

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

CITY OF CHICAGO,	)	
	)	
Plaintiff,	)	Case No. 17-CV-5720
v.	)	
	)	Honorable Harry D. Leinenweber
JEFFERSON BEAUREGARD SESSIONS III,	)	
	)	
Defendant.	)	

**THE UNITED STATES CONFERENCE OF MAYORS’  
REPLY IN FURTHER SUPPORT OF ITS MOTION TO INTERVENE**

Pursuant to Federal Rule of Civil Procedure 24, The United States Conference of Mayors (the “Conference”), by its undersigned attorneys, respectfully submits this reply brief in further support of its motion to intervene (Docket (“Dkt.”) 91).

**INTRODUCTION**

In its opening motion, the Conference established that it is entitled to intervene in this action to protect its members’ interests in the face of Defendant’s recent argument, both before this Court and on appeal, that the City of Chicago (“Chicago”) lacks standing to seek nationwide injunctive relief in this case. The Conference emphasized that intervention was necessary because, if this Court or the Court of Appeals were to accept Defendant’s argument, the Conference or its member cities would have to file new lawsuits to address the same unauthorized conditions at issue in this case. This would severely prejudice the Conference’s member cities by, at a minimum, delaying their receipt of tens of millions of dollars in critical federal law enforcement funding.

In response, Defendant raises three arguments, none of which have merit.

First, Defendant argues that the Conference’s motion is not timely because the Conference previously knew of this action and initially chose to participate as an *amicus* rather

than as a co-plaintiff. Defendant overlooks that under well-established law, an intervenor whose rights appear to be adequately represented by a party at the outset of litigation has no obligation to intervene until there is reason to think that may not be the case. Here, until Defendant sought to stay the Court's nationwide injunction on the basis that Chicago purportedly lacked standing to sustain it, the Conference had no reason to think its interests were not adequately represented by Chicago.

Moreover, Defendant ignores that courts evaluate timeliness not by any calendar, but according to the prejudice each side stands to suffer. Defendant identifies no prejudice he will suffer if intervention is granted at this early stage of the case. By contrast, requiring the Conference and its members to file new lawsuits will cause them severe prejudice by further delaying the receipt of critical grant funds for some cities, and by requiring other cities to either forego the funds entirely or to consent, under the imminent threat of losing funding, to the unauthorized conditions. Indeed, Defendant has expressly stated in seeking a stay that he wants to constrain the scope of this Court's injunction precisely so that he can leverage the illegal and unauthorized conditions to force other jurisdictions to make this untenable choice. It is that request that requires the participation of the Conference as a party to this action, and the Conference's motion is thus timely and appropriate.

Second, Defendant argues that the Conference may not intervene as of right because it could protect its members' rights by filing a separate lawsuit. According to Defendant, this means that the Conference cannot establish that "disposing of the action may as a practical matter impair or impede the [Conference's] ability to protect its interest," as Rule 24(a)(2) requires. Defendant misunderstands the Rule. Courts regularly find that a party is entitled to intervene where, as a practical matter, requiring a separate lawsuit would impede that party's ability to obtain relief. Such is the case here.

Third, Defendant argues that the Conference lacks standing to represent its members in this action. Not so. The Supreme Court has long recognized that organizations are often ideally suited to represent their members' interests in litigation, and has held that they may do so in all cases where: the members themselves could otherwise sue; the issues raised in the suit are germane to the organization's purpose; and the participation of the individual members is not required to adjudicate those issues. This is just such a case.

The Court should grant the Conference leave to intervene in this action.

### **ARGUMENT**

#### **I. The Court should grant the Conference leave to intervene as of right under Rule 24(a)(2).**

A party may intervene as of right where: (1) it makes a timely application; (2) it has an interest relating to the subject matter of the action; (3) there is a "potential impairment, as a practical matter, of that interest by disposition of the action;" and (4) there is a lack of adequate representation of the interest by the existing parties to the action. *Reich v. ABC/York-Estes Corp.*, 54 F.3d 316, 320 (7th Cir. 1995). In this case, Defendant does not contest that the second and fourth requirements are met. He concedes that the Conference has an interest in the subject matter of the action and that Chicago may not adequately represent that interest. Defendant argues only that the motion is not timely and that the Conference's interest will not be impaired by disposition of this action. Defendant also argues that the Conference lacks standing to assert the interests of its member cities. Each of these arguments fails.

##### **A. The Conference's motion is timely.**

Defendant's main argument is that the motion is untimely because the Conference knew of the lawsuit at the time it was filed but initially chose to participate as an *amicus* rather than as a co-plaintiff. (See Dkt. 113 at 5-6.) This argument fails to establish that the motion is untimely for at least two reasons.

First, Defendant ignores that courts “do not expect a party to petition for intervention in instances in which the potential intervenor has no reason to believe its interests are not being properly represented.” *Reich*, 64 F.3d at 322. In such cases, an intervenor’s motion is timely if brought within a reasonable amount of time after learning that its interests may not be adequately advanced by a party to the litigation. *Id.* In fact, a potential intervenor has no right to intervene until it reasonably believes that its interest may not be adequately represented. *See id;* Fed. R. Civ. P. 24(a)(2). For that reason, courts regularly permit third-parties to intervene mid-case where a litigant may no longer be able to represent the third-party’s interests or the potential intervenor wishes to advance an argument or ground for relief unavailable to the original party. *See Reich*, 64 F.3d at 322; *South v. Rowe*, 759 F.2d 610, 612-13 (7th Cir. 1985). *See also City of Chicago v. Fed. Emergency Mgmt. Agency*, 660 F.3d 980, 985-86 (7th Cir. 2011) (citing cases).

Here, the Conference was not alerted to the need to intervene until Defendant sought to stay the Court’s nationwide injunction on the basis that Chicago purportedly lacked standing to seek nationwide relief. This took place on September 26, 2017. (Dkt. 81).<sup>1</sup> The Conference appeared in Court only two days later to announce its intention to intervene and moved to intervene shortly thereafter. (Dkt. 91.) The Conference seeks to intervene because it can advance an argument against Defendant’s stay motion that Chicago cannot. Whatever the merit of Defendant’s argument that Chicago’s standing to seek relief in this case does not extend beyond its borders, that argument cannot apply to the Conference, whose members are located

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<sup>1</sup> Defendant argues that he raised the standing argument in his earlier opposition to Chicago’s motion for a preliminary injunction when he made an oblique reference to Chicago’s “injury in fact.” (Dkt. 113 at 7-8.) But that argument assumes too much. Defendant argued there that the Court would “abuse its discretion” by granting an overbroad injunction. (Dkt. 32 at 25.) Defendant never mentioned standing and never argued that the Court was prohibited from granting nationwide relief. Nothing requires a proposed intervenor to anticipate arguments a party does not make in express terms. Moreover, even if the Conference had done so, Defendant does not articulate any prejudice resulting from the Conference’s decision not to intervene at that time. *See infra* at 5-7.

throughout the country. Under these circumstances, the Conference's motion is sufficiently prompt.

Second, Defendant will not suffer prejudice as the result of any delay, and in fact he does not even claim any prejudice. This alone is fatal to Defendant's argument. Even where a potential intervenor delays filing its motion, the motion should be granted unless the delay (as opposed to the mere fact of the intervenor's participation in the suit) causes the existing parties prejudice and that prejudice outweighs any prejudice the intervenor may suffer if its motion is denied. *Reich*, 64 F.3d at 321; *Aurora Loan Servs., Inc. v. Craddieth*, 442 F.3d 1018, 1027 (7th Cir. 2006); *Zurich Capital Markets, Inc. v. Coglianesi*, 236 F.R.D. 379, 384 (N.D. Ill. 2006). In *Craddieth*, for example, the Seventh Circuit explained:

[Intervenor] would have been prudent to have moved earlier to intervene. But in the absence of any indication of prejudice to [the opposing party], the motion cannot be adjudged untimely as a matter of law. We don't want a rule that would require a potential intervenor to intervene at the drop of a hat; that would just clog the district courts with motions to intervene.

442 F.3d at 1027.

In this case, Defendant will suffer no prejudice from the Conference's intervention at this early, pre-answer stage of the case. Defendant does not even say how he will be prejudiced. He argues only that the Court should not "indulg[e] the Conference's shifting litigation strategy" by allowing the Conference to take advantage of the preliminary injunction the Court granted to Chicago. (See Dkt. 113 at 8-9, citing *Larson v. JP Morgan Chase & Co.*, 530 F.3d 578, 583-84 (7th Cir. 2008).) But courts routinely permit a non-litigant to intervene in an action to take advantage of a ruling in favor of a litigant. This is particularly true in cases like this one, where the intervenor is in effect a third-party beneficiary of the order. See, e.g., *Rowe*, 759 F.2d at 612-13 (allowing third-party beneficiary of consent decree to intervene two years after its entry to argue for an extension of the decree). And, of course, the mere fact that the Conference's

participation will defeat Defendant's favored argument against the nationwide scope of the Court's injunction does not constitute "prejudice" under Rule 24. *See Zurich Capital Markets, Inc.*, 236 F.R.D. at 384 (intervention was appropriate where "any prejudice to ZCM that would result from the Liquidator's intervention would result simply by virtue of the Liquidator's involvement in the case, not from the Liquidator's delay in moving to intervene").

The cases cited by Defendant only underscore that he will suffer no cognizable prejudice. In *Larson*, the court denied a motion to intervene that came three-and-a-half years after a partial summary judgment ruling disposed of the intervenor's would-be claims, which were no longer within the statute of limitations, and after the remaining claims were settled by the parties and final judgment was entered thereon. 530 F.3d at 581-84. In finding the motion untimely, the court emphasized that intervention threatened to derail or delay a \$28-million settlement the parties had worked years to achieve. *Id.* at 584. Allowing intervention in Defendant's remaining cases would have required similar reversals of fortune or reversions to much earlier stages of the case. *See United States v. City of Chicago*, 908 F.2d 197, 197-200 (7th Cir. 1990) (denying motion to intervene 15 years after suit was filed to object to \$9 million consent decree and seek individual damages); *Sokaogon Chippewa Community v. Babbitt*, 214 F.3d 941, 945, 948-50 (7th Cir. 2000) (noting that "[t]he purpose of the timeliness requirement is to prevent a tardy intervenor from derailing a lawsuit within sight of the terminal;" denying intervention to object to settlement 4 years after suit was filed) (internal citation and quotation omitted); *CE Design Ltd. v. King Supply Co.*, 791 F.3d 722, 726 (7th Cir. 2015) (denying intervention to object to settlement 3 years after suit was filed because "[a]t that late stage the only object of the intervention could be to block the settlement and put the class action suit back to where it had been [3 years earlier] in 2009").

These decisions are wholly inapposite. This case is still at the pleading stage. Defendant has not yet answered Chicago's complaint, and has recently asked for additional time to do so. Moreover, the Court's preliminary injunction order is still before it on reconsideration. And the Conference's request for the same relief granted to Chicago will not expand the case or require the parties or the Court to start the case anew. For this reason, Chicago raises no objection to intervention, which it would certainly do if (like in the cases cited by Defendant) there were any chance that intervention would disrupt the relief it has obtained or stall the progress the Court has made in the case.<sup>2</sup>

By contrast to Defendant, the Conference and its members will be severely prejudiced if intervention is denied. As the Conference made clear in its complaint and motion for a preliminary injunction, which it filed provisionally in anticipation of intervention, the Conference's member cities await the award of tens of millions of dollars in federal law enforcement grants that Defendant is apparently withholding pending his appeal of this Court's order. (Dkt. 91-1, Complaint ("Compl.") ¶¶ 39-41, Ex. A; Dkt. 109-1, Declaration ("Decl.") of Tom Cochran ¶¶ 9-14, Ex. A.) These funds are needed for critical, life-saving law enforcement measures. (Compl. ¶¶ 42-44; Cochran Decl. ¶¶ 15-17.) If intervention is denied and the Court of Appeals were to accept that Chicago could not obtain nationwide relief, the Conference and its members would have to file at least one, and potentially many, new lawsuits to relitigate the

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<sup>2</sup> Defendant points out in a footnote that the Conference submitted a single declaration in support of its motion for a preliminary injunction and argues that having done so renders intervention "untimely," citing *Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 573 (7th Cir. 2009). (Dkt. 113 at 9 n. 3.) The comparison is not apt. *Flying J* involved an intervention granted after a trial and final judgment. 578 F.3d at 573. Here, the case is still before the Court at the preliminary injunction stage, and the Conference submits the declaration of its Executive Director and CEO only to establish its interest in the litigation, not to expand upon the claims or issues already litigated. Like in *Flying J*, the Conference joins in this litigation only to further support the relief sought by the original plaintiff, Chicago. No evidentiary hearing was required to rule on Chicago's motion for preliminary injunction, and none will be required if intervention is granted. Nor does Defendant argue that the declaration will expand the case in any other way that would not obtain in any case in which a new party intervenes. Intervention is thus timely. See *Zurich Capital Markets, Inc.*, 236 F.R.D. at 384.

same issues and seek the same relief, which at a minimum would further delay the receipt of important grant money that already has been allocated to them. Beyond delay, many cities could not afford to file suit because doing so would not be cost-effective. (*See, e.g.*, Cochran Decl. ¶11, Ex. A.) Still others would be forced to capitulate to the unlawful conditions in the face of imminent law enforcement needs. Defendant has stated unequivocally that cities that receive grant award notifications will have only 45 days within which to agree to his conditions. (*See Exhibit A*, “Postaward Instructions,” at 4; *Exhibit B*, 8-15-2017 Hr’g Tr. at 6:15-21.) While Defendant has delayed sending notifications because of this case, he has made clear that he will do so immediately if the nationwide scope of this Court’s injunction is lifted. (*See* Dkt. 81 at 7-9.) This would leave the Conference and its members with insufficient time to obtain meaningful relief in a new suit.

This, of course, is precisely what Defendant wants—a stay of the nationwide injunction so that the unauthorized conditions can be forced upon jurisdictions that have not yet filed suit, and whose interests Defendant self-servingly claims Chicago cannot represent. Defendant thus repeatedly invites the Conference to file a new lawsuit (*see* Dkt. 113 at 8-9, 10), because Defendant knows that if he can only convince the Court of Appeals of Chicago’s lack of standing, any new lawsuit will now come too late for other jurisdictions to effectively oppose Defendant’s unauthorized and illegal conditions. But there is no reason for any defect in Chicago’s ability to seek nationwide relief to require additional lawsuits, because the Conference can remove any such defect by intervening here and now.

Under these circumstances, the mere fact that the Conference or its members could file additional, separate lawsuits is not sufficient to eliminate the prejudice caused by the delay in resolving those lawsuits. In *Rowe*, the Court of Appeals affirmed the grant of intervention in a similar case, finding that although the plaintiff in that case, who wished to take advantage of a

consent decree entered two years earlier, could have filed a new lawsuit, doing so would cause him “significant” prejudice and would be needlessly inefficient. *Rowe*, 759 F.2d at 612. The *Rowe* court described the prejudice as such: “Radick’s alternative was to file a new suit in his own name. Yet such a suit would be costly, would result in further delays that could possibly moot the underlying controversy, and would not be assured of success.” *Id.* at 612 n. 2. As such, the court held, the district judge was correct to allow intervention. *Id.* at 612-13. *See also Jeffries v. Swank*, 317 F.R.D. 543, 552 (N.D. Ill. 2016) (allowing intervention in a 46-year-old case to avoid prejudice from delay and “a multiplicity of suits based on differing interpretations” of the court’s prior orders).

**B. Disposition of this case will impair or impede the Conference’s ability, as a practical matter, to protect its interests.**

Defendant also argues that the Conference’s ability to file another lawsuit or to otherwise “promote its policy goals” means that it cannot demonstrate that disposition of this case would impair or impede its ability to protect its interests. (Dkt. 113 at 10-12.) Defendant misunderstands the nature of this requirement. Rule 24(a)(2) requires only impairment “as a practical matter.” It does not require an intervening party to demonstrate that its claims would be legally precluded absent intervention. *See City of Chicago*, 660 F.3d at 985 (“But the possibility that the would-be intervenor if refused intervention might have an opportunity in the future to litigate his claim has been held not to be an automatic bar to intervention.”) Rather, among other grounds, “[c]ases allow intervention as a matter of right when an original party does not advance a ground that if upheld by the court would confer a tangible benefit on an intervenor who wants to litigate that ground.” *Id.* at 985-86 (citing cases). *See also Jeffries*, 317 F.R.D. at 553 (rejecting argument that there was no impairment because intervenor “could bring his claims under another lawsuit”).

This is such a case. The Conference plainly has an interest in sustaining this Court's nationwide injunction, and Defendant does not argue otherwise. By asserting that Chicago cannot alone pursue such relief, however, Defendant gives the Conference, whose members are nationwide, a new ground for sustaining the Court's order that the Conference wishes to advance. As in *City of Chicago* and *Jeffries*, that ground is properly advanced in this litigation precisely because it is this Court's order that is at issue. *See id.*

Moreover, while a separate suit is possible, for the reasons set forth above, it is not "practical." Disposition of this matter without the Conference's participation would, as a *practical* matter, foreclose the Conference's ability to effectively protect its interests. *See supra* § I.B. For these reasons, intervention as of right is warranted here.

**C. The Conference has standing to assert the interests of its member cities.**

Without citation to any legal authority, and ignoring the allegations of the Conference's complaint, which must be accepted as true at this stage, *see Lake Investors Development Group v. Egidi Development Group*, 715 F.2d 1256, 1258 (7th Cir. 1983), Defendant argues that the Conference lacks standing to bring its claims. (Dkt. 113 at 12-14.) This argument fails.

Defendant first points out that the Conference is not itself a Byrne JAG recipient, and thus intervenes only to protect the interests of its member cities. (*Id.* at 12.) While that is correct, contrary to Defendant's argument, there is nothing "remarkable" about such a claim. It is well established that an association may sue to vindicate the rights of its members so long as: (1) its members, or some of them, would otherwise have standing to sue; (2) the interests the association seeks to protect are germane to its organizational purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual association members in the lawsuit. *Ezell v. City of Chicago*, 651 F.3d 684, 697 (7th Cir. 2011) (citing *Hunt v. Wash. State Apple Adver. Comm'n*, 517 U.S. 544, 553 (1977).)

Defendant does not take aim at any of these requirements, but each is nonetheless amply met here. First, as the Conference's complaint makes clear, its members consist of cities across the United States with populations of 30,000 or more. (Compl. ¶¶ 12, 17-22, Ex. A.) Many of these cities are recipients of Byrne JAG funds and have been allocated funds for 2017. (*Id.* at Ex. A; *see also* Cochran Decl. ¶¶ 10-14, Ex. A.) Among just those cities whose mayors serve in Conference leadership are 71 cities that together have been allocated over \$21.5 million in Byrne JAG funds for fiscal year 2017. (Cochran Decl. ¶ 10, Ex. A.) Each of these cities could sue on its own, and thus the first requirement is met.

Second, the Conference's interests in this case are indisputably germane to its organizational purpose. The Conference was founded for the very purpose of coordinating cities' interaction with the federal government on policy matters, and particularly those impacting the distribution of federal funds to cities; one of its primary organizational purposes is to ensure that federal policy meets urban needs; and it has undertaken an extensive review of, and adopted policies opposing, the very conduct of Defendant at issue in this litigation. (Compl. ¶¶ 17-26, 58-70, Exs. B-D; Cochran Decl. ¶¶ 3-8, 18-37, Exs. D-E.)

Third, no individualized proof will be required in this case. The Conference seeks only injunctive relief against the same conditions imposed across all jurisdictions, and in fact seeks only the same injunctive relief already requested, and in part obtained, by Chicago. This is precisely the type of relief an association may seek. *See Hunt*, 432 U.S. at 344 (requests for declaratory and injunctive relief are "properly resolved in a group context").

Rather than address the standing elements, Defendant raises a host of irrelevant or incorrect points in an attempt to call the Conference's standing into question. Defendant argues, for example, that because "the U.S. Conference of Mayors is a group of mayors, not a group of cities," it cannot represent the interests of cities that are Byrne JAG recipients. (Dkt. 113 at 14.)

Defendant's premise is incorrect. The Conference is a group of *cities* that are simply represented in the Conference by their mayors. This is made clear in the Conference's complaint (¶¶ 12, 17-22, Ex. A), motion for preliminary injunction (*see* Cochran Decl. ¶¶ 5-8, Ex. A), and its constitution, a copy of which is attached as Exhibit C to this reply brief. (*See* Art. II, § 1 ("Municipal corporations of 30,000 or over in population are eligible for membership, and representation of member municipal corporations in the work of the Conference shall be through the Mayor.").)

Defendant also argues that because some member cities may not be bound, or may not consider themselves bound, by the Court's judgment, the Court should find that the Conference lacks standing to represent the interests of any member city. (Dkt. 113 at 12-13.) But associational standing is not an "all or nothing" proposition. To the contrary, courts recognize that even where members' interests conflict, an organization may still be permitted to bring suit to assert rights held by some of its members. *See Builders Ass'n of Greater Chicago v. City of Chicago*, 170 F.R.D. 435, 438-39 (N.D. Ill. 1996) (citing *United Automobile Workers v. Brock*, 477 U.S. 274, 290 (1986)). In such cases, the remedy is not to deny associational standing but to pursue "less drastic ways to protect the rights of dissenting members," such as "through liberal approval of their intervention in the lawsuit or through refusal to preclude subsequent claims by dissenting members." *Id.* at 439 (quotation and citation omitted). Thus, associations are permitted to assert claims on behalf of their members notwithstanding that a ruling on those claims may not bind each member. *Id.* That is because associations are uniquely positioned to represent the interests of their membership as a whole. Indeed, "the primary reason people join an organization is often to create an effective vehicle for vindicating interests that they share with others." *Brock*, 477 U.S. at 290.

In this case, there is no conflict among the Conference's members because each of them shares the same interest in avoiding the imposition of unauthorized, unconstitutional conditions upon their receipt of Byrne JAG funds. As such, there is every reason to permit the Conference to advance those interests, and the fact that some cities have sued, or may sue, separately does not detract from the Conference's standing.

Moreover, Defendant does not explain how his concern regarding whether Conference members will be bound by a judgment applies to this case but not to the additional lawsuit, or lawsuits, Defendant invites the Conference and its members to file. In truth, and as the Court of Appeals has held in rejecting precisely this argument, any legitimate concern about whether an association's members are bound by a judgment against the association is sufficiently obviated by principles of *stare decisis* and does not demonstrate any lack of associational standing. *Chicago-Midwest Meat Ass'n v. City of Evanston*, 589 F.2d 278, 281 n.3 (7th Cir. 1978).

For these reasons, the Court should grant the Conference's motion to intervene as of right.

**II. Alternatively, the Court should permit the Conference to intervene under Rule 24(b).**

Even where a party is not entitled to intervene as of right, Rule 24(b) gives this Court wide discretion to permit intervention where there is any common question of law or fact and intervention would not "unduly delay or prejudice the adjudication of the original parties' rights." In deciding whether permissive intervention is appropriate, the Court should consider whether allowing intervention will be more efficient because it "might head off a second suit." *City of Chicago*, 660 F.3d at 986 (holding that the district court abused its discretion in denying permissive intervention where there was "no basis for thinking that it would be as efficient to litigate [the dispute] in two lawsuits rather than one").

In this case, there is no question that the Conference shares legal claims and factual questions with Chicago, and Defendant does not argue otherwise. And for the reasons set forth extensively above, litigating before this Court will be far less prejudicial and burdensome on *all* parties. Notwithstanding his insistence on separate lawsuits in opposing this motion, Defendant has repeatedly admitted as much. Before this Court, for example, Defendant has argued that he is without resources to quickly respond to this motion and simultaneously litigate Philadelphia's separate lawsuit (*see Exhibit D*, 10-11-17 Hr'g Tr. at 4:4-9) and complained that delay will irreparably harm both Defendant and the nearly 1,000 Byrne JAG recipients awaiting allocated grant funds. (Dkt. 81 at 7-9.) Defendant has sought an extension of time in the San Francisco litigation on similar grounds, and in Philadelphia Defendant has even relied upon this Court's nationwide injunction in arguing that Philadelphia will not be irreparably harmed absent separate relief. (*City and County of San Francisco v. Sessions*, Case No. 17-cv-04642 (N.D. Cal.), Dkt. 40 ¶¶ 4-5; *City of Philadelphia v. Sessions*, Case No. 17-cv-03894 (E.D. Pa.), Dkt. 28 at 45-46.)

It is plain, then, that even Defendant will best be served by the expeditious resolution of the issues raised before this Court, rather than any additional litigation the Conference or its members might otherwise file. This is particularly true when one considers that as an association organized under the laws of Illinois (*see* Compl. ¶ 12; Cochran Decl. ¶ 3), the Conference would likely sue in this district. Its suit would also likely be assigned to this Court as a related case under Local Rule 40.1.<sup>3</sup> Under the circumstances, there is no legitimate reason to require such a needless waste of time and resources by all parties. For these reasons and those set forth in

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<sup>3</sup> For this reason, the order entered by the United States District Court for the Northern District of California is irrelevant. (*See* Dkt. 113 Ex. A.) The court in that case exercised its discretion to deny a request for permissive intervention where it found that doing so would “upend[] established venue and forum rules.” (*Id.* at 2.) No such concern is present here, because venue would be proper in this district in any separate lawsuit brought by the Conference.

Section I, above, the Court should, at a minimum, grant the Conference leave to intervene as a matter of its discretion under Rule 24(b).

WHEREFORE, the United States Conference of Mayors respectfully requests that the Court grant it leave to intervene in this matter and to file *instanter* the complaint attached as Exhibit 1 to the Conference's motion and the motion for a preliminary injunction filed provisionally under Docket No. 109, and that the Court grant such further relief as the Court deems necessary and just under the circumstances.

Dated: November 3, 2017

Respectfully submitted,

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THE UNITED STATES CONFERENCE OF  
MAYORS

By: /s Brian C. Hausmann  
One of Its Attorneys

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on November 3, 2017, I electronically filed the foregoing **The United States Conference of Mayors' Reply in Further Support of Its Motion to Intervene** with the Clerk of the Court for the United States District Court, Northern District of Illinois, Eastern Division, by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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/s/ Brian C. Hausmann

# **EXHIBIT A**



Office of the Chief Financial Officer  
Grant Award and Financial Management Information

## Postaward Instructions

January 2017

## **Postaward Instructions**

Grantees should take the following steps for the financial administration of awards from the Office of Justice Programs (OJP) and the Office on Violence Against Women (OVW).

Step 1. Complete financial point of contact registration

Step 2. Review the award and special conditions

Step 3. Read the guidelines

Step 4. Complete and return the Automated Clearing House form

Step 5. Access payment using the Grant Payment Request System

Step 6. Fulfill reporting requirements

Step 7. Initiate closeout

Step 8. Review top 10 frequently asked questions

**Office of the Chief Financial Officer  
Postaward Instructions**

**STEP 1 – Complete Financial Point of Contact Registration**

The Office of Justice Programs (OJP) and the Office on Violence Against Women (OVW) process awards through the OJP Grants Management System (GMS). OJP and OVW notify grantees of award approval by email through GMS. Once OJP and OVW approve an award, they send a notice through GMS to the email address of the Grant Point of Contact (GPOC), as well as to the authorized grantee official. OJP and OVW also notify grantees by email through GMS when they release awards. OJP and OVW do not mail paper copies of awards to award recipients.

When the GPOC receives an email notification announcing award of a grant, the GPOC should go to GMS to assign a Financial Point of Contact (FPOC).

The GPOC will not be able to access the award until registration for at least one FPOC is complete.

GMS is accessible at:

<https://grants.ojp.usdoj.gov>

Instructions on assigning, registering, and approving an FPOC is accessible at:

[http://www.ojp.usdoj.gov/training/pdfs/gms\\_userguide.pdf](http://www.ojp.usdoj.gov/training/pdfs/gms_userguide.pdf)

OJP grantees may contact the GMS Helpdesk at 1-888-549-9901 (choose option 3) or  
[GMS.HelpDesk@usdoj.gov](mailto:GMS.HelpDesk@usdoj.gov)

OVW grantees may contact OVW GMS Support at 1-866-655-4482 or  
[OVW.GMSSupport@usdoj.gov](mailto:OVW.GMSSupport@usdoj.gov).

Once the FPOC completes registration, the GPOC may then access the award.

January 2017

**Office of the Chief Financial Officer  
Postaward Instructions**

**STEP 2 - Review Award and Special Conditions**

Once a financial point of contact (FPOC) completes registration (see step 1), the grant point of contact (GPOC) will be able to view the award online and print the document.

**If in agreement** with the terms and conditions, the **authorized recipient official** must sign and date the agreement and initial the special conditions and submit both the signed agreement and initialed special condition pages to the OJP Control Desk or OVW using one of the following methods:

<b>Agency:</b>	<b>OJP</b>	<b>OVW</b>
<b>Fax:</b>	Faxes no longer accepted for OJP award documents	202-514-7045
<b>Email:</b>	<a href="mailto:acceptance@usdoj.gov">acceptance@usdoj.gov</a>	<a href="mailto:OVW.Acceptance@usdoj.gov">OVW.Acceptance@usdoj.gov</a>

The GPOC must approve an FPOC before an award can be accessed in the GMS.

If the authorized recipient official has changed, the grantee should not alter the preprinted name in box 18 of the award. The GPOC will have to initiate a grant adjustment notice (GAN) in GMS to notify the Program Office of this change. Grantees have the capability to initiate a GAN by logging in to GMS at <https://grants.ojp.usdoj.gov> and selecting the GAN tab. For assistance accessing GMS or initiating the GAN, OJP grantees may contact the GMS Helpdesk at 1-888-549-9901 (choose option 3) or via email at [GMS.HelpDesk@usdoj.gov](mailto:GMS.HelpDesk@usdoj.gov). OVW grantees may contact OVW GMS Support at 1-866-655-4482 or [OVW.GMSSupport@usdoj.gov](mailto:OVW.GMSSupport@usdoj.gov). Once the GAN is approved by the Program Office, the agreement should be signed by the new authorized recipient official. The former authorized recipient's name should remain unaltered in box 18.

The authorized recipient official should also initial each page of special conditions and return the approved GAN, signed agreement, and initialed special condition pages to the OJP Control Desk or OVW using one of the following methods:

<b>Agency:</b>	<b>OJP</b>	<b>OVW</b>
<b>Fax:</b>	Faxes no longer accepted for OJP award documents	202-514-7045
<b>Email:</b>	<a href="mailto:acceptance@usdoj.gov">acceptance@usdoj.gov</a>	<a href="mailto:OVW.Acceptance@usdoj.gov">OVW.Acceptance@usdoj.gov</a>

The GPOC should notify the Program Office when special conditions have been met.

**Note:** The grantee should maintain the original signed documents for presentation in the event of an audit.

Community Oriented Policing Services (COPS) and U.S. Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA) grantees should not send acceptance documents to OJP or OVW. Grantees may contact COPS at 1-800-421-6770 or DHS at 1-866-927-5646 for instructions on the return of their award documents.

**If the grantee does not agree** with the terms and conditions, it may contact the awarding Program Office as noted in the award package to decline, withdraw, or request modification.

**Grantees have 45 days from the award date to accept the award. The grantee should notify the Program Office if the organization is unable to accept the award within this time. Grantees' failure to accept the award within 45 days may result in the awarding agency deobligating funds.**

Following are sample pages from GMS of the award and special conditions pages that award recipients will need to print, sign, and return to OJP or OVW to accept the award.

 Department of Justice Office of Justice Programs <OJP Program Office>		<b>Grant</b>		PAGE 1 OF 2
1. RECIPIENT NAME AND ADDRESS (Including Zip Code) <Grantee County> <Grantee Address> <City, State, Zip>		4. AWARD NUMBER: 2005-XX-XX-1234 5. PROJECT PERIOD: FROM mm/dd/yyyy TO mm/dd/yyyy BUDGET PERIOD: FROM mm/dd/yyyy TO mm/dd/yyyy 6. AWARD DATE mm/dd/yyyy		
1A. GRANTEE IRS/VENDOR NO. xxxxxxxxxx		7. ACTION Initial		8. SUPPLEMENT NUMBER
		9. PREVIOUS AWARD AMOUNT		\$ 0
3. PROJECT TITLE <Project Title>		10. AMOUNT OF THIS AWARD		\$ xxx
		11. TOTAL AWARD		\$ xxx
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		<div style="border: 1px solid black; padding: 50px; font-size: 48px; font-weight: bold;">Sample</div>		
15. METHOD OF PAYMENT PAPRS				
AGENCY APPROVAL		GRANTEE ACCEPTANCE		
16. TYPED NAME AND TITLE OF APPROVING OFFICIAL  Assistant Attorney General		18. TYPED NAME AND TITLE OF AUTHORIZED GRANTEE OFFICIAL  Chief Administrative Officer		
17. SIGNATURE OF APPROVING OFFICIAL		19. SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL		19A. DATE
AGENCY USE ONLY				
20. ACCOUNTING CLASSIFICATION CODES FISCAL FUND BUD. DIV. YEAR CODE ACT. OFC. REG. SUB. POMS AMOUNT x B xxx 00 00 00 xxx		21. VT05U00005		

OJP FORM 4000/2 (REV. 5-87) PREVIOUS EDITIONS ARE OBSOLETE.

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

 <p>Department of Justice Office of Justice Programs &lt;OJP Program Office&gt;</p>	<p><b>AWARD CONTINUATION SHEET</b></p> <p><b>Grant</b></p>	<p>PAGE 2 OF 2</p>	
PROJECT NUMBER	2005-__-__-__	AWARD DATE	mm/dd/yyyy
<p><i>SPECIAL CONDITIONS</i></p> <ol style="list-style-type: none"> <li>1. The recipient agrees to comply with the financial and administrative requirements set forth in the current edition of the Office of Justice Programs (OJP) Financial Guide.</li> <li>2. The recipient acknowledges that failure to submit an acceptable Equal Employment Opportunity Plan (if recipient is required to submit one pursuant to 28 C.F.R. Section 42.302), that is approved by the Office for Civil Rights, is a violation of its Certified Assurances and may result in suspension or termination of funding, until such time as the recipient is in compliance.</li> <li>3. The recipient agrees to comply with the organizational audit requirements of OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, as further described in the current edition of the OJP Financial Guide, Chapter 19.</li> <li>4. Recipient understands that any change in the terms, conditions, or objectives of the award without the express prior written approval of the Office of Justice Programs is prohibited.</li> <li>5. The recipient further certifies that it will not use grant funds to support or advocate the legalization or practice of prostitution or sex trafficking.</li> <li>6. The recipient agrees to cooperate with any assessments, national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within this project.</li> <li>7. The applicant budget is pending review or approval. The recipient may not obligate, expend or draw down any grant funds until the Office of the Comptroller, Office of Justice Programs has issued clearance of the application budget and budget narrative, and a Grant Adjustment Notice has been issued removing this special condition.</li> <li>8. Recipient may not obligate, expend or drawdown funds until the Office of Justice Programs (OJP) has reviewed and approved the Program Narrative portion of the application and has issued a Grant Adjustment Notice (GAN) informing the recipient of the approval.</li> <li>9. Recipient certifies that it does not promote, support, or advocate the legalization or practice of prostitution, nor will it use grant funds or program match funds to promote, support, or advocate the legalization or practice of prostitution.</li> </ol>			

Sample

**Office of the Chief Financial Officer  
Postaward Instructions**

**STEP 3 - Read the Guidelines**

There are Office of Management and Budget (OMB) Circulars and Common Rules and other important information grantees will need to know for the administration of awards. The most up-to-date versions of these documents are available through the Internet, as noted:

OMB Grants Management Circulars, <http://www.whitehouse.gov/omb/grants/index.html>

Code of Federal Regulations, <http://162.140.57.127/cgi-bin/ECFR?page=browse>

*DOJ Grants Financial Guide*, <http://ojp.gov/financialguide/DOJ/index.htm> for grants awarded in fiscal year (FY) 2015 and later.

2014 OJP *Financial Guide*, <http://www.ojp.gov/financialguide/index.htm> for grants awarded in FY 2014 and earlier.

OJP grantees with questions may contact:

**Office of Justice Programs  
Office of the Chief Financial Officer  
Customer Service Center  
1-800-458-0786 (choose option 2)  
or  
[ask.ocfo@usdoj.gov](mailto:ask.ocfo@usdoj.gov)**

OVW grantees with questions may contact:

**Office on Violence Against Women  
Grants Financial Management Division  
1-888-514-8556  
or  
[ovw.gfmd@usdoj.gov](mailto:ovw.gfmd@usdoj.gov)**

January 2017

## **OMB Circulars and Common Rules For Grant Management**

Administrative requirements for all federal award recipients are contained in governmentwide common rules. On December 26, 2013, OMB issued new guidance that provides a governmentwide framework for grants management (Federal Register, 12/26/2013). The new guidance, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 Code of Federal Regulation (CFR) Part 200), streamlines the Federal Government's administrative, cost, and audit requirements, and has been implemented by DOJ via DOJ regulation at 2 CFR Part 2800. These new requirements, as implemented by DOJ, apply to federal awards made after December 26, 2014, and the audit requirements apply to audits for fiscal years beginning on or after December 26, 2014. For federal awards made before December 26, 2014, absent an agreement otherwise in a federal award issued after that date, the requirements in place at the time of award continue to apply.

The new guidance supersedes the following OMB requirements:

- OMB Circular A-21, Cost Principles for Educational Institutions
- OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments
- OMB Circular A-102, Grants and Cooperative Agreements with State and Local Governments
- OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations
- OMB Circular A-122, Cost Principles for Nonprofit Organizations
- OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations (codified at CFR Part 66 and Part 70).

The following requirements remain in place:

- Governmentwide Debarment and Suspension (Nonprocurement) (codified at 2 CFR Part 180).
- Governmentwide Requirements for Drug-Free Workplace (Grants) (codified at 28 CFR Part 83).
- Restrictions on Lobbying (codified at 28 CFR Part 69).
- Contracts With Commercial Organizations (codified at 48 CFR 31.2).
- Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals (codified at 45 CFR 74, Appendix E).

**Office of the Chief Financial Officer  
Postaward Instructions**

**STEP 4 - Complete and Return the  
Automated Clearing House Form**

The U.S. Department of the Treasury (Treasury) uses Automated Clearing House (ACH) information to transmit payment data using electronic funds transfer to the recipient's designated financial institution.

Without a current, valid, and complete ACH form on file, payment requests for the same grant on the same day must be a total of less than \$10 million.

With a current, valid, and complete ACH form on file, payment requests for the same grant on the same day must be a total of less than \$100 million.

For questions, please contact the OCFO Customer Service Center at 1-800-458-0786 or [ask.ocfo@usdoj.gov](mailto:ask.ocfo@usdoj.gov).

The ACH form (ACH Vendor/Miscellaneous Payment Enrollment Form, SF 3881), located at <http://ojp.gov/funding/Apply/Resources/ACHVendor.pdf>, is required for:

- New grantees who have never submitted an ACH form for an OJP grant.
- Changes to banking information (for example, depositor account or bank routing number or banking institution).
- New grants that are linked to a vendor number for which there is no banking information on file.

Unless banking information has changed, grantees should not submit a new ACH form for a new grant if the grant falls under a vendor number for which there is already banking information on file.

**Note:** If submitting a new or updated ACH form, please contact the OCFO Customer Service Center at 1-800-458-0786 (option 2) to confirm banking information has been updated before proceeding with payment requests.

**If the grantee accepts** the terms and conditions specified in the award, the grantee must submit a completed ACH form, signed by a preferred financial institution. The grantee must **send the ORIGINAL** ACH form (i.e., the ACH form containing the original signature of the bank representative) via courier service (e.g., Federal Express, UPS, etc.) to:

**Office of Justice Programs  
Office of the Chief Financial Officer  
Attn: Control Desk–ACH  
810 Seventh Street, NW., Fifth Floor  
Washington, DC 20001**

**Note:** The grantee should submit the original form only. OJP will not accept electronic transmissions or copies of the original form. OJP must complete processing **the ACH form before the grantee draws down or requests funds.**

## **Office of the Chief Financial Officer Postaward Instructions**

### **STEP 5 - Access Payment Using the Grant Payment Request System (GPRS)**

Treasury electronically deposits payments to the recipient's account using banking information the recipient provides on the ACH form. Before attempting to access payment, the recipient must submit an ACH form to OJP. For ACH instructions, see step 4.

OJP and OVW require financial points of contact (FPOCs) to register in the Grants Management System (GMS) and COPS requires FPOCs to register directly in GPRS. As of June 18, 2016, OJP requires GPRS users to consolidate usernames for the same grantee organization, regardless of whether the awards are OJP, OVW, or COPS awards. See the [GPRS User Guide](http://ojp.gov/funding/Implement/Resources/GPRSUserGuide.pdf), <http://ojp.gov/funding/Implement/Resources/GPRSUserGuide.pdf>, for information in registering in GPRS and the [GPRS Job Aid](http://ojp.gov/about/pdfs/gprsjobaid.pdf), <http://ojp.gov/about/pdfs/gprsjobaid.pdf>, for information on consolidating usernames.

#### **OJP/OVW Registration Process for GPRS**

OJP and OVW grantees must be registered as FPOCs in GMS at <https://grants.ojp.usdoj.gov> before they can register as a drawdown specialist in GPRS (see step 1).

Once FPOCs are registered in GMS, grantees can then access GPRS at <https://grants.ojp.usdoj.gov/gprs>.

All grantees with accounts in GPRS will have the role of drawdown specialists. A grantee who is a GMS FPOC may request to be a GPRS drawdown specialist by accessing the GPRS Web site and selecting the "New GPRS User Registration for GMS" link. Once the registration is approved, GPRS sends an automated confirmation email to the GPOC and FPOC that the FPOC has been granted access to GPRS as a drawdown specialist. The confirmation email is sent the same day the registration request is made. Once GPRS sends the confirmation email, the drawdown specialist will be granted access to GPRS. Once GPRS grants access, the FPOC will use its GMS FPOC user identification (ID) and password to log in to GPRS.

### **COPS Registration Process for GPRS**

COPS grantees with accounts in GPRS have the role of drawdown specialists. A COPS grantee may request to be a GPRS drawdown specialist by accessing the GPRS Web site and selecting the “New GPRS User Registration for COPS” link.

Once the COPS Response Center approves registration, it sends a confirmation email to the FPOC, granting access to GPRS as a drawdown specialist. Once access is granted, the FPOC will use the user ID entered during the self-registration process and a temporary password (sent in the confirmation email) to log in to GPRS.

### **Note: Important Banking Information**

Treasury will electronically disburse all funds to the grantee’s designated financial institution for deposit into its bank account. For this reason, grantees must ensure that they complete and return the *original* ACH banking information form (entitled ACH Vendor/Miscellaneous Payment Enrollment Form). The original ACH form must bear the original signature of the authorized bank official.

OJP does not process payments during the last 4 business days of each month.

For more information about payments or GPRS, the grantee may contact the OCFO Customer Service Center at 1–800–458–0786 (choose option 2) or email [ask.ocfo@usdoj.gov](mailto:ask.ocfo@usdoj.gov).

**Office of the Chief Financial Officer  
Postaward Instructions**

**STEP 6 – Fulfill Reporting Requirements**

Grantees must meet reporting requirements during the life of the grant. Grantees may find a full explanation of these requirements in the DOJ *Grants Financial Guide*, <http://ojp.gov/financialguide/DOJ/index.htm>, and the OJP *Financial Guide*, <http://www.ojp.usdoj.gov/financialguide/index.htm>. Grantees should also check special conditions on awards for additional reporting requirements. The Grant Payment Request System (see step 5) will not permit access to funds if financial reporting is delinquent.

The following reports are required:

- Single Audit Reports
- Categorical Progress Reports
- Federal Financial Reports

## Single Audit Reports

A special condition may be included with awards that details reporting requirements for audit reports. Grantees should review and comply with that special condition. Grantees may find information and instructions on submitting single audit reports in the DOJ *Grants Financial Guide and OJP Financial Guide* under Part III, Postaward Requirements, Chapter 3.19: Audit Requirements and in OMB Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations.

Grantees should submit audit reports as follows:

- **State and Local Governments, Institutions of Higher Education, and Nonprofit Institutions.** Completed audit reports for fiscal years earlier than 2007 should be mailed to the Federal Audit Clearinghouse, Bureau of Census, 1201 East 10th Street, Jeffersonville, IN 47132. Completed audit reports for fiscal years 2008 and later should be submitted on the Federal Audit Clearinghouse's Web site at <http://harvester.census.gov/sac>. **Grantees should NOT submit audit reports to OJP unless specifically requested.**
- **Commercial Organizations and Individuals.** One copy of all audit reports should be mailed to Office of Justice Programs, Office of the Chief Financial Officer, ATTN: Control Desk, 810 Seventh Street NW., Room 5303, Washington, DC 20531.

## Categorical Assistance Progress Reports

OJP and OVW require grantees to report on the progress of the grant. Some grants may require an annual submission of progress report information. Most programs require semiannual reporting. Reporting requirements are specified in the grant solicitation and in the special conditions specified in the award. Grantees must submit Progress Reports via GMS. OJP grantees may contact the GMS Helpdesk at 1-888-549-9901 (choose option 3) or [GMS.HelpDesk@usdoj.gov](mailto:GMS.HelpDesk@usdoj.gov) and OVW grantees may contact OVW GMS Support at 1-866-655-4482 or [OVW.GMSSupport@usdoj.gov](mailto:OVW.GMSSupport@usdoj.gov) for assistance with submissions. Questions concerning progress reporting should be directed to the Program Manager for the award.

Semiannual reports are due:

**Reporting period:**  
**January 1–June 30**  
**July 1–December 31**

**Due no later than:**  
**July 30**  
**January 30**

The final Progress Report is due 90 days after the grant end date.

## **Federal Financial Reports (SF-425)**

This report (also called FFR) is used to track actual expenditures and unliquidated obligations.

OJP and OVW require grantees to file the SF-425 quarterly via GMS at <https://grants.ojp.usdoj.gov>.

COPS requires grantees to submit quarterly SF-425 reports on the COPS Web site at <http://www.cops.usdoj.gov>. For assistance accessing the system or completing the SF-425, grantees may contact the COPS Resource Center at 1-800-421-6670.

The schedule for submitting the SF-425 is as follows:

<b><u>Reporting quarter:</u></b>	<b><u>Due not later than:</u></b>
<b>January 1–March 31</b>	<b>April 30</b>
<b>April 1–June 30</b>	<b>July 30</b>
<b>July 1–September 30</b>	<b>October 30</b>
<b>October 1–December 31</b>	<b>January 30</b>

The final SF-425 is due 90 days after the grant end date.

**Filing the SF-425 online.** OJP and OVW require grantees to designate and approve at least one FPOC in GMS before they can file the SF-425. An FPOC must be registered and approved by the GPOC through GMS at <https://grants.ojp.usdoj.gov>. Instructions on assigning, registering, and approving an FPOC are available at [http://www.ojp.usdoj.gov/training/pdfs/gms\\_userguide.pdf](http://www.ojp.usdoj.gov/training/pdfs/gms_userguide.pdf)

OJP grantees may contact the GMS Helpdesk by phone at 1-888-549-9901 (choose option 3) or by email at [GMS.HelpDesk@usdoj.gov](mailto:GMS.HelpDesk@usdoj.gov) and OVW grantees may contact OVW GMS Support at 1-866-655-4482 or [OVW.GMSSupport@usdoj.gov](mailto:OVW.GMSSupport@usdoj.gov) for help in accessing or using GMS.

**Office of the Chief Financial Officer  
Postaward Instructions**

**STEP 7 – Initiate Closeout**

Within 90 days after the end date of the grant, grantees must initiate closeout of the grant in GMS.

Grantees should:

- Submit a Final Progress Report
- Submit a Final FFR
- Perform a financial reconciliation. If the reported unobligated balance of federal funds is more than draw downs, the grantee should draw down the difference. If the reported unobligated balance of federal funds is less than draw downs, the grantee must submit a check for the difference to OJP to:

DOJ/Office of Justice Programs  
Office of the Chief Financial Officer  
ATTN: Accounting Control and Reconciliation Branch  
810 Seventh Street, NW. – Fifth Floor  
Washington, DC 20531

The grantee should make the check payable to the Office of Justice Programs, and clearly mark it with the grant number and vendor number to ensure proper credit. The grantee should specify if funds are being returned to the grant or to be applied to program income. If sending funds for both, the grantee should specify what amount is for each.

Staff will review grants submitted for closeout in GMS and contact grantees as necessary to complete closeout.

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**Office of the Chief Financial Officer  
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## STEP 8 – Review Top 10 Frequently Asked Questions

### 1. How will I know that my application has been approved?

If you are the person who applied for the award or the authorized official of the organization named in the application, you will receive an email notifying you of your award. Once registration of at least one financial point of contact (FPOC) is completed in GMS, you may access the award by clicking on the “Awards” tab. For instructions on registering an FPOC, see [http://www.ojp.usdoj.gov/training/pdfs/gms\\_userguide.pdf](http://www.ojp.usdoj.gov/training/pdfs/gms_userguide.pdf).

### 2. Who do I contact for assistance in using the Grants Management System?

<b>Agency:</b>	<b>OJP</b>	<b>OVW</b>
<b>Help Desk:</b>	GMS Help Desk	OVW GMS Support
<b>Time:</b>	7 a.m. to 9 p.m. eastern standard time (EST)	8 a.m. to 4 p.m. EST
<b>Phone:</b>	1-888-549-9901 (choose option 3)	1-866-655-4482
<b>Email:</b>	<a href="mailto:GMS.HelpDesk@usdoj.gov">GMS.HelpDesk@usdoj.gov</a>	<a href="mailto:OVW.GMSSupport@usdoj.gov">OVW.GMSSupport@usdoj.gov</a>

### 3. How do I accept my award?

If you are the person who applied for the award or the authorized official of the organization named in the application, you will receive an email notifying you of your award. Once registration of at least one FPOC is completed in GMS, you may access the award by clicking on the “Awards” tab. For instructions on registering an FPOC, see [http://www.ojp.usdoj.gov/training/pdfs/gms\\_userguide.pdf](http://www.ojp.usdoj.gov/training/pdfs/gms_userguide.pdf)

Print and read the award and special conditions right away. **If you accept** the terms and conditions of the award, have your authorized recipient official **sign** a copy of the award and initial the Special Condition pages and submit both the signed agreement and initialed Special Condition pages to the OJP Control Desk or OVW.

**Note:** The signature in box 19 should be the same as the preprinted name in box 18. If the authorized recipient official has changed, do not alter the preprinted name in box 18. A grant adjustment notice (GAN) will have to be initiated in GMS notifying your Program Office of this change. Once the Program Office approves the GAN, print it out, have the new authorized

recipient official sign in box 19 and initial every page with special conditions. The documents should be submitted using one of the following methods:

<b>Agency:</b>	<b>OJP</b>	<b>OVW</b>
<b>Fax:</b>	Faxes no longer accepted for OJP award documents	202-514-7045
<b>Email:</b>	<a href="mailto:acceptance@usdoj.gov">acceptance@usdoj.gov</a>	<a href="mailto:OVW.Acceptance@usdoj.gov">OVW.Acceptance@usdoj.gov</a>

**Note:** OJP will not disburse funds unless the award is submitted correctly.

Maintain the original signed documents in the event of an audit.

**Note:** Acceptance documents for Community Oriented Policing Services (COPS) or U.S. Department of Homeland Security (DHS)/Federal Emergency Management Agency grants should not be sent to OJP or OVW. Please contact COPS at 1-800-421-6770 or DHS at 1-866-927-5646 for instructions on the return of their acceptance documents.

**If you do not accept** the terms/conditions, contact the OJP Program Office noted in the award letter immediately.

#### 4. How do I obtain payment?

Award recipients should first submit a completed original ACH form with the original signature of the bank representative via courier (Federal Express, UPS, etc.) to the following address:

Office of Justice Programs  
Office of the Chief Financial Officer  
Attn: Control Desk  
810 Seventh Street, NW., Fifth Floor  
Washington, DC 20001

**Note:** If submitting a new or updated ACH form, please contact the OCFO Customer Service Center at 1-800-458-0786 (choose option 2) to confirm banking information has been updated before proceeding with payment requests.

Once OCFO has been received and verified the ACH form, you may request funds (“draw down”) using OJP’s Grant Payment Request System (GPRS). Grantees and vendors can access GPRS at <https://grants.ojp.usdoj.gov/gprs>. Without a current, valid, and complete ACH form on file, payment requests for the same grant on the same day must be a total of less than \$10 million.

With a current, valid, and complete ACH form on file, payment requests for the same grant on the same day must be a total of less than \$100 million.

Upon successful completion of a draw down, the U.S. Department of the Treasury will deposit funds electronically into an account designated by the grantee on the ACH form.

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## 5. How can I access GPRS?

OJP and OVW grantees must register FPOCs in GMS at <https://grants.ojp.usdoj.gov> before they can successfully register drawdown specialists in GPRS. Once FPOC registration is complete, OJP and OVW grantees may then access the GPRS Web site and select the “New GPRS User Registration for GMS” link to register.

COPS grantees may request to be GPRS drawdown specialists by accessing the GPRS Web site, <https://grants.ojp.usdoj.gov/gprs/welcome>, and selecting the “New GPRS User Registration for COPS” link to register.

GPRS users are required to consolidate usernames for the same grantee organization, regardless of whether the awards are OJP, OVW, or COPS awards. See the GPRS User Guide, <http://ojp.gov/funding/Implement/Resources/GPRSUserGuide.pdf>, for details in registering in GPRS and the GPRS Job Aid, <http://ojp.gov/about/pdfs/gprsjobaid.pdf>, to consolidate usernames.

## 6. Why was my payment request denied?

Payment requests may be unsuccessful for various reasons, the most common of which are: (1) award was not accepted; (2) special conditions of the grant were not met; (3) certain reporting requirements throughout the life of the grant were not fulfilled; (4) legislation and federal grant management procedures during the life of a grant were not followed; (5) amount requested exceeded what was available; (6) financial reports (i.e. SF-425, Progress, or Audit) were not submitted by the due date; (7) the grant end date passed and an administrative closeout was initiated.

Compliance may affect the timing or the amount of the funds made available at any time.

## 7. What are my award responsibilities?

**Upon initial award:** Sign and email or fax (OVW only) the agreement and special conditions to confirm award acceptance. Complete and return the ACH form according to the instructions in the award.

Follow the instructions in the award to notify your Program Manager of your compliance with applicable special conditions.

**Reporting:** Grantees are required to submit the SF-425 30 days after the end of each quarter as follows:

<b><u>Reporting Quarter:</u></b>	<b><u>Due Not Later Than:</u></b>
<b>January 1–March 31</b>	<b>April 30</b>
<b>April 1–June 30</b>	<b>July 30</b>
<b>July 1–September 30</b>	<b>October 30</b>
<b>October 1–December 31</b>	<b>January 30</b>

Final reports are due 90 days after the grant end date.

If your organization has a match requirement (refer to Program Announcement), the match should be reported on the report.

OJP and OVW grantees are required to submit reports online via GMS at <https://grants.ojp.usdoj.gov>. An FPOC must be registered before the report can be submitted. For instructions on registering an FPOC, see [http://www.ojp.usdoj.gov/training/pdfs/gms\\_userguide.pdf](http://www.ojp.usdoj.gov/training/pdfs/gms_userguide.pdf).

COPS grantees are required to submit quarterly SF-425 reports on the COPS Web site at <http://www.cops.usdoj.gov>. For assistance accessing the system or completing the SF-425, contact the COPS Resource Center at 1–800–421–6670.

**Progress Reports** are usually due as follows or as listed in the solicitation:

<b><u>Reporting Period:</u></b>	<b><u>Due Not Later Than:</u></b>
<b>January 1–June 30</b>	<b>July 30</b>
<b>July 1–December 31</b>	<b>January 30</b>

Single **Audit Reports** may be required. A special condition is included with your award that details the reporting requirements for the audit reports. Please review that special condition.

**Funds Management:** Your organization should request funds based upon immediate disbursement/reimbursement requirements. Funds will not be paid in a lump sum, but rather disbursed over time as project costs are incurred or anticipated (with the exception of block grant programs such as the Byrne Justice Assistance Grant Program, Juvenile Accountability Block Grant Program, and State Criminal Alien Assistance Program awards, which may be drawn or are paid out in a lump sum).

Time requests to ensure that federal cash on hand is the minimum needed for disbursements/reimbursements to be made immediately or within 10 days. If the funds are not spent or disbursed within 10 days, you must return them to the awarding agency.

January 2017

## 8. How do I submit reports?

SF-425 and semiannual/annual **Progress Reports** should be filed online via GMS at:

<https://grants.ojp.usdoj.gov>

OJP grantees may contact the GMS Helpdesk by phone at 1-888-549-9901 (choose option 3) or by email at [GMS.HelpDesk@usdoj.gov](mailto:GMS.HelpDesk@usdoj.gov) and OVW grantees may contact OVW GMS Support at 1-866-655-4482 or [OVW.GMSSupport@usdoj.gov](mailto:OVW.GMSSupport@usdoj.gov) for assistance.

Submit **Audit Reports** as follows:

- State and Local Governments, Institutions of Higher Education, and Nonprofit Institutions.** Mail completed audit reports for fiscal years earlier than 2007 to the Federal Audit Clearinghouse, Bureau of Census, 1201 East 10th Street, Jeffersonville, IN 47132. Submit completed audit reports for fiscal years 2008 and later on the Federal Audit Clearinghouse’s Web site at <http://harvester.census.gov/sac>. **Do NOT submit your audit reports to OJP unless specifically requested.**
- Commercial Organizations and Individuals.** Mail one copy of all audit reports to Office of Justice Programs, Office of the Chief Financial Officer, ATTN: Control Desk, 810 Seventh Street NW., Room 5303, Washington, DC 20531.

## 9. If I have questions about my grant, whom do I contact?

### Program questions:

Contact the Program Manager identified in the award letter.

### Financial questions:

<b>Agency:</b>	<b>OJP</b>	<b>OVW</b>
<b>Help Desk:</b>	OCFO Customer Service Center	Grants Financial Management Division
<b>Time:</b>	8:30 a.m. to 6 p.m. EST	8 a.m. to 4 p.m. EST
<b>Phone:</b>	1-800-458-0786 (option 2) TDD: 202-616-3867	1-888-514-8556
<b>Email</b>	<a href="mailto:Ask.ocfo@usdoj.gov">Ask.ocfo@usdoj.gov</a>	<a href="mailto:OVW.GFMD@usdoj.gov">OVW.GFMD@usdoj.gov</a>

**10. What are the addresses and fax numbers for OCFO and OVW?**

**Office of Justice Programs**

Office of the Chief Financial Officer

Attn: Control Desk

810 Seventh Street, NW.

Washington, DC 20531 (U.S. Postal Service delivery)

*or* 20001 (overnight delivery, e.g. FedEx, UPS, etc.)

**Office on Violence Against Women**

145 N Street, NE.

Suite 10W.121

Washington, DC 20530

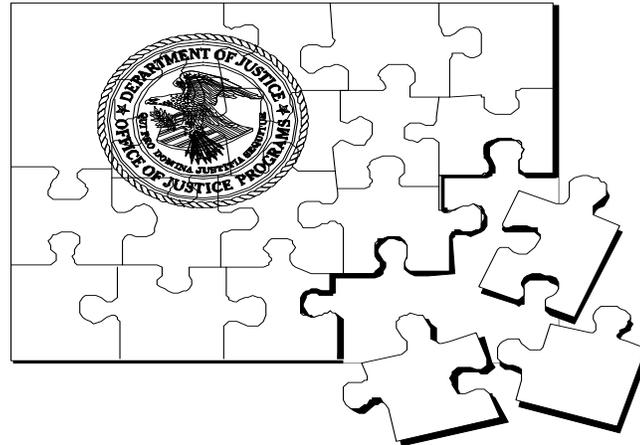
Fax: 202-514-7045

January 2017



U.S. Department of Justice  
Office of Justice Programs

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**Making the Pieces Fit**  
Assisting grant recipients in  
resolving financial questions.

**OCFO Customer Service Center**

8:30 a.m.–6 p.m. EST, Monday through Friday  
1–800–458–0786 (choose option 2)

TDD (Telecommunication Device for Deaf) 202–616–3867

OJP Web site address: <http://www.ojp.usdoj.gov>

Email: [ask.ocfo@usdoj.gov](mailto:ask.ocfo@usdoj.gov)

**OVW Grants Financial Management Division**

8 a.m.–4 p.m. EST, Monday through Friday  
1–888–514–8556

<http://www.usdoj.gov/ovw>

Email: [OVW.GFMD@usdoj.gov](mailto:OVW.GFMD@usdoj.gov)

Fax: 202–514–7045

**COPS Resource Center**

9 a.m.–5 p.m. EST, Monday through Friday  
1–800–421–6770

<http://www.cops.usdoj.gov>

Email: [askCOPSRC@usdoj.gov](mailto:askCOPSRC@usdoj.gov)

Fax: 202–616–9004

January 2017

# **EXHIBIT B**

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

THE CITY OF CHICAGO,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 17 CV 05720
	)	
JEFFERSON BEAUREGARD SESSIONS,	)	
III, Attorney General of the	)	
United States,	)	Chicago, Illinois
	)	August 15, 2017
Defendant.	)	9:46 a.m.

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE HARRY D. LEINENWEBER

APPEARANCES:

For the Plaintiff:	RILEY SAFER HOLMES & CANCELA, LLP
	BY: MR. RONALD S. SAFER
	MR. MATTHEW C. CROWL
	70 West Madison Street, Suite 2900
	Chicago, Illinois 60602
	(312) 471-8736
	rsafer@rshc-law.com
	mcrowl@rshc-law.com

WILMER CUTLER PICKERING HALE AND
DORR, LLP
BY: MR. ARI HOLTZBLATT
1875 Pennsylvania Avenue NW
Washington, DC 20006
(202) 663-6964
ari.holtzblatt@wilmerhale.com

Court Reporter:	Judith A. Walsh, CSR, RDR, CRR
	Official Court Reporter
	219 S. Dearborn Street, Room 1944
	Chicago, Illinois 60604
	(312) 702-8865
	judith_walsh@ilnd.uscourts.gov

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For the Defendant:

UNITED STATES DEPARTMENT OF JUSTICE  
BY: MR. CHAD A. READLER  
Acting Assistant Attorney General  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

MR. JOEL R. LEVIN  
Acting United States Attorney  
BY: MS. EILEEN M. MARUTZKY  
Assistant United States Attorney  
219 South Dearborn Street  
Suite 500  
Chicago, Illinois 60604  
(312) 353-5300

1 (Proceedings heard in open court:)

2 THE CLERK: 17 C 5720, City of Chicago versus  
3 Sessions.

4 MR. SAFER: Good morning, your Honor. Ron Safer,  
5 Matt Crowl, and Ari Holtzblatt on behalf of the City of  
6 Chicago.

7 MR. CROWL: Good morning, Judge.

8 MR. HOLTZBLATT: Good morning, Judge.

9 MR. READLER: Good morning, your Honor. Chad Readler  
10 from the Justice Department on behalf of the defendant.

11 MS. MARUTZKY: Eileen Marutzky on behalf of  
12 defendants.

13 THE COURT: All right. There's a motion for a  
14 preliminary injunction. You need a -- is it your intention to  
15 present evidence, or is it going to be on paper?

16 MR. SAFER: I think largely on paper, your Honor. I  
17 don't -- we haven't considered it, but I don't think that  
18 there is a factual dispute. We've asked the Court to take  
19 judicial notice of the vast majority of the facts, and I don't  
20 anticipate that there's any factual dispute.

21 THE COURT: I mean, it sounds to me like there's  
22 really -- it's a question of law concerning what has happened  
23 and what is about to happen. The question -- I have a trial  
24 starting next week which may go three weeks, so it's my  
25 understanding from the Attorney General that there -- your

1 date of September 5 is not a cutoff date and there is  
2 additional time.

3 MR. SAFER: That is the position that they've taken  
4 in the papers, your Honor, but I don't really think that bears  
5 analysis because the City's position or the --

6 THE COURT: If they agree that it's not going to  
7 happen, I mean, it's the same as a stipulation. I mean, it's  
8 the same as a TRO almost.

9 MR. SAFER: I would say -- I would say if the  
10 Department -- what the Department, in essence, has said is,  
11 "Regardless of what we told you, regardless of what the  
12 statute says, we will not refuse a grant," or put different --  
13 put affirmatively, the Congressionally mandated grant will be  
14 awarded or the award letter will issue irrespective of the  
15 lack of certification and the lack of any of these conditions  
16 that the Attorney General has asserted, then we would agree.

17 THE COURT: Well, I think what -- as I understand  
18 what they're saying, if they lose the case, they won't raise  
19 the September 5 deadline, whatever it is, they'll raise the  
20 September 25th or whatever it is they said. And if they -- if  
21 you win the case, then it's irrelevant, right?

22 MR. SAFER: Correct -- well, the grant -- the grant  
23 of the money is statutorily required. There's only -- there's  
24 a formula, and you submit your -- the basis for the formula,  
25 the money's distributed. So and that is what happens. Then

1 there is -- so that is the award. And there is an award  
2 letter that announces that the City has received or will  
3 receive those funds.

4 And these requirements that appear for the first time  
5 with the application, the government is now saying, "We will  
6 not apply what the application says. We will apply those  
7 conditions only at the time of award in order for the City to  
8 receive those funds."

9 If that is correct, that is, that the money will be  
10 awarded to the City, then I think the exigency goes down  
11 substantially. There is still exigency on the part of the  
12 City, and we still need to address this quickly because the  
13 budget is being formed. The City needs to know whether it has  
14 that money or whether it will be forced to abandon its  
15 longstanding policy of cooperation with immigrant community  
16 and law enforcement.

17 THE COURT: Let me see the trial thing.

18 I can't read your writing on here, the week of the  
19 18th, Tuesday. What is -- okay.

20 I would be available -- you're talking like one day,  
21 is that what you're talking about?

22 MR. SAFER: I believe so, your Honor.

23 THE COURT: On Monday or Thursday of the week of the  
24 11th, it would be the 11th or the 14th of September. Does  
25 that work?

1 MR. SAFER: Yes. Your Honor, if -- if we get the  
2 representation from the Department that --

3 THE COURT: Let me ask, in your papers, you say that  
4 September 5th is not a drop-dead date, that it's actually  
5 later in September. Is that correct, sir?

6 MR. READLER: That's correct, your Honor. Thank you.

7 THE COURT: So in other words, if nothing is done on  
8 the 5th because they have not been able to come before me,  
9 then there's an assurance that they will not be denied the --  
10 I mean, if they win the case, let's say, they will not --  
11 well, let me put it another way. That's not really -- but you  
12 would not use that as a reason to deny them the funds, the  
13 fact that it wasn't done by the 5th and it was done later in  
14 the month of September. Is that right, sir?

15 MR. READLER: I think in principle, it is, your  
16 Honor. Under our grant program, the application is due  
17 September 5th, but there's no binding commitment that's placed  
18 upon the City just by the application. It's by receipt of the  
19 award which would happen around September 30th, and then the  
20 City has 45 days whether to agree to it, whether to agree to  
21 the conditions.

22 So at that point, there would be a ripe dispute. In  
23 other words, the parties would know on September 30th what  
24 exactly are the requirements that the Department is putting on  
25 these grants, and then the City will know whether they want to

1 challenge those or not, but certainly anything before  
2 September 30 is a bit premature because, as we all  
3 acknowledge, we don't exactly know what the conditions will be.

4 MR. SAFER: We haven't acknowledged that, your Honor.  
5 The conditions are set forth very clearly in the application,  
6 and it -- and the idea that the application has none of these  
7 considerations for the condition --

8 THE COURT: Well, let me see. If they file their  
9 application, they would be filing without prejudice to remove  
10 those conditions.

11 MR. SAFER: Well, so put another way, your Honor, we  
12 would file an application with the caveat that we are not  
13 agreeing to these conditions.

14 THE COURT: Right. And that would not -- I mean,  
15 obviously, if the Attorney General wins the case, then it's  
16 kind of irrelevant. If they lose the case, we didn't want it  
17 to be that they would -- the Attorney General loses the case  
18 that you couldn't then say, well, you didn't do this by  
19 September 5.

20 MR. READLER: I think that's right, your Honor. I  
21 mean, every other city in the country will be filing an  
22 application by September 5th, and every city is treated the  
23 same. In other words, those are not binding commitments  
24 because there's not an actual offer, you know, acceptance of  
25 the grant until the end of September, and that's where the

1 express conditions are laid out.

2           So my recommendation to the City would be to  
3 obviously apply, and we can then dispute what actual  
4 obligations will be imposed upon the grant condition. I  
5 actually think that issue is much more ripe after September  
6 30th so we actually know what conditions -- for example, my  
7 friends on the other side have raised some concerns about what  
8 the conditions might be, but one of their concerns about  
9 having to hold people longer than their sentence, that may not  
10 be an actual condition.

11           In other words, the government might ask for 48  
12 hours' notice before someone is released, and some of their  
13 papers have posed the issue as if we're asking the City to  
14 hold someone 48 hours longer than they actually would be held.  
15 So in other words, there are a lot of disputes that are really  
16 not ripe in the sense that we don't have actual concrete  
17 conditions that are being imposed upon the City.

18           So we're happy to come to court in September. That  
19 would be fine. We really would like the two weeks so we can  
20 file our response to the brief because this is an important  
21 case, and we'd like to fully vet those issues, but I leave it  
22 to the Court's discretion when the best time to schedule a  
23 hearing on the issue.

24           THE COURT: Well, the best time for me is in that  
25 week of the 11th because it's between two trials.

1           MR. SAFER: So your Honor, just so that the Court is  
2 clear -- and I don't think we've gotten an express yes or  
3 no -- the application says individual JAG awards will include  
4 two new express conditions that, with respect to the program  
5 and activity that would be funded, are designed to ensure  
6 that, etcetera, one, to permit personnel of the U.S.  
7 Department of Homeland Security to access any correctional or  
8 detention facility in order to meet with an alien and inquire  
9 as to his or her rights to be or remain in the United States  
10 and, two, provide at least 48 hours' advance notice to DHS  
11 regarding the scheduled release date and time of an alien and  
12 requires that when DHS requests such notice in order to take  
13 custody of the alien pursuant to the Immigration Nationality  
14 Act. The government has said that they strongly encourage  
15 prospective applicants to review information on posted legal  
16 requirements prior, bolded, to submitting an application.

17           So the City is going to submit an application that  
18 says, here's our application. We are not agreeing, we're not  
19 taking the position yet, but we're not agreeing to these  
20 conditions. I think in order to avoid having this decision by  
21 September 5th, the government has to say the grant will go  
22 forward, the award will be made irrespective of those caveats.

23           THE COURT: If I find them unconstitutional or  
24 illegal.

25           MR. SAFER: Well --

1           THE COURT: I mean, obviously, it depends. You know,  
2 then you -- what I think I hear them saying is that if you win  
3 the case, you will get the grant, assuming all things being  
4 equal, without those two conditions.

5           MR. SAFER: I think what they're saying is the award  
6 will be made -- I'm hoping that what I'm hearing them saying  
7 is the award will be made irrespective of those caveats.  
8 Whether or not the City actually receives the money will  
9 depend on whether or not it complies with these conditions  
10 which will be the subject of the --

11           THE COURT: Right.

12           MR. SAFER: -- the Court's --

13           THE COURT: If I waive them as unconstitutional, then  
14 you wouldn't get the money and the City -- I mean, the  
15 government would not say, we won't give you the money because  
16 you didn't accept these conditions on September 5th and they  
17 won't give -- the fact that you -- well, that seems to me --  
18 in other words, if they win the case, they'll get the money  
19 assuming everything else is being equal. Obviously, if they  
20 don't comply with all other conditions, but if they win the  
21 case, then they will get the money not subject to those  
22 conditions that they're contesting.

23           MR. READLER: I think that's right, your Honor. I  
24 understand my friends don't want to waive their challenge, and  
25 we don't want to waive our right to impose them.

1 THE COURT: Right, but what it will do is give me  
2 more time to schedule the case, give you more time to brief  
3 the matter. And, you know, it's not an easy case, obviously.  
4 It took 46 pages to put it down in a complaint and 25, I  
5 think, in the brief, which doesn't surprise me.

6 All right. We'll set it for -- which day do you  
7 want, the 11th or the --

8 MR. SAFER: The 12th actually works better.

9 THE COURT: The 12th, I -- well, let's see.

10 THE CLERK: We can probably do it.

11 THE COURT: We can do it in the afternoon on the 12th.

12 MR. SAFER: The 11th is fine, your Honor. We'll do  
13 it on the 11th.

14 THE COURT: The 11th at 10:00 a.m.

15 THE CLERK: The 11th?

16 THE COURT: Yes, September 11th.

17 MR. READLER: And with respect to the briefing  
18 schedule, then will we have until the 24th to file our brief,  
19 the two weeks?

20 THE COURT: Right. You would get, yes, the 24th, and  
21 then they get seven days to reply.

22 THE CLERK: So August 24th for the response and the  
23 31st for the reply.

24 MR. SAFER: And the amici briefs would be due on the  
25 24th as well, your Honor?

1 THE COURT: The what?

2 MR. SAFER: The 31st, I'm sorry.

3 THE COURT: The 31st. Right.

4 MR. SAFER: Thank you.

5 THE COURT: How many amici will there be?

6 MR. SAFER: It's undetermined at the moment, your  
7 Honor, but we'll encourage them to be pithy if they file.

8 THE COURT: All right.

9 MR. SAFER: Thank you, your Honor.

10 (Proceedings adjourned at 10:01 a.m.)

11 \* \* \* \* \*

12 C E R T I F I C A T E

13 I, Judith A. Walsh, do hereby certify that the  
14 foregoing is a complete, true, and accurate transcript of the  
15 proceedings had in the above-entitled case before the  
16 Honorable HARRY D. LEINENWEBER, one of the judges of said  
17 Court, at Chicago, Illinois, on August 15, 2017.

18

19 /s/ Judith A. Walsh, CSR, RDR, F/CRR August 17, 2017

20 Official Court Reporter

21 United States District Court

22 Northern District of Illinois

23 Eastern Division

24

25

# **EXHIBIT C**



THE  
CONSTITUTION  
OF  
THE UNITED STATES CONFERENCE  
OF MAYORS

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ARTICLE I  
NAME AND PURPOSE

**SECTION 1.** The purpose of this organization, which shall be known as the United States Conference of Mayors, shall be the general improvement of every branch of city government by the following means: First, the perpetuation of the Conference as an agency for the cooperation of Mayors, Managers, and other duly designated representatives of cities, in the practical study of all municipal questions; second, the holding of annual and other meetings for the discussion of current city problems; third, the furnishing of information to municipal officials in order to enable them to better perform their functions; and fourth, the safeguarding of the interests, rights and privileges of municipalities as they may be affected by legislation.

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ARTICLE II  
MEMBERSHIP

**SECTION 1. *Population.*** Municipal corporations of 30,000 or over in population are eligible for membership, and representation of member municipal corporations in the work of the Conference shall be through the Mayor, whether elected by the people or the Council. The Executive Committee is authorized to invite the participation of the capital city of any state which does not otherwise qualify for membership.

**SECTION 2. *Changes.*** The population basis for membership may be changed by a majority vote of the Executive Committee and Advisory Board.

**SECTION 3. *Fees.*** The membership and service fees in the Conference shall be fixed on the basis of population by the Executive Committee. Membership and service fees, where appropriate, shall be automatically adjusted following each national census of population.

### ARTICLE III OFFICERS

**SECTION 1. *Executive Committee.*** The officers of the Conference shall be the Executive Committee, composed of a President, Vice President, Second Vice President, Past Presidents and thirteen Trustees. They shall be elected by the membership at the annual meeting and hold office until their successors are elected and qualified.

**SECTION 2. *Advisory Board.*** The annual meeting shall elect an Advisory Board of not more than twenty-seven members, which Board shall function in an advisory capacity to the Executive Committee on all matters of policy and program.

**SECTION 3. *Vacancies.*** A vacancy in the office of President shall be filled by the Vice President. A vacancy in the office of Vice President, Second Vice President, or Trustee member may be filled by a majority vote of the Executive Committee on an interim basis until the next annual meeting. Vacancies in the offices of President, Vice President, Second Vice President, Trustees, or member of the Advisory Board shall be deemed to exist if the incumbent no longer holds the official position of Mayor or formally resigned his position with the Conference.

**SECTION 4. *Reinstatement.*** When a Mayor who was previously a Trustee or member of the Advisory Board leaves office and subsequently returns to office, she/ he shall be reinstated to her/ his prior position. Such reinstatement shall be in addition to the thirteen Trustees or twenty-seven Advisory Board members and such position shall be eliminated when the Mayor leaves that position.

**SECTION 5. *Powers and Duties of the Executive Committee.*** When the members are not assembled for the annual meeting, the Executive Committee shall conduct the affairs of the organization.

- 1) The Executive Committee may adopt new policy between annual meetings so long as the following conditions are met:
  - a) The committee finds that an emergency condition exists which requires that action be taken as soon as possible;
  - b) The committee has made a reasonable effort to notify the membership and solicit comment;
  - c) The new policy is not inconsistent with any existing policies of the Conference; and
  - d) The new policy is adopted by no less than a majority of the members of the Executive Committee.
- 2) The Executive Committee may by a majority vote refer any matter to the membership of the Conference for an official expression of opinion.
- 3) The Executive Committee may make appointments of an honorary character.

**SECTION 6. *Powers and Duties of the President.***

- 1) The President shall preside over all meetings of the Conference and shall be the official spokesperson of the Conference. The President may designate the Vice President or another Mayor to act on his or her behalf.
- 2) The President shall appoint standing committees and designate the chairperson, provided that the establishment of such committees shall be proposed by the President and approved by a majority vote of the Executive Committee.
- 3) The President may also create and appoint special committees which shall report directly to the President at a time designated. The President shall report to the membership at the annual meeting on the progress and recommendations of each and every special committee.

**SECTION 7. *The Executive Director.*** The Executive Director, who shall be appointed by the Executive Committee, holds office at the pleasure of the Executive Committee and Advisory Board. The Executive Director shall transact the necessary routine and financial business of the organization as may be determined by the Executive Committee and Advisory Board. The Executive Director may not under any circumstances conduct the affairs of the Conference so as to incur debts beyond the Conference assets and revenues. The Executive Director shall refrain from that overt partisan political activity which might diminish the effectiveness of the Executive Director in serving the Conference.

**SECTION 8. *The Nominating Committee.*** The Nominating Committee shall recommend to the membership at the annual meeting the names of Mayors to fill the positions of Officers, Trustees and Advisory Board members. The Nominating Committee is appointed by the President and serves for one year. The prime consideration of the Nominating Committee shall be service and ability. In addition, the Nominating Committee shall consider race, sex, political affiliation, city size and region. In an effort to make the leadership of the Conference reasonably reflective of its membership, the Nominating Committee shall seek to maintain a balance of these characteristics in its recommendations for nominations for officers of the Conference.

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## **ARTICLE IV MEETINGS AND VOTING**

**SECTION 1. *Annual Meetings.*** The time, place and program of the annual meetings shall be determined by the Executive Committee. The Executive Committee shall meet at least once a year in addition to the annual meeting. Other special meetings of the Conference or of the Committee may be called by the Executive Committee after reasonable notice to the member cities.

**SECTION 2. *Voting.*** In all transactions requiring the official decision of the organization, each member city shall be entitled to one vote. A proxy is permitted only if the mayor designates in writing a representative from his or her city government to vote on behalf of the member city at the plenary business session of the annual meeting.

**SECTION 3. *Mail Ballot.*** When during the course of an annual meeting the sense of the meeting cannot be clearly determined, the question shall subsequently be submitted to the entire Conference membership by mail ballot.

**SECTION 4. *Resolutions.*** All resolutions presented to the members for consideration shall be first approved by the Resolutions Committee or must be approved for consideration by two-thirds vote of the member cities at the annual meeting. All resolutions presented by member cities for consideration at the annual meeting that call for the expenditure of public funds shall on the face of that resolution denote where possible the projected cost to the taxpayers of that resolution if passed.

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## **ARTICLE V AMENDMENTS**

**SECTION 1.** This Constitution may be amended or repealed by a referendum vote of two-thirds of the member cities by mail ballot.

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## **ARTICLE VI DISSOLUTION**

**SECTION 1.** Upon the dissolution or liquidation of the Corporation, and after payment or provision for payment of all liabilities of the Corporation, any and all remaining assets of the Corporation shall be distributed to Cities that are then Members of the Corporation.

THE UNITED STATES CONFERENCE OF MAYORS  
1620 Eye Street, N.W.  
Washington, D.C. 20006

# **EXHIBIT D**

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

THE CITY OF CHICAGO, )  
 )  
Plaintiff, )  
 )  
v. ) No. 17 CV 05720  
 )  
JEFFERSON BEAUREGARD SESSIONS, )  
III, Attorney General of the )  
United States, ) Chicago, Illinois  
 ) October 11, 2017  
Defendant. ) 9:45 a.m.

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE HARRY D. LEINENWEBER

APPEARANCES:  
For the Plaintiff: RILEY SAFER HOLMES & CANCELA, LLP  
BY: MR. RONALD S. SAFER  
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1 (Proceedings heard in open court:)

2 THE CLERK: 17 C 5720, City of Chicago versus  
3 Sessions.

4 MR. SAFER: Good morning, your Honor. Ron Safer and  
5 Laura Kleinman on behalf of the City of Chicago.

6 MR. HAUSSMANN: Good morning, your Honor. Brian  
7 Haussmann on behalf of the United States Conference of Mayors.

8 MR. WALSH: And Thomas Walsh, your Honor, for the  
9 United States. I'm standing in for my colleagues.

10 THE COURT: All right. This is a motion to  
11 intervene. What's the position of the --

12 MR. WALSH: Judge, we'd like 16 days from today,  
13 October 27th, to respond.

14 THE COURT: Any problem with that?

15 MR. HAUSSMANN: Your Honor, if I could, the motion  
16 has been pending for a couple of weeks, and I think there's a  
17 couple points that are important to -- well, it's been planned  
18 for a couple of weeks and announced for a couple of weeks.  
19 They've had it since Friday.

20 There's a couple points, I think, that are important  
21 to consider when setting the schedule. You know, we've told  
22 the Attorney General that we'd like them to file something  
23 quickly, perhaps within about seven days. And the reason for  
24 that is because the reason the Conference is intervening in  
25 this case is because the Attorney General has now challenged

1 Chicago's standing to pursue nationwide injunctive relief,  
2 that is, release beyond its borders. The Conference has a  
3 significant interest in allowing its member cities to rely on  
4 this Court's nationwide injunction.

5 THE COURT: Let me just -- without deciding the  
6 motion, if I deny the motion to reconsider the nationwide  
7 aspect of the injunction, does that eliminate the need for  
8 the -- what is it -- the Conference of Mayors to enter the  
9 case?

10 MR. HAUSSMANN: I don't think so, your Honor. We  
11 certainly think that that motion to stay should be denied, but  
12 I think the concern is that it will now go to the Seventh  
13 Circuit where a further stay motion will likely be briefed,  
14 and there's the possibility that the Court will then review  
15 this Court's order granting nationwide relief. We, frankly,  
16 would like to be there with the City such that if there is any  
17 concern regarding the standing issue the government has  
18 raised, the Conference, you know, can assert its rights and  
19 protect its rights.

20 Now, I -- as a practical matter, we understand that  
21 we may lag behind the City a little bit. I know your Honor  
22 wants to rule promptly on the stay motion, but we'd like to  
23 set an expeditious schedule. And there's another practicality  
24 at issue here, and that is because we haven't yet been  
25 permitted to intervene, we haven't been permitted to seek the

1 same injunctive relief that was granted to the City. We'd  
2 like to do that as well, and I presume the government may want  
3 to respond to that motion as well.

4 So I don't want to get ahead of ourselves, but I'd  
5 like to set, you know, as expeditious a schedule as possible.

6 MR. WALSH: Judge, the lawyers that are working on it  
7 are extremely busy. They've actually got another PI hearing  
8 set for October 26th in the Philadelphia case. We don't ask  
9 for this date lightly. It's the best -- the timeline probably  
10 could get done efficiently. We don't see a high level of  
11 expediency here.

12 The Conference of Mayors waited 60 days from the time  
13 this case was filed. They waited 21 days from the time you  
14 entered your preliminary injunction. It's sort of like  
15 somebody waited until the dust starts settling and hopping on  
16 the wagon they think is winning and then saying, "Could you  
17 guys hurry up."

18 MR. HAUSSMANN: You --

19 MR. SAFER: Your Honor, that's just not correct.  
20 This -- this motion to intervene was a direct response to the  
21 challenge that was made for the first time in the motion to  
22 stay which was a challenge to standing which had never been  
23 made before. Now, the Conference, of course, was an amicus,  
24 but for the first time in their brief in the motion to stay  
25 that was filed on September 26th, they raised the standing

1 issue.

2 This motion to intervene was purely in response to  
3 that, not in response to anything else. And so that's just  
4 not accurate.

5 MR. HAUSSMANN: And if I may, your Honor, I did  
6 appear two days later and announce the Conference's intention  
7 to intervene.

8 THE COURT: What is -- 16 days is kind of an odd --  
9 it's two weeks plus two days. Is there -- the extra two days,  
10 is that a --

11 MR. WALSH: There's a PI hearing on October 26th in  
12 Philadelphia. We'd like to have at least until the next day  
13 to file a response here.

14 THE COURT: What is the status of the appeal?

15 MR. SAFER: They filed a notice of appeal on the  
16 Chicago aspect of the --

17 THE COURT: I know, but is that -- has there been any  
18 reaction from upstairs?

19 MR. SAFER: None, your Honor.

20 MR. WALSH: Judge, I think the next thing that would  
21 happen would be your ruling on the motion to stay. A party  
22 can't go to the court of appeals and ask for a stay without  
23 first asking the district court for a stay.

24 MR. HAUSSMANN: And then my concern, your Honor, is  
25 as a practical matter, what will then happen is the Attorney

1 General, notwithstanding how busy its lawyers are, is then  
2 going to file an emergency stay motion in the Seventh Circuit.  
3 In that emergency stay motion, the Attorney General will argue  
4 that the City lacks standing to pursue nationwide injunctive  
5 relief.

6 I'm sure it will be an emergency at that point in  
7 time, although it's not now. And the problem with that from  
8 the Conference's perspective is that it represents about 1400  
9 cities around the country that wish to rely on this Court's  
10 relief. And if there's any possibility -- we don't think it's  
11 a likelihood and we don't think it would be a correct ruling,  
12 but if there's a possibility that the Seventh Circuit were to  
13 revoke -- reverse the nationwide scope, there would be a gap  
14 in the nationwide injunction at a minimum, and perhaps the  
15 city's many members, hundreds of members, would have to file  
16 their own lawsuits to pursue the relief that has been  
17 granted --

18 THE COURT: Are you seeking to intervene in the  
19 Philadelphia lawsuit, too?

20 MR. HAUSSMANN: We have not sought to intervene in  
21 the Philadelphia lawsuit, your Honor.

22 THE COURT: Is that a mirror to this case?

23 MR. WALSH: Yes.

24 MR. SAFER: Yes, your Honor, but -- as far as I know,  
25 although obviously, the result in this case may moot that

1 case.

2 THE COURT: All right. I'll give them the 16 days.  
3 Do you need to reply?

4 MR. HAUSSMANN: Your Honor, what I'd like -- I'm not  
5 sure. What I'd like to do is set a short date for a reply,  
6 and perhaps I can alert the Court --

7 THE COURT: Seven days?

8 MR. HAUSSMANN: Sure.

9 THE CLERK: October 27th and November 3.

10 THE COURT: All right. Thank you.

11 MR. SAFER: Now, it's our position, your Honor, that  
12 the motion to stay need not -- need not wait for that.

13 THE COURT: No, I understand that.

14 MR. SAFER: Yes. Thank you.

15 THE COURT: There's a pending motion that's been  
16 fully briefed.

17 MR. HAUSSMANN: Your Honor, may I ask one other  
18 question? Would it be permissible for the Conference -- so  
19 that we don't delay things any further, would it be  
20 permissible during this briefing period on the motion to stay  
21 for us to file our injunction motion? It will look much like  
22 the City's motion with a couple of minor differences, perhaps,  
23 and it will seek the same relief this Court has already  
24 granted.

25 I say that just so that, you know, if the Court

1 grants the motion to intervene, I'd like there not to be  
2 further delay on our part at least in briefing the preliminary  
3 injunction motion.

4 MR. WALSH: Judge, I don't think there's anything  
5 that stops somebody who is filing a case from filing a PI  
6 motion at the same time they file their case.

7 THE COURT: Yes, I think that's correct. You can  
8 file anything you want.

9 MR. HAUSSMANN: I just -- we're not a party yet, your  
10 Honor. I just want to be careful that we're crossing our  
11 T's --

12 THE COURT: All right.

13 MR. HAUSSMANN: -- and dotting our I's.

14 THE COURT: All right. We'll take it --

15 MR. WALSH: Thank you, your Honor.

16 MR. SAFER: Thank you, your Honor.

17 THE COURT: Thank you.

18 (Proceedings adjourned at 9:55 a.m.)  
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C E R T I F I C A T E

I, Judith A. Walsh, do hereby certify that the foregoing is a complete, true, and accurate transcript of the proceedings had in the above-entitled case before the Honorable HARRY D. LEINENWEBER, one of the judges of said Court, at Chicago, Illinois, on October 11, 2017.

*/s/ Judith A. Walsh, CSR, RDR, F/CRR*                      October 24, 2017

Official Court Reporter  
United States District Court  
Northern District of Illinois  
Eastern Division