



## President Trump’s “sanctuary city” executive order blocked by California federal judge

By Jason Gerrol

On April 25, 2017, the United States District Court for the Northern District of California granted a nationwide preliminary injunction against the enforcement of President Trump’s January 25, 2017 executive order titled “Enhancing Public Safety in the Interior of the United States.” Although the executive order outlines a number of new immigration enforcement policies and initiatives, the preliminary injunction only applies to Section 9(a) of the executive order, which requires the establishment of procedures whereby “sanctuary jurisdictions” are not eligible to receive federal grants. In response, the Trump administration stated it would “ultimately prevail in the Supreme Court,” suggesting the administration does intend to challenge the ruling.

The decision is a major victory for the increasing number of cities, counties and universities who have adopted policies to limit local cooperation with federal immigration authorities and/or offer protections to undocumented immigrants.

### **Why did the plaintiffs challenge the executive order, and why did the court find it unconstitutional?**

The County of Santa Clara, CA and the City and County of San Francisco, CA (collectively, the Counties) had previously adopted provisions, which in brief, prohibit the use of county or city resources to assist in enforcing federal immigration law. The policy considerations for adopting such provisions vary from jurisdiction to jurisdiction, but as a representative example, the San Francisco Administration Code provides a stated purpose of “foster[ing] respect and trust between law enforcement and residents, to protect limited local resources, to encourage cooperation between residents and City officials...and to ensure community security, and due process for all.” In the 2015–2016 fiscal year, Santa Clara received approximately \$1.7 billion in federal funds (approximately 35% of total revenue), while San Francisco’s annual budget of approximately \$9.6 billion is comprised of approximately \$1.2 billion in federal funds. For both Counties, the loss of federal funding would result in drastic cutbacks to vital services such as medical care and social services.

While the Counties have yet to lose any federal funding as a result of the executive order, the Counties successfully argued that while it is unclear whether they qualify as a “sanctuary jurisdiction” (the executive order does not define the term) (1) they have adopted sanctuary policies that are likely to subject them to defunding and other “enforcement action” under the executive order, (2) the threat of cuts to federal funding has resulted in budget uncertainty, and (3) that attempting to comply with the executive order would require them to change local policies in a manner that conflicts with their judgment on how best to ensure public safety, as well as require them to commit resources to assist in enforcing federal immigration laws.

Judge William H. Orrick found that the Counties were likely to succeed on the merits of their challenge to Section 9, and that the executive order (1) violates the separation of powers doctrine (i.e., Article I of the Constitution grants Congress, not the President, federal spending powers), (2) that even if the President had the spending power, the executive order was unconstitutionally ambiguous, coercive and lacks a required nexus to immigration enforcement, (3) that the executive order is unconstitutional under the Tenth Amendment because it attempts to conscript state and local jurisdictions into enforcing federal immigration law, and (4) that the executive order is unconstitutionally vague in violation of the Fifth Amendment’s Due Process Clause.

The government’s primary defense was that the executive order was merely the President utilizing his “bully pulpit” to highlight a new approach to immigration enforcement, that the executive order is restricted to enforcing existing law and that the executive order only applies to grants already conditioned on compliance with relevant immigration laws. Judge Orrick found these arguments unpersuasive, stating the “Government attempts to read out all of [Section 9’s] unconstitutional directives to render it an ominous, misleading[] and ultimately toothless threat.” As other courts have done in striking down President Trump’s immigration-related executive orders, Judge Orrick referenced statements made by President Trump and his administration that would suggest an intention and purpose contrary to the government’s primary defense (e.g., that the executive order would apply to all federal funding, and that the threat of defunding would be a “weapon” to force jurisdiction’s to change their policies).

For additional information regarding President Trump’s January 25, 2017 executive order, and judicial challenges to that executive order, please contact your Nixon Peabody attorney or a member of the Nixon Peabody immigration team:

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