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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CITY OF RICHMOND, a municipal corporation,

Plaintiff,

vs.

DONALD J. TRUMP, President of the United States, JOHN F. KELLY, Secretary of the United States Department of Homeland Security, JEFFERSON B. SESSIONS, Attorney General of the United States, and the UNITED STATES OF AMERICA

Defendants.

Case No.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF CONCERNING FEDERAL EXECUTIVE ORDER 13768, for

1. **VIOLATION OF THE TENTH AMENDMENT;**
2. **VIOLATION OF THE SEPARATION OF POWERS AND SPENDING CLAUSES;**
3. **VIOLATION OF THE FOURTH AMENDMENT;**
4. **VIOLATION OF THE DUE PROCESS CLAUSE BECAUSE OF VAGUENESS; AND**
5. **RULING THAT RICHMOND COMPLIES WITH 8 U.S.C. § 1373.**

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I. INTRODUCTION

1. On January 25, 2017, President Donald J. Trump issued an **Executive Order**, No. 13768 entitled "**Enhancing Public Safety in the Interior of the United States,**" 82 Fed. Reg. 8799 (Jan. 25, 2017) ("Executive Order"), which, in violation of the Constitution, seeks to force local police departments, such as the Richmond Police Department, to enforce federal immigration law. A copy of the Executive Order is attached as **Exhibit 1**.

2. The ability of the Richmond police to effectively combat crime will be severely curtailed by this Executive Order. In order to safeguard the safety of its residents and community, the City of Richmond, California ("Richmond"), the plaintiff in this action, engages in community policing. As its Police Chief Allwyn Brown recently explained: The Richmond Police are:

> **"Committed to a proven effective community policing model that knows the unmistakable truth, that community safety is a responsibility for everyone, and not just a job for the police. This requires active, engaged, and empowered neighborhood residents who freely interact with police without reservations."**

3. The Executive Order is in direct violation of the U.S. Constitution because it allows the Attorney General and Secretary of Homeland Security, based upon their discretion, to withhold federal funds from public entities that are jurisdictions who "willfully refuse" to comply with 8 U.S.C. 1373, a statute which seeks to regulate state and local jurisdictions' response to immigration requests, and for the Attorney General to take enforcement actions against any jurisdiction that violates federal law. Our U.S. Supreme Court has said that this use of an Executive Order to coerce Richmond through a threat of the loss of all federal funds is unconstitutional. *Nat'l Fed'n of Indep. Bus v. Sebelius,* 567 U.S. 519, 132 S. Ct. 2566, 2602-04 (2012). "When, for example, such conditions take the form of threats to terminate other significant independent grants, the conditions are properly viewed as a means of pressuring the states to accept policy changes." 132 S. Ct. at 2604.

4. The term "sanctuary jurisdiction" is not defined in the Executive Order or in any federal statute or regulation. While many public entities, including Richmond, have been referred to as "Sanctuary Cities" and Richmond is proud to support its immigrants, the policies

of the different jurisdictions differ substantially. It is unclear if Richmond will be considered a "sanctuary jurisdiction" subject to the loss of all federal funds. The Executive Order provides no guidance to Richmond on how to make this determination and there is no legal precedent for Richmond to consult to make this determination. Based upon statements made by President Trump and others, Richmond believes it may be swept up as a sanctuary jurisdiction under the Executive Order. The Executive Order violates the Due Process Clause because it is unconstitutionally vague and unenforceable against a city like Richmond, California. *Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S. Ct. 2294, 2298 (1972).

5. Moreover, the Executive Order does not define what actions or inaction can be considered by the Attorney General and Secretary of Homeland Security as a willful refusal to comply with 8 U.S.C. § 1373 and there is no legal precedent defining what constitutes a willful refusal to comply with 8 U.S.C. § 1373. Richmond does comply with 8 U.S.C. § 1373. This is an additional reason that the Executive Order is unconstitutionally vague and unenforceable pursuant to Supreme Court precedent.

6. Given the vagueness of the Executive Order and the discretion it provides to the Attorney General and Secretary of Homeland Security to withhold federal funds, Richmond faces imminent danger of losing all federal funding because of legislation that it enacted twenty-five years ago to foster trust between its police department and residents. Richmond has already been harmed by the uncertainty caused by the Executive Order. The Defendants intend to immediately begin enforcing the Executive Order, and the Executive Order does not provide any policies or procedures to challenge the findings of the Attorney General or Secretary of Homeland Security. Accordingly, this Court is the only vehicle for Richmond to obtain relief to stop the calamitous effects that the Executive Order will have on Richmond.

7. Richmond directly receives federal funds each year and also receives State funds, most of which are passed through federal funds. The funds are used to fund vital services, and only a small amount are used for law enforcement or immigration. Most are used for housing and infrastructure improvements. The loss of these funds will have a direct and substantial effect on Richmond and its citizens. None of the grants of money by the federal government to

Richmond were conditioned on Richmond's compliance with any immigration law. The Executive Order seeks to retroactively tie the receipt of federal funds to Richmond's compliance with the Executive Order, and specifically immigration laws, which is unconstitutional on its face.

8. While Presidents have the ability to issue executive orders, the President's power "must stem either from any act of Congress or from the Constitution itself." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585, 72 S. Ct. 863, 866 (1952). There is no authority from an act of Congress or from the Constitution for President Trump to have issued the Executive Order.

9. The Executive Order is an impermissible and illegal order because:

(1) the Executive Order violates the Tenth Amendment of the United States Constitution;

(2) the Executive Order seeks to give two Cabinet members the unfettered discretion to take away all federal funding from Richmond, a power that no branch of the federal government has;

(3) the Executive Order impermissibly usurps the rights of the Legislative branch regarding appropriating and spending monies thus violating the separation of powers clause of the Constitution;

(4) the Executive Order violates the due process clause because it is unconstitutionally vague in its definition of "sanctuary jurisdiction," "willful refusal to comply," and the unfettered enforcement discretion it gives to the Attorney General and Secretary of Homeland Security;

(5) the Executive Order exposes Richmond to liability under the Fourth Amendment of the United States Constitution for improperly detaining people; and

(6) the Executive Order imposes additional costs on Richmond to comply with the Executive Order, which costs the federal government will not reimburse.

10. In order to protect its residents, Richmond brings this action to have this Court declare that the Executive Order is unconstitutional to find that Richmond complies with 8 U.S.C. § 1373, and to enjoin the Executive Order from being enforced against Richmond.

II. JURISDICTION AND VENUE

13. The Court has jurisdiction under 28 U.S.C. Sections 1331 and 1346. This Court has further remedial authority under the Declaratory Judgment Act, 28 U.S.C. Sections 2201 and 2202 *et seq*.

14. Venue properly lies within the Northern District of California because Plaintiff, Richmond, is a public entity in this judicial district and a substantial part of the events or omissions giving rise to this action will occur or have occurred in this District. 28 U.S.C. § 1391(e).

III. PARTIES

15. Plaintiff **City of Richmond** is a municipal corporation organized and existing under and by virtue of the laws of the State of California, and is a Charter Law city. Its population is just over 100,000 people. Under its charter, it has the power to exercise police powers and make all necessary police regulations. Richmond Charter Art. II, § 1, ¶ 6.

16. Defendant **Donald J. Trump** has been since January 20, 2017, the President of the United States. He is sued in his official capacity. As a candidate, he railed against sanctuary cities and promised to punish them, and has consistently made insensitive and false statements about immigrants. When he announced his candidacy in June 2015, for example, he stated: "The U.S. has become a dumping ground for everybody else's problems. Thank you. It's true, and these are the best and the finest. When Mexico sends its people, they're not sending their best. They're not sending you. They're not sending you. They're sending people that have lots of problems, and they're bringing those problems to us. They're bringing drugs. They're bringing crime. They're rapists. And some, I assume, are good people." There was no factual support for this statement.

17. Defendant **John F. Kelly** is the Secretary of the Department of Homeland Security, a cabinet department of the United States government with the primary mission of

securing borders of the United States. Pursuant to the Executive Order at issue here, Secretary Kelly is responsible for executing relevant provisions of the Executive Order. He is sued in his official capacity.

18. Defendant **Jefferson B. Sessions** is the Attorney General, a cabinet department of the United States Government overseeing the Department of Justice. Attorney General Sessions is responsible for executing relevant provisions of the Executive Order. Attorney General Sessions is sued in his official capacity.

19. Defendant **United States of America** is sued under 28 U.S.C. Section 1346.

IV. FACTUAL ALLEGATIONS

A. RICHMOND IS A CITY OF IMMIGRANTS AND IMMIGRANTS' TRUST IN LAW ENFORCEMENT IS CRITICAL TO THE SAFETY OF THE COMMUNITY

20. Incorporated in 1905, Richmond has been a place where people from all over the world have come to seek a better life for themselves and their families and to contribute to the society in the Bay Area. According to the American Community Survey, in 2015, over 30% of Richmond residents were born in foreign counties.

21. Richmond, like the rest of the United States, is strong and successful because of the diversity of the immigrants who have come to this country. Their hard work and innovation have made the United States one of the greatest, if not the greatest, countries in the world. The contributions of immigrants are too numerous to even try to list. Most economists agree that immigrants, including those who are undocumented, are good for the U.S. economy. In March 2017, the Institution of Taxation & Economic Policy estimated that undocumented workers pay $111.74 billion in taxes each year. In March 2017, the Pew Research Center issued a report demonstrating that immigrants and their U.S.-born children are expected to drive growth in the U.S. working-age population. http://www.pewresearch.org/fact-tank/2017/03/08/immigration-projected-to-drive-growth-in-u-s-working-age-population-through-at-least-2035/. Since the Baby Boomer generation (people born after World War II and before 1965) is heading towards

retirement, there is a potential for the labor force to slow down without immigrants and their children being part of the work force. Richmond and the Bay Area need this work force.

22. Richmond has always welcomed newcomers. In the 1940s, for example, people came from all over the United States to help with the war effort by working in Richmond facilities such as the Kaiser shipyards. They and their families stayed and have made positive contributions to Richmond.

23. In the late 1980s, Richmond experienced an increase of immigrants arriving from Central America. They sought sanctuary from the violence and political instability in their native countries. Many of these immigrants had been the victims of political persecution. Since they came to Richmond, they and their families have contributed to the success of Richmond. Based upon their experience in their native countries, many of these immigrants were fearful of law enforcement. They were easy prey for criminals who knew the immigrants were unlikely to report crimes against them for fear that if they reported crimes or provided assistance to law enforcement, they would be deported. It is critical to the safety of the community that everyone, no matter their immigration status, trust law enforcement and provide information to keep Richmond safe and free from crime.

24. In response to these immigrants' concerns and to increase public safety, in 1990, over 25 years ago, the Richmond City Council unanimously enacted Ordinance No. 29-90, an ordinance whose purpose was to "foster an atmosphere of trust and cooperation between the Richmond Police Department and all persons, regardless of immigration status, residing in the City of Richmond; …" A true and correct copy of the Ordinance is attached as **Exhibit 2**.

25. Further, Ordinance No. 29-90 provided in pertinent part:

> Section 2. In order to address the fears expressed by the immigrant and refugee community in the City of Richmond concerning Immigration and Naturalization Service activities in the City of Richmond while preserving the ability of the Richmond Police Department to utilize all available resources to fight criminal activity, the Council of the City of Richmond hereby adopts the following policy:
>
> 1. All officers and employees of the City of Richmond, while acting in their official capacities, who receive any oral or written request from the Immigration and Naturalization Service for information, cooperation or assistance shall refer such request to the City Manager or the Chief of

> Police. The City Manager or Chief of Police shall decide whether such information shall be given or whether such cooperation or assistance shall be provided to the Immigration and Naturalization Service. In exercising their discretion, the City Manager and Chief of Police shall consider the possible disruption and inconvenience that may be experienced by the immigrant and refugee community in the City of Richmond and any requirements of any federal, state or local law or court decision. Nothing delineated in the foregoing policy shall be construed to prevent the City Manager or the Chief of Police from providing information, assistance or cooperation to the Immigration and Naturalization Service regarding the criminal violation of any federal, state or local law.

26. On February 6, 2007, in Resolution No. 11-07, the Richmond City Council reaffirmed its commitment to its residents that the City "welcomes and values all of its residents and supports them to live and work free from discrimination, hostility, abuse, violence, exploitation and fear of local, state and federal law enforcement; …" A true and correct copy of the Resolution is attached as **Exhibit 3**. In this resolution, the City of Richmond "reaffirms the terms of ordinance No. 20-90 ordering all officers and employees of this City not to inform, assist or cooperate with the Immigration and Customs Enforcement (ICE) formerly known as Immigration and Naturalization Service, without the specific authorization of the Richmond City Manager or the Chief of Police; …"

27. The ordinance and regulation were not to prevent the exchange of information between the federal government and Richmond regarding immigration matters, but instead to increase the trust between Richmond law enforcement and the community, thereby increasing public safety. Federal immigration raids, like the 2003 raid on the Richmond home of Porfirio Quintano, an immigrant from Honduras and his family, is but one example of the fear and distrust in the immigrant community caused by improper immigration enforcement. As Quintano explained in the *San Francisco Chronicle*: "'We are victims,' said Quintano, adding that his wife and two daughters, then ages 4 and 10, live in fear of another raid, even though all four family members are U.S. citizens. 'They were looking for somebody unrelated to us, but they lined us up against the wall and held us for an hour. It was terrifying, especially for our daughters.'" *San Francisco Chronicle* (Apr. 23, 2007).

28. In the 25 years since the enactment of Ordinance 29-90, the federal government has taken no action until now to stop the Richmond policy, and the policy has served Richmond and the nation well. The Richmond policy co-existed with the immigration policies of both Bush administrations as well as those of Presidents Clinton and Obama. Studies show that trust between law enforcement and those that they serve is key to decreasing crime and to making communities safe. See e.g. Bill O. Hing, "Immigration Sanctuary Policies: Constitutional and Representative of Good Policing and Good Public Policy, 2 *U.C. Irvine L. Rev.* 247 (2012). The final report of the President's Task Force on 21st Century Policy (May 2015) explains:

> Immigrants often fear approaching police officers when they are victims of and witnesses to crimes and when local police are entangled with federal immigration enforcement. At all levels of government, it is important that laws, policies, and practices not hinder the ability of local law enforcement to build the strong relationships necessary to public safety and community well-being. It is the view of this task force that whenever possible, state and local enforcement should not be involved in immigration enforcement.

The United States Department of Justice, Community Oriented Policy Services (COPS), published a report "Policy in New Immigrant Communities" by Matthew Alysalcowski, Albert Anthony Pearsall III and Jill Pope. The report provides suggestions to law enforcement about better serving the community, focusing on building trust and mutual respect between law enforcement and new immigrants. The report states that putting fears to rest is one of the most useful things law enforcement can do. "For many immigrants, reassurance that they will not be detained or deported removes the fear of reporting crimes." Report at 11.

29. Richmond is not the only public entity to enact laws regarding the relationship between the public entity and ICE. Numerous other California counties and cities, such as Alameda County, Berkeley, Los Angeles County, Los Angeles, Monterey County, Napa County, Orange County, Riverside County, Sacramento County, San Bernardino County, San Diego County, San Francisco City and County, San Mateo County, Santa Ana, Santa Clara County, Santa Cruz County, and Sonoma County, have enacted similar laws. Other cities in the United States, such as Boston, Chicago, Houston, New York, Philadelphia, and Washington D.C., to name a few, have also enacted similar laws. Even though they are similar, they are not identical.

There is no way to determine by the language of the Executive Order if any of these jurisdictions are "sanctuary jurisdictions."

30. The State of California also has enacted legislation, specifically Government Code sections 7282 and 7282.5 both effective January 1, 2014, regarding information that law enforcement can provide federal immigration officials. Section 7282.5 provides that a "law enforcement official shall have discretion to cooperate with federal immigration officials by detaining an individual on the basis of an immigration hold after that individual becomes eligible for release from custody only if the continued detention of the individual on the basis of the immigration hold would not violate any federal, state, or local law, or any local policy, and only under …." certain specified circumstances. The notes to section 7282, which provides definitions for the chapter, sets forth the Legislative Findings for these statutes.

> SECTION 1. The Legislature finds and declares all of the following:
>
> (a) The United States Immigration and Customs Enforcement's (ICE) Secure Communities program shifts the burden of federal civil immigration enforcement onto local law enforcement. To operate the Secure Communities program, ICE relies on voluntary requests, known as ICE holds or detainers, to local law enforcement to hold individuals in local jails for additional time beyond when they would be eligible for release in a criminal matter.
>
> (b) State and local law enforcement agencies are not reimbursed by the federal government for the full cost of responding to a detainer, which can include, but is not limited to, extended detention time and the administrative costs of tracking and responding to detainers.

31. The Department of Justice, under the previous administration, has already identified the State of California as a jurisdiction that does not fully comply with federal immigration enforcement priorities. Memorandum from Michael E. Horowitz, Inspector Gen., to Karol V. Mason, Assistant Att'y Gen. for the Office of Justice Programs, "Department of Justice Referral of Allegations of Potential Violations of 8 U.S.C. § 1373 by Grant Recipients," at 13 (May 31, 2016), https://oig.justice.gov/reports/2016/1607.pdf ("Horowitz Memorandum"). Since Richmond receives federal funds that are passed through the State of California,

Richmond faces the loss of funds under the Executive Order even if it complies with all requirements of the Executive Order.

B. IMMIGRANTS MAKE RICHMOND STRONG

32. Immigrants have been, since the establishment of our country, critical to the United States and specifically Richmond. The same false statements being made today about immigrants were made about Italians, Irish, Jews, and other ethnicities in the late 1800's and early 1900's.

33. In April of 2016, the U.S. Chamber of Commerce published a report entitled Immigration Myths and Faces, www.uschamber.com/reports/immigration-myths. The report demonstrates that most common negative contentions regarding immigrants are false.

34. For example, with citation to evidence, the Chamber of Commerce demonstrates that immigrants do not take away jobs from U.S. citizens, do not drive down the wages of the U.S. workers, but to the contrary, immigrants are necessary for the U.S. economy.

35. The Chamber also demonstrates that immigrants, even undocumented immigrants, pay taxes. Undocumented immigrants are not eligible for federal public benefit programs like Social Security, Medicaid, Medicare, and food stamps.

36. The Chamber report demonstrates that the premise of the Executive Order, that undocumented immigrants commit crimes, is contradicted by the facts. FBI data demonstrates that as the number of undocumented immigrants, tripled from 1990 violent crime declined 48% and property crime declined 41%. A report from the conservative Americas Majority Foundation found that crime rates are lowest in states with the highest immigration growth rates. Immigrants are less likely than people born in the United States to commit crimes or be incarcerated.

C. FEDERAL LAW DOES NOT REQUIRE RICHMOND TO COMPLY WITH DETAINER REQUESTS ISSUED BY ICE

37. ICE is an agency in the Department of Homeland Security and enforces federal immigration law. Federal law provides specific rules regarding the detention and removal of people who do not have the legal right to be in this country.

38. Not all people living in the United States who are undocumented are subjected to deportation. See e.g. 8 U.S.C. § 1229b(a) (providing Attorney General with discretion to cancel removal of an undocumented immigrant who is otherwise inadmissible or subject to deportation if he or she meets specified requirements); § 1229b(b)(2) (providing Attorney General with discretion to cancel removal and adjust status of an undocumented immigrant who is a victim of domestic violence). There are also other ways that undocumented immigrants can legally stay in the United States.

39. ICE often asks local jurisdictions for information about people who have been arrested. Richmond does not have a policy against and would not refuse to categorically to honor these requests, but requires that any request be brought to the attention of the City Manager or Chief of Police, who make a determination about what information will be provided. Richmond Ordinance No. 29-90, Resolution No. 11-07.

40. ICE also often issues "detainer requests" to local jurisdictions. These detainer requests ask local law enforcement agencies to continue to detain an immigrant inmate for up to 48 additional hours after his or her regularly scheduled release date so that ICE can decide whether to take that individual into custody and initiate removal proceedings. A detainer request is different than a criminal warrant because a detainer request is not issued by a judge based upon a finding of probable cause.

41. A public entity has discretion in how it complies with immigration holds. As stated by *Flores v. City of Baldwin Park*, No. CV 14-9290-MWF(JCx), 2015 U.S. Dist. LEXIS 22149, at *11-12 (C.D. Cal. Feb. 23, 2015): "[F]ederal law leaves compliance with immigration holds wholly within the discretion of states and localities. See *Galarza v. Szalczyk*, 745 F.3d 634, 640-43 (3d Cir. 2014) (holding that 'immigration detainers are requests and not mandatory orders' and observing that 'all federal agencies and departments having an interest in the matter have consistently described such detainers as requests'); Immigration Law, 127 *Harv. L. Rev.* [2593] at, 2596-97 [June 2014] ('And even if ICE wanted to make detainer enforcement mandatory, prevailing Tenth Amendment jurisprudence—which prohibits 'command[ing] the States' officers, or those of their political subdivisions, to administer or enforce a federal

regulatory program'—indicates that it could not do so. States are thus free to decide for themselves whether to limit—or even prohibit—the enforcement of detainers.')" (bracket materials added). As a general matter, ICE has not directed detainer requests to Richmond.

42. The fact that a person is an undocumented immigrant does not mean that the person is subject to detention. Most of the time, people who are suspected of being removable are not arrested; arrests only occur in certain circumstances and are only performed by federal officers specifically trained in immigration law. As the Supreme Court has explained:

> As a general rule, it is not a crime for a removable alien to remain present in the United States. See *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038, 104 S. Ct. 3479, 82 L. Ed. 2d 778 (1984). If the police stop someone based on nothing more than possible removability, the usual predicate for an arrest is absent. When an alien is suspected of being removable, a federal official issues an administrative document called a Notice to Appear. See 8 U. S. C. § 1229(a); 8 CFR § 239.1(a) (2012). The form does not authorize an arrest. Instead, it gives the alien information about the proceedings, including the time and date of the removal hearing. See 8 U. S. C. § 1229(a)(1). If an alien fails to appear, an in absentia order may direct removal. § 1229a(b)(5)(A).
>
> The federal statutory structure instructs when it is appropriate to arrest an alien during the removal process. For example, the Attorney General can exercise discretion to issue a warrant for an alien's arrest and detention "pending a decision on whether the alien is to be removed from the United States." 8 U. S. C. § 1226(a); see Memorandum from John Morton, Director, ICE, to All Field Office Directors *et al.*, Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens (June 17, 2011) (hereinafter 2011 ICE Memorandum) (describing factors informing this and related decisions). And if an alien is ordered removed after a hearing, the Attorney General will issue a warrant. See 8 CFR § 241.2(a)(1). In both instances, the warrants are executed by federal officers who have received training in the enforcement of immigration law. See §§ 241.2(b), 287.5(e)(3). If no federal warrant has been issued, those officers have more limited authority. See 8 U. S. C. § 1357(a). They may arrest an alien for being "in the United States in violation of any [immigration] law or regulation," for example, but only where the alien "is likely to escape before a warrant can be obtained." § 1357(a)(2).

Arizona v. United States, 567 U.S. 387, 132 S. Ct. 2492, 2505-06 (2012).

43. Even though Supreme Court precedent is clear, the Department of Justice, under the prior Presidential Administration, opined that failure to comply with detainer requests violates federal law. Horowitz Memorandum at 7.

44. The Richmond Police Department Policy Manual, Policy 428 specifically addresses Immigration Violations. A true and correct copy of the policy is attached hereto as

Exhibit 4. It provides that it is the "policy of the Richmond Police Department (RPD) to foster trust and cooperation with all people of the city and to encourage them to communicate with RPD officers without fear of inquiry regarding their immigration status." *Id.* § 428.1. "It is also department policy, consistent with its obligations under state and federal law, to adhere to the City of Richmond Ordinance 29-90. This ordinance prohibits the use of City resources to assist in the enforcement of federal immigration laws without the specific authorization of the City Manager or the Chief of Police." *Id.*

45. The policy does not prohibit assisting ICE. "When assisting ICE at its specific request, or when suspected criminal violations are discovered as a result of inquiry or investigation based on probable cause originating from activities other than the isolated violations of 8 USC § 1304; 8 USC § 1324; 8 USC § 1325 and 8 USC § 1326, the department may assist in the enforcement of federal immigration laws." *Id.*, § 428.2. The policy provides that the Richmond Police Department "does not conduct immigration 'sweeps' or engage in other concerted efforts to identify or detain suspected undocumented individuals." *Id.*, § 428.2.1; see also *id.*, § 428.2.2.

46. The policy reiterates the police department's concern "for the safety of local citizens and thus detection of criminal behavior is of primary interest in dealing with any person." *Id.*, § 428.4. Arrests should be based upon probable cause and not on arbitrary characteristics, such as race or ethnicity and "all individuals, regardless of their immigration status, must feel secure that contacting law enforcement will not make them vulnerable to deportation." *Id.*

47. The policy is explicit that: "Nothing in this policy is intended to restrict officers from exchanging legitimate law enforcement information with any other federal, state or local government entity (8 USC § 1373; 8 USC § 1644). *Id.*

48. Thus, Richmond has made a policy decision that the safety of its residents requires trust between its policy department and all residents, whether they are United States citizens, legal residents, or undocumented. Additionally, Richmond's policy is to comply with all laws, including 8 U.S.C. § 1373. Since ICE has not in the past asked Richmond for

information or issued detainer requests, Richmond has not violated 8 U.S.C. § 1373 or any other federal law.

D. THE EXECUTIVE ORDER

49. On January 25, 2017, defendant President Donald J. Trump issued **Executive Order 13768**, entitled "**Enhancing Public Safety in the Interior of the United States**." That Executive Order was published in the Federal Register on January 30, 2017, at 82 Fed. Reg. 8799. It is available on the White House public website (https://www.whitehouse.gov/the-press-office/2017/01/25/Presidential-executive-order-enhancing-public-safety-interior-united), and is attached hereto as **Exhibit 1**.

50. The Executive Order declares, "Sanctuary jurisdictions across the United States willfully violate Federal law in an attempt to shield aliens from removal from the United States. These jurisdictions have caused immeasurable harm to the American people and to the very fabric of our Republic."

51. To address the purported harm caused by Sanctuary Cities, the Executive Order establishes the policy that "jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law."

52. Specifically, Section 9(a) of the Executive Order states: "It is the policy of the executive branch to ensure, to the fullest extent of the law, that a State, or a political subdivision of a State, shall comply with 8 U.S.C. 1373." 8 U.S.C. § 1373 prohibits local jurisdictions from prohibiting the exchange of information with ICE regarding citizenship or immigration status.

53. Section 9(a) of the Executive Order establishes a **funding restriction**:

> In furtherance of this policy, the Attorney General and the Secretary, in their discretion and to the extent consistent with law, shall ensure that jurisdictions that willfully refuse to comply with 8 U.S.C. 1373 (sanctuary jurisdictions) are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary. The Secretary has the authority to designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction. *Id*.

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54. Section 9(a) of the Executive Order also mandates **enforcement action** for violations:

> The Attorney General shall take appropriate enforcement action against any entity that violates 8 U.S.C. 1373, or which has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law. *Id*.

55. Defendant John F. Kelly, the Secretary of Homeland Security has already begun implementing the Executive Order. On February 20, 2017, he issued two memoranda to implement the Executive Order. The first memorandum is entitled "Enforcement of the Immigration Law to Serve the National Interest." A true and correct copy of this memorandum, which will be referred to as the "Enforcement Memorandum" can be found at https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf and is attached hereto as **Exhibit 5**. The second memorandum is entitled "Implementing the President's Border Security and Immigration Enforcement Improvement Policies." A true and correct copy of this memorandum, which will be referred to as the "Implementation Memorandum" can be found at https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf and is attached hereto as **Exhibit 6**.

56. The Enforcement Memorandum does not reference "sanctuary jurisdictions" or provide any guidance about how the Secretary of Homeland Security will use its discretion to determine that a local jurisdiction should lose all federal funds because of that jurisdictions' "failure to comply with applicable Federal Law."

57. The Enforcement Memorandum states that it will be expanding the INA section 287(g) Program. This program "allows a qualified state or local law enforcement officer to be designated as an 'immigration officer' for purposes of enforcing federal immigration law. Such officers have the authority to perform all law enforcement functions specified in section 287(a) of the INA, including the authority to investigate, identify, apprehend, arrest, detain, and conduct searches authorized by under the INA, under the direction and supervision of the

Department." The program is voluntary; currently 32 law enforcement agencies in 16 states participate.

58. The Enforcement Memorandum further provides that: "Department personnel have full authority to arrest or apprehend an alien whom an immigration officer has probable cause to believe is in violation of immigration laws."

59. The Enforcement Memorandum also provides: "I direct the Director of ICE to immediately reallocate any and all resources that are currently used to advocate on behalf of illegal aliens (except as necessary to comply with a judicial order) to the new VOICE [Victims of Immigration Crime Engagement] Office, and to immediately terminate the provision of such outreach or advocacy services to illegal aliens." [bracketed materials added]

60. The Implementation Memorandum primarily deals with the building of a wall between the United States and Mexico, the hiring of additional Border Patrol Agents, and expediting undocumented immigrants to their native countries. The Implementation Memorandum does not provide any guidance regarding the implementation of the Executive Order as it applies to Richmond.

61. Since the Executive Order, the Enforcement and Implementation Memoranda, and federal law and regulations do not provide any guidelines to State and local jurisdictions regarding the criteria that will be used to determine when federal funds will be taken away or enforcement actions will be taken, Richmond must try to glean this information from other public statements of Defendants.

62. Based upon the public statements of Defendants, they intend to broadly define jurisdictions that do not comply with federal immigration law and to punish those jurisdictions with the withdrawal of all federal funds. Since as early as 2015, when he was a candidate for the Republican nominee for President, Donald Trump railed against "Sanctuary Cities." As set forth, *supra*, he called Mexican immigrants rapists, which statement is not supported by the evidence. He promised to punish these jurisdictions.

63. Since President Trump's inauguration, his office has reaffirmed these statements. For example, on January 25, 2017, when announcing the issuance of the Executive Order, the

President's Press Secretary said: "We are going to strip federal grant money from the sanctuary states and cities that harbor illegal immigrants. The American people are no longer going to have to be forced to subsidize this disregard for our laws."

64. A press release from the White House on January 28, 2017 stated that the executive order was going to halt federal funding for "sanctuary cities." The reference to "sanctuary cities in the Press Release implies that the President considers "sanctuary cities" to be the same as "sanctuary jurisdictions," which is the term used in the Executive Order. The same conflation between "sanctuary cities" and "sanctuary jurisdictions" occurred in a press release issued by the White house on February 1, 2017 and the term "sanctuary cities" is on the White House website: http://wwwwhitehouse.gov/law-enforcement-community.

65. President Trump, during an interview with Bill O'Reilly on February 5, 2017, also referenced "sanctuary cities" rather than "sanctuary jurisdictions" when referring to the Executive Order. He also specifically referred to proposed legislation by the California legislature regarding immigration as "ridiculous" and referred to the "tremendous amounts of money" the federal government gives to California.

66. Immediately prior to becoming the Attorney General, Defendant Jefferson B. Sessions, was a U.S. Senator. In July of 2015, he introduced Senate Bill 1842, the "Protecting American Lives Act." With regards to the bill and in other statements regarding immigration, Attorney General Sessions indicated an intent to punish local jurisdictions, such as Richmond, which had enacted ordinances which demonstrated concern for immigrants.

67. Based upon the evidence, it appears there is a substantial probability that Defendants, and each of them, will seek to enforce the unconstitutional Executive Order against Richmond based upon its enactment of Ordinances No. 29-90 and Resolution No. 11-07, Richmond being referred to as a "sanctuary city," and its large Latino population. While Richmond does not believe that it has willfully refused to follow any federal law, the statements by Defendants imply that simply enacting an ordinance like Ordinance No. 29-90 and Resolution No. 11-07 will provide the basis for Defendants to enforce the Executive Order against Richmond.

E. THE EXECUTIVE ORDER IS UNCONSTITUTIONAL BECAUSE IT EXCEEDS THE AUTHORITY OF THE PRESIDENT AND CONGRESS

1. The President Does Not Have the Authority to Issue the Executive Order

68. The federal system is a system of checks and balances. Our founders wanted to stop the President from being able to exercise unbridled discretion like the King from whom they had just won their freedom. Therefore, the Constitution limits the power of the President. Under Article I, section 8, clause 1 of the United States Constitution, Congress, not the President, has the authority to appropriate and spend federal monies. President Trump exceeded his constitutional authority by the enactment of the Executive Order because it is not authorized by any act of Congress or the Constitution. Hence, the Executive Order is unconstitutional. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585, 72 S. Ct. 863, 866 (1952).

69. The President may also not unilaterally impose new restrictions on jurisdictions' eligibility for federal funding because any restrictions on federal funds must be done so in advance by Congress. *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 171 101 S. Ct. 1531 (1981). The President may not on his own impose restrictions when Congress has not acted. The President does not have "unilateral power to change the text of duly enacted statutes." *Clinton v. City of New York*, 524 U.S. 417, 447 (1998).

2. Congress Does Not Have the Authority to Take the Actions in the Executive Order

70. The Executive Order is also unconstitutional because not even Congress would have the authority to enact the Executive Order as legislation.

71. Once Congress has authorized money to a State, county or city and it has been accepted, Congress cannot impose new conditions on the receipt of the monies. The taking away of funds violates the Spending Clause by imposing new funding conditions on existing appropriations of federal funds. "[I]f Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously," in advance. *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17, 101 S. Ct. 1531 (1981) "The legitimacy of Congress' power to legislate under the spending power . . . rests on whether the State voluntarily and knowingly accepts" Congress's conditions. *Id.* "There can, of course, be no knowing acceptance if a State

is unaware of the conditions or is unable to ascertain what is expected of it." *Id.* The Executive Order thus violates the Spending Clause because it seeks to take away monies already authorized and accepted by Richmond.

72. Further, even if Congress enacted legislation paralleling the Executive Order, the legislation would be unconstitutional because Congress cannot impose conditions to the acceptance of federal funds when those conditions are unrelated to the purpose for which the funds are given. See *South Dakota v. Dole*, 483 U.S. 203, 208-09 & n.3 (1987) ("[T]he imposition of conditions under the spending power" must be 'germane' or 'related' to the purpose of federal funding."). The Executive Order threatens the loss of all federal funds, not only those related to the purposes of the Executive Order, which purpose is related to immigration.

73. The Executive Order's threat to strip Richmond of all federal funds and bring enforcement actions against it for violation of Federal laws is also unconstitutional. Congress also cannot use coercion or a "power akin to undue influence" to force States, counties or cities to act in accordance with federal policies. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 132 S. Ct. 2566, 2602 (2012).

74. Under the United States' Constitution, Congress cannot compel state officials to execute federal law. *Printz v. United States*, 521 U.S. 898, 138 L. Ed. 2d 914, 117 S. Ct. 2365 (1997). "In providing for a stronger central government, therefore, the Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States. As we have seen, the Court has consistently respected this choice. We have always understood that even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts." *New York v. United States*, 505 U.S. 144, 166, 112 S. Ct. 2408, 2423 (1992). The Executive Order violates these principles of federalism and state sovereignty and is unconstitutional.

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3. The Executive Order Is Unconstitutional Because It Violates the Tenth and Fourth Amendments

75. The Executive Order is also unconstitutional because it violates the Tenth Amendment of the Constitution. The Tenth Amendment provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." This Amendment preserves the sovereignty of the States and local governments, but the Executive Order seeks to interfere with the States' and local jurisdictions' sovereignty.

76. The Executive Order is also unconstitutional because it forces jurisdictions to keep people in custody who otherwise would be released, thus potentially exposing the jurisdictions to liability under the Fourth Amendment. This is not an idle concern. Public entities may be liable under the Fourth Amendment for honoring an ICE civil detainer request. *Miranda-Olivares v. Clackamas Cty.*, No. 3:12-cv-02317-ST, 2014 U.S. Dist. LEXIS 50340 (D. Or. Apr. 11, 2014); see *Morales v. Chadbourne*, 793 F.3d 208, 215-216 (1st Cir. 2015); *Orellana v. Nobles Cnty.*, No. 15-3852 ADM/SER, 2017 U.S. Dist. LEXIS 2438, at *23-24 (D. Minn. Jan. 6, 2017); *Mendia v. Garcia*, 165 F. Supp. 3d 861, 887 (N.D. Cal. 2016).

77. The federal government has made clear that the local agency bears the financial burden of the detention, providing that "[n]o detainer issued as a result of a determination made under this chapter . . . shall incur any fiscal obligation on the part of the Department." 8 C.F.R. § 287.7(e). The federal government also will not indemnify local governments or its officials against constitutional claims, even when they arise directly out of actions the local government has taken at the direction of the federal government.

78. The Executive Order is unconstitutional because it coerces Richmond to implement federal immigration policy. The Executive Order provides that federal funds will be withheld from jurisdictions that failed to comply with federal law, including specifically 8 U.S.C. § 1373. Executive Order, § 9(a). However, nothing in 8 U.S.C. § 1373 conditions any federal funding on complying with 8 U.S.C. § 1373 and no federal funds which Richmond receives are conditioned with Richmond complying with 8 U.S.C. § 1373. In fact, in light of the

plain language of the statute, there can be no requirement that as a condition of receiving federal funds, a jurisdiction comply with 8 U.S.C. § 1373. If the Executive Order is allowed to stand, its implementation would impermissibly intrude on Richmond's exercise of powers conferred upon it by the State of California, and would unlawfully restrict Richmond's ability to shape local government according to Richmond's needs and policy mandates of its residents.

F. INJURY TO RICHMOND CAUSED BY THE EXECUTIVE ORDER

79. The Executive Order has created fear and confusion regarding the actions that Defendants Attorney General Sessions and Secretary of Homeland Security Kelly, acting on behalf of Defendant United States, will take against state and local governments, like Richmond, who have enacted ordinances to promote trust between law enforcement and the community.

80. Richmond has been forced to expend resources as a result of the Executive Order because the Executive Order has created an atmosphere of fear and distrust in the immigrant community. The positive effects created by Ordinance No. 29-90 and Resolution No. 11-07 in the relationship between law enforcement and the immigrant community have started to dissipate as a result of the Executive Order. The Executive Order has the effect of discouraging immigrants from reporting crimes and cooperating with law enforcement, which harms public safety.

81. Richmond has also been forced to expend resources to determine how it will provide vital municipal services if Defendant Attorney General Sessions and/or Defendant Secretary of Homeland Security Kelly, acting on behalf of Defendant United States, use their unbridled discretion, and determine that Richmond is a "sanctuary jurisdiction," which has willfully violated federal law, and then withhold federal funds.

82. Richmond is dependent on federal and state funds to provide critical services to its residents. From July 1, 2013 through June 30, 2014, it received over $28 million in federal funds. For the same period, it received over $18 million in state funds, many of these funds are pass-through federal funds. In a report prepared by the California State Controller in July 2016, found at http://www.sco.ca.gov/Files AUD/07_2016_richmond_state_and_federal_ expenditures.pdf, the Controller breaks down the federal funds.

83. For fiscal year 2016-2017, Richmond has been granted federal grants for street improvements, community oriented policing, low income public housing, housing choice voucher programs, home repairs, and other services.

84. Richmond's fiscal year runs from July 1 until June 30. Richmond begins its mid-year budget review in February of each year and holds its first budget hearings for the upcoming year in March. The City Council reviews and discusses the budget in May and June with final approval of the budget in early July. Thus, Richmond is in the midst of its budget process. Richmond is already facing budget issues and the potential that Richmond may be declared a "sanctuary jurisdiction" and have **all** federal funding stopped is causing uncertainty to Richmond's budget. Richmond is facing the prospect of sweeping cuts if federal funding ends. Richmond has no alternative source of funding or reserves to make-up for the loss of federal funding and, therefore, the loss of federal funding would be immediate and devastating to Richmond and its residents.

85. The Executive Order's threat to cut federal funds is manifestly coercive and, therefore unconstitutional. The Executive Order's direction to the Attorney General to take "appropriate enforcement action against any entity … which has in effect a statute, policy or practice that prevents or hinders the enforcement of Federal law" presents an immediate harm to Richmond. Richmond needs to make budget decisions regarding next year's budget without having any direction about whether it complies with the Executive Order or whether the Executive Order will be enforced against Richmond and, if so, in what manner.

G. THE COURT SHOULD DECLARE THE EXECUTIVE ORDER UNCONSTITUTIONAL AND ENJOIN ENFORCEMENT

86. There exists a present controversy between Defendants and Richmond because, based upon statements made by Defendants, Defendants, for purposes of enforcing the Executive Order, consider Richmond a sanctuary jurisdiction which is willfully violating the law. Richmond has been considered a Sanctuary City, but it believes that its ordinances comply with the law and permissibly use the discretion granted to Richmond by the United States Constitution and judicial precedent to make decisions regarding the safety of its community. Richmond

believes it complies with 8 U.S.C. § 1373. The Executive Order is unconstitutionally vague in that it fails to tell Richmond what it must do or not do to retain federal funds. There are no administrative remedies that Richmond can seek under the Executive Order. Therefore, Richmond seeks a declaration that the Executive Order is unconstitutional and unenforceable and also that Richmond believes it complies with 8 U.S.C. § 1373. This judicial declaration is necessary and appropriate at this time because of the imminent and irreparable harm that Richmond will face if the Executive Order is implemented against Richmond and all federal funds are cut off.

87. Richmond has no adequate or speedy remedy at law to stop the conduct of Defendants because the Executive Order provides no procedure for review or appeal. This action is Richmond's only way of securing prospective relief. Richmond has suffered actual harm by the issuance of the Executive Order and will continue to suffer extreme hardship and impending irreparable injury if the Executive Order is enforced because the Executive Order is unconstitutional and impermissibly seeks to take away Richmond's federal funding. The loss of federal funding on Richmond would be devastating. Therefore, Richmond seeks a temporary, preliminary, and permanent injunction enjoining the enforcement of the Executive Order against Richmond.

V. CLAIMS FOR RELIEF
(All Claims Are Against All Defendants)

FIRST CLAIM FOR RELIEF

For Injunctive and Declaratory Relief Based on Violation of the Tenth Amendment

88. Plaintiff repeats and incorporates by reference each allegation of the prior paragraphs as if fully set forth herein.

89. The Tenth Amendment preserves state's and local government's sovereignty and limits the federal government's ability to control local governments' actions. Under the Tenth Amendment, "Congress may not simply commandeer the legislative process of the States by directly compelling them to enact and enforce a federal regulatory program." *New York v. United States*, 505 U.S. 144, 161, 112 S. Ct. 2408 (1992) (internal quotation omitted). "The

commandeering cases involve attempts by Congress to direct states to perform certain functions, command state officers to administer federal regulatory programs, or to compel states to adopt specific legislation." *Raich v. Gonzales*, 500 F.3d 850, 867 n. 17 (9th Cir. 2007). The Executive Order violates the Tenth Amendment.

90. The Tenth Amendment applies to Richmond. *Printz v. United States*, 521 U.S. 898, 931, n. 15, 138 L. Ed. 2d 914, 117 S. Ct. 2365 (1997); *City of Santa Cruz v. Gonzales*, No. C 03-01802 JF, 2007 U.S. Dist. LEXIS 66414 (N.D. Cal. Aug. 30, 2007).

91. The Executive Order exceeds the power of the President or any federal branch of government because the Executive Order requires state and local governments to affirmatively assist federal immigration officials by, *inter alia*, complying, at their own expense, with ICE detainer requests. In Section 9(a) of the Executive Order, the "Attorney General shall take appropriate enforcement action against any entity that violates 8 U.S.C. § 1373, or which has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal Law." By demanding that state and local governments, including Richmond, detain individuals who may be subject to removal at the request of federal officials even if those individuals would otherwise be subject to release from custody and by ordering the Attorney General to take enforcement action against state and local governments which do not comply, the Executive Order commandeers state and local officials in furtherance of a federal regulatory program in violation of the Tenth Amendment to the United States Constitution.

92. The Executive Order also requires that state and local governments take action to avoid preventing or hindering the federal government in the enforcement of Federal law. Executive Order, § 9(a). This requirement forces local officials to act as an arm of the federal government, which violates the Tenth Amendment. The federal government cannot use the appropriation of money as a threat to coerce Richmond to act in a certain way. This use of an Executive Order to coerce Richmond through a threat of the loss of all federal funds is unconstitutional. *Nat'l Fed'n of Indep. Bus v. Sebelius,* 567 U.S. 519, 132 S. Ct. 2566, 2602-04 (2012).

93. The Executive Order further impermissibly seeks to interfere with Richmond's policy decisions in enacting Ordinance No. 29-90 and Resolution No. 11-07, which further legitimate local concerns and interests. This federal interference impermissibly penalizes state and local governments that are deemed to "prevent or hinder" the enforcement of federal law and thus impermissibly coerces state and local governments to adopt policies and practices that support the Executive Order to the subordination of state and local government interests.

94. The Executive Order additionally interferes with Richmond's ability to budget. If it is forced to keep people in custody as a result of an ICE detention request, Richmond must pay for these additional costs to detain. These costs are hundreds of dollars per day. If Richmond is forced to incur these costs, it will have less money to spend on services for its residents.

95. Accordingly, the Executive Ordinance is unconstitutional and Richmond seeks a declaration that the Executive Order is unconstitutional, and a temporary, preliminary, and permanent injunction enjoining the enforcement of the Executive Order against Richmond.

WHEREFORE, Richmond prays for relief as hereinafter set forth.

SECOND CLAIM FOR RELIEF

For Injunctive and Declaratory Relief Based on the Separation of Powers And Spending Clauses

96. Plaintiff repeats and incorporates by reference each allegation of the prior paragraphs as if fully set forth herein.

97. The Executive Order Section 2(c) states: "It is the policy of the executive branch to . . . Ensure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law." It further states in Section 9 that: "It is the policy of the executive branch to ensure, to the fullest extent of the law, that a State, or a political subdivision of a State, shall comply with 8 U.S.C. 1373."

98. If defendant Attorney General Sessions or defendant Secretary of Homeland Security Kelly, in the discretion of either one of them, determines that a "sanctuary jurisdiction" who fully refuses to comply with 8 U.S.C. § 1373, they must ensure that the jurisdiction is not

"eligible to receive federal grants, except as deemed necessary for law enforcement purposes." Executive Order § 9.

99. The Executive Order provides that the Attorney General "shall take appropriate enforcement action against any entity that violates 8 U.S.C. § 1373 or has in effect a statute policy or practice that prevents or hinders the enforcement of Federal law." Executive Order § 9.

100. The President does not have the authority to issue the Executive Order because the Executive Order is not authorized by the Constitution or Congress.

101. Accordingly, the Executive Ordinance is unconstitutional and Richmond seeks a declaration that the Executive Order is unconstitutional, and a temporary, preliminary, and permanent injunction enjoining the enforcement of the Executive Order against Richmond.

WHEREFORE, Richmond prays for relief as hereinafter set forth.

THIRD CLAIM FOR RELIEF

For Injunctive and Declaratory Relief Based on Violation of Fourth Amendment

102. Plaintiff repeats and incorporates by reference each allegation of the prior paragraphs as if fully set forth herein.

103. The Fourth Amendment prohibits unreasonable search and seizure, which includes keeping people in custody who otherwise would be released.

104. The Executive Order requires Richmond to keep people in custody who would otherwise be released. Richmond and its law enforcement officials will not have probable cause to keep these people in custody.

105. Therefore, Richmond may be liable under the Fourth Amendment for honoring an ICE civil detention request. *Miranda-Olivares v. Clackamas Cty.*, No. 3:12-cv-02317-ST, 2014 U.S. Dist. LEXIS 50340 (D. Or. Apr. 11, 2014); see *Morales v. Chadbourne*, 793 F.3d 208, 215-216 (1st Cir. 2015); *Orellana v. Nobles Cnty.*, No. 15-3852 ADM/SER, 2017 U.S. Dist. LEXIS 2438, at *23-24 (D. Minn. Jan. 6, 2017); *Mendia v. Garcia*, 165 F. Supp. 3d 861, 887 (N.D. Cal. 2016). Further, the federal government has made clear that Richmond will bear all responsibility for the additional detention costs and potential liability.

106. Accordingly, the Executive Ordinance is unconstitutional and Richmond seeks a declaration that the Executive Order is unconstitutional, and a temporary, preliminary, and permanent injunction enjoining the enforcement of the Executive Order against Richmond.

WHEREFORE, Richmond prays for relief as hereinafter set forth.

FOURTH CLAIM FOR RELIEF

For Injunctive and Declaratory Relief Based on Violation of Due Process Clause Because of Vagueness

107. Plaintiff repeats and incorporates by reference each allegation of the prior paragraphs as if fully set forth herein.

108. The Executive Order is *unconstitutionally vague* in violation of the Due Process Claim, the Fifth Amendment of the Constitution.

109. A federal law is *unconstitutionally vague* if it "fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement. *United States v. Williams*, 553 U.S. 285, 304, 128 S. Ct. 1830, 1845 (2008). This standard applies to Executive Orders. See *United States v. Soussi*, 316 F.3d 1095, 1101 (10th Cir. 2002). "It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." *Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S. Ct. 2294, 2298 (1972); see also *Desertrain v. City of L.A.*, 754 F.3d 1147, 1155-56 (9th Cir. 2014).

110. The Executive Order is unconstitutionally vague and, therefore, unconstitutional. It fails to define key terms, such as "sanctuary jurisdiction" and the term is not defined in any federal law or regulation. Although Richmond and numerous other jurisdictions have been referred to as "sanctuary cities," there is no common definition of a sanctuary city and there are differences between the ordinances and policies of the different jurisdictions referred to as "sanctuary cities." The fact that a public entity has been referred to as a sanctuary city or that it has enacted legislation about immigration policies does not mean that it is a "sanctuary jurisdiction" under the Executive Order. No jurisdiction can determine by the language of the Executive Order if it is a "sanctuary jurisdiction" subject to the Executive Order.

111. The Executive Order is also unconstitutionally vague and, therefore, unconstitutional, because it does not define what actions or inactions constitute "willful refusal to comply with 8 U.S.C. § 1373." The Executive Order gives unfettered discretion to the Attorney General and Secretary of Homeland Security without providing any rules or guidance on how that discretion should be exercised. The Executive Order is, therefore unconstitutionally vague. *United States v. Williams*, 553 U.S. at 304; *Grayned v. City of Rockford*, 408 U.S. at 108. The Executive Order is impermissibly vague because it allows resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. See *Grayned v. City of Rockford*, 408 U.S. at 109.

112. An additional reason that the Executive Order is unconstitutionally vague is that it does not define what is meant by the phrase: "Ensure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law." Richmond does not know, with respect to the Executive Order, what "applicable Federal law means." There is no way for Richmond to know whether the "applicable Federal law" is only 8 U.S.C. § 1373, all immigration laws or all federal laws.

113. Accordingly, the Executive Ordinance is unconstitutional and Richmond seeks a declaration that the Executive Order is unconstitutional, and a temporary, preliminary, and permanent injunction enjoining the enforcement of the Executive Order against Richmond.

WHEREFORE, Richmond prays for relief as hereinafter set forth.

FIFTH CLAIM FOR RELIEF

For a Declaration that Richmond Complies With 8 U.S.C. § 1373

114. Plaintiff repeats and incorporates by reference each allegation of the prior paragraphs as if fully set forth herein.

115. Richmond contends that it complies with 8 U.S.C. § 1373. Specifically, the Richmond Police Department Policy Manual provides that nothing in Section 428 of the Manual regarding immigration violations "is intended to restrict officers from exchanging legitimate law enforcement information with other federal, state or local government entity (8 U.S.C. § 1373; 8 U.S.C. § 1644)."

116. Richmond believes that Defendants contend that Richmond does not comply with 8 U.S.C. § 1373.

117. An actual controversy thus presently exists between Richmond and Defendants about whether Richmond complies with 8 U.S.C. § 1373. A judicial determination resolving this controversy is necessary and appropriate at this time.

WHEREFORE, Richmond prays for relief as hereinafter set forth.

VI. PRAYER FOR RELIEF

Wherefore, the City of Richmond prays for the following relief:

1. For a declaration that the Executive Order is unconstitutional because it violates the Tenth Amendment, violates the separation of powers clause of the U.S. Constitution, violates the spending clause of the U.S. Constitution, is unconstitutionally coercive, violates the Fourth Amendment of the U.S. Constitution, and/or is unconstitutionally vague;

2. For a declaration that Richmond complies with 8 U.S.C. § 1373;

3. Temporarily, preliminarily and permanently enjoin the named Defendants from enforcing the Executive Order against the City of Richmond;

4. Award the City of Richmond reasonable costs and attorney's fees; and

5. Grant any other further relief that the Court deems fit and proper.

Dated: March 21, 2017

COTCHETT, PITRE & McCARTHY, LLP

By: /s/ *Joseph W. Cotchett*

JOSEPH W. COTCHETT
Attorneys for Plaintiff

Dated: March 21, 2017

CITY OF RICHMOND

By: /s/ *Bruce Reed Goodmiller*

BRUCE REED GOODMILLER
Attorneys for Plaintiff

ATTESTATION OF FILING

I, Nancy L. Fineman, hereby attest, pursuant to Northern District of California, Local Rule 5-1(i)(3) that concurrence to the filing of this document has been obtained from each signatory hereto.

/s/ Nancy L. Fineman

NANCY L. FINEMAN
Attorney for Plaintiff

Exhibit 1

Presidential Documents

Executive Order 13768 of January 25, 2017

Enhancing Public Safety in the Interior of the United States

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Immigration and Nationality Act (INA) (8 U.S.C. 1101 *et seq.*), and in order to ensure the public safety of the American people in communities across the United States as well as to ensure that our Nation's immigration laws are faithfully executed, I hereby declare the policy of the executive branch to be, and order, as follows:

Section 1. *Purpose.* Interior enforcement of our Nation's immigration laws is critically important to the national security and public safety of the United States. Many aliens who illegally enter the United States and those who overstay or otherwise violate the terms of their visas present a significant threat to national security and public safety. This is particularly so for aliens who engage in criminal conduct in the United States.

Sanctuary jurisdictions across the United States willfully violate Federal law in an attempt to shield aliens from removal from the United States. These jurisdictions have caused immeasurable harm to the American people and to the very fabric of our Republic.

Tens of thousands of removable aliens have been released into communities across the country, solely because their home countries refuse to accept their repatriation. Many of these aliens are criminals who have served time in our Federal, State, and local jails. The presence of such individuals in the United States, and the practices of foreign nations that refuse the repatriation of their nationals, are contrary to the national interest.

Although Federal immigration law provides a framework for Federal-State partnerships in enforcing our immigration laws to ensure the removal of aliens who have no right to be in the United States, the Federal Government has failed to discharge this basic sovereign responsibility. We cannot faithfully execute the immigration laws of the United States if we exempt classes or categories of removable aliens from potential enforcement. The purpose of this order is to direct executive departments and agencies (agencies) to employ all lawful means to enforce the immigration laws of the United States.

Sec. 2. *Policy.* It is the policy of the executive branch to:

(a) Ensure the faithful execution of the immigration laws of the United States, including the INA, against all removable aliens, consistent with Article II, Section 3 of the United States Constitution and section 3331 of title 5, United States Code;

(b) Make use of all available systems and resources to ensure the efficient and faithful execution of the immigration laws of the United States;

(c) Ensure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law;

(d) Ensure that aliens ordered removed from the United States are promptly removed; and

(e) Support victims, and the families of victims, of crimes committed by removable aliens.

Sec. 3. *Definitions.* The terms of this order, where applicable, shall have the meaning provided by section 1101 of title 8, United States Code.

Sec. 4. *Enforcement of the Immigration Laws in the Interior of the United States.* In furtherance of the policy described in section 2 of this order, I hereby direct agencies to employ all lawful means to ensure the faithful execution of the immigration laws of the United States against all removable aliens.

Sec. 5. *Enforcement Priorities.* In executing faithfully the immigration laws of the United States, the Secretary of Homeland Security (Secretary) shall prioritize for removal those aliens described by the Congress in sections 212(a)(2), (a)(3), and (a)(6)(C), 235, and 237(a)(2) and (4) of the INA (8 U.S.C. 1182(a)(2), (a)(3), and (a)(6)(C), 1225, and 1227(a)(2) and (4)), as well as removable aliens who:

(a) Have been convicted of any criminal offense;

(b) Have been charged with any criminal offense, where such charge has not been resolved;

(c) Have committed acts that constitute a chargeable criminal offense;

(d) Have engaged in fraud or willful misrepresentation in connection with any official matter or application before a governmental agency;

(e) Have abused any program related to receipt of public benefits;

(f) Are subject to a final order of removal, but who have not complied with their legal obligation to depart the United States; or

(g) In the judgment of an immigration officer, otherwise pose a risk to public safety or national security.

Sec. 6. *Civil Fines and Penalties.* As soon as practicable, and by no later than one year after the date of this order, the Secretary shall issue guidance and promulgate regulations, where required by law, to ensure the assessment and collection of all fines and penalties that the Secretary is authorized under the law to assess and collect from aliens unlawfully present in the United States and from those who facilitate their presence in the United States.

Sec. 7. *Additional Enforcement and Removal Officers.* The Secretary, through the Director of U.S. Immigration and Customs Enforcement, shall, to the extent permitted by law and subject to the availability of appropriations, take all appropriate action to hire 10,000 additional immigration officers, who shall complete relevant training and be authorized to perform the law enforcement functions described in section 287 of the INA (8 U.S.C. 1357).

Sec. 8. *Federal-State Agreements.* It is the policy of the executive branch to empower State and local law enforcement agencies across the country to perform the functions of an immigration officer in the interior of the United States to the maximum extent permitted by law.

(a) In furtherance of this policy, the Secretary shall immediately take appropriate action to engage with the Governors of the States, as well as local officials, for the purpose of preparing to enter into agreements under section 287(g) of the INA (8 U.S.C. 1357(g)).

(b) To the extent permitted by law and with the consent of State or local officials, as appropriate, the Secretary shall take appropriate action, through agreements under section 287(g) of the INA, or otherwise, to authorize State and local law enforcement officials, as the Secretary determines are qualified and appropriate, to perform the functions of immigration officers in relation to the investigation, apprehension, or detention of aliens in the United States under the direction and the supervision of the Secretary. Such authorization shall be in addition to, rather than in place of, Federal performance of these duties.

(c) To the extent permitted by law, the Secretary may structure each agreement under section 287(g) of the INA in a manner that provides the most effective model for enforcing Federal immigration laws for that jurisdiction.

Sec. 9. *Sanctuary Jurisdictions.* It is the policy of the executive branch to ensure, to the fullest extent of the law, that a State, or a political subdivision of a State, shall comply with 8 U.S.C. 1373.

(a) In furtherance of this policy, the Attorney General and the Secretary, in their discretion and to the extent consistent with law, shall ensure that jurisdictions that willfully refuse to comply with 8 U.S.C. 1373 (sanctuary jurisdictions) are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary. The Secretary has the authority to designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction. The Attorney General shall take appropriate enforcement action against any entity that violates 8 U.S.C. 1373, or which has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law.

(b) To better inform the public regarding the public safety threats associated with sanctuary jurisdictions, the Secretary shall utilize the Declined Detainer Outcome Report or its equivalent and, on a weekly basis, make public a comprehensive list of criminal actions committed by aliens and any jurisdiction that ignored or otherwise failed to honor any detainers with respect to such aliens.

(c) The Director of the Office of Management and Budget is directed to obtain and provide relevant and responsive information on all Federal grant money that currently is received by any sanctuary jurisdiction.

Sec. 10. *Review of Previous Immigration Actions and Policies.* (a) The Secretary shall immediately take all appropriate action to terminate the Priority Enforcement Program (PEP) described in the memorandum issued by the Secretary on November 20, 2014, and to reinstitute the immigration program known as "Secure Communities" referenced in that memorandum.

(b) The Secretary shall review agency regulations, policies, and procedures for consistency with this order and, if required, publish for notice and comment proposed regulations rescinding or revising any regulations inconsistent with this order and shall consider whether to withdraw or modify any inconsistent policies and procedures, as appropriate and consistent with the law.

(c) To protect our communities and better facilitate the identification, detention, and removal of criminal aliens within constitutional and statutory parameters, the Secretary shall consolidate and revise any applicable forms to more effectively communicate with recipient law enforcement agencies.

Sec. 11. *Department of Justice Prosecutions of Immigration Violators.* The Attorney General and the Secretary shall work together to develop and implement a program that ensures that adequate resources are devoted to the prosecution of criminal immigration offenses in the United States, and to develop cooperative strategies to reduce violent crime and the reach of transnational criminal organizations into the United States.

Sec. 12. *Recalcitrant Countries.* The Secretary of Homeland Security and the Secretary of State shall cooperate to effectively implement the sanctions provided by section 243(d) of the INA (8 U.S.C. 1253(d)), as appropriate. The Secretary of State shall, to the maximum extent permitted by law, ensure that diplomatic efforts and negotiations with foreign states include as a condition precedent the acceptance by those foreign states of their nationals who are subject to removal from the United States.

Sec. 13. *Office for Victims of Crimes Committed by Removable Aliens.* The Secretary shall direct the Director of U.S. Immigration and Customs Enforcement to take all appropriate and lawful action to establish within U.S. Immigration and Customs Enforcement an office to provide proactive, timely, adequate, and professional services to victims of crimes committed by removable aliens and the family members of such victims. This office shall provide quarterly reports studying the effects of the victimization by criminal aliens present in the United States.

Sec. 14. *Privacy Act.* Agencies shall, to the extent consistent with applicable law, ensure that their privacy policies exclude persons who are not United States citizens or lawful permanent residents from the protections of the Privacy Act regarding personally identifiable information.

Sec. 15. *Reporting.* Except as otherwise provided in this order, the Secretary and the Attorney General shall each submit to the President a report on the progress of the directives contained in this order within 90 days of the date of this order and again within 180 days of the date of this order.

Sec. 16. *Transparency.* To promote the transparency and situational awareness of criminal aliens in the United States, the Secretary and the Attorney General are hereby directed to collect relevant data and provide quarterly reports on the following:

(a) the immigration status of all aliens incarcerated under the supervision of the Federal Bureau of Prisons;

(b) the immigration status of all aliens incarcerated as Federal pretrial detainees under the supervision of the United States Marshals Service; and

(c) the immigration status of all convicted aliens incarcerated in State prisons and local detention centers throughout the United States.

Sec. 17. *Personnel Actions.* The Office of Personnel Management shall take appropriate and lawful action to facilitate hiring personnel to implement this order.

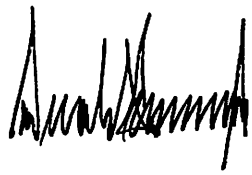
Sec. 18. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 25, 2017.

[FR Doc. 2017–02102
Filed 1–27–17; 11:15 am]
Billing code 3295–F7–P

Exhibit 2

ORDINANCE NO. 29-90 N.S.

AN ORDINANCE OF THE CITY OF RICHMOND, CALIFORNIA, ADOPTING CERTAIN POLICIES REGARDING THE REQUEST FOR INFORMATION, ASSISTANCE OR COOPERATION BY THE IMMIGRATION AND NATURALIZATION SERVICE OF THE UNITED STATES DEPARTMENT OF JUSTICE

WHEREAS, the Council of the City of Richmond desires to foster an atmosphere of trust and cooperation between the Richmond Police Department and all persons, regardless of immigration status, residing in the City of Richmond; and

WHEREAS, the creation of such trust and cooperation is important to law enforcement efforts in the City of Richmond in the war on drugs and criminal activity generally; and

WHEREAS, concerns have been raised that this positive environment may be compromised by certain actions engaged in by agents of the Immigration and Naturalization Service of the United States Department of Justice in the City of Richmond when aided by information or assistance provided by City of Richmond officers and employees; and

WHEREAS, the Council of the City of Richmond desires to respond to the community's concerns in an effective manner.

NOW, THEREFORE, the Council of the City of Richmond do ordain as follows:

Section 1. The Council of the City of Richmond hereby declares that it does not condone the detention of citizens and non-citizens by the Immigration and Naturalization Service based solely upon physical profiles or a lack of probable cause.

Section 2. In order to address the fears expressed by the immigrant and refugee community in the City of Richmond concerning Immigration and Naturalization Service activities in the City of Richmond while preserving the ability of the Richmond Police Department to utilize all available resources to fight criminal activity, the Council of the City of Richmond hereby adopts the following policy:

1. All officers and employees of the City of Richmond, while acting in their official capacities, who receive any oral or written request from the Immigration and Naturalization Service for information, cooperation or assistance shall refer

such request to the City Manager or the Chief of Police. The City Manager or the Chief of Police shall decide whether such information shall be given or whether such cooperation or assistance shall be provided to the Immigration and Naturalization Service. In exercising their discretion, the City Manager and the Chief of Police shall consider the possible disruption and inconvenience that may be experienced by the immigrant and refugee community in the City of Richmond and any requirements of any federal, state or local law or court decision. Nothing delineated in the foregoing policy shall be construed to prevent the City Manager or the Chief of Police from providing information, assistance or cooperation to the Immigration and Naturalization Service regarding the criminal violation of any federal, state or local law.

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2. The City Manager and the Chief of Police shall report to the City Council regarding the activities of the Immigration and Naturalization Service within the City of Richmond as requested by the City Council or as the City Manager or Chief of Police may deem appropriate.

3. The City Manager shall distribute a copy of this policy to all current and new officers and employees of the City of Richmond and shall emphasize the importance of complying with this City Council policy.

Section 3. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed each section, subsection, subdiviaion, paragraph, sentence, clause or phrase of this Ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

First read at a regular meeting of the Council of the City of Richmond, California, held August 13, 1990,

and finally passed and adopted at a regular meeting thereof held August 20, 1990, by the following vote:

AYES: Councilmembers Niccolls, Corbin, Marquez, Ziesenhenne, MacDiarmid, Griffin and Vice-Mayor McMillan

NOES: None

ABSENT: Councilmember Washington and Mayor Livingston

EULA M. BARNES
Clerk of the City of Richmond

Approved: (SEAL)

GEORGE L. LIVINGSTON
Mayor

Approved as to form:

MALCOLM HUNTER
City Attorney

State of California)
County of Contra Costa : ss.
City of Richmond)

I certify that the foregoing is a true copy of Resolution No. 29-90 N.S. finally passed and adopted by the Council of the City of Richmond at a regular meeting held August 13, 1990, and published in accordance with law.

3 EULA M. BARNES
Clerk of the City of Richmond

By: Dian Holmes
Deputy City Clerk

Exhibit 3

RESOLUTION NO. 11-07

A RESOLUTION OF THE RICHMOND CITY COUNCIL REAFFIRMING ITS SUPPORT FOR COMPREHENSIVE IMMIGRATION REFORM THAT IS FAIR, JUST AND HUMANE

WHEREAS, The City of Richmond welcomes and values all of its residents and supports them to live and work free from discrimination, hostility, abuse, violence, exploitation and fear of local, state and federal law enforcement; and

WHEREAS, one fourth of the residents of Richmond are persons who were born in foreign countries and who have come to the U.S. in search of better lives for themselves and their families; and

WHEREAS; National experts and policy makers agree our federal immigration policy is broken, inconsistent and in need of reform; and

WHEREAS; Most economists agree that immigrants and undocumented workers are good for the US economy and studies show that immigrants contribute $25-30 billion more in taxes than they receive in services; and

WHEREAS; A crackdown on illegal immigration in 2004 caused a shortage of workers needed to bring in the agricultural crop in the Western United States which caused a $1 billion dollar loss for the industry; and

WHEREAS, The City of Richmond in resolution 35-06 of April 18, 2006 called for a comprehensive immigration reform bill that is fair, just and humane; that recognizes all immigrants for their contributions to our economic and social life; and

WHEREAS The City of Richmond passed Ordinance 29-90 to affirms its desire to foster an atmosphere of trust and cooperation between the Richmond Police Department and all residents of the city of Richmond; and

WHEREAS, Immigration and Customs Enforcement (ICE) has acknowledged through press reports that its officers identify themselves as "police", which technically correct misleads the residents of Richmond, by suggesting they are Richmond Police Department officers investigating local crimes and undermines the trust built by the Richmond Police Department; and

WHEREAS, the community and church leaders have received also numerous complaints of people arrested at places of work and in public places, for which no warrants existed, creating a climate of fear among immigrant families; and

NOW, THEREFORE, BE IT RESOLVED that the US Department of Homeland Security and the US Immigration and Customs Enforcement be called upon to issue a moratorium on raids until the US Congress comes to an agreement on comprehensive immigration reform so that the debate can be carried out in good faith, rather than against a backdrop of fear, repression and intimidation; and

BE IT FURTHER RESOLVED that the City of Richmond reaffirms the terms of ordinance No. 20-90 ordering all officers and employees of this City not to inform, assist or cooperate with the Immigration and Customs Enforcement (ICE) formerly known as Immigration and Naturalization Service, without the specific authorization of the Richmond City Manager or the Chief of Police; and

BE IT FURTHER RESOLVED that the City of Richmond calls for the Immigration and Customs Enforcement (ICE) officers conducting any future official business in Richmond to clearly and specifically identify themselves as federal immigration officers and to proactively and clearly state that they are not officers of the Richmond Police Department; and

BE IT FURTHER RESOLVED that the City of Richmond reaffirms its support for comprehensive immigration reform bill that is fair, just and humane; that recognizes all immigrants for their contributions to our economic and social life; that provides a system that addresses the backlog of visas to reunite families currently separated; that provides

undocumented workers and students with a path toward permanent residency; and prevents the criminalization of the estimated 12 million undocumented immigrants currently residing in the United States; and

BE IT FURTHER RESOLVED that the Richmond City Council directs the Clerk of the Richmond City Council to send copies of this resolution to Michael Chertoff, Secretary for Homeland Security, and to Federal representatives including Senator Dianne Feinstein, Senator Barbara Boxer, and Congressman George Miller.

I certify that the foregoing resolution was passed and adopted by the Council of the City of Richmond, California at a meeting held on February 6, 2007, by the following vote:

Ayes:	Councilmembers Bates, Butt, Lopez, Marquez, Rogers, Sandhu, Thurmond, Viramontes, and Mayor McLaughlin
Noes:	None
Abstentions:	None
Absent:	None

DIANE HOLMES
Clerk of the City of Richmond

[SEAL]

APPROVED:

GAYLE McLAUGHLIN
Mayor

APPROVED AS TO FORM:

JOHN EASTMAN
City Attorney

State of California }
County of Contra Costa : ss
City of Richmond }

I certify that the foregoing is a true copy of Resolution No. 11-07, finally passed and adopted by the Council of the City of Richmond at a meeting held on February 6, 2007.

Exhibit 4

Immigration Violations

428.1 PURPOSE AND SCOPE

It is the policy of the Richmond Police Department (RPD) to foster trust and cooperation with all people of the city and to encourage them to communicate with RPD officers without fear of inquiry regarding their immigration status. It is also department policy, consistent with its obligations under state and federal law, to adhere to the City of Richmond Ordinance 2990. This ordinance prohibits the use of City resources to assist in the enforcement of federal immigration laws without the specific authorization of the City Manager or the Chief of Police.

428.2 DEPARTMENT POLICY

The U.S. Immigration and Customs Enforcement (ICE) has primary jurisdiction for enforcement of the provisions of Title 8, United States Code dealing with illegal entry.

When assisting ICE at its specific request, or when suspected criminal violations are discovered as a result of inquiry or investigation based on probable cause originating from activities other than the isolated violations of 8 USC § 1304; 8 USC § 1324; 8 USC § 1325 and 8 USC § 1326, this department may assist in the enforcement of federal immigration laws.

428.2.1 IMMIGRATION "SWEEPS" AND SPECIAL ENFORCEMENT EFFORTS

The Richmond Police Department does not conduct immigration "sweeps" or engage in other concentrated efforts to identify or detain suspected undocumented individuals.

Equal consideration should be given to all suspected violations and not just those affecting a particular race, ethnic group, age group, gender, socioeconomic status, immigration status, or other group when enforcement efforts are increased in any particular area of the city.

The disposition of each contact (e.g., warning, citation, arrest), while discretionary in each case, should not be affected by such factors as race, ethnicity, sexual orientation, immigration status, etc.

428.2.2 ICE REQUEST FOR ASSISTANCE

If the U.S. Immigration and Customs Enforcement (ICE) requests assistance from this department for support services, such as traffic control or "keep the peace" efforts, authorization must be obtained from the Chief of Police.

RPD officers shall not participate in ICE operations such as immigration "sweeps", or activities related to immigration issues, other than as emergency backup.

428.2.3 BOOKING

If the officer is unable to reasonably establish an arrestee's identity, the individual may, upon approval of a supervisor, be booked into jail for the suspected criminal violation and held for bail.

A person detained exclusively pursuant to the authority of Vehicle Code § 40302(a) for any Vehicle Code infraction or misdemeanor shall not be detained beyond four hours for the purpose of

Adoption Date: 2016/03/09
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establishing his/her true identity. Regardless of the status of that person's identity at the expiration of four hours, he/she shall be released on his/her signature with a promise to appear in court for the Vehicle Code infraction or misdemeanor involved.

428.2.4 NOTIFICATION OF IMMIGRATION AND CUSTOMS ENFORCEMENT

It is the policy of the City of Richmond and the Richmond Police Department that the Department shall not comply with Immigration and Customs Enforcement (ICE) hold "requests" or ICE detainers. Arrested persons shall not be held for these hold/retainer "requests." ICE has no legal authority to require compliance with these "requests." The Department shall comply with federal arrest warrants or orders signed by a judge.

ICE personnel shall not be allowed access to the Richmond Police Department Detention Unit (Temporary Holding Facility) unless they are there to pick up a prisoner on a federal warrant or order signed by a judge.

Richmond Police Department personnel shall not notify ICE of individuals who are taken into custody. If an arrested person meets Richmond Police Department criteria to be transported and booked into the County Jail, that person may be subject to an ICE hold or detainer "request" once he or she is booked into the county Jail based on the Contra Costa County Sheriff's Department's policy which provides ICE personnel access to the County Jail and shares information with ICE.

ICE personnel shall not be permitted access to any Richmond Police Department records, including booking sheets, booking logs, or police reports unless they have the approval of a Lieutenant or Chief of Police.

Any deviations from this policy shall require the approval of a Lieutenant or the Chief of Police.

428.3 PROCEDURES FOR IMMIGRATION COMPLAINTS

In October 2000, the United States Congress passed the Victims of Trafficking and Violence Prevention Act. As part of this Act, Congress sought to strengthen the ability of local law enforcement agencies to detect, investigate, and prosecute crimes against nonresident foreigners. In cases in which the victims are nonresident foreigners, their immigration status in the United States can directly affect their ability to cooperate and assist local law enforcement in the investigation and prosecution of these crimes.

Nonresident foreign victims usually need to be in the United States to be accessible to provide information and testimony as part of an investigation or prosecution. Nonresident foreign victims may also need a place of refuge so they can avoid returning to the same environment in another country where they might be exposed to further crimes. For this reason, Congress created a specific avenue for nonresident foreign crime victims to obtain lawful temporary immigrant status. This was accomplished by amending certain sections of the Immigration and Nationality Act (INA) to create the "U Visa." The Richmond Police Department participates in the U Visa Program.

428.3.1 BASIS FOR CONTACT

(a) Temporary Visa - allowing the victim to remain in the U.S. for up to four (4) years

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(b) After three (3) years, the victim can apply for permanent residency

(c) Victim may legally work in the U.S.; and

(d) Nation-wide, a total of only 10,000 U-Visas are issued annually.

(e) Except for those cases protected under California Penal Code Section 293, U-Visa information/records are subject to the Public Records Access Act.

428.3.2 SWEEPS

In order for a Form I-918, Supplement b to be completed and certified by the Department, the facts of the case under investigation must demonstrate the following:

(a) The non-resident foreign victim has been, is being, or is likely to be "helpful" to an RPD investigation. For the purposes of this policy, the victim is described as being "helpful" when he/she:

1. Possesses and furnishes vital information about a qualifying crime;
2. Demonstrates continual cooperation during the investigation and/or prosecution;
3. Assists investigators with gathering additional vital information; and
4. Makes him/herself available to investigators.

(b) The non-resident foreigner was a victim of an actual crime (listed in subpart C. below) which took place in the United States.

1. If there is no Richmond connection (e.g., the Department has not and does not plan to open an investigation), the request shall be returned to the requester with instructions to forward to the appropriate investigating or charging agency.
2. If a prior investigation and related criminal case has been closed and the date of the incident exceeds the statute of limitations, the Department shall not process the request without first consulting with the District Attorney's Office.

(c) The non-resident foreign victim sustained physical injury or mental abuse and the crime was one of the following:

1. Rape;
2. Torture;
3. Trafficking;
4. Incest;
5. Domestic violence;
6. Sexual assaults;
7. Abusive sexual contact;
8. Prostitution, sexual exploitation;

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9. Female genital mutilation;
10. Abduction;
11. Unlawful criminal restraint;
12. False imprisonment;
13. Blackmail;
14. Extortion;
15. Manslaughter;
16. Murder;
17. Felonious assault;
18. Witness tampering;
19. Obstruction of justice;
20. Perjury or attempt;
21. Conspiracy; or
22. Solicitation to commit any of the above mentioned crimes.

(d) The decision to complete the certification of Form I-918, Supplement B, is based solely on these qualifiers. If the application does not satisfy these criteria, the Form shall be returned to the requester uncompleted and "un-signed."

428.3.3 ICE REQUEST FOR ASSISTANCE

The Richmond Police Department's U-Visa program is managed by the Officer In Charge assigned to the Criminal Investigations Section. A petition for a U-Visa from the U.S. Citizenship and Immigrations Services must be completed on DHS Form I-918 by the assigned investigator or the assigned prosecutor and must include information on how the individual can assist in a criminal investigation or prosecution in order for a U-Visa to be issued.

Any request for assistance in applying for U-Visa status should be forwarded in a timely fashion to the Investigations Division Sergeant assigned to supervise the handling of any related case. The Investigations Division Sergeant should do the following:

- Consult with the assigned detective to determine the current status of any related case and whether an update on the case is warranted.
- Review the instructions for completing the certification if necessary. Instructions for completing Form I-918 can be found on the DHS website at http://www.uscis.gov/portal/site/uscis.
- Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the certification has not already been completed and that certification is warranted.

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- Timely address the request and complete the certification if appropriate.
- Ensure that any decision to complete or not complete the form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed certification in the case file.

428.4 CONSIDERATIONS PRIOR TO REPORTING TO ICE

The Richmond Police Department is concerned for the safety of local citizens and thus detection of criminal behavior is of primary interest in dealing with any person. The decision to arrest shall be based upon those factors which establish probable cause and not on arbitrary aspects. Race, ethnicity, age, gender, sexual orientation, religion, and socioeconomic status alone are of no bearing on the decision to arrest.

All individuals, regardless of their immigration status, must feel secure that contacting law enforcement will not make them vulnerable to deportation. Members should not attempt to determine the immigration status of crime victims and witnesses or take enforcement action against them absent exigent circumstances or reasonable cause to believe that a crime victim or witness is involved in violating criminal laws. Generally, if an officer suspects that a victim or witness is an undocumented immigrant, the officer need not report the person to ICE unless circumstances indicate such reporting is reasonably necessary.

Nothing in this policy is intended to restrict officers from exchanging legitimate law enforcement information with any other federal, state or local government entity (8 USC § 1373; 8 USC § 1644).

428.4.1 U-VISA/T-VISA NONIMMIGRANT STATUS

Under certain circumstances, federal law allows temporary immigration benefits to victims and witnesses of certain qualifying crimes (8 USC § 1101(a)(15)(U); 8 USC § 1101(a)(15)(T)). A declaration/certification for a U-Visa/T-Visa from the U.S. Citizenship and Immigration Services may be completed on the appropriate U.S. DHS Form supplements (I-918 or I-914) by law enforcement and must include information on how the individual can assist in a criminal investigation or prosecution in order for a U-Visa/T-Visa to be issued.

Any request for assistance in applying for U-Visa/T-Visa status should be forwarded in a timely manner to the Investigations Division sergeant assigned to supervise the handling of any related case. The Investigations Division sergeant should do the following:

(a) Consult with the assigned detective to determine the current status of any related case and whether further documentation is warranted.

(b) Review the instructions for completing the declaration/certification if necessary. Instructions for completing Forms I-918/I-914 can be found on the U.S. DHS website.

(c) Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the declaration/certification has not already been completed and whether a declaration/certification is warranted.

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(d) Address the request and complete the declaration/certification, if appropriate, in a timely manner.

(e) Ensure that any decision to complete or not complete the form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed declaration/certification in the case file.

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Exhibit 5

Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

February 20, 2017

MEMORANDUM FOR:

Kevin McAleenan
Acting Commissioner
U.S. Customs and Border Protection

Thomas D. Homan
Acting Director
U.S. Immigration and Customs Enforcement

Lori Scialabba
Acting Director
U.S. Citizenship and Immigration Services

Joseph B. Maher
Acting General Counsel

Dimple Shah
Acting Assistant Secretary for International Affairs

Chip Fulghum
Acting Undersecretary for Management

FROM:

John Kelly
Secretary

SUBJECT:

Enforcement of the Immigration Laws to Serve the National Interest

This memorandum implements the Executive Order entitled "Enhancing Public Safety in the Interior of the United States," issued by the President on January 25, 2017. It constitutes guidance for all Department personnel regarding the enforcement of the immigration laws of the United States, and is applicable to the activities of U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS). As such, it should inform enforcement and removal activities, detention decisions, administrative litigation, budget requests and execution, and strategic planning.

With the exception of the June 15, 2012, memorandum entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children," and the November 20, 2014 memorandum entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents,"[1] all existing conflicting directives, memoranda, or field guidance regarding the enforcement of our immigration laws and priorities for removal are hereby immediately rescinded—to the extent of the conflict—including, but not limited to, the November 20, 2014, memoranda entitled "Policies for the Apprehension, Detention and Removal of Undocumented Immigrants," and "Secure Communities."

A. The Department's Enforcement Priorities

Congress has defined the Department's role and responsibilities regarding the enforcement of the immigration laws of the United States. Effective immediately, and consistent with Article II, Section 3 of the United States Constitution and Section 3331 of Title 5, United States Code, Department personnel shall faithfully execute the immigration laws of the United States against all removable aliens.

Except as specifically noted above, the Department no longer will exempt classes or categories of removable aliens from potential enforcement. In faithfully executing the immigration laws, Department personnel should take enforcement actions in accordance with applicable law. In order to achieve this goal, as noted below, I have directed ICE to hire 10,000 officers and agents expeditiously, subject to available resources, and to take enforcement actions consistent with available resources. However, in order to maximize the benefit to public safety, to stem unlawful migration and to prevent fraud and misrepresentation, Department personnel should prioritize for removal those aliens described by Congress in Sections 212(a)(2), (a)(3), and (a)(6)(C), 235(b) and (c), and 237(a)(2) and (4) of the Immigration and Nationality Act (INA).

Additionally, regardless of the basis of removability, Department personnel should prioritize removable aliens who: (1) have been convicted of any criminal offense; (2) have been charged with any criminal offense that has not been resolved; (3) have committed acts which constitute a chargeable criminal offense; (4) have engaged in fraud or willful misrepresentation in connection with any official matter before a governmental agency; (5) have abused any program related to receipt of public benefits; (6) are subject to a final order of removal but have not complied with their legal obligation to depart the United States; or (7) in the judgment of an immigration officer, otherwise pose a risk to public safety or national security. The Director of ICE, the Commissioner of CBP, and the Director of USCIS may, as they determine is appropriate, issue further guidance to allocate appropriate resources to prioritize enforcement activities within these categories—for example, by prioritizing enforcement activities against removable aliens who are convicted felons or who are involved in gang activity or drug trafficking.

[1] The November 20, 2014, memorandum will be addressed in future guidance.

B. Strengthening Programs to Facilitate the Efficient and Faithful Execution of the Immigration Laws of the United States

Facilitating the efficient and faithful execution of the immigration laws of the United States—and prioritizing the Department's resources—requires the use of all available systems and enforcement tools by Department personnel.

Through passage of the immigration laws, Congress established a comprehensive statutory regime to remove aliens expeditiously from the United States in accordance with all applicable due process of law. I determine that the faithful execution of our immigration laws is best achieved by using all these statutory authorities to the greatest extent practicable. Accordingly, Department personnel shall make full use of these authorities.

Criminal aliens have demonstrated their disregard for the rule of law and pose a threat to persons residing in the United States. As such, criminal aliens are a priority for removal. The Priority Enforcement Program failed to achieve its stated objectives, added an unnecessary layer of uncertainty for the Department's personnel, and hampered the Department's enforcement of the immigration laws in the interior of the United States. Effective immediately, the Priority Enforcement Program is terminated and the Secure Communities Program shall be restored. To protect our communities and better facilitate the identification, detention, and removal of criminal aliens within constitutional and statutory parameters, the Department shall eliminate the existing Forms I-247D, I-247N, and I-247X, and replace them with a new form to more effectively communicate with recipient law enforcement agencies. However, until such forms are updated they may be used as an interim measure to ensure that detainers may still be issued, as appropriate.

ICE's Criminal Alien Program is an effective tool to facilitate the removal of criminal aliens from the United States, while also protecting our communities and conserving the Department's detention resources. Accordingly, ICE should devote available resources to expanding the use of the Criminal Alien Program in any willing jurisdiction in the United States. To the maximum extent possible, in coordination with the Executive Office for Immigration Review (EOIR), removal proceedings shall be initiated against aliens incarcerated in federal, state, and local correctional facilities under the Institutional Hearing and Removal Program pursuant to section 238(a) of the INA, and administrative removal processes, such as those under section 238(b) of the INA, shall be used in all eligible cases.

The INA § 287(g) Program has been a highly successful force multiplier that allows a qualified state or local law enforcement officer to be designated as an "immigration officer" for purposes of enforcing federal immigration law. Such officers have the authority to perform all law enforcement functions specified in section 287(a) of the INA, including the authority to investigate, identify, apprehend, arrest, detain, and conduct searches authorized under the INA, under the direction and supervision of the Department.

There are currently 32 law enforcement agencies in 16 states participating in the 287(g)

Program. In previous years, there were significantly more law enforcement agencies participating in the 287(g) Program. To the greatest extent practicable, the Director of ICE and Commissioner of CBP shall expand the 287(g) Program to include all qualified law enforcement agencies that request to participate and meet all program requirements. In furtherance of this direction and the guidance memorandum, "Implementing the President's Border Security and Immigration Enforcement Improvements Policies" (Feb. 20, 2017), the Commissioner of CBP is authorized, in addition to the Director of ICE, to accept State services and take other actions as appropriate to carry out immigration enforcement pursuant to section 287(g) of the INA.

C. Exercise of Prosecutorial Discretion

Unless otherwise directed, Department personnel may initiate enforcement actions against removable aliens encountered during the performance of their official duties and should act consistently with the President's enforcement priorities identified in his Executive Order and any further guidance issued pursuant to this memorandum. Department personnel have full authority to arrest or apprehend an alien whom an immigration officer has probable cause to believe is in violation of the immigration laws. They also have full authority to initiate removal proceedings against any alien who is subject to removal under any provision of the INA, and to refer appropriate cases for criminal prosecution. The Department shall prioritize aliens described in the Department's Enforcement Priorities (Section A) for arrest and removal. This is not intended to remove the individual, case-by-case decisions of immigration officers.

The exercise of prosecutorial discretion with regard to any alien who is subject to arrest, criminal prosecution, or removal in accordance with law shall be made on a case-by-case basis in consultation with the head of the field office component, where appropriate, of CBP, ICE, or USCIS that initiated or will initiate the enforcement action, regardless of which entity actually files any applicable charging documents: CBP Chief Patrol Agent, CBP Director of Field Operations, ICE Field Office Director, ICE Special Agent-in-Charge, or the USCIS Field Office Director, Asylum Office Director or Service Center Director.

Except as specifically provided in this memorandum, prosecutorial discretion shall not be exercised in a manner that exempts or excludes a specified class or category of aliens from enforcement of the immigration laws. The General Counsel shall issue guidance consistent with these principles to all attorneys involved in immigration proceedings.

D. Establishing the Victims of Immigration Crime Engagement (VOICE) Office

Criminal aliens routinely victimize Americans and other legal residents. Often, these victims are not provided adequate information about the offender, the offender's immigration status, or any enforcement action taken by ICE against the offender. Efforts by ICE to engage these victims have been hampered by prior Department of Homeland Security (DHS) policy extending certain Privacy Act protections to persons other than U.S. citizens and lawful permanent residents, leaving victims feeling marginalized and without a voice. Accordingly, I am establishing the Victims of Immigration Crime Engagement (VOICE) Office within the Office of

the Director of ICE, which will create a programmatic liaison between ICE and the known victims of crimes committed by removable aliens. The liaison will facilitate engagement with the victims and their families to ensure, to the extent permitted by law, that they are provided information about the offender, including the offender's immigration status and custody status, and that their questions and concerns regarding immigration enforcement efforts are addressed.

To that end, I direct the Director of ICE to immediately reallocate any and all resources that are currently used to advocate on behalf of illegal aliens (except as necessary to comply with a judicial order) to the new VOICE Office, and to immediately terminate the provision of such outreach or advocacy services to illegal aliens.

Nothing herein may be construed to authorize disclosures that are prohibited by law or may relate to information that is Classified, Sensitive but Unclassified (SBU), Law Enforcement Sensitive (LES), For Official Use Only (FOUO), or similarly designated information that may relate to national security, law enforcement, or intelligence programs or operations, or disclosures that are reasonably likely to cause harm to any person.

E. Hiring Additional ICE Officers and Agents

To enforce the immigration laws effectively in the interior of the United States in accordance with the President's directives, additional ICE agents and officers are necessary. The Director of ICE shall—while ensuring consistency in training and standards—take all appropriate action to expeditiously hire 10,000 agents and officers, as well as additional operational and mission support and legal staff necessary to hire and support their activities. Human Capital leadership in CBP and ICE, in coordination with the Under Secretary for Management and the Chief Human Capital Officer, shall develop hiring plans that balance growth and interagency attrition by integrating workforce shaping and career paths for incumbents and new hires.

F. Establishment of Programs to Collect Authorized Civil Fines and Penalties

As soon as practicable, the Director of ICE, the Commissioner of CBP, and the Director of USCIS shall issue guidance and promulgate regulations, where required by law, to ensure the assessment and collection of all fines and penalties which the Department is authorized under the law to assess and collect from aliens and from those who facilitate their unlawful presence in the United States.

G. Aligning the Department's Privacy Policies With the Law

The Department will no longer afford Privacy Act rights and protections to persons who are neither U.S. citizens nor lawful permanent residents. The DHS Privacy Office will rescind the DHS *Privacy Policy Guidance memorandum*, dated January 7, 2009, which implemented the DHS "mixed systems" policy of administratively treating all personal information contained in DHS record systems as being subject to the Privacy Act regardless of the subject's immigration status. The DHS Privacy Office, with the assistance of the Office of the General Counsel, will

develop new guidance specifying the appropriate treatment of personal information DHS maintains in its record systems.

H. Collecting and Reporting Data on Alien Apprehensions and Releases

The collection of data regarding aliens apprehended by ICE and the disposition of their cases will assist in the development of agency performance metrics and provide transparency in the immigration enforcement mission. Accordingly, to the extent permitted by law, the Director of ICE shall develop a standardized method of reporting statistical data regarding aliens apprehended by ICE and, at the earliest practicable time, provide monthly reports of such data to the public without charge.

The reporting method shall include uniform terminology and shall utilize a format that is easily understandable by the public and a medium that can be readily accessed. At a minimum, in addition to statistical information currently being publicly reported regarding apprehended aliens, the following categories of information must be included: country of citizenship, convicted criminals and the nature of their offenses, gang members, prior immigration violators, custody status of aliens and, if released, the reason for release and location of their release, aliens ordered removed, and aliens physically removed or returned.

The ICE Director shall also develop and provide a weekly report to the public, utilizing a medium that can be readily accessed without charge, of non-Federal jurisdictions that release aliens from their custody, notwithstanding that such aliens are subject to a detainer or similar request for custody issued by ICE to that jurisdiction. In addition to other relevant information, to the extent that such information is readily available, the report shall reflect the name of the jurisdiction, the citizenship and immigration status of the alien, the arrest, charge, or conviction for which each alien was in the custody of that jurisdiction, the date on which the ICE detainer or similar request for custody was served on the jurisdiction by ICE, the date of the alien's release from the custody of that jurisdiction and the reason for the release, an explanation concerning why the detainer or similar request for custody was not honored, and all arrests, charges, or convictions occurring after the alien's release from the custody of that jurisdiction.

I. No Private Right of Action

This document provides only internal DHS policy guidance, which may be modified, rescinded, or superseded at any time without notice. This guidance is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigation prerogatives of DHS.

In implementing these policies, I direct DHS Components to consult with legal counsel to ensure compliance with all applicable laws, including the Administrative Procedure Act.

Exhibit 6

Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

February 20, 2017

MEMORANDUM FOR:

Kevin McAleenan
Acting Commissioner
U.S. Customs and Border Protection

Thomas D. Homan
Acting Director
U.S. Immigration and Customs Enforcement

Lori Scialabba
Acting Director
U.S. Citizenship and Immigration Services

Joseph B. Maher
Acting General Counsel

Dimple Shah
Acting Assistant Secretary for International Affairs

Chip Fulghum
Acting Undersecretary for Management

FROM:

John Kelly
Secretary

SUBJECT:

Implementing the President's Border Security and Immigration Enforcement Improvements Policies

This memorandum implements the Executive Order entitled "Border Security and Immigration Enforcement Improvements," issued by the President on January 25, 2017, which establishes the President's policy regarding effective border security and immigration enforcement through faithful execution of the laws of the United States. It implements new policies designed to stem illegal immigration and facilitate the detection, apprehension, detention, and removal of aliens who have no lawful basis to enter or remain in the United States. It constitutes guidance to all Department personnel, and supersedes all existing conflicting policy, directives, memoranda, and other guidance regarding this subject matter—to the extent of the conflict—except as otherwise expressly stated in this memorandum.

A. Policies Regarding the Apprehension and Detention of Aliens Described in Section 235 of the Immigration and Nationality Act.

The President has determined that the lawful detention of aliens arriving in the United States and deemed inadmissible or otherwise described in section 235(b) of the Immigration and Nationality Act (INA) pending a final determination of whether to order them removed, including determining eligibility for immigration relief, is the most efficient means by which to enforce the immigration laws at our borders. Detention also prevents such aliens from committing crimes while at large in the United States, ensures that aliens will appear for their removal proceedings, and substantially increases the likelihood that aliens lawfully ordered removed will be removed.

These policies are consistent with INA provisions that mandate detention of such aliens and allow me or my designee to exercise discretionary parole authority pursuant to section 212(d)(5) of the INA only on a case-by-case basis, and only for urgent humanitarian reasons or significant public benefit. Policies that facilitate the release of removable aliens apprehended at and between the ports of entry, which allow them to abscond and fail to appear at their removal hearings, undermine the border security mission. Such policies, collectively referred to as "catch-and-release," shall end.

Accordingly, effective upon my determination of (1) the establishment and deployment of a joint plan with the Department of Justice to surge the deployment of immigration judges and asylum officers to interview and adjudicate claims asserted by recent border entrants; and, (2) the establishment of appropriate processing and detention facilities, U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) personnel should only release from detention an alien detained pursuant to section 235(b) of the INA, who was apprehended or encountered after illegally entering or attempting to illegally enter the United States, in the following situations on a case-by-case basis, to the extent consistent with applicable statutes and regulations:

1. When removing the alien from the United States pursuant to statute or regulation;

2. When the alien obtains an order granting relief or protection from removal or the Department of Homeland Security (DHS) determines that the individual is a U.S. citizen, national of the United States, or an alien who is a lawful permanent resident, refugee, asylee, holds temporary protected status, or holds a valid immigration status in the United States;

3. When an ICE Field Office Director, ICE Special Agent-in-Charge, U.S. Border Patrol Sector Chief, CBP Director of Field Operations, or CBP Air & Marine Operations Director consents to the alien's withdrawal of an application for admission, and the alien contemporaneously departs from the United States;

4. When required to do so by statute, or to comply with a binding settlement agreement or order issued by a competent judicial or administrative authority;

5. When an ICE Field Office Director, ICE Special Agent-in-Charge, U.S. Border Patrol Sector Chief, CBP Director of Field Operations, or CBP Air & Marine Operations Director authorizes the alien's parole pursuant to section 212(d)(5) of the INA with the written concurrence of the Deputy Director of ICE or the Deputy Commissioner of CBP, except in exigent circumstances such as medical emergencies where seeking prior approval is not practicable. In those exceptional instances, any such parole will be reported to the Deputy Director or Deputy Commissioner as expeditiously as possible; or

6. When an arriving alien processed under the expedited removal provisions of section 235(b) has been found to have established a "credible fear" of persecution or torture by an asylum officer or an immigration judge, provided that such an alien affirmatively establishes to the satisfaction of an ICE immigration officer his or her identity, that he or she presents neither a security risk nor a risk of absconding, and provided that he or she agrees to comply with any additional conditions of release imposed by ICE to ensure public safety and appearance at any removal hearings.

To the extent current regulations are inconsistent with this guidance, components will develop or revise regulations as appropriate. Until such regulations are revised or removed, Department officials shall continue to operate according to regulations currently in place.

As the Department works to expand detention capabilities, detention of all such individuals may not be immediately possible, and detention resources should be prioritized based upon potential danger and risk of flight if an individual alien is not detained, and parole determinations will be made in accordance with current regulations and guidance. *See* 8 C.F.R. §§ 212.5, 235.3. This guidance does not prohibit the return of an alien who is arriving on land to the foreign territory contiguous to the United States from which the alien is arriving pending a removal proceeding under section 240 of the INA consistent with the direction of an ICE Field Office Director, ICE Special Agent-in-Charge, CBP Chief Patrol Agent, or CBP Director of Field Operations.

B. Hiring More CBP Agents/Officers

CBP has insufficient agents/officers to effectively detect, track, and apprehend all aliens illegally entering the United States. The United States needs additional agents and officers to ensure complete operational control of the border. Accordingly, the Commissioner of CBP shall—while ensuring consistency in training and standards—immediately begin the process of hiring 5,000 additional Border Patrol agents, as well as 500 Air & Marine Agents/Officers, subject to the availability of resources, and take all actions necessary to ensure that such agents/officers enter on duty and are assigned to appropriate duty stations, including providing for the attendant resources and additional personnel necessary to support such agents, as soon as practicable.

Human Capital leadership in CBP and ICE, in coordination with the Under Secretary for

Management, Chief Financial Officer, and Chief Human Capital Officer, shall develop hiring plans that balance growth and interagency attrition by integrating workforce shaping and career paths for incumbents and new hires.

C. Identifying and Quantifying Sources of Aid to Mexico

The President has directed the heads of all executive departments to identify and quantify all sources of direct and indirect Federal aid or assistance to the Government of Mexico. Accordingly, the Under Secretary for Management shall identify all sources of direct or indirect aid and assistance, excluding intelligence activities, from every departmental component to the Government of Mexico on an annual basis, for the last five fiscal years, and quantify such aid or assistance. The Under Secretary for Management shall submit a report to me reflecting historic levels of such aid or assistance provided annually within 30 days of the date of this memorandum.

D. Expansion of the 287(g) Program in the Border Region

Section 287(g) of the INA authorizes me to enter into a written agreement with a state or political subdivision thereof, for the purpose of authorizing qualified officers or employees of the state or subdivision to perform the functions of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States. This grant of authority, known as the 287(g) Program, has been a highly successful force multiplier that authorizes state or local law enforcement personnel to perform all law enforcement functions specified in section 287(a) of the INA, including the authority to investigate, identify, apprehend, arrest, detain, transport and conduct searches of an alien for the purposes of enforcing the immigration laws. From January 2006 through September 2015, the 287(g) Program led to the identification of more than 402,000 removable aliens, primarily through encounters at local jails.

Empowering state and local law enforcement agencies to assist in the enforcement of federal immigration law is critical to an effective enforcement strategy. Aliens who engage in criminal conduct are priorities for arrest and removal and will often be encountered by state and local law enforcement officers during the course of their routine duties. It is in the interest of the Department to partner with those state and local jurisdictions through 287(g) agreements to assist in the arrest and removal of criminal aliens.

To maximize participation by state and local jurisdictions in the enforcement of federal immigration law near the southern border, I am directing the Director of ICE and the Commissioner of CBP to engage immediately with all willing and qualified law enforcement jurisdictions that meet all program requirements for the purpose of entering into agreements under 287(g) of the INA.

The Commissioner of CBP and the Director of ICE should consider the operational functions and capabilities of the jurisdictions willing to enter into 287(g) agreements and structure such agreements in a manner that employs the most effective enforcement model for that jurisdiction, including the jail enforcement model, task force officer model, or joint jail enforcement-task force officer model. In furtherance of my direction herein, the Commissioner of

CBP is authorized, in addition to the Director of ICE, to accept state services and take other actions as appropriate to carry out immigration enforcement pursuant to 287(g).

E. Commissioning a Comprehensive Study of Border Security

The Under Secretary for Management, in consultation with the Commissioner of CBP, Joint Task Force (Border), and Commandant of the Coast Guard, is directed to commission an immediate, comprehensive study of the security of the southern border (air, land and maritime) to identify vulnerabilities and provide recommendations to enhance border security. The study should include all aspects of the current border security environment, including the availability of federal and state resources to develop and implement an effective border security strategy that will achieve complete operational control of the border.

F. Border Wall Construction and Funding

A wall along the southern border is necessary to deter and prevent the illegal entry of aliens and is a critical component of the President's overall border security strategy. Congress has authorized the construction of physical barriers and roads at the border to prevent illegal immigration in several statutory provisions, including section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, 8 U.S.C. § 1103 note.

Consistent with the President's Executive Order, the will of Congress and the need to secure the border in the national interest, CBP, in consultation with the appropriate executive departments and agencies, and nongovernmental entities having relevant expertise—and using materials originating in the United States to the maximum extent permitted by law—shall immediately begin planning, design, construction and maintenance of a wall, including the attendant lighting, technology (including sensors), as well as patrol and access roads, along the land border with Mexico in accordance with existing law, in the most appropriate locations and utilizing appropriate materials and technology to most effectively achieve operational control of the border.

The Under Secretary for Management, in consultation with the Commissioner of CBP shall immediately identify and allocate all sources of available funding for the planning, design, construction and maintenance of a wall, including the attendant lighting, technology (including sensors), as well as patrol and access roads, and develop requirements for total ownership cost of this project, including preparing Congressional budget requests for the current fiscal year (e.g., supplemental budget requests) and subsequent fiscal years.

G. Expanding Expedited Removal Pursuant to Section 235(b)(1)(A)(iii)(I) of the INA

It is in the national interest to detain and expeditiously remove from the United States aliens apprehended at the border, who have been ordered removed after consideration and denial of their claims for relief or protection. Pursuant to section 235(b)(1)(A)(i) of the INA, if an immigration officer determines that an arriving alien is inadmissible to the United States under

section 212(a)(6)(C) or section 212(a)(7) of the INA, the officer shall, consistent with all applicable laws, order the alien removed from the United States without further hearing or review, unless the alien is an unaccompanied alien child as defined in 6 U.S.C. § 279(g)(2), indicates an intention to apply for asylum or a fear of persecution or torture or a fear of return to his or her country, or claims to have a valid immigration status within the United States or to be a citizen or national of the United States.

Pursuant to section 235(b)(1)(A)(iii)(I) of the INA and other provisions of law, I have been granted the authority to apply, by designation in my sole and unreviewable discretion, the expedited removal provisions in section 235(b)(1)(A)(i) and (ii) of the INA to aliens who have not been admitted or paroled into the United States, who are inadmissible to the United States under section 212(a)(6)(C) or section 212(a)(7) of the INA, and who have not affirmatively shown, to the satisfaction of an immigration officer, that they have been continuously physically present in the United States for the two-year period immediately prior to the determination of their inadmissibility. To date, this authority has only been exercised to designate for application of expedited removal, aliens encountered within 100 air miles of the border and 14 days of entry, and aliens who arrived in the United States by sea other than at a port of entry.[1]

The surge of illegal immigration at the southern border has overwhelmed federal agencies and resources and has created a significant national security vulnerability to the United States. Thousands of aliens apprehended at the border, placed in removal proceedings, and released from custody have absconded and failed to appear at their removal hearings. Immigration courts are experiencing a historic backlog of removal cases, primarily proceedings under section 240 of the INA for individuals who are not currently detained.

During October 2016 and November 2016, there were 46,184 and 47,215 apprehensions, respectively, between ports of entry on our southern border. In comparison, during October 2015 and November 2015 there were 32,724 and 32,838 apprehensions, respectively, between ports of entry on our southern border. This increase of 10,000–15,000 apprehensions per month has significantly strained DHS resources.

Furthermore, according to EOIR information provided to DHS, there are more than 534,000 cases currently pending on immigration court dockets nationwide—a record high. By contrast, according to some reports, there were nearly 168,000 cases pending at the end of fiscal year (FY) 2004 when section 235(b)(1)(A)(i) was last expanded.[2] This represents an increase of more than 200% in the number of cases pending completion. The average removal case for an alien who is not detained has been pending for more than two years before an immigration judge.[3] In some immigration courts, aliens who are not detained will not have their cases heard by an

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[1] Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(a)(iii) of the Immigration and Nationality Act, 67 Fed. Reg. 68924 (Nov. 13, 2002); Designating Aliens For Expedited Removal, 69 Fed. Reg. 48877 (Aug. 11, 2004); Eliminating Exception to Expedited Removal Authority for Cuban Nationals Encountered in the United States or Arriving by Sea, 82 Fed. Reg. 4902 (Jan. 17, 2017).

[2] Syracuse University, *Transactional Records Access Clearinghouse (TRAC) Data Research*; available at http://trac.syr.edu/phptools/immigration/court_backlog/.

[3] *Id.*

immigration judge for as long as five years. This unacceptable delay affords removable aliens with no plausible claim for relief to remain unlawfully in the United States for many years.

To ensure the prompt removal of aliens apprehended soon after crossing the border illegally, the Department will publish in the *Federal Register* a new Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(a)(iii) of the Immigration and Nationality Act, which may, to the extent I determine is appropriate, depart from the limitations set forth in the designation currently in force. I direct the Commissioner of CBP and the Director of ICE to conform the use of expedited removal procedures to the designations made in this notice upon its publication.

H. Implementing the Provisions of Section 235(b)(2)(C) of the INA to Return Aliens to Contiguous Countries

Section 235(b)(2)(C) of the INA authorizes the Department to return aliens arriving on land from a foreign territory contiguous to the United States, to the territory from which they arrived, pending a formal removal proceeding under section 240 of the INA. When aliens so apprehended do not pose a risk of a subsequent illegal entry or attempted illegal entry, returning them to the foreign contiguous territory from which they arrived, pending the outcome of removal proceedings saves the Department's detention and adjudication resources for other priority aliens.

Accordingly, subject to the requirements of section 1232, Title 8, United States Code, related to unaccompanied alien children and to the extent otherwise consistent with the law and U.S. international treaty obligations, CBP and ICE personnel shall, to the extent appropriate and reasonably practicable, return aliens described in section 235(b)(2)(A) of the INA, who are placed in removal proceedings under section 240 of the INA—and who, consistent with the guidance of an ICE Field Office Director, CBP Chief Patrol Agent, or CBP Director of Field Operations, pose no risk of recidivism—to the territory of the foreign contiguous country from which they arrived pending such removal proceedings.

To facilitate the completion of removal proceedings for aliens so returned to the contiguous country, ICE Field Office Directors, ICE Special Agents-in-Charge, CBP Chief Patrol Agent, and CBP Directors of Field Operations shall make available facilities for such aliens to appear via video teleconference. The Director of ICE and the Commissioner of CBP shall consult with the Director of EOIR to establish a functional, interoperable video teleconference system to ensure maximum capability to conduct video teleconference removal hearings for those aliens so returned to the contiguous country.

I. Enhancing Asylum Referrals and Credible Fear Determinations Pursuant to Section 235(b)(1) of the INA

With certain exceptions, any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum. For those aliens who are subject

to expedited removal under section 235(b) of the INA, aliens who claim a fear of return must be referred to an asylum officer to determine whether they have established a credible fear of persecution or torture.[4] To establish a credible fear of persecution, an alien must demonstrate that there is a "significant possibility" that the alien could establish eligibility for asylum, taking into account the credibility of the statements made by the alien in support of the claim and such other facts as are known to the officer.[5]

The Director of USCIS shall ensure that asylum officers conduct credible fear interviews in a manner that allows the interviewing officer to elicit all relevant information from the alien as is necessary to make a legally sufficient determination. In determining whether the alien has demonstrated a significant possibility that the alien could establish eligibility for asylum, or for withholding or deferral of removal under the Convention Against Torture, the asylum officer shall consider the statements of the alien and determine the credibility of the alien's statements made in support of his or her claim and shall consider other facts known to the officer, as required by statute.[6]

The asylum officer shall make a positive credible fear finding only after the officer has considered all relevant evidence and determined, based on credible evidence, that the alien has a significant possibility of establishing eligibility for asylum, or for withholding or deferral of removal under the Convention Against Torture, based on established legal authority.[7]

The Director of USCIS shall also increase the operational capacity of the Fraud Detection and National Security (FDNS) Directorate and continue to strengthen the integration of its operations to support the Field Operations, Refugee, Asylum, and International Operations, and Service Center Operations Directorate, to detect and prevent fraud in the asylum and benefits adjudication processes, and in consultation with the USCIS Office of Policy and Strategy as operationally appropriate.

The Director of USCIS, the Commissioner of CBP, and the Director of ICE shall review fraud detection, deterrence, and prevention measures throughout their respective agencies and provide me with a consolidated report within 90 days of the date of this memorandum regarding fraud vulnerabilities in the asylum and benefits adjudication processes, and propose measures to enhance fraud detection, deterrence, and prevention in these processes.

J. Allocation of Resources and Personnel to the Southern Border for Detention of Aliens and Adjudication of Claims

The detention of aliens apprehended at the border is critical to the effective enforcement of the immigration laws. Aliens who are released from custody pending a determination of their removability are highly likely to abscond and fail to attend their removal hearings. Moreover, the screening of credible fear claims by USCIS and adjudication of asylum claims by EOIR at

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[4] *See* INA § 235(b)(1)(A)-(B); 8 C.F.R. §§ 235.3, 208.30.
[5] *See* INA § 235(b)(1)(B)(v).
[6] *See id.*
[7] *Id.*

detention facilities located at or near the point of apprehension will facilitate an expedited resolution of those claims and result in lower detention and transportation costs.

Accordingly, the Director of ICE and the Commissioner of CBP should take all necessary action and allocate all available resources to expand their detention capabilities and capacities at or near the border with Mexico to the greatest extent practicable. CBP shall focus these actions on expansion of "short-term detention" (defined as 72 hours or less under 6 U.S.C. § 211(m)) capability, and ICE will focus these actions on expansion of all other detention capabilities. CBP and ICE should also explore options for joint temporary structures that meet appropriate standards for detention given the length of stay in those facilities.

In addition, to the greatest extent practicable, the Director of USCIS is directed to increase the number of asylum officers and FDNS officers assigned to detention facilities located at or near the border with Mexico to properly and efficiently adjudicate credible fear and reasonable fear claims and to counter asylum-related fraud.

K. Proper Use of Parole Authority Pursuant to Section 212(d)(5) of the INA

The authority to parole aliens into the United States is set forth in section 212(d)(5) of the INA, which provides that the Secretary may, in his discretion and on a case-by-case basis, temporarily parole into the United States any alien who is an applicant for admission for urgent humanitarian reasons or significant public benefit. The statutory language authorizes parole in individual cases only where, after careful consideration of the circumstances, it is necessary because of demonstrated urgent humanitarian reasons or significant public benefit. In my judgment, such authority should be exercised sparingly.

The practice of granting parole to certain aliens in pre-designated categories in order to create immigration programs not established by Congress, has contributed to a border security crisis, undermined the integrity of the immigration laws and the parole process, and created an incentive for additional illegal immigration.

Therefore, the Director of USCIS, the Commissioner of CBP, and the Director of ICE shall ensure that, pending the issuance of final regulations clarifying the appropriate use of the parole power, appropriate written policy guidance and training is provided to employees within those agencies exercising parole authority, including advance parole, so that such employees are familiar with the proper exercise of parole under section 212(d)(5) of the INA and exercise such parole authority only on a case-by-case basis, consistent with the law and written policy guidance.

Notwithstanding any other provision of this memorandum, pending my further review and evaluation of the impact of operational changes to implement the Executive Order, and additional guidance on the issue by the Director of ICE, the ICE policy directive establishing standards and procedures for the parole of certain arriving aliens found to have a credible fear of persecution or

torture shall remain in full force and effect.[8] The ICE policy directive shall be implemented in a manner consistent with its plain language. In every case, the burden to establish that his or her release would neither pose a danger to the community, nor a risk of flight remains on the individual alien, and ICE retains ultimate discretion whether it grants parole in a particular case.

L. Proper Processing and Treatment of Unaccompanied Alien Minors Encountered at the Border

In accordance with section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (codified in part at 8 U.S.C. § 1232) and section 462 of the Homeland Security Act of 2002 (6 U.S.C. § 279), unaccompanied alien children are provided special protections to ensure that they are properly processed and receive the appropriate care and placement when they are encountered by an immigration officer. An unaccompanied alien child, as defined in section 279(g)(2), Title 6, United States Code, is an alien who has no lawful immigration status in the United States, has not attained 18 years of age; and with respect to whom, (1) there is no parent or legal guardian in the United States, or (2) no parent of legal guardian in the United States is available to provide care and physical custody.

Approximately 155,000 unaccompanied alien children have been apprehended at the southern border in the last three years. Most of these minors are from El Salvador, Honduras, and Guatemala, many of whom travel overland to the southern border with the assistance of a smuggler who is paid several thousand dollars by one or both parents, who reside illegally in the United States.

With limited exceptions, upon apprehension, CBP or ICE must promptly determine if a child meets the definition of an "unaccompanied alien child" and, if so, the child must be transferred to the custody of the Office of Refugee Resettlement within the Department of Health and Human Services (HHS) within 72 hours, absent exceptional circumstances.[9] The determination that the child is an "unaccompanied alien child" entitles the child to special protections, including placement in a suitable care facility, access to social services, removal proceedings before an immigration judge under section 240 of the INA, rather than expedited removal proceedings under section 235(b) of the INA, and initial adjudication of any asylum claim by USCIS.[10]

Approximately 60% of minors initially determined to be "unaccompanied alien children" are placed in the care of one or more parents illegally residing in the United States. However, by Department policy and practice, such minors maintained their status as "unaccompanied alien children," notwithstanding that they may no longer meet the statutory definition once they have been placed by HHS in the custody of a parent in the United States who can care for the minor. Exploitation of that policy led to abuses by many of the parents and legal guardians of those minors and has contributed to significant administrative delays in adjudications by immigration

[8] ICE Policy No. 11002.1: Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture (Dec. 8, 2009).
[9] *See* 8 U.S.C. § 1232(b)(3).
[10] *See generally* 8 U.S.C. § 1232; INA § 208(b)(3)(C).

courts and USCIS.

To ensure identification of abuses and the processing of unaccompanied alien children consistent with the statutory framework and any applicable court order, the Director of USCIS, the Commissioner of CBP, and the Director of ICE are directed to develop uniform written guidance and training for all employees and contractors of those agencies regarding the proper processing of unaccompanied alien children, the timely and fair adjudication of their claims for relief from removal, and, if appropriate, their safe repatriation at the conclusion of removal proceedings. In developing such guidance and training, they shall establish standardized review procedures to confirm that alien children who are initially determined to be "unaccompanied alien child[ren]," as defined in section 279(g)(2), Title 6, United States Code, continue to fall within the statutory definition when being considered for the legal protections afforded to such children as they go through the removal process.

M. Accountability Measures to Protect Alien Children from Exploitation and Prevent Abuses of Our Immigration Laws

Although the Department's personnel must process unaccompanied alien children pursuant to the requirements described above, we have an obligation to ensure that those who conspire to violate our immigration laws do not do so with impunity—particularly in light of the unique vulnerabilities of alien children who are smuggled or trafficked into the United States.

The parents and family members of these children, who are often illegally present in the United States, often pay smugglers several thousand dollars to bring their children into this country. Tragically, many of these children fall victim to robbery, extortion, kidnapping, sexual assault, and other crimes of violence by the smugglers and other criminal elements along the dangerous journey through Mexico to the United States. Regardless of the desires for family reunification, or conditions in other countries, the smuggling or trafficking of alien children is intolerable.

Accordingly, the Director of ICE and the Commissioner of CBP shall ensure the proper enforcement of our immigration laws against any individual who—directly or indirectly—facilitates the illegal smuggling or trafficking of an alien child into the United States. In appropriate cases, taking into account the risk of harm to the child from the specific smuggling or trafficking activity that the individual facilitated and other factors relevant to the individual's culpability and the child's welfare, proper enforcement includes (but is not limited to) placing any such individual who is a removable alien into removal proceedings, or referring the individual for criminal prosecution.

N. Prioritizing Criminal Prosecutions for Immigration Offenses Committed at the Border

The surge of illegal immigration at the southern border has produced a significant increase in organized criminal activity in the border region. Mexican drug cartels, Central American gangs, and other violent transnational criminal organizations have established sophisticated criminal

enterprises on both sides of the border. The large-scale movement of Central Americans, Mexicans, and other foreign nationals into the border area has significantly strained federal agencies and resources dedicated to border security. These criminal organizations have monopolized the human trafficking, human smuggling, and drug trafficking trades in the border region.

It is in the national interest of the United States to prevent criminals and criminal organizations from destabilizing border security through the proliferation of illicit transactions and violence perpetrated by criminal organizations.

To counter this substantial and ongoing threat to the security of the southern border—including threats to our maritime border and the approaches—the Directors of the Joint Task Forces-West, -East, and -Investigations, as well as the ICE-led Border Enforcement Security Task Forces (BESTs), are directed to plan and implement enhanced counternetwork operations directed at disrupting transnational criminal organizations, focused on those involved in human smuggling. The Department will support this work through the Office of Intelligence and Analysis, CBP's National Targeting Center, and the DHS Human Smuggling Cell.

In addition, the task forces should include participants from other federal, state, and local agencies, and should target individuals and organizations whose criminal conduct undermines border security or the integrity of the immigration system, including offenses related to alien smuggling or trafficking, drug trafficking, illegal entry and reentry, visa fraud, identity theft, unlawful possession or use of official documents, and acts of violence committed against persons or property at or near the border.

In order to support the efforts of the BESTs and counter network operations of the Joint Task Forces, the Director of ICE shall increase of the number of special agents and analysts in the Northern Triangle ICE Attaché Offices and increase the number of vetted Transnational Criminal Investigative Unit international partners. This expansion of ICE's international footprint will focus both domestic and international efforts to dismantle transnational criminal organizations that are facilitating and profiting from the smuggling routes to the United States.

O. Public Reporting of Border Apprehensions Data

The Department has an obligation to perform its mission in a transparent and forthright manner. The public is entitled to know, with a reasonable degree of detail, information pertaining to the aliens unlawfully entering at our borders.

Therefore, consistent with law, in an effort to promote transparency and renew confidence in the Department's border security mission, the Commissioner of CBP and the Director of ICE shall develop a standardized method for public reporting of statistical data regarding aliens apprehended at or near the border for violating the immigration law. The reporting method shall include uniform terminology and shall utilize a format that is easily understandable by the public in a medium that can be readily accessed.

At a minimum, in addition to statistical information currently being publicly reported regarding apprehended aliens, the following information must be included: the number of convicted criminals and the nature of their offenses; the prevalence of gang members and prior immigration violators; the custody status of aliens and, if released, the reason for release and location of that release; and the number of aliens ordered removed and those aliens physically removed.

P. No Private Right of Action

This document provides only internal DHS policy guidance, which may be modified, rescinded, or superseded at any time without notice. This guidance is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigation prerogatives of DHS.

In implementing this guidance, I direct DHS Components to consult with legal counsel to ensure compliance with all applicable laws, including the Administrative Procedure Act.