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 CITY AND COUNTY OF SAN FRANCISCO

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 14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA

16 CITY AND COUNTY OF SAN
 FRANCISCO,

17 Plaintiff,

18 vs.

19 DONALD J. TRUMP, President of the United
 20 States, UNITED STATES OF AMERICA,
 ELAINE DUKE, Acting Secretary of United
 21 States Department of Homeland Security,
 22 JEFFERSON B. SESSIONS III, Attorney
 General of the United States, DOES 1-100,

23 Defendants.

Case No. 17-485 WHO

**ADMINISTRATIVE MOTION TO
 CONSIDER WHETHER CASES SHOULD
 BE RELATED PURSUANT TO N.D. CAL.
 CIVIL L.R. 3-12(B)**

Date Filed: January 31, 2017

Trial Date: April 23, 2018

1 **I. INTRODUCTION**

2 Plaintiff City and County of San Francisco (“San Francisco”), a party in this action, has filed a
3 separate action challenging two new grant conditions imposed by the United States Department of
4 Justice. *City and County of San Francisco v. Sessions, et. al.*, Case No. 3:17-cv-04642
5 (“*San Francisco v. Sessions*”), involves the same Plaintiff, one of the same Defendants, and similar
6 issues to those before this Court in *City and County of San Francisco v. Trump et al.*, Case No. 3:17-
7 cv-00485-WHO (“*San Francisco v. Trump*”).¹ Pursuant to Civil Local Rule 3-12(b), San Francisco
8 respectfully requests that the Court consider whether these two matters may be related, and conclude
9 that they are.

10 **II. DISCUSSION**

11 “An action is related to another when: (1) The actions concern substantially the same parties,
12 property, transaction or event; and (2) it appears likely that there will be an unduly burdensome
13 duplication of labor and expense or conflicting results if the cases are conducted before different
14 Judges.” N.D. Cal. Civ. L.R. 3-12(a). *San Francisco v. Trump* and *San Francisco v. Sessions* concern
15 substantially the same parties, and they both challenge actions by President Trump’s Administration to
16 withhold federal funds from sanctuary cities.²

17 *San Francisco v. Trump* challenges provisions of President Trump’s January 25, 2017
18 executive order directing specified actions against state, local, and municipal governments deemed to
19 be so-called “sanctuary jurisdictions,” Exec. Order 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017) (the
20 “Executive Order”). Among other things, the Executive Order directs the Attorney General and the
21 Secretary of Homeland Security to ensure that sanctuary jurisdictions “are not eligible to receive
22 Federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or
23 the Secretary.” San Francisco contends that this violates constitutional separation of powers, the

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25 ¹ The Court has already related *San Francisco v. Trump* to two other cases challenging
26 Executive Order No. 13,768. See Dkt. No. 19 (relating *County of Santa Clara v. v. Trump et al.*, Case
27 No. 5:17-cv-00574-WHO), and Dkt. No. 53 (relating *City of Richmond v. Trump, et al.*, Case No.
28 3:17-cv-01535-WHO).

² The complaints in *San Francisco v. Trump* and *San Francisco v. Sessions* are attached as
Exhibits 1 and 2, respectively, to the Declaration of Mollie M. Lee filed with this Motion.

1 Spending Clause, and the Tenth Amendment. Dkt. No. 105 ¶¶ 144-157. On April 25, 2017, the Court
2 entered a preliminary injunction enjoining Defendants (except the President) from enforcing the
3 challenged provision against sanctuary jurisdictions.³ Dkt. No. 82 at 49. As the Court subsequently
4 noted, “[t]he PI Order does not address or enjoin any other independent authority that may allow the
5 government to impose grant conditions on funds, as no such issue was before the court.” Dkt. No. 146
6 at 1 fn. 1.

7 *San Francisco v. Sessions* challenges recently announced grant conditions for the Edward
8 Byrne Memorial Justice Assistance Grant Program, which is administered by the United States
9 Department of Justice. These conditions require grant recipients to (1) provide federal immigration
10 officials access to local detention facilities to interrogate any suspected aliens held there, and (2)
11 provide the Department of Homeland Security with 48 hours’ notice before releasing an individual,
12 where the federal government has requested notice in order to take that individual into custody for
13 immigration reasons. San Francisco contends that these conditions violate the Constitution’s
14 separation of powers and Spending Clause, for many of the same reasons that the Executive Order
15 violates these provisions. These provisions seek to usurp Congress’ power to attach conditions on
16 federal grant funding, because Congress has neither included these conditions in any federal statute or
17 authorized the Attorney General to impose them. In addition, the conditions the Trump
18 Administration attempts to impose are ambiguous; are not germane to the stated purposes of the
19 statutory program; and would require funding recipients to engage in unconstitutional activity by
20 detaining individuals without probable cause.

21 *San Francisco v. Trump* and *San Francisco v. Sessions* concern substantially the same parties.
22 San Francisco is the plaintiff in both suits, and Attorney General Jefferson B. Sessions is a defendant
23 in both suits. *San Francisco v. Trump* also names as defendants President Trump, U.S. Department of
24 Homeland Security Secretary John F. Kelly, and the United States. *San Francisco v. Sessions* also
25 names as defendants Alan R. Hanson, Acting Assistant Attorney General of the United States, and the
26 United States Department of Justice.

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28 ³ San Francisco also sought a declaration that its laws comply with 8 U.S.C. § 1373, which the
Executive Order linked to sanctuary jurisdictions. The Court has not yet ruled on this question.

1 Given the overlap in parties and the similar factual and legal issues involved, conducting the
2 actions in two courts simultaneously may lead to unnecessary duplication of effort and the potential
3 for conflicting results.

4 **III. CONCLUSION**

5 For the foregoing reasons, San Francisco respectfully requests that the Court find that
6 *San Francisco v. Trump* and *San Francisco v. Sessions* are related under Local Rule 3-12.

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8 Dated: August 15, 2017

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