UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

THE CITY OF CHICAGO,
Plaintiff,

v.

JEFFERSON BEAUREGARD SESSIONS III,
Defendant.

Civil Case No. 1:17-cv-5720
Honorable Harry D. Leinenweber

BRIEF OF THE CALIFORNIA STATE LEGISLATURE AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

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INTEREST OF *AMICUS CURIAE*

The California State Legislature is a leader in advancing laws that promote the health and safety of all the State's residents and local communities as a whole. California furthers these efforts by ensuring that all residents are able to cooperate with state and local law enforcement without concern of immigration consequences, including as witnesses, victims willing to come forward, and participants in community criminal justice efforts. California's approach also preserves state taxpayers' money for use in state and local law enforcement, rather than divert it to federal civil immigration investigations and related enforcement.

The Attorney General of the United States, however, the defendant here, has repeatedly spoken in vague and undefined terms of so-called "sanctuary" jurisdictions and California's policies, as if they are inconsistent with federal law. That is not true. California's law enforcement laws and policies comply with the statutory immigration scheme Congress enacted, and constitute a quintessential exercise of state sovereignty and responsibility.

The Attorney General is unilaterally attempting to change federal law and evade the limited scope of the statutes enacted by Congress, through his own imposition of conditions on federal funding—actions that are in excess of his statutory and constitutional authority and that are contrary to principles of federalism. He is mandating that state and local law enforcement participate in federal civil immigration efforts—practices that undermine the trust of immigrant communities—as a condition of those jurisdictions receiving federal funding that Congress allocated to support local criminal justice programs.

The California State Legislature has a particular interest in this litigation and the entry of a preliminary injunction against these immigration conditions on federal funding. In the past, the Legislature has passed laws designed to establish trust between state and local law enforcement and immigrant communities. *See* Trust Act, Cal. Gov't Code §§ 7282-7282.5; Truth Act, Cal.

Gov't Code §§ 7283 *et seq*. Currently, the Legislature has under consideration Senate Bill 54, which would further address these issues. These various legislative provisions were drafted explicitly to comply with the federal statutory framework for immigration enforcement enacted by Congress. But the new immigration conditions imposed unilaterally by the defendant Attorney General could call into question both current state statutes and provisions of pending SB 54. That the Attorney General's immigration conditions challenged here would undermine a State's legislative prerogatives, and potentially interfere with an ongoing state legislative process, starkly illustrates how far the defendant has exceeded his statutory and constitutional authority.

INTRODUCTION

The Attorney General has imposed conditions on receipt of federal funding under the Byrne JAG program that require States to operate their local jails and statewide prison systems in a manner that facilitates federal efforts to investigate potential violations of civil immigration laws. The Attorney General acted in excess of both his statutory and constitutional authority in imposing such conditions.

Congress did not enact any provision in the Byrne JAG program related to federal civil immigration enforcement. Congress expressly authorized Byrne JAG funding for "state" or "local" "criminal justice" programs under 42 U.S.C. § 3751(a)(1); specified eight types of such local criminal justice programs in § 3751(a)(1)(A)-(H), for which Byrne JAG funds may be granted, none of which relate to federal immigration law; limited the federal program to a formula grant structure in § 3755(a) with which the challenged immigration conditions conflict; and in 42 U.S.C. § 3789d(a), specifically prohibited the type of interpretation adopted by the defendant that exercises federal direction, supervision, and control over operation of state and local jails and prisons. The overreach by the Attorney General to establish federal civil

immigration enforcement as a primary purpose of such federal funding threatens the separation of powers between the Executive and Congress, and poses unique federalism concerns, as the California Legislature's experience illustrates. These concerns are manifest when a single federal agency would interfere with a state legislature's ability to legislate, consistent with duly enacted federal law, to address critical health and safety issues in the State.

ARGUMENT

I. The Attorney General Lacks Constitutional And Statutory Authority To Condition Byrne JAG Funding Awards To States And Localities On Their Participation In Federal Civil Immigration Efforts.

A. The Executive Branch May Not Exercise Congress's Spending Clause Power Without An Express, Specific Delegation, Especially In An Attempt To Condition Receipt Of Federal Funds On Changes In State Law.

The Constitution vests the spending power in Congress—not the Executive Branch. U.S. Const. art. I, § 8, cl. 1. This separation of powers principle is especially significant in the circumstances of federal funding for States and localities, where federalism concerns are paramount. It is "critical to ensur[e] that Spending Clause legislation does not undermine the status of the States as independent sovereigns in our federal system." *Nat'l Fed. of Indep. Bus. v. Sebelius*, 567 U.S. 519, 577 (2012) (controlling op. of Roberts, C.J.). Otherwise, the power to condition federal funds devolves into impermissible commandeering and regulation.

When federalism principles are at stake, the Court demands a "clear statement" from Congress, which "assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved." *Gregory v. Ashcroft*, 501 U.S. 452, 461 (1991). The *en banc* Fourth Circuit has explained that the requirement of a clear statement applies when an agency attempts to attach conditions on a State or local jurisdiction's receipt of a federal grant. *See Virginia Dep't of Educ. v. Riley*, 106 F.3d 559 (4th Cir. 1997) (en banc) (adopting dissenting panel opinion of Luttig, J.), *superseded by statute*. The Fourth Circuit refused to defer to an

agency's broad interpretation of a statutory funding condition based on the agency's understanding of the "implicit" meaning of the statute. *Id.* at 566-68. The court required "unambiguous statutory expression of congressional intent to condition the States' receipt of federal funds in a particular manner." *Id.* at 566. The Seventh Circuit agrees with that approach. *See Doe v. Bd. of Educ. of Oak Park & River Forest High Sch. Dist. 200*, 115 F.3d 1273, 1278 (7th Cir. 1997).

The momentous conditions on the receipt of federal funds imposed by the Attorney General here, treating the conditions—in the words of the President's threat to the State of California—as a "weapon,"[1] have not been authorized by Congress, unambiguously or otherwise. These actions are even more problematic than the agency action in *Riley*, where Congress at least had spoken to the subject-matter of the condition. Here Congress has not enacted any provision addressing federal civil immigration matters as part of the Byrne JAG statutory scheme, as we explain below. Certainly nothing in the statute demonstrates that Congress "in fact faced, and intended to bring into issue, the critical matters" that defendant attempts to sweep into the Byrne JAG program. *Gregory*, 501 U.S. at 461.

B. Congress Did Not Authorize The Attorney General To Require States And Localities To Operate Local Jails And Prisons In Support Of Federal Civil Immigration Enforcement As A Condition On Receipt Of Byrne JAG Funds.

The statutory text and structure of the Byrne JAG program make clear that the Attorney General lacks the authority he claims to support his federal civil immigration conditions.

[1] Harriet Taylor, *Trump to Fox News: I may defund California as 'a weapon' to fight illegal immigration*," CNBC.com (Feb. 5, 2017), https://www.cnbc.com/2017/02/05/trump-threatens-to-defund-california-in-fight-against-sanctuary-cities.html.

1. The Agency's Immigration Conditions Impermissibly Divert Federal Funds Away From The Local Criminal Justice Programs For Which Congress Expressly Authorized Funding In 42 U.S.C. § 3751(a)(1).

The fundamental conflict between the Byrne JAG program that Congress enacted and the authority that the Attorney General attempted to exercise is apparent on the face of the recent Solicitations for grant applications under the program. The Solicitation states that "[c]ompliance with" the agency's new federal immigration conditions "will be an authorized and priority purpose of the award." Solicitation at 30. Moreover, it states that "reasonable costs (to the extent not reimbursed under any other federal program) of developing and putting into place statutes, rules, regulations, policies, or practices as required by these conditions, and to honor any duly authorized requests from DHS that is encompassed by these conditions, will be allowable costs under the award." *Id.*; *see also* Opp. to PI, Ex. 1 (Hanson Decl., Ex. A, p. 18) (including similar provision in award document already issued to an FY 2017 applicant). That designation of federal civil immigration efforts as a "priority purpose" of Byrne JAG awards, and identification of compliance costs to be "[a]llowable costs," means that the funds Congress appropriated for local criminal justice programs may now be used by States and localities to support federal civil immigration enforcement efforts. *See* 2 C.F.R. Part 200, Subpt E.

That is a remarkable and unlawful arrogation of power by an agency to redirect federal funds away from the programs for which Congress explicitly appropriated them. Congress was clear when it enacted the Byrne JAG program to fund grants "for use by the State or unit of local government to provide additional personnel, equipment, supplies, contractual support, training, technical assistance, and information systems for criminal justice." 42 U.S.C. § 3751(a)(1) (to be recodified as of September 1, 2017, at 34 U.S.C. §§ 10152 et seq.; *see* Statutory Addendum (listing new codification sections)). Indeed, Congress enacted a list of eight types of programs and specified that, from the funds Congress was making available under the Byrne JAG program,

"the Attorney General may" make grants for state and local criminal justice programs, "including for any one or more" of: "[l]aw enforcement programs;" "[p]rosecution and court programs;" "[p]revention and education programs;" "[c]orrections and community corrections programs;" "[d]rug treatment and enforcement programs;" "[p]lanning, evaluation, and technology improvement programs;" "[c]rime victim and witness programs (other than compensation);" and "[m]ental health programs and related law enforcement and corrections programs, including behavioral programs and crisis intervention teams." *Id.* § 3751(a)(1)(A)-(H).

The Attorney General is replacing that duly enacted law with his unilateral choice as to the purpose and use of Byrne JAG funding. Participation in federal civil immigration investigations is plainly not one of the local criminal justice programs Congress authorized for funding. In essence, the agency's immigration "conditions" are not conditions at all, but a non-statutory "purpose" grafted onto the Byrne JAG program. That is not a lawful implementation of the program Congress enacted; indeed, it appears to authorize an unappropriated expenditure of federal funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341(a).

2. The Agency's Immigration Conditions Are Incompatible With The Formula Grant Structure Congress Enacted In 42 U.S.C. § 3755(a), And The Application Requirements In 42 U.S.C. § 3752(a).

When Congress created the Byrne JAG program, it crafted a detailed formula for funding distribution based on objective factors, including population size and rates of violent crime, while also guaranteeing a minimum allocation to all eligible jurisdictions. *See* 42 U.S.C. § 3755(a). To be eligible, a jurisdiction is required to operate one of the eight types of "criminal justice" programs Congress enumerated. *Supra* pp. 5-6. And upon applying, a jurisdiction is required to make two certifications and three assurances, covering matters such as compliance with applicable law, the accuracy of the information in the application, and record-keeping and reporting requirements. *See* 42 U.S.C. § 3752(a)(1)-(5).

Allowing DOJ to deny funding to States and localities that qualify under Congress's criteria and comply with Congress's required certifications and assurances would conflict with that statutory scheme. Especially revealing on this point is the record-keeping "assurance," which empowers the Attorney General, within "reason[]," to "require" the applicant to "maintain and report . . . data, records, and information (programmatic and financial)." *Id.* § 3752(a)(4). If the Attorney General had the sweeping authority to adopt substantive policy conditions as he now claims, Congress would have had no reason to explicitly provide the Attorney General with the much more modest authority to impose record-keeping requirements.

3. The Agency's Immigration Conditions Violate Congress's Instruction In 42 U.S.C. § 3789d(a) Barring Federal Direction, Supervision, Or Control Over State And Local Law Enforcement.

Even if Congress had conferred on the Attorney General the authority to impose substantive new conditions on Byrne JAG grants, the immigration conditions challenged here would still be foreclosed. Congress enacted a rule of construction governing certain Department of Justice grants and programs, including the Byrne JAG program, that prohibit these immigration conditions. Section 3789d(a) states: "Nothing in this chapter or any other Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over any police force or any other criminal justice agency of any State or any political subdivision thereof." 42 U.S.C. § 3789d(a).

The immigration conditions imposed by the Attorney General do exactly what § 3789d(a) prohibits. By mandating that States and localities operate their local jails and prison systems in a manner to support federal investigations and interviews regarding potential violations of civil immigration laws, or risk the loss of criminal justice funding, the federal authorities are exercising just that type of direction, supervision, and control over the state and local criminal justice agencies. This mandate takes no account of particular local circumstances, facilities,

workforce, resources, or security factors, to name just a few of the local prerogatives that § 3789d(a) protects. Section 3789d(a) evidences Congress's determination to prevent the Department from using the Byrne JAG program to override the judgment and policies of state and local law enforcement in the very manner now attempted by the Attorney General.

4. The Experience Of The California Legislature—Abiding By Duly Enacted Federal Laws Only To Face Unilateral Funding Conditions From A Federal Agency—Illustrates The Threat To Federalism.

The intrusion by the Attorney General's immigration conditions into the operation of local jails and state prisons undermines principles of federalism that underlie § 3789d(a), as well as the Tenth Amendment. California's experience illustrates this statutory and constitutional flaw in the agency's attempt to displace the purpose and uses of Congress's Byrne JAG program.

The California State Legislature exercises its quintessential role and responsibility protected by the Constitution to determine how best to protect the health and safety of its residents, and has done so cognizant of, and consistent with, Congress's actions in the area of immigration law. California has strengthened the trust between its immigrant communities and state and local agencies, while remaining compliant with federal law. A federal agency now is attempting to override that framework and upset the federal-state relationship. That attempt by the agency to single-handedly thwart existing and future state legislation involving operation of local jails and state prisons cannot be reconciled with constitutional values of federalism.

For example, in 2013, the California Legislature enacted the Transparency and Responsibility Using State Tools (TRUST) Act, Cal. Gov't Code §§ 7282-7282.5, which limits the ability of state law enforcement to prolong detention of individuals at federal request through so-called "immigration detainers." The TRUST Act is consistent with federal law and is a permissible limitation by the State on how it uses its resources, allowing officers to focus on detention of individuals who have been convicted of a defined range of serious crimes.

In 2016, the California Legislature enacted the Transparent Review of Unjust Transfers and Holds (TRUTH) Act, Cal. Gov't Code §§ 7283 et seq., which addresses use of state facilities for federal immigration interviews of detainees. It requires that detention facilities provide advance written notice to detainees of "the purpose of the interview, that the interview is voluntary, and that he or she may decline to be interviewed or may choose to be interviewed only with his or her attorney present." *Id.* § 7283.1(a). Again, this state law is consistent with federal statutes and is a permissible limitation by the State on how it uses its resources.

Currently, the California Legislature has under consideration Senate Bill 54 ("SB 54"), known as the California Values Act, first introduced on December 5, 2016, by Senate President pro Tempore De León. SB 54 would direct California law enforcement agencies that, in general, they are not to use their limited resources to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, s*ee* SB 54 § 1 (proposed Cal. Gov't Code § 7284.6(a)(1)), with various exceptions, including for judicial warrants and other specific circumstances. *See, e.g., id*. (proposed Cal. Gov't Code § 7284.6(a)(1)(G)). SB 54 specifies that the general limitation on use of state and local resources includes, among other things, not "[r]esponding to requests for notification by providing release dates" unless "that information is available to the public," and not "[g]iving federal immigration authorities access to interview an individual in agency or department custody, except pursuant to a judicial warrant, and in accordance with [the TRUTH Act]." *Id.* (proposed Cal. Gov't Code § 7284.6(a)(1)(C) and (G)). In so doing, the Legislature has ensured that there would be compliance with duly enacted federal law, including 8 U.S.C. § 1373. SB 54 § 1 (proposed Cal. Gov't Code § 7284.6(f)).[2]

[2] Because current and pending California legislation explicitly provides for compliance with 8 U.S.C. § 1373, this brief does not challenge the Attorney General's "Section 1373" condition, but also does not concede the validity of that statutory provision or the condition.

The immigration conditions imposed by the Attorney General could call into question both current state statutes and provisions of pending SB 54 and force a conflict between California local jails and state prisons abiding by the provisions regarding immigration enforcement's access and notification, and receiving federal criminal justice funds. But our constitutional structure of federalism vests the California Legislature with authority to adopt legislation without the Attorney General's interference. The people of California and their representatives are permitted to conclude, as SB 54 sets out, that "[a] relationship of trust between California's immigrant community and state and local agencies is central to the public safety of the people of California," and that entangling state and local agencies in immigration enforcement threatens that trust. SB 54 § 1 (proposed Cal. Gov't Code § 7284.2(b), (c)).

The Attorney General's immigration conditions on the Byrne JAG program are just his latest attempt to interfere with California's legislative prerogatives. The Attorney General has criticized California and written to the California Supreme Court asserting that the State had enacted statutes "designed to specifically prohibit or hinder ICE from enforcing immigration law by prohibiting communication with ICE, and denying requests by ICE officers and agents to enter prisons and jails to make arrests." Letter from Hon. J. Sessions and Hon. J. Kelly to Hon. T. Cantil-Sakauye at 2 (Mar. 29, 2017) (Attachment A). Counsel for the Legislature sought a dialogue with the Attorney General regarding his claims, requesting that the Attorney General identify the laws he viewed as interfering with immigration enforcement, and providing an analysis of the constitutionality of SB 54. *See* Letter from E. Holder to Hon. J. Sessions & Exhibits 2, 3 (Jun. 19, 2017) (Attachment B). The Legislature did not receive a substantive response.

Consistent with the views expressed by the California Legislature to the Attorney General, a federal district court preliminarily enjoined a central provision of an Executive Order that purported to impose immigration-related mandates on recipients of federal funding. *Cty. of Santa Clara v. Trump*, 2017 WL 1459081 (N.D. Cal. Apr. 25, 2017). Refusing to be stymied by the limits of Congress's statutory authorization or the dictates of federal judicial authority, however, the Attorney General imposed immigration conditions on Byrne JAG funding as another end-run around the constitutional and statutory framework as it exists.

C. The Narrow Provision Of 42 U.S.C. § 3712(a)(6), On Which The Attorney General Relies, Does Not Support The Expansive Authority He Claims.

The sole statutory basis the Attorney General has invoked in his attempt to defeat Congress's carefully structured Byrne JAG program is 42 U.S.C. § 3712(a)(6). That provision, under the heading of "Duties and functions of Assistant Attorney General" of the Office of Justice Programs (OJP), states that the Assistant Attorney General of OJP "shall . . . exercise such other powers and functions as may be vested in the Assistant Attorney General pursuant to this chapter or by delegation of the Attorney General, including placing special conditions on all grants, and determining priority purposes for formula grants." *Id.* Chicago notes that § 3712 is written as a narrow authority to delegate power from the Attorney General to the Assistant Attorney General of OJP—not as an expansive creation of new authority. Chicago Mem. at 13.

Even if § 3712 did newly authorize the imposition of "special conditions," the statutory framework demonstrates the narrowness of any such authority. Section 3712 applies to "all grants" under OJP, and Congress has authorized different conditions on different OJP grant programs. For example, Congress authorized the Attorney General to impose "reasonable conditions" on awards under the Violence Against Women Act, with a proviso limiting them "to ensur[ing] that the States meet statutory, regulatory, and other program requirements." 42

U.S.C. § 3796gg-1(e)(3). Congress provided more limited authority vis-à-vis Byrne grants, providing only that the Attorney General may specify the "form" of applications, *id.* § 3752(a), and impose reasonable record-keeping requirements, *id.* § 3752(a)(4). These distinctions from grant program to grant program make no sense if § 3712 already conferred authority to impose any condition on any grant.

If Congress intended to permit the agency to impose any substantive condition on any grant, it also could have used the word "condition" without the modifier "special." When Congress added this language in 2006, "special condition" had a particular regulatory meaning, referring to conditions imposed on high-risk grantees, such as "additional project monitoring" and "requiring additional, more detailed financial reports." 28 C.F.R. § 66.12 (effective through Dec. 25, 2014). And even if Congress meant to expand that contemporaneous regulatory definition, the term is not boundless. At most, it could refer to conditions on the administration of an award or the appropriate use of specific grant funds, as evidenced by various conditions OJP imposes requiring a recipient to "collect and maintain data that measure the performance and effectiveness of activities under the award," to comply with nondiscrimination laws in the administration of the award, and to report duplicative funding, fraud, waste or abuse in the award implementation. Opp. to PI, Ex. 1 (Hanson Decl., Ex. A, pp. 8-10).

Finally, to interpret § 3712 as a blank check from Congress, as the Attorney General's position would require, lacks a logical stopping point. If the agency can withhold criminal justice funding provided by Congress when a State refuses to operate its jails and prisons to provide immigration enforcement access to and notice about certain detainees, the agency would seemingly have authority to demand changes to any state or local criminal justice law, from bond requirements to capital punishment, to comport with the agency's current policy views.

Congress does not "hide elephants in mouseholes," *Whitman v. Am. Trucking Ass'n*, 531 U.S. 457, 468 (2001), and when it "wishes to assign to an agency decisions of vast . . . 'political significance,'" it speaks clearly, *Util. Air Regulatory Grp. v. EPA*, 134 S. Ct. 2427, 2444 (2014). Congress did not hide, in an innocuous grant administration provision, a tool for the Attorney General to extract from States and localities sweeping legal concessions to participate in federal civil immigration efforts as a condition of receiving funding for local criminal justice programs.

II. The Immigration Conditions Imposed By The Attorney General Do Not Comply With The Spending Clause Requirements Of Relatedness And Adequate Notice.

When Congress conditions federal funding to States and local governments on the recipients' compliance with various prerequisites, Congress must adhere to particular requirements of the Spending Clause. The immigration conditions imposed by the Attorney General fail at least two such requirements: the conditions are not sufficiently related to the purposes of the spending program, and do not provide adequate notice to the recipients.[3]

A. The Agency's Immigration Conditions Are Not Germane To Congress's Authorized Purpose For The Byrne JAG Program.

Congress appropriates Byrne JAG funds "for use *by the State or unit of local government* to provide additional personnel, equipment, supplies, contractual support, training, technical assistance, and information systems for *criminal* justice." 42 U.S.C. § 3751(a)(1) (emphasis added). Congress further specified eight types of local criminal justice programs for which the "Attorney General may, in accordance with the formula" established by statute, make Byrne JAG funding awards. *See id.* § 3751(a)(1)(A)-(H) and *supra* p. 6 (quoting statutory list).

[3] *Amicus* does not address the requirements that conditions not induce unconstitutional acts and not be coercive, without conceding that these requirements are met.

The immigration conditions that the Attorney General placed on Byrne JAG funding recipients relate to something else entirely. They require custodial officials to facilitate interviews and investigations concerning federal civil immigration enforcement. In defense of this condition, the Attorney General isolates Congress's use of the term "criminal justice," and links it to *federal* "criminal justice priorities related to enforcement of criminal immigration statutes." DOJ Br. 18. But enforcement of federal immigration statutes is not plausibly related to Congress's express purpose of providing resources "for use by the State or unit of local government" in its *own* "criminal justice" programs. 42 U.S.C. § 3751(a)(1). Moreover, the Attorney General disregards the fact that his immigration conditions relate to violations of *civil* immigration law, *i.e.*, "individuals' right to be or remain in the United States." Opp. to PI, Ex. 1 (Hanson Decl., Ex. A, p. 18). It is well-settled that "unlawful presence in the country is not, without more, a crime." *United States v. Meza-Rodriguez*, 798 F.3d 664, 673 (7th Cir. 2015).

Congress well understood the complexities of involving state and local officers in the highly specialized area of federal immigration law, under which a host of statutory provisions can form the basis for removal, subject to a maze of possible grounds for cancelling or withholding removal, adjusting status, or according asylum. Congress required that a State or locality that *wishes* to have its local law enforcement officers perform the investigation, apprehension, or detention functions of a federal immigration officer must enter into a written agreement with the federal government that "shall contain," *inter alia*, "a written certification" of adequate training of the particular officers regarding enforcement of federal immigration laws. 8 U.S.C. § 1357(g)(2). Congress required that such officers operate subject to the "direction and supervision" by the Attorney General, and be treated as federal officers for immunity purposes. *Id.* § 1357(g)(3), (8). That elaborate mechanism would be unnecessary if Congress viewed

federal immigration investigations as inherent to state and local criminal justice, as the Attorney General now claims.

B. The Agency's Immigration Conditions Are Not Sufficiently Clear To Provide Grant Recipients Adequate Notice.

In response to legal challenge, the Attorney General revised his immigration conditions, but they still contain unconstitutional ambiguities. First, the revised conditions direct States to have in place statutes, rules, or practices to ensure that federal agents are given "access" to any state or local correctional facility in order to "meet with individuals who are (or are believed by such agents to be) aliens and to inquire as to such individuals' right to be or remain in the United States." Opp. to PI, Ex. 1 (Hanson Decl., Ex. A, p. 18). But they do not identify any means for accounting for state or local law, or other relevant circumstances, such as facilities, workforce, resources, or security factors, and whether access must be accorded irrespective of such concerns. Significantly, the Legislature cannot determine whether, in the Attorney General's view, it would constitute a denial of access for a state or local jail or prison to comply with the state requirement of the TRUTH Act that detainees be provided written notice of "the purpose of the interview, that the interview is voluntary, and that he or she may decline to be interviewed or may choose to be interviewed only with his or her attorney present." Cal. Gov't Code § 7283.1(a).

Second, the revised conditions direct States to have in place statutes, rules, or practices designed to ensure that upon written request, DHS will receive advance notice of an alien's scheduled release date and time, "as early as practicable." Opp. to PI, Ex. 1 (Hanson Decl., Ex. A, p. 18). But there is no specificity as to what is meant by a DHS "written request," what type of documentation will provide notice, or what showing DHS will make to demonstrate that the recipient of the notice is authorized to turn the detainee over to DHS as a lawful custodian.

Dated: August 31, 2017

Respectfully submitted,

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STATUTORY ADDENDUM

For ease of reference, set forth below is a list of the sections of the Byrne JAG program statute that we cite as they are currently located in Title 42 of the United States Code, along with the corresponding new sections where the provisions can be found as of September 1, 2017, pursuant to the reorganization of Title 34 by the Office of Law Revision Counsel that will move those provisions from Title 42:

Current section of Title 42 of the United States Code	Corresponding section of Title 34 of the United States Code as of September 1, 2017
3712	10102
3751	10152
3752	10153
3755	10156
3789d	10228
3796gg-1	10446

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that he caused a copy of the foregoing document to be filed and served via the Court's CM/ECF system on all counsel of record registered to receive such service.

/s/ John C. Gekas