AWARD CONTINUATION
SHEET
Grant**

PAGE 2 OF 20

PROJECT NUMBER 2017-DJ-BX-0002

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

1. Requirements of the award; remedies for non-compliance or for materially false statements

The conditions of this award are material requirements of the award. Compliance with any certifications or assurances submitted by or on behalf of the recipient that relate to conduct during the period of performance also is a material requirement of this award.

Failure to comply with any one or more of these award requirements -- whether a condition set out in full below, a condition incorporated by reference below, or a certification or assurance related to conduct during the award period -- may result in the Office of Justice Programs ("OJP") taking appropriate action with respect to the recipient and the award. Among other things, the OJP may withhold award funds, disallow costs, or suspend or terminate the award. The Department of Justice ("DOJ"), including OJP, also may take other legal action as appropriate.

Any materially false, fictitious, or fraudulent statement to the federal government related to this award (or concealment or omission of a material fact) may be the subject of criminal prosecution (including under 18 U.S.C. 1001 and/or 1621, and/or 42 U.S.C. 3795a), and also may lead to imposition of civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. 3729-3730 and 3801-3812).

Should any provision of a requirement of this award be held to be invalid or unenforceable by its terms, that provision shall first be applied with a limited construction so as to give it the maximum effect permitted by law. Should it be held, instead, that the provision is utterly invalid or -unenforceable, such provision shall be deemed severable from this award.

2. Applicability of Part 200 Uniform Requirements

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, as adopted and supplemented by DOJ in 2 C.F.R. Part 2800 (together, the "Part 200 Uniform Requirements") apply to this FY 2017 award from OJP.

The Part 200 Uniform Requirements were first adopted by DOJ on December 26, 2014. If this FY 2017 award supplements funds previously awarded by OJP under the same award number (e.g., funds awarded during or before December 2014), the Part 200 Uniform Requirements apply with respect to all funds under that award number (regardless of the award date, and regardless of whether derived from the initial award or a supplemental award) that are obligated on or after the acceptance date of this FY 2017 award.

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

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

3. Compliance with DOJ Grants Financial Guide

The recipient agrees to comply with the DOJ Grants Financial Guide as posted on the OJP website (currently, the "2015 DOJ Grants Financial Guide" available at <https://ojp.gov/financialguide/DOJ/index.htm>), including any updated version that may be posted during the period of performance.



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 3 OF 20

PROJECT NUMBER 2017-DJ-BX-0002

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

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

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

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

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

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

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

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

6. Requirement to report potentially duplicative funding

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



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 4 OF 20

PROJECT NUMBER 2017-DJ-BX-0002

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

7. Requirements related to System for Award Management and Universal Identifier Requirements

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

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

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

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

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

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

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

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

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

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



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 5 OF 20

PROJECT NUMBER 2017-DJ-BX-0002

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

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

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of recipients, subrecipients ("subgrantees"), or individuals defined (for purposes of this condition) as "employees" of the recipient or of any subrecipient.

The details of the recipient's obligations related to prohibited conduct related to trafficking in persons are posted on the OJP web site at <https://ojp.gov/funding/Explore/ProhibitedConduct-Trafficking.htm> (Award condition: Prohibited conduct by recipients and subrecipients related to trafficking in persons (including reporting requirements and OJP authority to terminate award)), and are incorporated by reference here.

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

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

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

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

The recipient must collect and maintain data that measure the performance and effectiveness of work under this award. The data must be provided to OJP in the manner (including within the timeframes) specified by OJP in the program solicitation or other applicable written guidance. Data collection supports compliance with the Government Performance and Results Act (GPRA) and the GPRA Modernization Act of 2010, and other applicable laws.

13. OJP Training Guiding Principles

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

14. Effect of failure to address audit issues

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

15. Potential imposition of additional requirements

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



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 6 OF 20

PROJECT NUMBER 2017-DJ-BX-0002

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

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

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

17. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 54

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 54, which relates to nondiscrimination on the basis of sex in certain "education programs."

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

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

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

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

19. Restrictions on "lobbying"

In general, as a matter of federal law, federal funds awarded by OJP may not be used by the recipient, or any subrecipient ("subgrantee") at any tier, either directly or indirectly, to support or oppose the enactment, repeal, modification, or adoption of any law, regulation, or policy, at any level of government. See 18 U.S.C. 1913. (There may be exceptions if an applicable federal statute specifically authorizes certain activities that otherwise would be barred by law.)

Another federal law generally prohibits federal funds awarded by OJP from being used by the recipient, or any subrecipient at any tier, to pay any person to influence (or attempt to influence) a federal agency, a Member of Congress, or Congress (or an official or employee of any of them) with respect to the awarding of a federal grant or cooperative agreement, subgrant, contract, subcontract, or loan, or with respect to actions such as renewing, extending, or modifying any such award. See 31 U.S.C. 1352. Certain exceptions to this law apply, including an exception that applies to Indian tribes and tribal organizations.

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



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 7 OF 20

PROJECT NUMBER 2017-DJ-BX-0002

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

20. Compliance with general appropriations-law restrictions on the use of federal funds (FY 2017)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable restrictions on the use of federal funds set out in federal appropriations statutes. Pertinent restrictions, including from various "general provisions" in the Consolidated Appropriations Act, 2017, are set out at <https://ojp.gov/funding/Explore/FY17AppropriationsRestrictions.htm>, and are incorporated by reference here.

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

21. Reporting potential fraud, waste, and abuse, and similar misconduct

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

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

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



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 8 OF 20

PROJECT NUMBER 2017-DJ-BX-0002

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

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

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

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

1. In accepting this award, the recipient--

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

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

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

a. it represents that--

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

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

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



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 9 OF 20

PROJECT NUMBER 2017-DJ-BX-0002

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

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

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

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

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

24. Encouragement of policies to ban text messaging while driving

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

25. Cooperating with OJP Monitoring

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

26. FFATA reporting: Subawards and executive compensation

The recipient must comply with applicable requirements to report first-tier subawards ("subgrants") of \$25,000 or more and, in certain circumstances, to report the names and total compensation of the five most highly compensated executives of the recipient and first-tier subrecipients (first-tier "subgrantees") of award funds. The details of recipient obligations, which derive from the Federal Funding Accountability and Transparency Act of 2006 (FFATA), are posted on the OJP web site at <https://ojp.gov/funding/Explore/FFATA.htm> (Award condition: Reporting Subawards and Executive Compensation), and are incorporated by reference here.

This condition, including its reporting requirement, does not apply to-- (1) an award of less than \$25,000, or (2) an award made to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 10 OF 20

PROJECT NUMBER 2017-DJ-BX-0002

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

27. Use of program income

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

28. Justice Information Sharing

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

29. Avoidance of duplication of networks

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

30. Compliance with 28 C.F.R. Part 23

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

31. Protection of human research subjects

The recipient (and any subrecipient at any tier) must comply with the requirements of 28 C.F.R. Part 46 and all OJP policies and procedures regarding the protection of human research subjects, including obtainment of Institutional Review Board approval, if appropriate, and subject informed consent.

32. Confidentiality of data

The recipient (and any subrecipient at any tier) must comply with all confidentiality requirements of 42 U.S.C. 3789g and 28 C.F.R. Part 22 that are applicable to collection, use, and revelation of data or information. The recipient further agrees, as a condition of award approval, to submit a Privacy Certificate that is in accord with requirements of 28 C.F.R. Part 22 and, in particular, 28 C.F.R. 22.23.



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 11 OF 20

PROJECT NUMBER 2017-DJ-BX-0002

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

33. Verification and updating of recipient contact information

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

34. Law enforcement task forces - required training

Within 120 days of award acceptance, each current member of a law enforcement task force funded with award funds who is a task force commander, agency executive, task force officer, or other task force member of equivalent rank, must complete required online (internet-based) task force training. Additionally, all future task force members must complete this training once during the period of performance for this award, or once every four years if multiple OJP awards include this requirement.

The required training is available free of charge online through the BJA-funded Center for Task Force Integrity and Leadership (www.ctfli.org). The training addresses task force effectiveness, as well as other key issues including privacy and civil liberties/rights, task force performance measurement, personnel selection, and task force oversight and accountability. If award funds are used to support a task force, the recipient must compile and maintain a task force personnel roster, along with course completion certificates.

Additional information regarding the training is available through BJA's web site and the Center for Task Force Integrity and Leadership (www.ctfli.org).

35. Required attendance at BJA-sponsored events

The recipient (and its subrecipients at any tier) must participate in BJA-sponsored training events, technical assistance events, or conferences held by BJA or its designees, upon BJA's request.

36. Justification of consultant rate

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



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 12 OF 20

PROJECT NUMBER 2017-DJ-BX-0002

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

37. Compliance with National Environmental Policy Act and related statutes

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

The recipient understands that this condition applies to new activities as set out below, whether or not they are being specifically funded with these award funds. That is, as long as the activity is being conducted by the recipient, a subrecipient, or any third party, and the activity needs to be undertaken in order to use these award funds, this condition must first be met. The activities covered by this condition are:

a. New construction;

b. Minor renovation or remodeling of a property located in an environmentally or historically sensitive area, including properties located within a 100-year flood plain, a wetland, or habitat for endangered species, or a property listed on or eligible for listing on the National Register of Historic Places;

c. A renovation, lease, or any proposed use of a building or facility that will either (a) result in a change in its basic prior use or (b) significantly change its size;

d. Implementation of a new program involving the use of chemicals other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or education environments; and

e. Implementation of a program relating to clandestine methamphetamine laboratory operations, including the identification, seizure, or closure of clandestine methamphetamine laboratories.

The recipient understands and agrees that complying with NEPA may require the preparation of an Environmental Assessment and/or an Environmental Impact Statement, as directed by BJA. The recipient further understands and agrees to the requirements for implementation of a Mitigation Plan, as detailed at <https://bja.gov/Funding/nepa.html>, for programs relating to methamphetamine laboratory operations.

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

38. Establishment of trust fund

If award funds are being drawn down in advance, the recipient (or a subrecipient, with respect to a subaward) is required to establish a trust fund account. (The trust fund may or may not be an interest-bearing account.) The fund, including any interest, may not be used to pay debts or expenses incurred by other activities beyond the scope of the Edward Byrne Memorial Justice Assistance Grant Program (JAG). The recipient also agrees to obligate the award funds in the trust fund (including any interest earned) during the period of performance for the award and expend within 90 days thereafter. Any unobligated or unexpended funds, including interest earned, must be returned to OJP at the time of closeout.



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 13 OF 20

PROJECT NUMBER 2017-DJ-BX-0002

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

39. Prohibition on use of award funds for match under BVP program

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

40. Certification of body armor "mandatory wear" policies

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

41. Body armor - compliance with NIJ standards

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

42. Required monitoring of subawards

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

43. Reporting requirements

The recipient must submit quarterly Federal Financial Reports (SF-425) and semi-annual performance reports through OJP's GMS (<https://grants.ojp.usdoj.gov>). Consistent with the Department's responsibilities under the Government Performance and Results Act (GPRA) and the GPRA Modernization Act of 2010, the recipient must provide data that measure the results of its work. The recipient must submit quarterly performance metrics reports through BJA's Performance Measurement Tool (PMT) website (www.bjaperformancetools.org). For more detailed information on reporting and other JAG requirements, refer to the JAG reporting requirements webpage. Failure to submit required JAG reports by established deadlines may result in the freezing of grant funds and future High Risk designation.

44. Required data on law enforcement agency training

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



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 14 OF 20

PROJECT NUMBER 2017-DJ-BX-0002

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

45. Prohibited Expenditures List

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

46. Controlled expenditures - prior written approval required

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

47. Controlled expenditures - incident reporting

If an agency uses award funds to purchase or acquire any item on the Controlled Expenditure List at the time of purchase or acquisition, including as the list may be amended from time to time, the agency must collect and retain (for at least 3 years) certain information about the use of-- (1) any federally-acquired Controlled Equipment in the agency's inventory, and (2) any other controlled equipment in the same category as the federally-acquired controlled equipment in the agency's inventory, regardless of source; and the agency must make that information available to BJA upon request. Details about what information must be collected and retained are set out at <https://ojp.gov/docs/LE-Equipment-WG-Final-Report.pdf>.

48. Sale of items on Controlled Expenditure List

Notwithstanding the provision of the Part 200 Uniform Requirements set out at 2 C.F.R. 200.313, no equipment listed on the Controlled Expenditure List that is purchased with award funds may be transferred or sold to a third party, except as described below:

a. Agencies may transfer or sell any controlled equipment, except riot helmets and riot shields, to a Law Enforcement Agency (LEA) after obtaining prior written approval from BJA. As a condition of that approval, the acquiring LEA will be required to submit information and certifications to BJA as if it were requesting approval to use award funds for the initial purchase of items on the Controlled Expenditure List.

b. Agencies may not transfer or sell any riot helmets or riot shields purchased under this award.

c. Agencies may not transfer or sell any Controlled Equipment purchased under this award to non-LEAs, with the exception of fixed wing aircraft, rotary wing aircraft, and command and control vehicles. Before any such transfer or sale is finalized, the agency must obtain prior written approval from BJA. All law enforcement-related and other sensitive or potentially dangerous components, and all law enforcement insignias and identifying markings must be removed prior to transfer or sale.

The recipient must notify BJA prior to the disposal of any items on the Controlled Expenditure List purchased with award funds, and must abide by any applicable laws (including regulations) in such disposal.

49. Prohibited or controlled expenditures - Effect of failure to comply

Failure to comply with an award condition related to prohibited or controlled expenditures may result in denial of any further approvals of controlled expenditures under this or other federal awards.



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 15 OF 20

PROJECT NUMBER 2017-DJ-BX-0002

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

50. Controlled expenditures - Standards

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

51. Authorization to obligate (federal) award funds to reimburse certain project costs incurred on or after October 1, 2016

The recipient may obligate (federal) award funds only after the recipient makes a valid acceptance of the award. As of the first day of the period of performance for the award (October 1, 2016), however, the recipient may choose to incur project costs using non-federal funds, but any such project costs are incurred at the recipient's risk until, at a minimum-- (1) the recipient makes a valid acceptance of the award, and (2) all applicable withholding conditions are removed by OJP (via a Grant Adjustment Notice). (A withholding condition is a condition in the award document that precludes the recipient from obligating, expending, or drawing down all or a portion of the award funds until the condition is removed.)

Except to the extent (if any) that an award condition expressly precludes reimbursement of project costs incurred "at-risk," if and when the recipient makes a valid acceptance of this award and OJP removes each applicable withholding condition through a Grant Adjustment Notice, the recipient is authorized to obligate (federal) award funds to reimburse itself for project costs incurred "at-risk" earlier during the period of performance (such as project costs incurred prior to award acceptance or prior to removal of an applicable withholding condition), provided that those project costs otherwise are allowable costs under the award.

Nothing in this condition shall be understood to authorize the recipient (or any subrecipient at any tier) to use award funds to "supplant" State or local funds in violation of the recipient's certification (executed by the chief executive of the State or local government) that federal funds will be used to increase the amounts of such funds that would, in the absence of federal funds, be made available for law enforcement activities.

52. "Certification of Compliance with 8 U.S.C. 1373" required for valid award acceptance by a unit of local government

In order validly to accept this award, the applicant local government must submit the required "Certification of Compliance with 8 U.S.C. 1373" (executed by the chief legal officer of the local government). Unless that executed certification either-- (1) is submitted to OJP together with the fully-executed award document, or (2) is uploaded in OJP's GMS no later than the day the signed award document is submitted to OJP, any submission by a unit of local government that purports to accept the award is invalid.

If an initial award-acceptance submission by the recipient is invalid, once the unit of local government does submit the necessary certification regarding 8 U.S.C. 1373, it may submit a fully-executed award document executed by the unit of local government on or after the date of that certification.

For purposes of this condition, "local government" does not include any Indian tribes.



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 16 OF 20

PROJECT NUMBER 2017-DJ-BX-0002

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

53. Ongoing compliance with 8 U.S.C. 1373 is required

1. With respect to the "program or activity" funded in whole or part under this award (including any such "program or activity" of any subrecipient at any tier), throughout the period of performance for the award, no State or local government entity, -agency, or -official may prohibit or in any way restrict-- (1) any government entity or -official from sending or receiving information regarding citizenship or immigration status as described in 8 U.S.C. 1373(a); or (2) a government entity or -agency from sending, requesting or receiving, maintaining, or exchanging information regarding immigration status as described in 8 U.S.C. 1373(b). For purposes of this award, any prohibition (or restriction) that violates this condition is an "information-communication restriction."

2. Certifications from subrecipients. The recipient may not make a subaward to a State or local government or a "public" institution of higher education, unless it first obtains a certification of compliance with 8 U.S.C. 1373, properly executed by the chief legal officer of the jurisdiction or institution that would receive the subaward, using the appropriate form available at <https://ojp.gov/funding/Explore/SampleCertifications-8USC1373.htm>. Similarly, the recipient must require that no subrecipient (at any tier) may make a further subaward to a State or local government or a "public" institution of higher education, unless it first obtains a certification of compliance with 8 U.S.C. 1373, properly executed by the chief legal officer of the jurisdiction or institution that would receive the further subaward, using the appropriate OJP form.

3. The recipient's monitoring responsibilities include monitoring of subrecipient compliance with the requirements of this condition.

4. Allowable costs. Compliance with these requirements is an authorized and priority purpose of this award. To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated (including for authorized reimbursements) for the reasonable, necessary, and allocable costs (if any) that the recipient, or any subrecipient at any tier that is a State or local government or a "public" institution of higher education, incurs to implement this condition.

5. Rules of Construction

A. For purposes of this condition:

(1) "State" and "local government" include any agency or other entity thereof, but not any institution of higher education or any Indian tribe.

(2) A "public" institution of higher education is one that is owned, controlled, or directly funded by a State or local government.

(3) "Program or activity" means what it means under title VI of the Civil Rights Act of 1964 (see 42 U.S.C. 2000d-4a).

(4) "Immigration status" means what it means for purposes of 8 U.S.C. 1373 (Illegal Immigration Reform and Immigrant Responsibility Act of 1996); and terms that are defined in 8 U.S.C. 1101 (Immigration and Nationality Act) mean what they mean under that section 1101, except that the term "State" also shall include American Samoa (cf. 42 U.S.C. 901(a)(2)).

(5) Pursuant to the provisions set out at (or referenced in) 8 U.S.C. 1551 note ("Abolition ... and Transfer of Functions"), references to the "Immigration and Naturalization Service" in 8 U.S.C. 1373 are to be read as references to particular components of the Department of Homeland Security (DHS).

B. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, any State or local government, any "public" institution of higher education, or any other entity (or individual) to violate any federal law, including any applicable civil rights or nondiscrimination law.



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 17 OF 20

PROJECT NUMBER 2017-DJ-BX-0002

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

IMPORTANT NOTE: Any questions about the meaning or scope of this condition should be directed to OJP, before award acceptance.

54. Authority to obligate award funds contingent on compliance with 8 U.S.C. 1373; unallowable costs; obligation to notify

1. If the recipient is a State or local government--

A. The recipient may not obligate award funds if, at the time of the obligation, the "program or activity" of the recipient (or of any subrecipient at any tier that is either a State or unit of local government or a "public" institution of higher education) that is funded in whole or in part with award funds is subject to any "information-communication restriction."

B. In addition, with respect to any project costs it incurs "at risk," the recipient may not obligate award funds to reimburse itself if -- at the time it incurs such costs -- the "program or activity" of the recipient (or of any subrecipient at any tier that is either a State or unit of local government or a "public" institution of higher education) that would be reimbursed in whole or in part with award funds was subject to any "information-communication restriction."

C. Any drawdown of award funds by the recipient shall be considered, for all purposes, to be a material representation by the recipient to OJP that, as of the date the recipient requests the drawdown, the recipient and all subrecipients (regardless of tier) are in compliance with 8 U.S.C. 1373.

D. The recipient must promptly notify OJP (in writing) if the recipient, from its requisite monitoring of compliance with award conditions or otherwise, has credible evidence that indicates that the funded "program or activity" of the recipient, or of any subrecipient at any tier that is either a State or a local government or a "public" institution of higher education, may be subject to any "information-communication restriction." In addition, any subaward (at any tier) to a subrecipient that is either a State or a local government or a "public" institution of higher education must require prompt notification to the entity that made the subaward, should the subrecipient such credible evidence regarding an "information-communication restriction."

2. Any subaward (at any tier) to a subrecipient that is either a State or a local government or a "public" institution of higher education must provide that the subrecipient may not obligate award funds if, at the time of the obligation, the "program or activity" of the subrecipient (or of any further such subrecipient at any tier) that is funded in whole or in part with award funds is subject to any "information-communication restriction."

3. Absent an express written determination by DOJ to the contrary, based upon a finding by DOJ of compelling circumstances (e.g., a small amount of award funds obligated by the recipient at the time of a subrecipient's minor and transitory non-compliance, which was unknown to the recipient despite diligent monitoring), any obligations of award funds that, under this condition, may not be made shall be unallowable costs for purposes of this award. In making any such determination, DOJ will give great weight to evidence submitted by the recipient that demonstrates diligent monitoring of subrecipient compliance with the requirements set out in the award condition entitled "Ongoing compliance with 8 U.S.C. 1373 is required."

4. Rules of Construction

A. For purposes of this condition "information-communication restriction" has the meaning set out in the award condition entitled "Ongoing compliance with 8 U.S.C. 1373 is required."

B. Both the "Rules of Construction" and the "Important Note" set out in the award condition entitled "Ongoing compliance with 8 U.S.C. 1373 is required" are incorporated by reference as though set forth here in full.



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 18 OF 20

PROJECT NUMBER 2017-DJ-BX-0002

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

55. Required State-level rules or practices related to aliens; allowable costs

The following provisions apply to the recipient of this award, if the recipient is a State government, and also apply to any State-government subrecipient at any tier (whether or not the recipient is a State government).

1. Requirements

With respect to the "program or activity" that is funded (in whole or in part) by this award, as of the date the recipient accepts this award, and throughout the remainder of the period of performance for the award--

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

B. A State statute, or a State rule, -regulation, -policy, or -practice, must be in place that is designed to ensure that, when a State (or State-contracted) correctional facility receives from DHS a formal written request authorized by the Immigration and Nationality Act that seeks advance notice of the scheduled release date and time for a particular alien in such facility, then such facility will honor such request and -- as early as practicable (see para. 4.B. of this condition) -- provide the requested notice to DHS.

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with the requirements of this condition.

3. Allowable costs

Compliance with these requirements is an authorized and priority purpose of this award. To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated (including for authorized reimbursements) for the reasonable, necessary, and allocable costs (if any) of-- (1) developing and putting into place statutes, rules, regulations, policies, and practices to satisfy this condition, and (2) permitting access as described in para. 1.A. above, and (3) honoring any request from DHS that is encompassed by para. 1.B. above.

4. Rules of construction

A. For purposes of this condition--

(1) the term "alien" means what it means under section 101 of the Immigration and Nationality Act (see 8 U.S.C. 1101(a)(3)).

(2) the term "correctional facility" means what it means under the Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (see 42 U.S.C. 3791(a)(7)).

B. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, any State or local government, or any other entity or individual to maintain (or detain) any individual in custody beyond the date and time the individual would have been released in the absence of this condition.

Current DHS practice is ordinarily to request advance notice of scheduled release "as early as practicable (at least 48 hours, if possible)." (See DHS Form I-247A (3/17)). In the event that (e.g., in light of the date DHS made such request) the scheduled release date and time for an alien are such as not to permit the advance notice that DHS has requested, it shall not be a violation of this condition to provide only as much advance notice as practicable.



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 19 OF 20

PROJECT NUMBER 2017-DJ-BX-0002

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

NOTE: Current DHS practice is to use one form (DHS Form I-247A (3/17)) for two distinct purposes -- to request advance notice of scheduled release, and to request that an individual be detained for up to 48 hours AFTER the scheduled release. This condition imposes NO requirements as to such DHS requests for detention.

C. Both the "Rules of Construction" and the "Important Note" set out in the award condition entitled "Ongoing compliance with 8 U.S.C. 1373 is required" are incorporated by reference as though set forth here in full.

56. Required local-government-level rules or practices related to aliens; allowable costs

The following provisions apply to the recipient of this award, if the recipient is a unit of local government, and also apply to any local-government subrecipient of this award at any tier (whether or not the recipient itself is a unit of local government).

1. Requirements

With respect to the "program or activity" that is funded (in whole or in part) by this award, as of the date the recipient accepts this award, and throughout the remainder of the period of performance for the award--

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

B. A local ordinance, -rule, -regulation, -policy, or -practice (or an applicable State statute, -rule, -regulation, -policy, or -practice) must be in place that is designed to ensure that, when a local-government (or local-government-contracted) correctional facility receives from DHS a formal written request authorized by the Immigration and Nationality Act that seeks advance notice of the scheduled release date and time for a particular alien in such facility, then such facility will honor such request and -- as early as practicable (see "Rules of Construction" incorporated by para. 4.B. of this condition) -- provide the requested notice to DHS.

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with the requirements of this condition.

3. Allowable costs

Compliance with these requirements is an authorized and priority purpose of this award. To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated (including for authorized reimbursements) for the reasonable, necessary, and allocable costs (if any) of-- (1) developing and putting into place statutes, ordinances, rules, regulations, policies, and practices to satisfy this condition, (2) permitting access as described in para. 1.A. above, and (3) honoring any request from DHS that is encompassed by para. 1.B. above.

4. Rules of construction

A. The "Rules of Construction" and the "Important Note" set out in the award condition entitled "Ongoing compliance with 8 U.S.C. 1373 is required" are incorporated by reference as though set forth here in full.

B. The "Rules of Construction" set out in the award condition entitled "Required State-level rules or practices related to aliens; allowable costs" are incorporated by reference as though set forth here in full.



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 20 OF 20

PROJECT NUMBER 2017-DJ-BX-0002

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

57. Use of funds for DNA testing; upload of DNA profiles

If award funds are used for DNA testing of evidentiary materials, any resulting eligible DNA profiles must be uploaded to the Combined DNA Index System ("CODIS," the DNA database operated by the FBI) by a government DNA laboratory with access to CODIS.

No profiles generated under this award may be entered or uploaded into any non-governmental DNA database without prior express written approval from BJA.



Award funds may not be used for the purchase of DNA equipment and supplies unless the resulting DNA profiles may be accepted for entry into CODIS.

58. Encouragement of submission of "success stories"

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

Exhibit B*

* In the document that follows, on the page labeled "1 of 20," information in the original document has been redacted in fields 2a ("GRANTEE IRS/VENDOR NO") and 2b ("GRANTEE DUNS NO").

 <p>U.S. Department of Justice Office of Justice Programs Bureau of Justice Assistance</p>		Grant		PAGE 1 OF 20																	
1 RECIPIENT NAME AND ADDRESS (Including Zip Code) City of Binghamton 38 Hawley Street Binghamton, NY 13901-3777		4 AWARD NUMBER: 2017-DJ-BX-0001																			
		5 PROJECT PERIOD: FROM 10/01/2016 TO 09/30/2018 BUDGET PERIOD: FROM 10/01/2016 TO 09/30/2018																			
		6 AWARD DATE 08/23/2017		7 ACTION Initial																	
2a GRANTEE IRS/VENDOR NO [REDACTED]		8 SUPPLEMENT NUMBER 00																			
2b GRANTEE DUNS NO [REDACTED]		9 PREVIOUS AWARD AMOUNT \$ 0																			
3 PROJECT TITLE BJA FY 2017 Edward Byrne Memorial Assistance Grant JAG (Parks)		10 AMOUNT OF THIS AWARD		\$ 24,259																	
		11 TOTAL AWARD		\$ 24,259																	
12 SPECIAL CONDITIONS THE ABOVE GRANT PROJECT IS APPROVED SUBJECT TO SUCH CONDITIONS OR LIMITATIONS AS ARE SET FORTH ON THE ATTACHED PAGE(S)																					
13 STATUTORY AUTHORITY FOR GRANT This project is supported under FY17(BJA - JAG State and JAG Local) Title I of Pub L No 90-351 (generally codified at 42 U S C 3711 - 3797ff-5), including subpart 1 of part E (codified at 42 U S C 3750 - 3758); see also 28 U S C 530C(a)																					
14 CATALOG OF DOMESTIC FEDERAL ASSISTANCE (CFDA Number) 16 738 - Edward Byrne Memorial Justice Assistance Grant Program																					
15 METHOD OF PAYMENT GPRS																					
AGENCY APPROVAL			GRANTEE ACCEPTANCE																		
16 TYPED NAME AND TITLE OF APPROVING OFFICIAL Alan R Hanson Acting Assistant Attorney General			18 TYPED NAME AND TITLE OF AUTHORIZED GRANTEE OFFICIAL Richard C David Mayor																		
17 SIGNATURE OF APPROVING OFFICIAL 			19 SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL		19A DATE																
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20 ACCOUNTING CLASSIFICATION CODES <table border="1"> <thead> <tr> <th>FISCAL YEAR</th> <th>FUND CODE</th> <th>BUD ACT</th> <th>OFC</th> <th>DIV REG</th> <th>SUB</th> <th>POMS</th> <th>AMOUNT</th> </tr> </thead> <tbody> <tr> <td>X</td> <td>B</td> <td>DJ</td> <td>80</td> <td>00</td> <td>00</td> <td></td> <td>24259</td> </tr> </tbody> </table>			FISCAL YEAR	FUND CODE	BUD ACT	OFC	DIV REG	SUB	POMS	AMOUNT	X	B	DJ	80	00	00		24259	21 SDJUGT0338		
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U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Assistance

**AWARD CONTINUATION
SHEET
Grant**

PAGE 2 OF 20

PROJECT NUMBER 2017-DJ-BX-0001

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

1. Requirements of the award; remedies for non-compliance or for materially false statements

The conditions of this award are material requirements of the award. Compliance with any certifications or assurances submitted by or on behalf of the recipient that relate to conduct during the period of performance also is a material requirement of this award.

Failure to comply with any one or more of these award requirements -- whether a condition set out in full below, a condition incorporated by reference below, or a certification or assurance related to conduct during the award period -- may result in the Office of Justice Programs ("OJP") taking appropriate action with respect to the recipient and the award. Among other things, the OJP may withhold award funds, disallow costs, or suspend or terminate the award. The Department of Justice ("DOJ"), including OJP, also may take other legal action as appropriate.

Any materially false, fictitious, or fraudulent statement to the federal government related to this award (or concealment or omission of a material fact) may be the subject of criminal prosecution (including under 18 U.S.C. 1001 and/or 1621, and/or 42 U.S.C. 3795a), and also may lead to imposition of civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. 3729-3730 and 3801-3812).

Should any provision of a requirement of this award be held to be invalid or unenforceable by its terms, that provision shall first be applied with a limited construction so as to give it the maximum effect permitted by law. Should it be held, instead, that the provision is utterly invalid or -unenforceable, such provision shall be deemed severable from this award.

2. Applicability of Part 200 Uniform Requirements

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, as adopted and supplemented by DOJ in 2 C.F.R. Part 2800 (together, the "Part 200 Uniform Requirements") apply to this FY 2017 award from OJP.

The Part 200 Uniform Requirements were first adopted by DOJ on December 26, 2014. If this FY 2017 award supplements funds previously awarded by OJP under the same award number (e.g., funds awarded during or before December 2014), the Part 200 Uniform Requirements apply with respect to all funds under that award number (regardless of the award date, and regardless of whether derived from the initial award or a supplemental award) that are obligated on or after the acceptance date of this FY 2017 award.

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

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

3. Compliance with DOJ Grants Financial Guide

The recipient agrees to comply with the DOJ Grants Financial Guide as posted on the OJP website (currently, the "2015 DOJ Grants Financial Guide" available at <https://ojp.gov/financialguide/DOJ/index.htm>), including any updated version that may be posted during the period of performance.



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 3 OF 20

PROJECT NUMBER 2017-DJ-BX-0001

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

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

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

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

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

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

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

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

6. Requirement to report potentially duplicative funding

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



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 4 OF 20

PROJECT NUMBER 2017-DJ-BX-0001

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

7. Requirements related to System for Award Management and Universal Identifier Requirements

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

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

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

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

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

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

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

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

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

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



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 5 OF 20

PROJECT NUMBER 2017-DJ-BX-0001

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

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

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of recipients, subrecipients ("subgrantees"), or individuals defined (for purposes of this condition) as "employees" of the recipient or of any subrecipient.

The details of the recipient's obligations related to prohibited conduct related to trafficking in persons are posted on the OJP web site at <https://ojp.gov/funding/Explore/ProhibitedConduct-Trafficking.htm> (Award condition: Prohibited conduct by recipients and subrecipients related to trafficking in persons (including reporting requirements and OJP authority to terminate award)), and are incorporated by reference here.

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

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

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

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

The recipient must collect and maintain data that measure the performance and effectiveness of work under this award. The data must be provided to OJP in the manner (including within the timeframes) specified by OJP in the program solicitation or other applicable written guidance. Data collection supports compliance with the Government Performance and Results Act (GPRA) and the GPRA Modernization Act of 2010, and other applicable laws.

13. OJP Training Guiding Principles

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

14. Effect of failure to address audit issues

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

15. Potential imposition of additional requirements

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



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 6 OF 20

PROJECT NUMBER 2017-DJ-BX-0001

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

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

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

17. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 54

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 54, which relates to nondiscrimination on the basis of sex in certain "education programs."

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

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

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

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

19. Restrictions on "lobbying"

In general, as a matter of federal law, federal funds awarded by OJP may not be used by the recipient, or any subrecipient ("subgrantee") at any tier, either directly or indirectly, to support or oppose the enactment, repeal, modification, or adoption of any law, regulation, or policy, at any level of government. See 18 U.S.C. 1913. (There may be exceptions if an applicable federal statute specifically authorizes certain activities that otherwise would be barred by law.)

Another federal law generally prohibits federal funds awarded by OJP from being used by the recipient, or any subrecipient at any tier, to pay any person to influence (or attempt to influence) a federal agency, a Member of Congress, or Congress (or an official or employee of any of them) with respect to the awarding of a federal grant or cooperative agreement, subgrant, contract, subcontract, or loan, or with respect to actions such as renewing, extending, or modifying any such award. See 31 U.S.C. 1352. Certain exceptions to this law apply, including an exception that applies to Indian tribes and tribal organizations.

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



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 7 OF 20

PROJECT NUMBER 2017-DJ-BX-0001

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

20. Compliance with general appropriations-law restrictions on the use of federal funds (FY 2017)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable restrictions on the use of federal funds set out in federal appropriations statutes. Pertinent restrictions, including from various "general provisions" in the Consolidated Appropriations Act, 2017, are set out at <https://ojp.gov/funding/Explore/FY17AppropriationsRestrictions.htm>, and are incorporated by reference here.

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

21. Reporting potential fraud, waste, and abuse, and similar misconduct

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

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

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



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 8 OF 20

PROJECT NUMBER 2017-DJ-BX-0001

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

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

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

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

1. In accepting this award, the recipient--

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

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

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

a. it represents that--

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

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

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



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 9 OF 20

PROJECT NUMBER 2017-DJ-BX-0001

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

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

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

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

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

24. Encouragement of policies to ban text messaging while driving

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

25. Cooperating with OJP Monitoring

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

26. FFATA reporting: Subawards and executive compensation

The recipient must comply with applicable requirements to report first-tier subawards ("subgrants") of \$25,000 or more and, in certain circumstances, to report the names and total compensation of the five most highly compensated executives of the recipient and first-tier subrecipients (first-tier "subgrantees") of award funds. The details of recipient obligations, which derive from the Federal Funding Accountability and Transparency Act of 2006 (FFATA), are posted on the OJP web site at <https://ojp.gov/funding/Explore/FFATA.htm> (Award condition: Reporting Subawards and Executive Compensation), and are incorporated by reference here.

This condition, including its reporting requirement, does not apply to-- (1) an award of less than \$25,000, or (2) an award made to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 10 OF 20

PROJECT NUMBER 2017-DJ-BX-0001

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

27. Use of program income

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

28. Justice Information Sharing

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

29. Avoidance of duplication of networks

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

30. Compliance with 28 C.F.R. Part 23

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

31. Protection of human research subjects

The recipient (and any subrecipient at any tier) must comply with the requirements of 28 C.F.R. Part 46 and all OJP policies and procedures regarding the protection of human research subjects, including obtainment of Institutional Review Board approval, if appropriate, and subject informed consent.

32. Confidentiality of data

The recipient (and any subrecipient at any tier) must comply with all confidentiality requirements of 42 U.S.C. 3789g and 28 C.F.R. Part 22 that are applicable to collection, use, and revelation of data or information. The recipient further agrees, as a condition of award approval, to submit a Privacy Certificate that is in accord with requirements of 28 C.F.R. Part 22 and, in particular, 28 C.F.R. 22.23.



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 11 OF 20

PROJECT NUMBER 2017-DJ-BX-0001

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

33. Verification and updating of recipient contact information

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

34. Law enforcement task forces - required training

Within 120 days of award acceptance, each current member of a law enforcement task force funded with award funds who is a task force commander, agency executive, task force officer, or other task force member of equivalent rank, must complete required online (internet-based) task force training. Additionally, all future task force members must complete this training once during the period of performance for this award, or once every four years if multiple OJP awards include this requirement.

The required training is available free of charge online through the BJA-funded Center for Task Force Integrity and Leadership (www.ctfli.org). The training addresses task force effectiveness, as well as other key issues including privacy and civil liberties/rights, task force performance measurement, personnel selection, and task force oversight and accountability. If award funds are used to support a task force, the recipient must compile and maintain a task force personnel roster, along with course completion certificates.

Additional information regarding the training is available through BJA's web site and the Center for Task Force Integrity and Leadership (www.ctfli.org).

35. Required attendance at BJA-sponsored events

The recipient (and its subrecipients at any tier) must participate in BJA-sponsored training events, technical assistance events, or conferences held by BJA or its designees, upon BJA's request.

36. Justification of consultant rate

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



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 12 OF 20

PROJECT NUMBER 2017-DJ-BX-0001

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

37. Compliance with National Environmental Policy Act and related statutes

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

The recipient understands that this condition applies to new activities as set out below, whether or not they are being specifically funded with these award funds. That is, as long as the activity is being conducted by the recipient, a subrecipient, or any third party, and the activity needs to be undertaken in order to use these award funds, this condition must first be met. The activities covered by this condition are:

a. New construction;

b. Minor renovation or remodeling of a property located in an environmentally or historically sensitive area, including properties located within a 100-year flood plain, a wetland, or habitat for endangered species, or a property listed on or eligible for listing on the National Register of Historic Places;

c. A renovation, lease, or any proposed use of a building or facility that will either (a) result in a change in its basic prior use or (b) significantly change its size;

d. Implementation of a new program involving the use of chemicals other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or education environments; and

e. Implementation of a program relating to clandestine methamphetamine laboratory operations, including the identification, seizure, or closure of clandestine methamphetamine laboratories.

The recipient understands and agrees that complying with NEPA may require the preparation of an Environmental Assessment and/or an Environmental Impact Statement, as directed by BJA. The recipient further understands and agrees to the requirements for implementation of a Mitigation Plan, as detailed at <https://bja.gov/Funding/nepa.html>, for programs relating to methamphetamine laboratory operations.

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

38. Establishment of trust fund

If award funds are being drawn down in advance, the recipient (or a subrecipient, with respect to a subaward) is required to establish a trust fund account. (The trust fund may or may not be an interest-bearing account.) The fund, including any interest, may not be used to pay debts or expenses incurred by other activities beyond the scope of the Edward Byrne Memorial Justice Assistance Grant Program (JAG). The recipient also agrees to obligate the award funds in the trust fund (including any interest earned) during the period of performance for the award and expend within 90 days thereafter. Any unobligated or unexpended funds, including interest earned, must be returned to OJP at the time of closeout.



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 13 OF 20

PROJECT NUMBER 2017-DJ-BX-0001

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

39. Prohibition on use of award funds for match under BVP program

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

40. Certification of body armor "mandatory wear" policies

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

41. Body armor - compliance with NIJ standards

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

42. Required monitoring of subawards

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

43. Reporting requirements

The recipient must submit quarterly Federal Financial Reports (SF-425) and semi-annual performance reports through OJP's GMS (<https://grants.ojp.usdoj.gov>). Consistent with the Department's responsibilities under the Government Performance and Results Act (GPRA) and the GPRA Modernization Act of 2010, the recipient must provide data that measure the results of its work. The recipient must submit quarterly performance metrics reports through BJA's Performance Measurement Tool (PMT) website (www.bjaperformancetools.org). For more detailed information on reporting and other JAG requirements, refer to the JAG reporting requirements webpage. Failure to submit required JAG reports by established deadlines may result in the freezing of grant funds and future High Risk designation.

44. Required data on law enforcement agency training

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



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 14 OF 20

PROJECT NUMBER 2017-DJ-BX-0001

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

45. Prohibited Expenditures List

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

46. Controlled expenditures - prior written approval required

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

47. Controlled expenditures - incident reporting

If an agency uses award funds to purchase or acquire any item on the Controlled Expenditure List at the time of purchase or acquisition, including as the list may be amended from time to time, the agency must collect and retain (for at least 3 years) certain information about the use of-- (1) any federally-acquired Controlled Equipment in the agency's inventory, and (2) any other controlled equipment in the same category as the federally-acquired controlled equipment in the agency's inventory, regardless of source; and the agency must make that information available to BJA upon request. Details about what information must be collected and retained are set out at <https://ojp.gov/docs/LE-Equipment-WG-Final-Report.pdf>.

48. Sale of items on Controlled Expenditure List

Notwithstanding the provision of the Part 200 Uniform Requirements set out at 2 C.F.R. 200.313, no equipment listed on the Controlled Expenditure List that is purchased with award funds may be transferred or sold to a third party, except as described below:

a. Agencies may transfer or sell any controlled equipment, except riot helmets and riot shields, to a Law Enforcement Agency (LEA) after obtaining prior written approval from BJA. As a condition of that approval, the acquiring LEA will be required to submit information and certifications to BJA as if it were requesting approval to use award funds for the initial purchase of items on the Controlled Expenditure List.

b. Agencies may not transfer or sell any riot helmets or riot shields purchased under this award.

c. Agencies may not transfer or sell any Controlled Equipment purchased under this award to non-LEAs, with the exception of fixed wing aircraft, rotary wing aircraft, and command and control vehicles. Before any such transfer or sale is finalized, the agency must obtain prior written approval from BJA. All law enforcement-related and other sensitive or potentially dangerous components, and all law enforcement insignias and identifying markings must be removed prior to transfer or sale.

The recipient must notify BJA prior to the disposal of any items on the Controlled Expenditure List purchased with award funds, and must abide by any applicable laws (including regulations) in such disposal.

49. Prohibited or controlled expenditures - Effect of failure to comply

Failure to comply with an award condition related to prohibited or controlled expenditures may result in denial of any further approvals of controlled expenditures under this or other federal awards.



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 15 OF 20

PROJECT NUMBER 2017-DJ-BX-0001

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

50. Controlled expenditures - Standards

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

51. Authorization to obligate (federal) award funds to reimburse certain project costs incurred on or after October 1, 2016

The recipient may obligate (federal) award funds only after the recipient makes a valid acceptance of the award. As of the first day of the period of performance for the award (October 1, 2016), however, the recipient may choose to incur project costs using non-federal funds, but any such project costs are incurred at the recipient's risk until, at a minimum-- (1) the recipient makes a valid acceptance of the award, and (2) all applicable withholding conditions are removed by OJP (via a Grant Adjustment Notice). (A withholding condition is a condition in the award document that precludes the recipient from obligating, expending, or drawing down all or a portion of the award funds until the condition is removed.)

Except to the extent (if any) that an award condition expressly precludes reimbursement of project costs incurred "at-risk," if and when the recipient makes a valid acceptance of this award and OJP removes each applicable withholding condition through a Grant Adjustment Notice, the recipient is authorized to obligate (federal) award funds to reimburse itself for project costs incurred "at-risk" earlier during the period of performance (such as project costs incurred prior to award acceptance or prior to removal of an applicable withholding condition), provided that those project costs otherwise are allowable costs under the award.

Nothing in this condition shall be understood to authorize the recipient (or any subrecipient at any tier) to use award funds to "supplant" State or local funds in violation of the recipient's certification (executed by the chief executive of the State or local government) that federal funds will be used to increase the amounts of such funds that would, in the absence of federal funds, be made available for law enforcement activities.

52. "Certification of Compliance with 8 U.S.C. 1373" required for valid award acceptance by a unit of local government

In order validly to accept this award, the applicant local government must submit the required "Certification of Compliance with 8 U.S.C. 1373" (executed by the chief legal officer of the local government). Unless that executed certification either-- (1) is submitted to OJP together with the fully-executed award document, or (2) is uploaded in OJP's GMS no later than the day the signed award document is submitted to OJP, any submission by a unit of local government that purports to accept the award is invalid.

If an initial award-acceptance submission by the recipient is invalid, once the unit of local government does submit the necessary certification regarding 8 U.S.C. 1373, it may submit a fully-executed award document executed by the unit of local government on or after the date of that certification.

For purposes of this condition, "local government" does not include any Indian tribes.



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 16 OF 20

PROJECT NUMBER 2017-DJ-BX-0001

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

53. Ongoing compliance with 8 U.S.C. 1373 is required

1. With respect to the "program or activity" funded in whole or part under this award (including any such "program or activity" of any subrecipient at any tier), throughout the period of performance for the award, no State or local government entity, -agency, or -official may prohibit or in any way restrict-- (1) any government entity or -official from sending or receiving information regarding citizenship or immigration status as described in 8 U.S.C. 1373(a); or (2) a government entity or -agency from sending, requesting or receiving, maintaining, or exchanging information regarding immigration status as described in 8 U.S.C. 1373(b). For purposes of this award, any prohibition (or restriction) that violates this condition is an "information-communication restriction."

2. Certifications from subrecipients. The recipient may not make a subaward to a State or local government or a "public" institution of higher education, unless it first obtains a certification of compliance with 8 U.S.C. 1373, properly executed by the chief legal officer of the jurisdiction or institution that would receive the subaward, using the appropriate form available at <https://ojp.gov/funding/Explore/SampleCertifications-8USC1373.htm>. Similarly, the recipient must require that no subrecipient (at any tier) may make a further subaward to a State or local government or a "public" institution of higher education, unless it first obtains a certification of compliance with 8 U.S.C. 1373, properly executed by the chief legal officer of the jurisdiction or institution that would receive the further subaward, using the appropriate OJP form.

3. The recipient's monitoring responsibilities include monitoring of subrecipient compliance with the requirements of this condition.

4. Allowable costs. Compliance with these requirements is an authorized and priority purpose of this award. To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated (including for authorized reimbursements) for the reasonable, necessary, and allocable costs (if any) that the recipient, or any subrecipient at any tier that is a State or local government or a "public" institution of higher education, incurs to implement this condition.

5. Rules of Construction

A. For purposes of this condition:

(1) "State" and "local government" include any agency or other entity thereof, but not any institution of higher education or any Indian tribe.

(2) A "public" institution of higher education is one that is owned, controlled, or directly funded by a State or local government.

(3) "Program or activity" means what it means under title VI of the Civil Rights Act of 1964 (see 42 U.S.C. 2000d-4a).

(4) "Immigration status" means what it means for purposes of 8 U.S.C. 1373 (Illegal Immigration Reform and Immigrant Responsibility Act of 1996); and terms that are defined in 8 U.S.C. 1101 (Immigration and Nationality Act) mean what they mean under that section 1101, except that the term "State" also shall include American Samoa (cf. 42 U.S.C. 901(a)(2)).

(5) Pursuant to the provisions set out at (or referenced in) 8 U.S.C. 1551 note ("Abolition ... and Transfer of Functions"), references to the "Immigration and Naturalization Service" in 8 U.S.C. 1373 are to be read as references to particular components of the Department of Homeland Security (DHS).

B. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, any State or local government, any "public" institution of higher education, or any other entity (or individual) to violate any federal law, including any applicable civil rights or nondiscrimination law.



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 17 OF 20

PROJECT NUMBER 2017-DJ-BX-0001

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

IMPORTANT NOTE: Any questions about the meaning or scope of this condition should be directed to OJP, before award acceptance.

54. Authority to obligate award funds contingent on compliance with 8 U.S.C. 1373; unallowable costs; obligation to notify

1. If the recipient is a State or local government--

A. The recipient may not obligate award funds if, at the time of the obligation, the "program or activity" of the recipient (or of any subrecipient at any tier that is either a State or unit of local government or a "public" institution of higher education) that is funded in whole or in part with award funds is subject to any "information-communication restriction."

B. In addition, with respect to any project costs it incurs "at risk," the recipient may not obligate award funds to reimburse itself if -- at the time it incurs such costs -- the "program or activity" of the recipient (or of any subrecipient at any tier that is either a State or unit of local government or a "public" institution of higher education) that would be reimbursed in whole or in part with award funds was subject to any "information-communication restriction."

C. Any drawdown of award funds by the recipient shall be considered, for all purposes, to be a material representation by the recipient to OJP that, as of the date the recipient requests the drawdown, the recipient and all subrecipients (regardless of tier) are in compliance with 8 U.S.C. 1373.

D. The recipient must promptly notify OJP (in writing) if the recipient, from its requisite monitoring of compliance with award conditions or otherwise, has credible evidence that indicates that the funded "program or activity" of the recipient, or of any subrecipient at any tier that is either a State or a local government or a "public" institution of higher education, may be subject to any "information-communication restriction." In addition, any subaward (at any tier) to a subrecipient that is either a State or a local government or a "public" institution of higher education must require prompt notification to the entity that made the subaward, should the subrecipient such credible evidence regarding an "information-communication restriction."

2. Any subaward (at any tier) to a subrecipient that is either a State or a local government or a "public" institution of higher education must provide that the subrecipient may not obligate award funds if, at the time of the obligation, the "program or activity" of the subrecipient (or of any further such subrecipient at any tier) that is funded in whole or in part with award funds is subject to any "information-communication restriction."

3. Absent an express written determination by DOJ to the contrary, based upon a finding by DOJ of compelling circumstances (e.g., a small amount of award funds obligated by the recipient at the time of a subrecipient's minor and transitory non-compliance, which was unknown to the recipient despite diligent monitoring), any obligations of award funds that, under this condition, may not be made shall be unallowable costs for purposes of this award. In making any such determination, DOJ will give great weight to evidence submitted by the recipient that demonstrates diligent monitoring of subrecipient compliance with the requirements set out in the award condition entitled "Ongoing compliance with 8 U.S.C. 1373 is required."

4. Rules of Construction

A. For purposes of this condition "information-communication restriction" has the meaning set out in the award condition entitled "Ongoing compliance with 8 U.S.C. 1373 is required."

B. Both the "Rules of Construction" and the "Important Note" set out in the award condition entitled "Ongoing compliance with 8 U.S.C. 1373 is required" are incorporated by reference as though set forth here in full.



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 18 OF 20

PROJECT NUMBER 2017-DJ-BX-0001

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

55. Required State-level rules or practices related to aliens; allowable costs

The following provisions apply to the recipient of this award, if the recipient is a State government, and also apply to any State-government subrecipient at any tier (whether or not the recipient is a State government).

1. Requirements

With respect to the "program or activity" that is funded (in whole or in part) by this award, as of the date the recipient accepts this award, and throughout the remainder of the period of performance for the award--

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

B. A State statute, or a State rule, -regulation, -policy, or -practice, must be in place that is designed to ensure that, when a State (or State-contracted) correctional facility receives from DHS a formal written request authorized by the Immigration and Nationality Act that seeks advance notice of the scheduled release date and time for a particular alien in such facility, then such facility will honor such request and -- as early as practicable (see para. 4.B. of this condition) -- provide the requested notice to DHS.

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with the requirements of this condition.

3. Allowable costs

Compliance with these requirements is an authorized and priority purpose of this award. To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated (including for authorized reimbursements) for the reasonable, necessary, and allocable costs (if any) of-- (1) developing and putting into place statutes, rules, regulations, policies, and practices to satisfy this condition, and (2) permitting access as described in para. 1.A. above, and (3) honoring any request from DHS that is encompassed by para. 1.B. above.

4. Rules of construction

A. For purposes of this condition--

(1) the term "alien" means what it means under section 101 of the Immigration and Nationality Act (see 8 U.S.C. 1101(a)(3)).

(2) the term "correctional facility" means what it means under the Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (see 42 U.S.C. 3791(a)(7)).

B. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, any State or local government, or any other entity or individual to maintain (or detain) any individual in custody beyond the date and time the individual would have been released in the absence of this condition.

Current DHS practice is ordinarily to request advance notice of scheduled release "as early as practicable (at least 48 hours, if possible)." (See DHS Form I-247A (3/17)). In the event that (e.g., in light of the date DHS made such request) the scheduled release date and time for an alien are such as not to permit the advance notice that DHS has requested, it shall not be a violation of this condition to provide only as much advance notice as practicable.



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 19 OF 20

PROJECT NUMBER 2017-DJ-BX-0001

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

NOTE: Current DHS practice is to use one form (DHS Form I-247A (3/17)) for two distinct purposes -- to request advance notice of scheduled release, and to request that an individual be detained for up to 48 hours AFTER the scheduled release. This condition imposes NO requirements as to such DHS requests for detention.

C. Both the "Rules of Construction" and the "Important Note" set out in the award condition entitled "Ongoing compliance with 8 U.S.C. 1373 is required" are incorporated by reference as though set forth here in full.

56. Required local-government-level rules or practices related to aliens; allowable costs

The following provisions apply to the recipient of this award, if the recipient is a unit of local government, and also apply to any local-government subrecipient of this award at any tier (whether or not the recipient itself is a unit of local government).

1. Requirements

With respect to the "program or activity" that is funded (in whole or in part) by this award, as of the date the recipient accepts this award, and throughout the remainder of the period of performance for the award--

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

B. A local ordinance, -rule, -regulation, -policy, or -practice (or an applicable State statute, -rule, -regulation, -policy, or -practice) must be in place that is designed to ensure that, when a local-government (or local-government-contracted) correctional facility receives from DHS a formal written request authorized by the Immigration and Nationality Act that seeks advance notice of the scheduled release date and time for a particular alien in such facility, then such facility will honor such request and -- as early as practicable (see "Rules of Construction" incorporated by para. 4.B. of this condition) -- provide the requested notice to DHS.

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with the requirements of this condition.

3. Allowable costs

Compliance with these requirements is an authorized and priority purpose of this award. To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated (including for authorized reimbursements) for the reasonable, necessary, and allocable costs (if any) of-- (1) developing and putting into place statutes, ordinances, rules, regulations, policies, and practices to satisfy this condition, (2) permitting access as described in para. 1.A. above, and (3) honoring any request from DHS that is encompassed by para. 1.B. above.

4. Rules of construction

A. The "Rules of Construction" and the "Important Note" set out in the award condition entitled "Ongoing compliance with 8 U.S.C. 1373 is required" are incorporated by reference as though set forth here in full.

B. The "Rules of Construction" set out in the award condition entitled "Required State-level rules or practices related to aliens; allowable costs" are incorporated by reference as though set forth here in full.



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 20 OF 20

PROJECT NUMBER 2017-DJ-BX-0001

AWARD DATE 08/23/2017

SPECIAL CONDITIONS

57. Use of funds for DNA testing; upload of DNA profiles

If award funds are used for DNA testing of evidentiary materials, any resulting eligible DNA profiles must be uploaded to the Combined DNA Index System ("CODIS," the DNA database operated by the FBI) by a government DNA laboratory with access to CODIS.

No profiles generated under this award may be entered or uploaded into any non-governmental DNA database without prior express written approval from BJA.

Award funds may not be used for the purchase of DNA equipment and supplies unless the resulting DNA profiles may be accepted for entry into CODIS.

58. Encouragement of submission of "success stories"

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

59. Initial period of performance; requests for extension

The recipient understands that the initial period of performance for this award is two years. The recipient further understands that any requests for an extension of the period of performance for this award will be approved automatically for up to a total of two additional years, pursuant to 42 U.S.C. 3751(f) and in accordance with the program solicitation associated with this award.

Any request for an extension of the period of performance beyond a four-year award period will require approval, and the approval (if any) will be at the discretion of the Director of BJA.

60. Withholding of funds: Budget narrative

The recipient may not obligate, expend, or draw down any award funds until the recipient submits, and OJP has reviewed and accepts, the budget narrative for the award, and a Grant Adjustment Notice (GAN) has been issued to remove this condition.

61. Withholding of funds: Program narrative

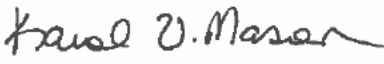
The recipient may not obligate, expend, or draw down any award funds until the recipient submits, and OJP has reviews and accepts, the program narrative for this award, and a Grant Adjustment Notice (GAN) has been issued to remove this condition.

62. Withholding of funds: Memorandum of Understanding

The recipient may not obligate, expend, or draw down any award funds until OJP has reviewed and approved the Memorandum of Understanding (MOU), and a Grant Adjustment Notice (GAN) has been issued to remove this condition.

Exhibit C*

* In the document that follows, on the page labeled "1 of 13," information in the original document has been redacted in fields 2a ("GRANTEE IRS/VENDOR NO") and 2b ("GRANTEE DUNS NO").

 U.S. Department of Justice Office of Justice Programs Bureau of Justice Assistance		Grant		PAGE 1 OF 13																		
1. RECIPIENT NAME AND ADDRESS (Including Zip Code) City of Chicago 121 North LaSalle Street Chicago, IL 60602		4. AWARD NUMBER: 2016-DJ-BX-0106 5. PROJECT PERIOD: FROM 10/01/2015 TO 09/30/2019 BUDGET PERIOD: FROM 10/01/2015 TO 09/30/2019 6. AWARD DATE 09/07/2016 7. ACTION Initial																				
2a. GRANTEE IRS/VENDOR NO. [REDACTED]		8. SUPPLEMENT NUMBER 00																				
2b. GRANTEE DUNS NO. [REDACTED]		9. PREVIOUS AWARD AMOUNT \$ 0																				
3. PROJECT TITLE FY 2016 Chicago/Cook County Justice Assistance Grant		10. AMOUNT OF THIS AWARD \$ 2,333,428 11. TOTAL AWARD \$ 2,333,428																				
12. SPECIAL CONDITIONS THE ABOVE GRANT PROJECT IS APPROVED SUBJECT TO SUCH CONDITIONS OR LIMITATIONS AS ARE SET FORTH ON THE ATTACHED PAGE(S).																						
13. STATUTORY AUTHORITY FOR GRANT This project is supported under FY16(BJA - JAG) 42 USC 3750, et seq.																						
14. CATALOG OF DOMESTIC FEDERAL ASSISTANCE (CFDA Number) 16.738 - Edward Byrne Memorial Justice Assistance Grant Program																						
15. METHOD OF PAYMENT GPRS																						
16. TYPED NAME AND TITLE OF APPROVING OFFICIAL Karol Virginia Mason Assistant Attorney General		18. TYPED NAME AND TITLE OF AUTHORIZED GRANTEE OFFICIAL Eddie T. Johnson Superintendent																				
17. SIGNATURE OF APPROVING OFFICIAL 		19. SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL		19A. DATE																		
20. ACCOUNTING CLASSIFICATION CODES <table border="1"> <thead> <tr> <th>FISCAL YEAR</th> <th>FUND CODE</th> <th>BUD. ACT.</th> <th>OFC.</th> <th>DIV. REG.</th> <th>SUB.</th> <th>POMS</th> <th>AMOUNT</th> </tr> </thead> <tbody> <tr> <td>X</td> <td>B</td> <td>DJ</td> <td>80</td> <td>00</td> <td>00</td> <td></td> <td>2333428</td> </tr> </tbody> </table>					FISCAL YEAR	FUND CODE	BUD. ACT.	OFC.	DIV. REG.	SUB.	POMS	AMOUNT	X	B	DJ	80	00	00		2333428	21. RDJUGT0913	
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OJP FORM 4000/2 (REV. 5-87) PREVIOUS EDITIONS ARE OBSOLETE.

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



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 2 OF 13

PROJECT NUMBER 2016-DJ-BX-0106

AWARD DATE 09/07/2016

SPECIAL CONDITIONS

1. Applicability of Part 200 Uniform Requirements

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

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

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

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

2. Compliance with DOJ Grants Financial Guide

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

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

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

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

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

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



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 3 OF 13

PROJECT NUMBER 2016-DJ-BX-0106

AWARD DATE 09/07/2016

SPECIAL CONDITIONS

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

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

5. Requirement to report potentially duplicative funding

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

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

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

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

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

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

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

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

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



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 4 OF 13

PROJECT NUMBER 2016-DJ-BX-0106

AWARD DATE 09/07/2016

SPECIAL CONDITIONS

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

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

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

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

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of recipients, subrecipients ("subgrantees"), or individuals defined (for purposes of this condition) as "employees" of the recipient or of any subrecipient.

The details of the recipient's obligations related to prohibited conduct related to trafficking in persons are posted on the OJP web site at <http://ojp.gov/funding/Explore/ProhibitedConduct-Trafficking.htm> (Award condition: Prohibited conduct by recipients and subrecipients related to trafficking in persons (including reporting requirements and OJP authority to terminate award)), and are incorporated by reference here.

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

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

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

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

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

12. OJP Training Guiding Principles

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



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 5 OF 13

PROJECT NUMBER 2016-DJ-BX-0106

AWARD DATE 09/07/2016

SPECIAL CONDITIONS

13. Effect of failure to address audit issues

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

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

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

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

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

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

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

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

17. Restrictions on "lobbying"

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

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



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 6 OF 13

PROJECT NUMBER 2016-DJ-BX-0106

AWARD DATE 09/07/2016

SPECIAL CONDITIONS

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

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

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

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

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

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

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



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 7 OF 13

PROJECT NUMBER 2016-DJ-BX-0106

AWARD DATE 09/07/2016

SPECIAL CONDITIONS

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

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

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

1. In accepting this award, the recipient--

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

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

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

a. it represents that--

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

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

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



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 8 OF 13

PROJECT NUMBER 2016-DJ-BX-0106

AWARD DATE 09/07/2016

SPECIAL CONDITIONS

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

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

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

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

22. Encouragement of policies to ban text messaging while driving

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

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

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

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



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 9 OF 13

PROJECT NUMBER 2016-DJ-BX-01106

AWARD DATE 09/07/2016

SPECIAL CONDITIONS

26. In order to promote information sharing and enable interoperability among disparate systems across the justice and public safety community, OJP requires the grantee to comply with DOJ's Global Justice Information Sharing Initiative (DOJ's Global) guidelines and recommendations for this particular grant. Grantee shall conform to the Global Standards Package (GSP) and all constituent elements, where applicable, as described at: http://www.it.ojp.gov/gsp_grantcondition. Grantee shall document planned approaches to information sharing and describe compliance to the GSP and appropriate privacy policy that protects shared information, or provide detailed justification for why an alternative approach is recommended.
27. To avoid duplicating existing networks or IT systems in any initiatives funded by BJA for law enforcement information sharing systems which involve interstate connectivity between jurisdictions, such systems shall employ, to the extent possible, existing networks as the communication backbone to achieve interstate connectivity, unless the grantee can demonstrate to the satisfaction of BJA that this requirement would not be cost effective or would impair the functionality of an existing or proposed IT system.
28. The recipient agrees that any information technology system funded or supported by OJP funds will comply with 28 C.F.R. Part 23, Criminal Intelligence Systems Operating Policies, if OJP determines this regulation to be applicable. Should OJP determine 28 C.F.R. Part 23 to be applicable, OJP may, at its discretion, perform audits of the system, as per the regulation. Should any violation of 28 C.F.R. Part 23 occur, the recipient may be fined as per 42 U.S.C. 3789g(c)-(d). Recipient may not satisfy such a fine with federal funds.
29. Grantee agrees to comply with the requirements of 28 C.F.R. Part 46 and all Office of Justice Programs policies and procedures regarding the protection of human research subjects, including obtainment of Institutional Review Board approval, if appropriate, and subject informed consent.
30. Grantee agrees to comply with all confidentiality requirements of 42 U.S.C. section 3789g and 28 C.F.R. Part 22 that are applicable to collection, use, and revelation of data or information. Grantee further agrees, as a condition of grant approval, to submit a Privacy Certificate that is in accord with requirements of 28 C.F.R. Part 22 and, in particular, section 22.23.
31. Award recipients must verify Point of Contact(POC), Financial Point of Contact (FPOC), and Authorized Representative contact information in GMS, including telephone number and e-mail address. If any information is incorrect or has changed, a Grant Adjustment Notice (GAN) must be submitted via the Grants Management System (GMS) to document changes.
32. The grantee agrees that within 120 days of award acceptance, each current member of a law enforcement task force funded with these funds who is a task force commander, agency executive, task force officer, or other task force member of equivalent rank, will complete required online (internet-based) task force training. Additionally, all future task force members are required to complete this training once during the life of this award, or once every four years if multiple awards include this requirement. The training is provided free of charge online through BJA's Center for Task Force Integrity and Leadership (www.ctfli.org). This training addresses task force effectiveness as well as other key issues including privacy and civil liberties/rights, task force performance measurement, personnel selection, and task force oversight and accountability. When BJA funding supports a task force, a task force personnel roster should be compiled and maintained, along with course completion certificates, by the grant recipient. Additional information is available regarding this required training and access methods via BJA's web site and the Center for Task Force Integrity and Leadership (www.ctfli.org).
33. The recipient agrees to participate in BJA-sponsored training events, technical assistance events, or conferences held by BJA or its designees, upon BJA's request.



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 10 OF 13

PROJECT NUMBER 2016-DJ-BX-0106

AWARD DATE 09/07/2016

SPECIAL CONDITIONS

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

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

The grantee understands that this special condition applies to its following new activities whether or not they are being specifically funded with these grant funds. That is, as long as the activity is being conducted by the grantee, a subgrantee, or any third party and the activity needs to be undertaken in order to use these grant funds, this special condition must first be met. The activities covered by this special condition are:

- a. New construction;
- b. Minor renovation or remodeling of a property located in an environmentally or historically sensitive area, including properties located within a 100-year flood plain, a wetland, or habitat for endangered species, or a property listed on or eligible for listing on the National Register of Historic Places;
- c. A renovation, lease, or any proposed use of a building or facility that will either (a) result in a change in its basic prior use or (b) significantly change its size;
- d. Implementation of a new program involving the use of chemicals other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or education environments; and
- e. Implementation of a program relating to clandestine methamphetamine laboratory operations, including the identification, seizure, or closure of clandestine methamphetamine laboratories.

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

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

36. The recipient is required to establish a trust fund account. (The trust fund may or may not be an interest-bearing account.) The fund, including any interest, may not be used to pay debts or expenses incurred by other activities beyond the scope of the Edward Byrne Memorial Justice Assistance Grant Program (JAG). The recipient also agrees to obligate the grant funds in the trust fund (including any interest earned) during the period of the grant and expend within 90 days thereafter. Any unobligated or unexpended funds, including interest earned, must be returned to the Office of Justice Programs at the time of closeout.
37. JAG funds may be used to purchase vests for an agency, but they may not be used as the 50% match for purposes of the Bulletproof Vest Partnership (BVP) program.



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

**AWARD CONTINUATION
SHEET
Grant**


PAGE 11 OF 13

PROJECT NUMBER 2016-DJ-BX-0106

AWARD DATE 09/07/2016

SPECIAL CONDITIONS

38. Ballistic-resistant and stab-resistant body armor purchased with JAG funds may be purchased at any threat level, make or model, from any distributor or manufacturer, as long as the vests have been tested and found to comply with applicable National Institute of Justice ballistic or stab standards and are listed on the NIJ Compliant Body Armor Model List (<http://nij.gov>). In addition, ballistic-resistant and stab-resistant body armor purchased must be American-made. The latest NIJ standard information can be found here: <http://www.nij.gov/topics/technology/body-armor/safety-initiative.htm>.
39. The recipient agrees to submit a signed certification that all law enforcement agencies receiving vests purchased with JAG funds have a written "mandatory wear" policy in effect. Fiscal agents and state agencies must keep signed certifications on file for any subrecipients planning to utilize JAG funds for ballistic-resistant and stab-resistant body armor purchases. This policy must be in place for at least all uniformed officers before any JAG funding can be used by the agency for body armor. There are no requirements regarding the nature of the policy other than it be a mandatory wear policy for all uniformed officers while on duty.
40. The recipient agrees to monitor subawards under this JAG award in accordance with all applicable statutes, regulations, OMB circulars, and guidelines, including the DOJ Financial Guide, and to include the applicable conditions of this award in any subaward. The recipient is responsible for oversight of subrecipient spending and monitoring of specific outcomes and benefits attributable to use of JAG funds by subrecipients. The recipient agrees to submit, upon request, documentation of its policies and procedures for monitoring of subawards under this award.
41. The recipient agrees that funds received under this award will not be used to supplant State or local funds, but will be used to increase the amounts of such funds that would, in the absence of Federal funds, be made available for law enforcement activities.
42. Award recipients must submit quarterly Federal Financial Reports (SF-425) and semi-annual performance reports through GMS (<https://grants.ojp.usdoj.gov>). Consistent with the Department's responsibilities under the Government Performance and Results Act (GPRA), P.L. 103-62, applicants who receive funding under this solicitation must provide data that measure the results of their work. Therefore, quarterly performance metrics reports must be submitted through BJA's Performance Measurement Tool (PMT) website (www.bjaperformancetools.org). For more detailed information on reporting and other JAG requirements, refer to the JAG reporting requirements webpage. Failure to submit required JAG reports by established deadlines may result in the freezing of grant funds and future High Risk designation.
43. Any law enforcement agency receiving direct or sub-awarded JAG funding must submit quarterly accountability metrics data related to training that officers have received on the use of force, racial and ethnic bias, de-escalation of conflict, and constructive engagement with the public.
44. BJA strongly encourages the recipient to submit annual (or more frequent) JAG success stories. To submit a success story, sign in to your My BJA account at <https://www.bja.gov/Login.aspx> to access the Success Story Submission form. If you do not yet have a My BJA account, please register at <https://www.bja.gov/profile.aspx>. Once you register, one of the available areas on your My BJA page will be "My Success Stories". Within this box, you will see an option to add a Success Story. Once reviewed and approved by BJA, all success stories will appear on the new BJA Success Story web page at <https://www.bja.gov/SuccessStoryList.aspx>.
45. Recipient understands and agrees that award funds may not be used for items that are listed on the Controlled Expenditure List at the time of purchase or acquisition, including as the list may be amended from time to time, without explicit written prior approval from BJA. The Controlled Expenditure List, and instructions on how to request approval for purchase or acquisitions may be accessed here: <https://www.bja.gov/funding/JAGControlledPurchaseList.pdf>

 <p>U.S. Department of Justice Office of Justice Programs Bureau of Justice Assistance</p>	<p align="center">AWARD CONTINUATION SHEET Grant</p>	<p align="right">PAGE 12 OF 13</p>
<p>PROJECT NUMBER 2016-DJ-BX-0106 AWARD DATE 09/07/2016</p>		
<p align="center"><i>SPECIAL CONDITIONS</i></p> <p>46. The recipient understands that, pursuant to recommendation 2.1 of Executive Order 13688, law enforcement agencies that acquire controlled equipment through Federal programs must adopt robust and specific written policies and protocols governing General Policing Standards and Specific Controlled Equipment Standards. General Policing Standards includes policies on (a) Community Policing; (b) Constitutional Policing; and (c) Community Input and Impact Considerations. Specific Controlled Equipment Standards includes policies specifically related to (a) Appropriate Use of Controlled Equipment; (b) Supervision of Use; (c) Effectiveness Evaluation; (d) Auditing and Accountability; and (e) Transparency and Notice Considerations. Upon OJP's request, the recipient agrees to provide a copy of the General Policing Standards and Specific Controlled Equipment Standards, and any related policies and protocols.</p> <p>47. Recipient understands and agrees that the purchase or acquisition of any item on the Controlled Expenditure List at the time of purchase or acquisition, including as the list may be amended from time to time, with award funds by an agency will trigger a requirement that the agency collect and retain (for at least 3 years) certain information about the use of 1) any federally-acquired Controlled Equipment in the agency's inventory, and 2) any other controlled equipment in the same category as the federally-acquired controlled equipment in the agency's inventory, regardless of source; and make that information available to BJA upon request. Details about what information must be collected and retained may be accessed here: https://www.whitehouse.gov/sites/default/files/docs/le_equipment_wg_final_report_final.pdf</p> <p>48. Recipient understands and agrees that failure to comply with conditions related to Prohibited or Controlled Expenditures may result in a prohibition from further Controlled Expenditure approval under this or other federal awards.</p> <p>49. Recipient understands and agrees that award funds may not be used for items that are listed on the Prohibited Expenditure List at the time of purchase or acquisition, including as the list may be amended from time to time. The Prohibited Expenditure list may be accessed here: https://www.bja.gov/funding/JAGControlledPurchaseList.pdf.</p> <p>50. Recipient understands and agrees that, notwithstanding 2 CFR § 200.313, no equipment listed on the Controlled Expenditure List that is purchased under this award may be transferred or sold to a third party, except as described below:</p> <p>a. Agencies may transfer or sell any controlled equipment, except riot helmets and riot shields, to a Law Enforcement Agency (LEA) after obtaining prior written approval from BJA. As a condition of that approval, the acquiring LEA will be required to submit information and certifications to BJA as if it was requesting approval to use award fund for the initial purchase of items on the Controlled Expenditure List.</p> <p>b. Agencies may not transfer or sell any riot helmets or riot shields purchased under this award.</p> <p>c. Agencies may not transfer or sell any Controlled Equipment purchased under this award to non-LEAs, with the exception of fixed wing aircraft, rotary wing aircraft, and command and control vehicles. Before any such transfer or sale is finalized, the agency must obtain prior written approval from BJA. All law enforcement-related and other sensitive or potentially dangerous components, and all law enforcement insignias and identifying markings must be removed prior to transfer or sale.</p> <p>Recipient further understands and agrees to notify BJA prior to the disposal of any items on the Controlled Expenditure List purchased under this award, and to abide by any applicable laws and regulations in such disposal.</p>		



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

**AWARD CONTINUATION
SHEET
Grant**

PAGE 13 OF 13

PROJECT NUMBER 2016-DJ-BX-0106

AWARD DATE 09/07/2016

SPECIAL CONDITIONS

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

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

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

52. Submission of compliance validation:

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

ATTACHMENT 4

SECOND HANSEN DECLARATION

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

THE CITY OF CHICAGO,

Plaintiff,

v.

**JEFF SESSIONS, Attorney General of the
United States,**

Defendant.

Civil Action No. 1:17-cv-05720

Hon. Harry D. Leinenweber

SECOND DECLARATION OF ALAN R. HANSON

Pursuant to 28 U.S.C. § 1746, I, Alan R. Hanson, declare as follows:

1. I am the Acting Assistant Attorney General for the Office of Justice Programs (“OJP”) at the U.S. Department of Justice. I have held this position since January 30, 2017. As Acting Assistant Attorney General, I am the head of OJP.

2. OJP administers the Edward Byrne Memorial Justice Assistance Grant (“Byrne JAG”) program.

3. Applications under the FY 2017 Byrne JAG - Local Solicitation¹ were generally due by September 5, 2017 (with some exceptions relating to jurisdictions affected by Hurricane Harvey). Applications under the FY 2017 Byrne JAG - State Solicitation² were due by August 25, 2017.

4. OJP received more than 900 applications under the FY 2017 Byrne JAG - Local Solicitation. OJP received 56 applications under the FY 2017 Byrne JAG - State Solicitation. In total, nearly one thousand FY 2017 Byrne JAG applications were received.

¹ This document is available at <https://www.bja.gov/Funding/JAGLocal17.pdf>.

² This document is available at <https://www.bja.gov/Funding/JAGState17.pdf>.

5. In the FY 2017 Byrne JAG cycle, OJP has issued two award notifications—to the County of Greenville, South Carolina and the City of Binghamton, New York—both on August 23, 2017. (Dkt. No. 32-1 ¶¶ 3-4.) All other FY 2017 Byrne JAG applications presently remain outstanding.

6. The FY 2017 Byrne JAG - Local Solicitation states an estimated total amount available to be awarded of \$83 million for the FY 2017 grant cycle. The FY 2017 Byrne JAG - State Solicitation states an estimated total amount available to be awarded of up to \$174.4 million for the FY 2017 grant cycle.

7. Prior to the entry of a nationwide preliminary injunction in this case, OJP had aimed to issue FY 2017 Byrne JAG awards by September 30, 2017. This is stated in the FY 2017 Byrne JAG - Local Solicitation, the FY 2017 Byrne JAG - State Solicitation, and a filing by the Defendant in this case (Dkt. No. 28 ¶ 4). That target is not a mandatory deadline, but reflects OJP's prudential goal for effective administration of the Byrne JAG program.

8. The ordinary federal 2017 fiscal year runs from October 1, 2016 to September 30, 2017. The September 30 target for issuing FY 2017 Byrne JAG awards is thus the end of the relevant federal fiscal year.

9. Historically speaking, never have virtually all Byrne JAG applications remained outstanding for the issuance of award documents at this advanced juncture (*i.e.*, late September) in the grant-making cycle. In other years, most Byrne JAG award notifications have been issued to prospective grant recipients well before September 30. As an example, FY 2016 Byrne JAG award documents were transmitted to the City of Chicago on September 7, 2016. (Dkt. No. 32-1 ¶ 7.) In years prior to that, Byrne JAG

award documents were transmitted to the City of Chicago on September 1, 2015; August 26, 2014; August 22, 2013; August 1, 2012; September 2, 2011; August 18, 2010; August 28, 2009; August 15, 2008; September 4, 2007; and May 4, 2006.

10. OJP is concerned by the disruption to the Byrne JAG program that would be associated with a significant delay (past September 30, 2017) in the issuance of FY 2017 Byrne JAG award notifications in response to the nearly 1,000 outstanding State and local applications. Such a delay would hinder the reasonably timely and reliable flow of funding under this important grant program that supports the law-enforcement activity of jurisdictions around the country. In many instances, the State or local fiscal year starts on July 1; thus, prospective FY 2017 Byrne JAG recipients may already be in “arrears” in waiting for anticipated federal funds.

11. The impact of a delay in the Byrne JAG grant-making cycle would likely tend to fall especially heavily on localities. That is because localities, which generally-speaking may have relatively small budgets, may receive Byrne JAG funding both through applications under the Local Solicitation, and additionally through sub-awards from State Administering Agencies that apply under the State Solicitation.

12. State Administering Agencies typically have strict timelines, set by each State based on the State’s fiscal year (which, I understand, often runs from July 1 to June 30), for reviewing sub-recipient applications and making sub-awards. A significant delay in OJP’s FY 2017 Byrne JAG grant-making process could disrupt the timelines under which States process their Byrne JAG sub-awards and maintain that sub-award cycle within the confines of their State fiscal years.

13. A common (though by no means exclusive) use of Byrne JAG funds is to cover State and local law enforcement overtime and equipment expenses. This year, funding for such expenses may at present be particularly critical to various State and local jurisdictions facing extraordinary law enforcement needs based on recent states of emergency caused by hurricane activity in Texas, Florida, Puerto Rico, and the U.S. Virgin Islands. A significant delay in securing and coordinating FY 2017 Byrne JAG funding for such jurisdictions presently facing emergency challenges would be counter-productive to federal attempts to assist with recovery efforts in disaster areas.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 26, 2017


Alan R. Hanson