



CITY OF NEWBURGH
COUNCIL MEETING AGENDA
SESION GENERAL DEL CONSEJAL
September 18, 2017
7:00 PM

Mayor/Alcaldesa

1. Pledge of Allegiance/Juramento a la Alianza

City Clerk:/Secretaria de la Ciudad

2. Roll Call / Lista de Asistencia

Communications/Comunicaciones

Presentations/Presentaciones

Comments from the public regarding agenda and general matters of City
Business/Comentarios del público con respecto a la agenda y sobre asuntos generales
de la Ciudad.

Comments from the Council regarding the agenda/Comentarios del Consejo con
respecto a la agenda

City Manager's Report/ Informe del Gerente de la Ciudad

Old Business: / Asuntos Pendientes

New Business: / Nuevos Negocios

3. COPS FY 2017 Grant Application

Additional certification required for the City's COPS FY 2017 Grant
Application in connection with Resolution No. 71-2017 (A Resolution
declaring the City of Newburgh a Fair and Welcoming City).

Final Comments from the City Council/ Comentarios Finales del Ayuntamiento:

Adjournment/ Aplazamiento:

The City of Newburgh

Office of the Corporation Counsel

City Hall – 83 Broadway
Newburgh, New York 12550

Michelle Kelson
Corporation Counsel

Tel. (845) 569-7335
Fax. (845) 569-7338

Jeremy Kaufman
Assistant Corporation Counsel

MEMORANDUM

TO: Michael G. Ciaravino, City Manager
Lt. Aaron Weaver, Lieutenant in Charge/Acting Police Chief
Kathryn Mack, Comptroller
Helen Reilly, Grants Administrator

FROM: Michelle Kelson, Corporation Counsel

RE: US Department of Justice -COPS Office FY 2017 Grant Application
Certification of Illegal Immigration Cooperation

DATE: September 13, 2017

An opinion of counsel was requested to address whether the City Manager and the Lieutenant-in-Charge of the City of Newburgh Police Department can complete the Certification of Illegal Immigration Cooperation requested by the U.S. Department of Justice, Office of Community Oriented Policing Services in connection with the City's 2017 COPS grant application.

The cover letter accompanying the Certification of Illegal Immigration Cooperation states that the COPS office may give additional consideration to state, local or tribal applicants that cooperate with federal law enforcement to address illegal immigration. In order to receive the additional consideration, the certification must be signed by the chief executive officer and chief law enforcement executive officer within the jurisdiction and returned by 5:00 pm EDT on Tuesday, September 19, 2017. A copy of the U.S. Department of Justice, Office of Community Oriented Policing Services cover letter and Certification of Illegal Immigration Cooperation are attached.

Paragraph 1 of the certification is a statement of the certifiers' authority to make the certification on behalf of the City of Newburgh, as the applicant. Resolution No. 189-2017 authorizes the City Manager to apply for the grant and complete the application forms as required, including the proposed certification form.

Paragraphs 2 and 3 of the certification are statements that the grant applicant has implemented or will implement policies, procedures and/or practices that ensure Department of Homeland Security ("DHS") personnel have access to the City's correctional or detention facilities to meet

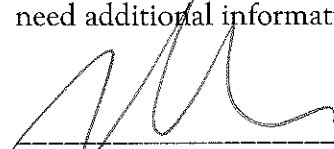
with an alien or individual believed to be an alien and ask about the alien's right to be or remain in the United States and that ensure that the City's correctional or detention facilities provide advance notice as early as practicable to DHS regarding the scheduled release date of an alien in custody when DHS requests such notice in order to take custody of the alien but does not require holding an alien beyond his or her scheduled time of release.

The City Council identified itself a "fair and welcoming city" by adopting Resolution No. 71-2017 of March 13, 2017. A copy of Resolution No. 71-2017 is attached. In Resolution No. 71-2017, the City Council declared its support for the establishment and communication of a clear policy that local police and government agents will not enforce federal civil immigration law nor help facilitate Immigration and Customs Enforcement ("ICE") deportations, except where legally required to do so. In relevant part, Resolution No. 71-2017 provided that the City and its law enforcement agents and employees will not allow ICE access to City facilities, property, equipment or databases without a judicial warrant. ICE is a division of the Department of Homeland Security.

Resolution No. 71-2017 expressly states that, "the City and its law enforcement agents and employees will not . . . allow ICE access to City facilities, property, equipment or databases without a judicial warrant." This portion of Resolution No. 71-2017 directly contradicts Certification of Illegal Immigration Cooperation paragraph 2 requiring that the applicant and/or its governing body implement "rules, regulations, policies, and/or practices that ensure that U.S. Department of Homeland Security ("DHS") personnel have access to any of the governing body's correctional or detention facilities in order to meet with an alien (or individual believed to be an alien) and inquire as to his or her right to be or to remain in the United States." Absent a change in the Council's position on this particular access issue, neither the City Manager nor the Lieutenant-in-Charge of the Police Department can sign the COPS grant application certification as it is presented without contravening the express policy statement of the City Council as stated in Resolution No. 71-2017.

Completing the certification will provide the City with some undefined and unquantified additional consideration of its 2017 COPS grant application. It does not appear that the City's grant application will be disqualified from consideration if it is unable or unwilling to return the signed certification of cooperation as requested.

Please review and do not hesitate to contact the Law Department if you have more questions or need additional information. Thank you for your attention to this matter.



MICHELLE KELSON
Corporation Counsel

MK/dt
Attachment

Reilly, Helen

From: Office of Community Policing Services (COPS)
<copsdonotreply@service.govdelivery.com>
Sent: Thursday, September 07, 2017 4:01 PM
To: Reilly, Helen
Subject: RE: COPS Office Grant Application: New Opportunity for Additional Consideration
Attachments: COPS+Certification+of+Illegal+Immigration+Cooperation.pdf



U.S. DEPARTMENT OF JUSTICE
OFFICE OF COMMUNITY ORIENTED POLICING SERVICES
145 N Street, NE, Washington, D.C. 20530

COPS

September 7, 2017

RE: COPS Office Grant Application: New Opportunity for Additional Consideration

Dear COPS Office FY 2017 Grant Applicant:

Thank you for your agency's application for COPS Office funding this fiscal year. The COPS Office is currently reviewing all applications and looks forward to making award decisions in the near future.

As the FY 2017 COPS Office application materials stated, the COPS Office may give additional consideration to state, local, or tribal applicants that cooperate with federal law enforcement to address illegal immigration. Your agency may receive this additional consideration by completing the enclosed Certification and returning it to the COPS Office by 5 p.m. EDT on Tuesday, September 19, 2017.

For agencies that are currently preparing for or conducting hurricane recovery efforts: your deadline for submitting the Certification will be by 5 p.m. EDT on Friday, September 29, 2017. We recognize that your agencies are facing significant challenges at this time and hope that this extended deadline may assist in offering you this Certification opportunity without compromising your emergency efforts.

Both the Government Executive (highest ranking official within your jurisdiction – e.g., mayor, city administrator, county executive, or equivalent) and Law Enforcement Executive (highest ranking law enforcement official within your jurisdiction – e.g., chief of police, sheriff, or equivalent) must sign the enclosed Certification and submit it by the deadline to receive this additional consideration. If your agency chooses to complete the Certification, please print the blank Certification, fill out and sign the form, scan the completed Certification and send the file to the COPS Office via email at copsofficecertifications@usdoj.gov.

Please note that by offering this opportunity for additional consideration, we anticipate making award announcements for most COPS Office programs after September 30, 2017. We remain committed to finishing application reviews and announcing this year's award recipients as quickly as possible.

Certification of Illegal Immigration Cooperation

On behalf of the applicant entity named below, I certify under penalty of perjury to the Office of Community Oriented Policing Services, U.S. Department of Justice, that all of the following is true and correct:

- (1) As the Law Enforcement Executive or Government Executive for the applicant entity named below, I have the authority to make this certification on behalf of the applicant entity (that is, the entity applying directly to the Office of Community Oriented Policing Services) and its governing body (i.e., city, county, or state).
- (2) The applicant entity and/or its governing body has implemented or, before drawing down grant funds if awarded, will implement rules, regulations, policies, and/or practices that ensure that U.S. Department of Homeland Security ("DHS") personnel have access to any of the governing body's correctional or detention facilities in order to meet with an alien (or an individual believed to be an alien) and inquire as to his or her right to be or to remain in the United States.
- (3) The applicant entity and/or its governing body has implemented or, before drawing down grant funds if awarded, will implement rules, regulations, policies, and/or practices that ensure that any of the governing body's correctional and detention facilities provide advance notice as early as practicable (at least 48 hours, where possible) to DHS regarding the scheduled release date and time of an alien in the jurisdiction's custody when DHS requests such notice in order to take custody of the alien. This certification does not require holding an alien beyond his or her scheduled time of release.

I acknowledge that a false statement in this certification, or in the application that it supports, may be the subject of criminal prosecution (including under 18 U.S.C. §§ 1001 and/or 1621, and/or 42 U.S.C. § 3795), of administrative action, and/or of civil action in court. I also acknowledge that Office of Community Oriented Policing Services awards, including certifications provided in connection with such awards, are subject to review by the Office of Community Oriented Policing Services and/or by the Department of Justice's Office of the Inspector General.

City of Newburgh

Name of Applicant Entity

Signature of Law Enforcement Executive

Signature of Government Executive

Lieutenant in Command Aaron Weaver
Printed Title and Name of Law Enforcement Executive

City Manager Michael Ciaravino
Printed Title and Name of Government Executive

Date Signed

Date Signed

RESOLUTION NO.: 71 - 2017

OF

MARCH 13, 2017

**A RESOLUTION DECLARING THE CITY OF NEWBURGH
A FAIR AND WELCOMING CITY**

WHEREAS, the City of Newburgh values its ethnic, racial, linguistic, religious and socio-economic diversity. Our diversity is a source of our municipality's strength and the City of Newburgh City Council is committed to ensuring that all our residents can live and pursue their livelihoods in peace and prosperity; and

WHEREAS, since the 17th Century, the City of Newburgh has long embraced refugees fleeing persecution and violence from the Palatines to the Freedman to new waves of immigrants; and

WHEREAS, City of Newburgh residents, like many Americans, are deeply concerned about how the new national administration will impact their lives and families, whether they will be forced to leave this country, and whether rights and protections afforded to them will suddenly be taken away; and

WHEREAS, when local law enforcement voluntarily cooperates with or works on behalf of U.S. Immigration and Customs Enforcement (ICE) to facilitate civil immigration deportations, significant gaps in trust and cooperation grow between immigrant communities and the police. Some of these practices could expose the City to liability for violations of individuals' Constitutional rights; and

WHEREAS, undue collaboration related to non-criminal deportation and detention between local law enforcement and ICE will make immigrants less likely to report crimes, act as witnesses in criminal investigations and prosecutions, and provide intelligence to law enforcement. The cooperation of the City's immigrant communities is essential to prevent and solve crimes and maintain public order, safety and security in the entire City. Community policing depends on trust with every community member and facilitating deportations will harm our efforts at community policing; and

WHEREAS, a growing number of municipalities around the country are resisting threats against privacy and liberty by taking meaningful steps to ensure that communities are safe, and that all residents' rights are respected so that their municipality may continue to thrive; and

WHEREAS, the City of Newburgh Police Department has long held to the practice that it does not inquire into a person's immigration status; and

WHEREAS, due to the City's limited resources, the clear need to foster the trust of and cooperation from the public, including members of vulnerable communities; and to effectuate

the City's goals, the City Council urges the City administration to clarify its role in protecting all city residents' privacy and rights;

NOW, THEREFORE, BE IT RESOLVED THAT, the City of Newburgh City Council supports the establishment and communication of a clear policy that local police and government agents will not enforce federal civil immigration law nor help facilitate ICE deportations, except where legally required to do so. To this end, the City and its law enforcement agents and employees will not enter into any contracts, agreements or arrangements, including "287(g) agreements" as provided by 8 U.S.C. § 1357(g) or Intergovernmental Service Agreements with the federal government that deputize local law enforcement officers to act as immigration agents or use local facilities to house immigrants in deportation proceedings; participate in joint operations with ICE, including, but not limited to setting up traffic stops for purposes of civil immigration enforcement or assisting in raids; stop, arrest or detain people based on perceived or actual immigration status or belief the person has committed an immigration offense; arrest, detain or transfer individuals based on warrantless immigration detainers or administrative warrants; or allow ICE access to City facilities, property, equipment or databases without a judicial warrant; and

BE IT FURTHER RESOLVED THAT, City of Newburgh City Council is committed to working with the City's administration on strong anti-discrimination policies to protect vulnerable communities. Ensuring that all are treated fairly and without discrimination or profiling based on actual or perceived national origin, immigration status, race, ethnicity, language proficiency, religion, sexual orientation, gender identity, disability, housing status, financial status, marital status, status as a victim of domestic violence, criminal history, or status as a veteran is a priority for our community. Such policies should include a prohibition on City agents and employees conditioning services on immigration status, except where required under applicable federal or state law; strict policies prohibiting City agents and employees from coercing individuals or threatening to report them or their family members to ICE or take other immigration-related action against them or their family members; and a strong policy making clear that where presentation of a state driver's license is accepted as adequate evidence of identity, presentation of a photo identity document issued by the person's nation of origin, such as a driver's license, passport, or consulate-issued document, shall be accepted and shall not subject the person to a higher level of scrutiny or different treatment. City employees should not inquire into individuals' immigration status except where required by state or federal law; and

BE IT FURTHER RESOLVED THAT, the City of Newburgh City Council is committed to work with the City's administration on strong privacy protections limiting the extent to which city agents and employees are permitted to maintain and share confidential personal information, including but not limited to personal contact information, information about national origin, race, ethnicity, language proficiency, religion, sexual orientation, gender identity, disability, housing status, financial status, marital status, status as a victim of domestic violence, criminal history, release date from incarceration or confinement in a jail, or status as a veteran; except where otherwise required by state or federal law or regulation or directive or court order; and

BE IT FURTHER RESOLVED THAT, the City of Newburgh City Council encourages the adoption of clear and transparent protocols for the certification of U-Visas for

undocumented immigrant community members who have been victims of a serious crime and have cooperated in the investigation of the crime; and

BE IT FURTHER RESOLVED THAT, the City of Newburgh City Council encourages the municipality to report on its public facing website the number of times the municipality was asked to participate in any civil immigration enforcement operations, did participate, the number of detainer requests lodged and the number of U visa requests made, among other data annually; and

BE IT FURTHER RESOLVED THAT, the City of Newburgh City Council is committed to publicly and vigorously opposing any government registry based on race, gender, sexual orientation, religion, ethnicity or national origin; and

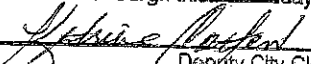
BE IT FURTHER RESOLVED THAT, the City of Newburgh City Council urges the city to commit to support vital resources for immigrant communities, including establishing protocols and policies to take reasonable steps to develop and implement agency-specific language assistance plans regarding Limited English Proficient (LEP) residents; and

BE IT FURTHER RESOLVED THAT, the City of Newburgh City Council is committed to maintaining community stakeholder engagement around implementation of policies that preserve and protect our diverse and inclusive community, and will serve as a resource for immigrant community members with questions, comments, or concerns about safety or local government's role in defending vulnerable communities; and

BE IT FURTHER RESOLVED THAT, We are Newburgh. We were born multicultural!

I, Katrina Cotten, Deputy City Clerk of the City of Newburgh hereby certify that I have compared the foregoing with the original resolution adopted by the Council of the City of Newburgh at a regular meeting held 3/13/17 and that it is a true and correct copy of such original.

Witness my hand and seal of the City of Newburgh this 14th day of March 17


Deputy City Clerk

RESOLUTION NO.: 71 - 2017

OF

MARCH 13, 2017

**A RESOLUTION DECLARING THE CITY OF NEWBURGH
A FAIR AND WELCOMING CITY**

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BE IT FURTHER RESOLVED THAT, We are Newburgh. We were born multicultural!

I, Karina Cotten, Deputy City Clerk of the City of Newburgh,
hereby certify that I have compared the foregoing with the
original resolution adopted by the Council of the City of
Newburgh at a regular meeting held 3/13/17
and that it is a true and correct copy of such original.
Witness my hand and seal of the City of
Newburgh this 14th day of March, 2017
Karina Cotten
Deputy City Clerk



Federal judge blocks Trump from denying funds to sanctuary cities

BY BRANDON CARTER · 09/15/17 04:36 PM EDT

18,744 SHARES

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PLUS ONE

Just In...

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HEALTHCARE — 3M 19S AGO

Home builder confidence slips after hurricanes

FINANCE — 3M 33S AGO

Moore laments racial division between 'reds and yellows'

CAMPAIGN — 10M 47S AGO

PTSD may have stopped Salinger, but it shouldn't haunt today's vets

OPINION — 11M 35S AGO

Trump, Netanyahu talk Middle East peace at UN meeting

MEDIA — 11M 50S AGO

Driverless Uber in Pittsburgh involved in crash

TRANSPORTATION — 22M 8S AGO

Take Turkey's Kurdish group off the US terror list for good

OPINION — 34M 12S AGO

Clinton won't rule out questioning legitimacy of election

ADMINISTRATION — 37M 32S AGO

[VIEW ALL](#)



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A federal judge has blocked the Trump administration's rules requiring so-called sanctuary cities to help enforce federal immigration laws in order to receive funding.

U.S. District Judge Harry Leinenweber issued a nationwide preliminary injunction against the Department of Justice (DOJ) on Friday after Attorney General Jeff Sessions announced new rules governing DOJ law enforcement grants, [The Chicago Tribune](#) reports.

The city of Chicago [sued](#) the Trump administration last month over the DOJ's threat to withhold those grants from "sanctuary cities," which are cities that refuse to help federal authorities enforce immigration laws.

Leinenweber said in his 41-page ruling that Chicago had shown a "likelihood of success" in its arguments that Sessions exceeded his authority in July when he announced that the DOJ would withhold public safety grants to sanctuary cities.

The judge, who was appointed by former President Ronald Reagan, explained that he halted the DOJ policy nationwide because there is "no reason to think that the legal issues present in this case are restricted to Chicago or that the statutory authority given to the Attorney General would differ in another jurisdiction."

In July, the agency [announced](#) that a popular grant program that provides money to local law enforcement for training and supplies would only apply "to cities and states that comply with federal law, allow federal

immigration access to detention facilities, and provide 48 hours notice before they release an illegal alien wanted by federal authorities."

Sessions condemned sanctuary cities like Chicago, arguing that policies that prohibit local law enforcement from aiding Immigration and Customs Enforcement agents makes cities less safe.

"So-called sanctuary policies make all of us less safe because they intentionally undermine our laws and protect illegal aliens who have committed crimes," Sessions said in a statement at the time.

"These policies also encourage illegal immigration and even human trafficking by perpetuating the lie that in certain cities, illegal aliens can live outside the law."

– John Bowden contributed

Updated: 4:50 p.m.

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State of New York

Executive Chamber

No. 170

EXECUTIVE ORDER

STATE POLICY CONCERNING IMMIGRANT ACCESS TO STATE SERVICES

WHEREAS, New York State will remain true to the ideals that founded this country, and will continue to welcome immigrants as a source of energy, and celebrate them as a source of revitalization for our State; and

WHEREAS, New York State's residents make up one of the nation's most diverse communities, as over 4.3 million immigrants reside within the State and over twenty percent of the State's population is foreign-born; and

WHEREAS, immigrants residing in New York State are an essential part of the economic fabric of this State, as over 29% of all business owners in New York are foreign-born, such businesses generate millions of dollars in total net income, and the combined purchasing power of immigrant communities exceeds \$165 billion dollars; and

WHEREAS, the reporting of unlawful activity by immigrant witnesses and victims is critical to strengthening ties between immigrants and law enforcement, reducing crime, and enhancing the State's ability to protect the safety of all of its residents; and

WHEREAS, the New York State Constitution and the New York State Human Rights Law protect individuals from discrimination on the basis of national origin in the areas of education, benefits, employment, housing, and public accommodation, and the State is committed to enforcing those protections to the fullest extent of the law; and

WHEREAS, State government has a responsibility to ensure that services are provided equally, and consistent with civil rights laws, to all individuals eligible to receive them; and

WHEREAS, access to State services is critical to the vitality and well-being of immigrant communities and their continued integration into the State's economic, civil, and cultural life; and

WHEREAS, providing State services to immigrant communities is necessary to meet the needs of the State's diverse population, to maintain public confidence in State government and its agencies, and to comply with State and Federal civil rights laws; and

NOW, THEREFORE, I, ANDREW M. CUOMO, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and laws of the State of New York, do hereby order as follows:

A. Definitions

1. "State entity" shall mean (i) all agencies and departments over which the Governor has executive authority, and (ii) all public benefit corporations, public authorities, boards, and commissions, for which the Governor appoints the Chair, the Chief Executive, or the majority of Board members, except for the Port Authority of New York and New Jersey.

2. "Alien" shall mean any person who is not a citizen or national of the United States.
3. "Illegal activity" shall mean any unlawful activity that constitutes a crime under state or federal law. However, an individual's status as an undocumented alien does not constitute unlawful activity.

B. Agency and Authority Responsibilities Respecting the Privacy of Personal Information

1. No State officers or employees, other than law enforcement officers as provided in B.3 *infra*, shall inquire about an individual's immigration status unless:
 - a. The status of such individual is necessary to determine his or her eligibility for a program, benefit, or the provision of a service; or
 - b. The State officer or employee is required by law to inquire about such individual's status.
2. No State officers or employees, including law enforcement officers, shall disclose information to federal immigration authorities for the purpose of federal civil immigration enforcement, unless required by law. Notwithstanding such prohibition, this Order does not prohibit, or in any way restrict, any state employee from sending to, or receiving from, federal immigration authorities, information regarding the citizenship or immigration status, lawful or unlawful, of any individual, as required by law.
3. No law enforcement officers shall inquire about an individual's immigration status unless investigating such individual's illegal activity, provided however that such inquiry is relevant to the illegal activity under investigation. Nothing in this section shall restrict law enforcement officers from seeking documents for the purpose of identification following arrest.
 - a. This prohibition against inquiring into status includes, but is not limited to, when an individual approaches a law enforcement officer seeking assistance, is the victim of a crime, or is witness to a crime.
 - b. Law enforcement officers may not use resources, equipment or personnel for the purpose of detecting and apprehending any individual suspected or wanted only for violating a civil immigration offense. Law enforcement officers have no authority to take any police action solely because the person is an undocumented alien. This includes identifying, questioning, detaining, or demanding to inspect federal immigration documents.



BY THE GOVERNOR


Secretary to the Governor

GIVEN under my hand and the Privy Seal of the
State in the City of Albany this fifteenth
day of September in the year two
thousand seventeen.





DOJ BYRNE JAG PROGRAM CONDITIONS REGARDING IMMIGRATION ENFORCEMENT

New Conditions and How to Respond

Introduction

On July 25, 2017, AG Sessions announced new conditions for Byrne Justice Assistance Grants applicants:

- Certification of compliance with 8 USC 1373 (had been previously announced)
- Must allow ICE access to jails and detention facilities
- Must provide 48 hours notice before a scheduled release

These conditions will apply to the next grant cycle, for which applications are due September 5, 2017 for local applicants, and August 25, 2017 for state applicants.

According to the Byrne JAG FY2017 Solicitation, the three new conditions arise later in the application cycle: in order to receive funds, a jurisdiction must complete the certification of compliance with 8 USC 1373, while the other two requirements will be explicit conditions in the grant agreement.

IS IT LEGAL TO ADD THESE REQUIREMENTS?

These new conditions likely violate the constitution and federal law. Much like the federal court in *Santa Clara v. Trump*, the lawsuit over the executive order to 'defund sanctuary cities,' the federal courts are likely to find that adding new grant conditions without statutory authority violates the Spending Clause and exceeds the power of the executive branch.

Lawsuits Filed to Challenge the New Conditions

Three lawsuits have already been filed to prevent DOJ from conditioning funds on helping with immigration enforcement:

On August 7, the city of Chicago filed a lawsuit to enjoin DOJ from adding these conditions to the Byrne JAG program. On August 10, Chicago moved for a preliminary injunction to prevent the DOJ from imposing these conditions while the legal challenge proceeds.

On August 11, the city and county of San Francisco filed a similar lawsuit in California, also seeking an injunction against the new conditions.

On August 14, the State of California filed a lawsuit demanding that the courts declare the new conditions illegal, enjoin DOJ from conditioning any JAG funds on ICE access or notification of release, and clarify that California state laws, the Trust Act and the Truth Act, do not violate these conditions.

These lawsuits raise separate claims, but they generally assert that:

- The conditions are inconsistent with the statutory authority for the Byrne JAG program
 - Not only is there no statutory authority for these conditions, Congress considered and voted against them
- The new conditions exceed the Executive's power in the Spending Clause of the Constitution
 - The President/Executive Branch does not have authority to impose new conditions on funds allocated by Congress; that is Congress's Spending Power
- The new conditions violate the Fourth Amendment
 - Requiring localities to provide 48 hours notice of release would require continuing to detain people beyond their time of release in order to meet the 48 hours

HOW MUCH MONEY IS AT STAKE?

Different jurisdictions receive widely varying amounts of money; generally larger and more populous cities and counties commonly receive in the range of \$100,000 - \$300,000, while most cities receive on the order of \$10,000 - \$50,000. States receive the majority of Byrne JAG funds, and pass substantial amounts of that on to local agencies. States typically receive millions of dollars in Byrne grants.

WHAT DO BYRNE GRANTS FUND?

- Byrne grants fund a variety of law enforcement programs, from body armor to drug enforcement to border security efforts. FY2017 “areas of emphasis” include: reducing gun violence, FBI’s national incident based reporting system, officer safety and wellness, border security, and collaborative prosecutions between police and prosecutors.
- Nothing in the Byrne JAG program mentions or prioritizes immigration enforcement.
- The Byrne JAG program has been widely criticized for funding discriminatory drug war policies and incentivizing aggressive enforcement measures without tracking actual improvements in public safety, health, or crime reduction.

WHAT SHOULD LOCALITIES DO IN RESPONSE?

Speak up!

- This is an undemocratic attempt to strong-arm localities into implementing the Trump administration’s xenophobic agenda against their will.
- Localities that restrict access to jail facilities or limit information sharing are doing so because of a strong governmental interest in the safety and wellbeing of the communities they were elected to protect, using the powers delegated to them by the constitution.
- These conditions are unconstitutional because they exceed the Congressional authority for this grant program, which has no such conditions, and they may violate the Fourth Amendment as well.
- The DOJ and the Trump Administration don’t care that these conditions are unconstitutional; they are just trying to scare local agencies into doing whatever they demand on immigration enforcement.
- Even conservatives in Congress likely do not want the President to have this much power over federal funds, because a potential future democratic administration will then be able to coerce states and localities in the other direction.

Evaluating Whether to Apply

- Option 1: Talk to your mayor or other elected officials about not applying for the Byrne JAG program. Look into local reforms and programs to scale back mass incarceration rather than seeking federal funds to increase police and law enforcement budgets.
- Option 2: Urge your city or county file to a lawsuit against these unconstitutional conditions.
- Option 3: Wait to see if a court enjoins these conditions before you decide.
- Option 4: Let your local agencies apply on September 5 with a plan to follow up on any future decision of whether to accept the funds and comply with the conditions at the time of acceptance. If the court doesn’t issue an injunction before September 5, they may still do so after that date.

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Report: Police Departments Statewide Withhold Critical Information from the Public

FOR IMMEDIATE RELEASE

September 18, 2017 – The New York Civil Liberties Union released a report today that details how far New York police departments go to keep information from the public on the use of force, stops and detentions, complaints about misconduct, racial profiling and the use of surveillance equipment.

The findings in *Taking Cover* are the result of Freedom of Information Law (FOIL) requests the NYCLU sent to 23 representative police departments. For over two years, departments ignored legal deadlines, excessively redacted documents, maintained inadequate staff to facilitate disclosure and had deficient recordkeeping practices. Of departments contacted, 20 did not respond within the time required. The NYCLU filed administrative appeals in 22 requests, as well as lawsuits with the Buffalo and Ramapo police.

“Police are supposed to serve and answer to the people of New York, yet departments across the state are being run like secret clubs,” said NYCLU Executive Director Donna Lieberman. “No department should be a black box. Police must open their books to the People to ensure the kind of oversight and accountability that builds trust with the community.”

Taking Cover notes that many departments were openly hostile to information requests. The Binghamton Police Department’s FOIL officer said he “didn’t care” about legal deadlines and refused to comply. It

took 19 months and the arrival of a new city lawyer to resolve the NYCLU request. Other departments responded by sending pages of documents redacted well beyond what is legally permissible. When the NYCLU asked the Newburgh Police Department for its policies, it sent back blacked-out pages that had nothing to do with the request.

Departments also lacked resources and policies for handling FOIL requests, had staff that were not trained, kept inadequate records and held records that were not in searchable forms. For example, seven departments did not track the race of people stopped by police and another three kept incomplete records. Such conditions did not merely plague small departments. Hempstead police have no system for finding records and do not keep copies of policies in a single place. With nearly 120 sworn police officers and 50 civilian personnel, Hempstead has only one officer to respond to FOIL requests who also handles payroll, new recruits and coordinating the academy.

“For more than two years, police departments across New York delayed and dodged providing information that all New Yorkers have a right to,” said NYCLU Advocacy Director Johanna Miller. “Our requests weren’t about paperwork, they were about how police work. Our state and local officials need to make sure police departments have both the will and the way to answer to New Yorkers.”

Taking Cover calls on municipalities to do their part to ensure police comply with FOIL requests and provide answers to New Yorkers. The report also calls on state lawmakers to pass the Police Statistics and Transparency (STAT) Act, which requires uniform data collection and reporting on low-level law enforcement as well as deaths in custody. Finally, it urges the repeal of civil rights law 50-a, a narrow state provision limiting public disclosure of personnel records, but which has been misused to shield disclosure of officer misconduct.

Taking Cover is the introductory publication of the NYCLU’s Police Report Card Series, which will index and publish records received from police departments throughout the state and offer analyses.

For more information and to read *Taking Cover*, visit: www.nyclu.org/policereportcard