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10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 12 SAN FRANCISCO DIVISION

14 **STATE OF CALIFORNIA, ex rel, XAVIER**
 15 **BECCERRA, in his official capacity as**
 16 **Attorney General of the State of California,**

17 Plaintiff,

18 v.

19 **JEFFERSON B. SESSIONS, in his official**
 20 **capacity as Attorney General of the United**
 21 **States; ALAN R. HANSON, in his official**
 22 **capacity as Acting Assistant Attorney**
 23 **General; UNITED STATES**
 24 **DEPARTMENT OF JUSTICE; and DOES**
 25 **1-100,**

26 Defendants.

Case No. 17-cv-4701

PLAINTIFF STATE OF CALIFORNIA'S
NOTICE OF AMENDED MOTION AND
AMENDED MOTION FOR
PRELIMINARY INJUNCTION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF

Date: December 13, 2017
 Time: 2:00 p.m.
 Dept: 2
 Judge: Honorable William H. Orrick
 Trial Date: None Set
 Action Filed: 8/14/2017

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

Notice of Amended Motion and Amended Motion for Preliminary Injunction 1

Memorandum of Points and Authorities 1

Introduction 1

Background 4

 A. Section 1373 and the INA 4

 B. California’s Statutes 5

 1. The TRUST, TRUTH and Values Acts 6

 2. California’s Confidentiality Statutes 8

 C. The History and Purpose of JAG 9

 D. California’s Use of JAG and COPS Funds 10

 E. JAG and COPS Requirements in Relation to Section 1373 12

 F. Defendants’ Other Actions Threatening to Find the State in Violation of Section 1373 13

Legal Argument 15

 I. Legal Standard 15

 II. California is Likely to Succeed on Its Claims that the JAG Section 1373 Condition is Unlawful 15

 A. The JAG Section 1373 Condition Violates the Spending Clause Because it is Unrelated to the Purpose of JAG 15

 B. Imposition of the JAG Section 1373 Condition is Arbitrary and Capricious 16

 III. California is Likely to Succeed in Showing that California’s Statutes Do Not Violate Section 1373 17

 A. The Values, TRUST, and TRUTH Acts Do Not Conflict with Section 1373 18

 B. California’s Confidentiality Statutes Do Not Conflict with Section 1373 19

 C. The Tenth Amendment Does Not Allow for Section 1373 to Commandeer the State in its Control over Governmental Employees and its Residents’ Confidential Personal Information 20

 IV. Without Court Intervention, the Section 1373 Conditions will Cause the State Imminent and Irreparable Harm 25

 V. The Balance of Hardships Favors Granting a Preliminary Injunction 27

Conclusion 28

TABLE OF AUTHORITIES

		<u>Page</u>
1	TABLE OF AUTHORITIES	
2		
3	CASES	
4	<i>Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez</i>	
5	458 U.S. 592 (1982).....	28
6	<i>Am. Trucking Ass'ns, Inc. v. City of Los Angeles</i>	
7	559 F.3d 1046 (9th Cir. 2009).....	25, 26, 27
8	<i>Ariz. Dream Act Coalition v. Brewer</i>	
9	757 F.3d 1053 (9th Cir. 2014).....	28
10	<i>Arizona v. United States</i>	
11	567 U.S. 387 (2012).....	16
12	<i>Atascadero State Hospital v. Scanlon</i>	
13	473 U.S. 234 (1985).....	20
14	<i>Bond v. United States</i>	
15	134 S. Ct. 2077 (2014).....	20
16	<i>Cape May Greene, Inc. v. Warren</i>	
17	698 F.2d 179 (3d Cir. 1983).....	17
18	<i>Chamber of Commerce of U.S. v. Whiting</i>	
19	563 U.S. 582 (2011).....	18
20	<i>City of Chicago v. Sessions</i>	
21	No. 17-cv-5720, 2017 WL 4081821 (N.D. Ill. Sept. 15, 2017).....	24, 25, 27
22	<i>City of New York v. United States</i>	
23	179 F.3d 29 (2d Cir. 1999).....	22, 24, 25
24	<i>Cty. of Santa Clara v. Trump</i>	
25	250 F. Supp. 3d 497 (N.D. Cal. 2017).....	15
26	<i>Davis v. Mich. Dep't. of Treasury</i>	
27	489 U.S. 803 (1989).....	19, 20
28	<i>Encino Motorcars, LLC v. Navarro</i>	
	136 S.Ct. 2117 (2016).....	17
	<i>FCC v. Fox Television Stations, Inc.</i>	
	556 U.S. 502 (2009).....	16, 17
	<i>FERC v. Mississippi</i>	
	456 U.S. 742 (1982).....	23

TABLE OF AUTHORITIES
(continued)

		<u>Page</u>
1		
2		
3	<i>Giovani Carandola, Ltd. v. Bason</i>	
4	303 F.3d 507 (4th Cir. 2002).....	28
5	<i>Gregory v. Ashcroft</i>	
6	501 U.S. 452 (1991).....	20, 23
7	<i>Kansas v. United States</i>	
8	249 F.3d 1213 (10th Cir. 2001).....	25
9	<i>Koog v. United States</i>	
10	79 F.3d 452 (5th Cir. 1996).....	21, 22, 23
11	<i>Massachusetts v. United States</i>	
12	435 U.S. 444 (1978).....	15
13	<i>Melendres v. Arpaio</i>	
14	695 F.3d 990 (9th Cir. 2012).....	28
15	<i>Morales v. Trans World Airlines</i>	
16	504 U.S. 374 (1992).....	25
17	<i>Motor Vehicle Mfrs. Ass’n of the U.S. v. State Farm Mut. Auto. Ins. Co.</i>	
18	463 U.S. 29 (1983).....	16, 17
19	<i>Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.</i>	
20	545 U.S. 967 (2005).....	17
21	<i>New York v. United States</i>	
22	505 U.S. 144 (1992).....	20, 21, 23
23	<i>Nken v. Holder</i>	
24	556 U.S. 418 (2009).....	27
25	<i>Printz v. United States</i>	
26	521 U.S. 898 (1997).....	20, 21, 22, 23
27	<i>Raygor v. Regents of Univ. of Minn.</i>	
28	534 U.S. 533 (2002).....	20
	<i>Romero v. United States</i>	
	883 F. Supp. 1076 (W.D. La. 1994).....	22
	<i>South Dakota v. Dole</i>	
	483 U.S. 203 (1987).....	15

TABLE OF AUTHORITIES
(continued)

		<u>Page</u>
1		
2		
3	<i>Steinle v. City & Cty. of San Francisco</i>	
4	230 F. Supp. 3d 994 (N.D. Cal. 2017)	18
5	<i>Stuller, Inc. v. Steak N Shake Enterprises, Inc.</i>	
6	695 F.3d 676 (7th Cir. 2012).....	27
7	<i>Texas v. United States</i>	
8	No. 15-cv-151, 2016 WL 4138632 (N.D. Tex. Aug. 4, 2016).....	16
9	<i>Trump v. Int’l Refugee Assistance Project</i>	
10	137 S.Ct. 2080 (2017)	15
11	<i>United States v. Lopez</i>	
12	514 U.S. 549 (1995).....	23
13	<i>United States v. Morrison</i>	
14	529 U.S. 598 (2000).....	22
15	<i>United States v. North Carolina</i>	
16	192 F. Supp. 3d 620 (M.D.N.C. 2016).....	27
17	<i>Univ. of Texas v. Camenisch</i>	
18	451 U.S. 390 (1981).....	15
19	<i>Winter v. Nat. Res. Def. Council, Inc.</i>	
20	555 U.S. 7 (2008).....	15, 27
21	<i>Zadvydas v. Davis</i>	
22	533 U.S. 678 (2001).....	21
23	FEDERAL STATUTES	
24	5 U.S.C. § 706.....	16
25	8 U.S.C. § 1101	5, 19
26	8 U.S.C. § 1367	5, 19
27	8 U.S.C. § 1373.....	<i>passim</i>
28	8 U.S.C. § 1644.....	4
	34 U.S.C. §§ 10151-58.....	9
	34 U.S.C. § 10152.....	10, 16

TABLE OF AUTHORITIES
(continued)

		<u>Page</u>
3	34 U.S.C. § 10153	10
4	34 U.S.C. § 10156	9
5	CALIFORNIA STATUTES	
6	Cal. Civ. Code	
7	§ 1798.3	7
8	Cal. Civ. Proc. Code	
9	§ 155	<i>passim</i>
10	Cal. Gov't Code	
11	§ 7282	6
12	§ 7282.5	6
13	§ 7282.5 (amended and chaptered on Oct. 5, 2017)	7, 18, 21, 23
14	§ 7283.1	7, 21
15	§ 7284.2 (chaptered on Oct. 5, 2017)	6, 7
16	§ 7284.6 (chaptered on Oct. 5, 2017)	<i>passim</i>
17	Cal. Penal Code	
18	§ 422.93	<i>passim</i>
19	§ 679.10	<i>passim</i>
20	§ 679.11	<i>passim</i>
21	Cal. Welf. & Inst. Code	
22	§ 827	<i>passim</i>
23	§ 831	<i>passim</i>
24	CONSTITUTIONAL PROVISIONS	
25	U. S. Const., art. I, § 8, cl. 4	4
26	COURT RULES	
27	Cal. R. of Ct. 5.552	9
28	OTHER AUTHORITIES	
29	Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, 102 Stat. 4181 (1988)	9
30	Dep't of Commerce, Justice, and State, the Judiciary, and Related Agencies	
31	Appropriations Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996)	10
32	Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L.	
33	104-208, 110 Stat. 3009-546 (1996)	5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES
(continued)

	<u>Page</u>
Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (1990).....	10
Technical Immigration and Naturalization Amendments of 1991, Pub. L. No. 102- 232, 105 Stat. 1733 (1991).....	10
Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960 (2006).....	10

NOTICE OF AMENDED MOTION AND AMENDED MOTION FOR PRELIMINARY INJUNCTION

PLEASE TAKE NOTICE that on Wednesday, December 13, 2017, at 2:00 p.m. or as soon thereafter as it may be heard before the Honorable William H. Orrick in Courtroom 2 of the U. S. District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102, Plaintiff State of California, ex rel. Xavier Becerra, California Attorney General will and does hereby move the Court pursuant to F.R.C.P. 65 for a preliminary injunction against Defendants Attorney General Jefferson Sessions, Assistant Attorney General Alan Hanson, and the United States Department of Justice, and their officers, agents, servants, employees, and attorneys, and any other persons who are in active concert or participation with them.

California moves the Court to enter a preliminary injunction prohibiting Defendants from requiring compliance with 8 U.S.C. § 1373 as a condition for the State and its political subdivisions to receive funding pursuant to the Edward Byrne Memorial Justice Assistance Grant (“JAG”) program. In addition, because the State’s laws comply with Section 1373, California seeks an order enjoining Defendants from interpreting or enforcing Section 1373 in such a manner to withhold, terminate, or claw-back funding from, or disbar or make ineligible, the State or any of its political subdivisions that apply for JAG or Community Policing Services grants on account of the following state statutes: California Government Code sections 7282 *et seq.*, 7283 *et seq.*, 7284 *et seq.*, Penal Code sections 422.93, 679.10, 679.11, California Welfare and Institutions Code sections 827 and 831, and California Code of Civil Procedure section 155. This Motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities, the declarations, the Request for Judicial Notice, as well as the papers, evidence and records on file, and any other written or oral evidence or argument as may be presented.

MEMORANDUM OF POINTS AND AUTHORITIES**INTRODUCTION**

Plaintiff State of California, ex rel. Xavier Becerra, California Attorney General moves for a preliminary injunction preventing Defendants from enforcing against the State and its political subdivisions conditions requiring compliance with 8 U.S.C. § 1373 in order to receive \$31.1 million in law enforcement funding pursuant to the Edward Byrne Memorial Justice Assistance

1 Grant (“JAG”) and Community Oriented Policing Services (“COPS”) grants.¹ Starting with
2 President Trump’s Executive Order No. 13768 directed at so-called “sanctuary jurisdictions,” that
3 has already been found likely unconstitutional, the Trump Administration has sought to interpret
4 and use Section 1373 in a constitutionally impermissible manner as a cudgel to force state and
5 local jurisdictions to acquiesce to the President’s immigration enforcement demands. Defendants
6 now require jurisdictions to certify compliance with Section 1373, a statute restricting federal,
7 state, and local jurisdictions from prohibiting the exchange of information regarding an
8 individual’s immigration and citizenship status, in order to receive grants that are unrelated to
9 immigration enforcement.

10 Although Defendants lack constitutional and legal authority to impose the Section 1373
11 condition for JAG, under normal circumstances there would be no dispute because the State’s
12 laws comply with Section 1373. To be sure, California has enacted one group of statutes that set
13 parameters for when and how state or local law enforcement agencies (“LEAs”) may engage in
14 immigration enforcement activities—such as prolonging an individual’s ordinary release on the
15 basis of a Department of Homeland Security (“DHS”) detainer request, notifying DHS agents of
16 an individual’s release date, and informing those detainees that DHS seeks to interview of their
17 rights. But these statutes do not touch upon the activities regulated by Section 1373. California
18 has also enacted confidentiality statutes that protect residents’ personal information, including
19 immigration status information, when the State has deemed such protection necessary to
20 effectuate State and local governmental activities. All of these statutes are designed to improve
21 the public safety of all Californians by promoting relationships of trust between the State and its
22 10 million foreign-born residents and their family members, and encourage victims and witnesses
23 of crime to come forward. Reading Section 1373 as applying to the first group of statutes would
24 conflict with the text of Section 1373, while reading Section 1373 as to California’s
25 confidentiality statutes would be inconsistent with the remainder of the Immigration and
26

27 ¹ The FY 2017 State and Local Solicitations for JAG are Exhibits A and B, respectively, to the
28 Request for Judicial Notice accompanying this Motion. The FY 2017 COPS Application Guides
for the Anti-Methamphetamine Program and Anti-Heroin Task Forces are Exhibits C and D,
respectively, to the Judicial Notice Request.

1 Naturalization Act (“INA”) and the federal government’s own handling of immigration status
2 information. And either would violate the Tenth Amendment of the U.S. Constitution.

3 Defendants have nevertheless indicated that at least one of California’s laws may be
4 incompatible with Section 1373, and that other jurisdictions’ statutes and policies similar to those
5 in California are incompatible with Section 1373. On October 12, 2017, Defendants announced
6 preliminary assessments with respect to seven jurisdictions from which Defendants sought legal
7 opinions validating their compliance with Section 1373. Defendants determined that five of the
8 jurisdictions had laws or policies that appear to violate Section 1373, including one jurisdiction
9 because it, like California, regulates the disclosure of information regarding victims of crime.

10 California too submitted a legal opinion that analyzed California’s laws and concluded that
11 the State does not violate Section 1373. The day after the State filed its initial Motion for
12 Preliminary Injunction (“PI Mot”), ECF No. 17, Defendants informed the State of their
13 determination that the recently adopted California Values Act, California Government Code
14 section 7284 *et seq.*,² a law that has not taken effect yet, “may violate [Section 1373], depending
15 on how your jurisdiction interprets and applies [it].”³ Moreover, Defendants expressly stated that
16 they may take action on other California statutes. Defendants’ interpretation of Section 1373 as
17 communicated in that letter interferes with the State’s ability to submit an unqualified
18 certification of compliance with Section 1373, under penalty of perjury, that the State must do in
19 order to receive JAG funding. In addition, USDOJ will soon make awards for the COPS grants,
20 which Defendants will either deny to the State or demand that the State accept only if it assures
21 that it will comply with all applicable laws, which would include compliance with Defendants’
22 misinterpretation of Section 1373.

23 Defendants’ actions cause irreparable harm to the State’s sovereignty, public safety, and
24 operations. Congress has appropriated \$28.3 million in JAG funding to California to support

25 _____
26 ² All references to provisions in Government Code section 7284 *et seq.* refer to the law that was
chaptered on October 5, 2017, and is set to take effect on January 4, 2018.

27 ³ Defendants’ November 1, 2017 letter, which seeks to enforce Section 1373 against the Values
28 Act as to FY 2016 funds already awarded, although the law was not in effect in that fiscal year,
leaves no doubt that the Values Act and amended TRUST Act are ripe for determination here.

1 criminal justice programs. Among other things, these programs support crime victims and
2 witnesses, reduce recidivism, facilitate crime prevention education for at-risk youth, and fund
3 other law enforcement programs. The State is also expected to receive \$2.8 million pursuant to
4 two COPS grants, grants that the State has received every year they have existed, which are used
5 to investigate illicit drug distribution. Loss of these funds will harm public safety. But public
6 safety will also be harmed if the State and its political subdivisions must accede to Defendants'
7 demands in order to receive these federal dollars. Defendants' misinterpretation of Section 1373
8 further means that Californians will not be able to hold their state and local officials appropriately
9 accountable for policy changes that are beyond their control—the very harm the Tenth
10 Amendment aims to prevent. To prevent these harms, a preliminary injunction is necessary.⁴

11 BACKGROUND

12 **A. Section 1373 and the INA**

13 The U.S. Constitution grants Congress the power to regulate immigration and
14 naturalization. *See* art. I, § 8, cl. 4. Congress has done so via the comprehensive framework
15 codified in the INA. Two provisions of the INA restrict federal, state, and local governments in
16 how they may control the exchange of information regarding an individual's immigration and
17 citizenship status. The statute relevant to this litigation is 8 U.S.C. § 1373.⁵ Paragraph (a) of
18 Section 1373 provides as follows:

19 Notwithstanding any other provision of Federal, State, or local law, a Federal, State,
20 or local government entity or official may not prohibit, or in any way restrict, any
21 government entity or official from sending to, or receiving from [federal immigration
authorities] information regarding the citizenship or immigration status, lawful or
unlawful, of any individual.

22 Paragraph (b) forbids federal, state, or local governments from prohibiting the following: (i)
23 “[s]ending [immigration status] information to, or requesting or receiving such information from

24 ⁴ California has also brought claims challenging Defendants' imposition of conditions requiring
25 jurisdictions to respond to DHS requests for inmates' release dates and to provide DHS agents
26 access to detention facilities for interview purposes. *See, e.g.*, FAC, ¶¶ 122-144. Those
27 conditions are currently subject to a nationwide injunction. *See City of Chicago v. Sessions*, No.
17-cv-5720, ECF No. 78 (N.D. Ill. Sept. 15, 2017). California reserves its right to seek a
preliminary injunction as to those conditions if the nationwide injunction is stayed or modified.

28 ⁵ The other statute, 8 U.S.C. § 1644, exists in a chapter within the INA for “Restricting Welfare
and Public Benefits for Aliens” and contains restrictions that are encompassed by Section 1373.

1 [federal immigration authorities];” (ii) “[m]aintaining such information;” or (iii) “[e]xchanging
2 such information with any other Federal, State, or local government entity.”

3 Other provisions of the INA provide information-sharing safeguards for certain vulnerable
4 immigrants, including those who are undocumented. For example, the INA offers protections and
5 benefits to victims and witnesses of crime by creating specialized U-visas for those who have
6 cooperated with law enforcement in investigating or prosecuting enumerated crimes such as
7 domestic violence and child abuse, and T-visas for those who have cooperated in prosecuting
8 human trafficking. *Id.* § 1101(a)(15)(T)-(U). Title 8, Section 1367, which was enacted as part of
9 the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208,
10 110 Stat. 3009-546, the same Act that created Section 1373,⁶ generally prohibits the “use by or
11 disclosure” of any information provided during the process of applying for U- or T-visas, or other
12 benefits available for immigrant witnesses and victims of crime, “to anyone” other than identified
13 federal departments. *See* 8 U.S.C. § 1367(a)(1)-(2). It also prohibits using the information
14 provided to “make an adverse determination of admissibility or deportability” for the immigrant
15 victims and witnesses of crime. *Id.* The INA also details a “Special Immigrant Juvenile” process,
16 through which certain abused, neglected, or abandoned undocumented immigrant children may
17 seek legal immigration status. *Id.* § 1101(a)(27)(J). Federal law relies on state courts to make the
18 predicate determination for youth who are eligible to apply for this status. *See id.*

19 **B. California’s Statutes**

20 California’s laws are consistent with the INA. Relevant to this Motion are the State’s laws
21 impacted by Defendants’ interpretation of Section 1373, and arguably implicated by the Section
22 1373 conditions. These laws fit into two categories: (a) those laws that define the circumstances
23 under which LEAs may assist in immigration enforcement (the TRUTH, TRUST, and Values
24 Acts); and (b) six state statutes safeguarding confidentiality, the “State’s Confidentiality
25 Statutes”: Penal Code sections 422.93, 679.10, and 679.11, Welfare and Institutions Code
26 sections 827 and 831, and Code of Civil Procedure section 155.

27 ⁶ Compare *id.* tit. III, § 384, 110 Stat. at 3009-652-53 with *id.* tit. VI, § 642, 110 Stat. at 3009-
28 707.

1 California has enacted these statutes to strengthen community policing efforts.⁷ Exercising
 2 its discretion, California has concluded that statutes like these improve public safety in light of
 3 evidence that immigrants are no more likely to commit crimes than native-born Americans,⁸ and
 4 that a clear distinction between local law enforcement and immigration enforcement results in
 5 safer communities. *See, e.g.*, RJN, Exs. F at 5, G at 8; W at 8. The California Legislature has
 6 relied on law enforcement officers' statements about the public safety benefits of practices that
 7 reduce the entanglement between their agencies and immigration enforcement. *See, e.g.*, RJN,
 8 Exs. G at 9; X at 7. LEAs throughout the State continue to build trust between LEAs and
 9 immigrant communities so that "people could come forward if they are a crime victim or . . .
 10 witness to a crime without fear of being deported." *See* Decl. of L.A. Cty. Sheriff Jim McDonnell
 11 in Supp. of Pl.'s Am. Mot. for Prelim. Inj. ("McDonnell Decl."), ¶¶ 10-13; *see also* Compl., *City*
 12 *and Cty. of San Francisco v. Sessions*, No. 17-4642 (N.D. Cal. Aug. 11, 2017) ("S.F. Compl.") ¶¶
 13 19, 28. These laws and local practices protect the public safety of all Californians, regardless of
 14 immigration status. *See, e.g.*, Cal. Gov't Code § 7284.2(f); RJN, Ex. X at 1.

15 1. The TRUST, TRUTH and Values Acts

16 In 2013, California enacted the TRUST Act, Cal. Gov't Code § 7282 *et seq.*, which defined
 17 when local LEAs could detain an individual for up to 48 hours after the person's ordinary release
 18 on the basis of a detainer request. *See id.* §§ 7282(c), 7282.5. The TRUST Act allowed
 19 compliance with detainers if they did not "violate any federal, state, or local law, or any local
 20 policy," and the subject possessed a specified criminal background (including a prior conviction
 21 of one of hundreds of crimes), was on the California Sex and Arson Registry, or was held after a
 22 magistrate's finding of probable cause for a serious or violent felony. *See id.* § 7282.5(a).

23 Three years later, the State enacted the TRUTH Act, Cal. Gov't Code § 7283 *et seq.*, which
 24 increased transparency about local LEA's involvement when federal immigration authorities seek
 25 to interview someone in a jail's custody. Under the TRUTH Act, a jail must notify such an

26 _____
 27 ⁷ *See, e.g.*, Cal. Gov't Code § 7284.2(c); 2016 Cal. Legis. Serv. Ch. 768 § 2(i) (the "TRUTH
 Act"); 2013 Cal. Legis. Serv. Ch. 570 § 1(d) (the "TRUST Act"); Cal. Penal Code § 422.93(a).

28 ⁸ *See, e.g.*, 2013 Cal. Legis. Serv. Ch. 570 § 1(d) (the "TRUST Act"); RJN, Ex. E at 6.

1 individual that interviews are voluntary and the detainee has the right to seek counsel. *Id.* §
2 7283.1(a). Upon receipt of a detainer, notification, or transfer request, a LEA must provide the
3 subject a copy and inform him or her whether the LEA intends to comply. *Id.* § 7283.1(b).

4 On October 5, 2017, Governor Edmund G. Brown signed into law the California Values
5 Act, Cal. Gov't Code § 7284 *et seq.*, intended “to ensure effective policing, to protect the safety,
6 well-being, and constitutional rights of the people of California, and to direct the state’s limited
7 resources to matters of greatest concern to state and local governments.” *Id.* § 7284.2(f). The
8 Values Act accomplishes these goals by generally prohibiting “[i]nquiri[es] into an individual’s
9 immigration status,” meaning LEAs cannot ask an individual about his or her immigration status
10 for immigration enforcement purposes. *See id.* § 7284.6(a)(1)(A). In order to ensure compliance
11 with federal court decisions that have found Fourth Amendment violations when law enforcement
12 holds inmates beyond their ordinary release pursuant to a warrantless detainer request, the Values
13 Act prohibits compliance with such requests. *See id.* §§ 7284.2(e), 7284.6(a)(1)(B). The Values
14 Act amends the TRUST Act to define when LEAs have discretion to respond to “notification
15 requests,” which are requests by an immigration authority asking an LEA to inform it “of the
16 release date and time in advance of the public of an individual in its custody.” *See id.* §§
17 7282.5(a) (chaptered Oct. 5, 2017), 7283(f), 7284.6(a)(1)(C). LEAs may notify immigration
18 authorities about the release dates of individuals with a prior criminal conviction of one of
19 hundreds of crimes, or if the information is already “available to the public.” *See id.* §
20 7284.6(a)(1)(C). The Values Act also prohibits the use of LEA money or personnel to “provid[e]
21 personal information,” about an individual “for immigration enforcement purposes,” unless that
22 information is “available to the public.”⁹ *Id.* § 7284.6(a)(1)(D). This “personal information”
23 includes information about victims and witnesses of crime that a LEA would also possess.

24 Notwithstanding any of the above, the Values Act contains a savings clause that expressly
25 permits compliance with all aspects of Section 1373:

26 ⁹ “Personal information” is defined as “any information that is maintained by an agency that
27 identifies or describes an individual, including, but not limited to, his or her name, social security
28 number, physical description, home address, home telephone number, education, financial
matters, and medical or employment history. It includes statements made by, or attributed to, the
individual.” Cal. Civ. Code § 1798.3(a).

1 This section does not prohibit or restrict any government entity or official from
2 sending to, or receiving from, federal immigration authorities, information regarding
3 the citizenship or immigration status, lawful or unlawful, of an individual, or from
4 requesting from federal immigration authorities immigration status information,
5 lawful or unlawful, of any individual, or maintaining or exchanging that information
6 with any other federal, state, or local government entity, pursuant to Sections 1373
7 and 1644 of title 8 of the United States Code.

8 *Id.* § 7284.6(e). The Values Act also explicitly does not prohibit any jurisdiction from allowing
9 immigration authorities access to jails. *Id.* § 7284.6(b)(5).

10 **2. California’s Confidentiality Statutes**

11 To ensure the proper operation of state and local criminal and juvenile justice systems, the
12 State’s Confidentiality Statutes protect, in discrete circumstances, the confidentiality of sensitive
13 information that the State and its localities collect and maintain. These Confidentiality Statutes
14 can be broken down into two subcategories. The first subcategory (Cal. Penal Code §§ 422.93,
15 679.10, 679.11) consists of statutes that protect the confidential information of victims and
16 witnesses of crime, in order to “encourag[e]” “victims of or witnesses to crime, or [those] who
17 otherwise can give evidence in a criminal investigation, to cooperate with the criminal justice
18 system.” *See, e.g., id.* § 422.93(a). California Penal Code sections 679.10 and 679.11 implement
19 the state and local LEA’s role in the federal U- and T-visa process by, among other things,
20 prohibiting certifying entities from “disclosing the immigration status of a victim” or other person
21 requesting certification “except to comply with federal law or legal process, or if authorized by
22 the victim or person requesting [the certification form].” *Id.* §§ 679.10(k), 679.11(k). These
23 confidentiality protections impact thousands of immigrants who come forward to cooperate with
24 law enforcement. For example, in 2016, the year Section 679.10 came into effect for U-visa
25 applicants, L.A. County Sheriff’s Department received double the number of U-visa applications
26 from the year before (954 in total, 80 percent of which were certified), and in 2017, L.A. County
27 has already processed 774 applications, 90 percent of which have been certified. McDonnell
28 Decl., ¶ 14. The third state statute in this subcategory, Penal Code section 422.93, protects hate-
crime victims or witnesses who are “not charged with or convicted of committing any crime
under State law” by prohibiting law enforcement from “detain[ing] the individual exclusively for

1 any actual or suspected immigration violation or report[ing] or turn[ing] the individual over to
2 federal immigration authorities.” Cal. Penal Code § 422.93(b).

3 The second subcategory of statutes (Cal. Welf. & Inst. Code §§ 827, 831; Cal. Civ. Proc.
4 Code § 155) protects the confidential information of youth in the State’s juvenile court system.
5 The Legislature determined that “[c]onfidentiality is integral to the operation of the juvenile
6 system in order to avoid stigma and promote rehabilitation for all youth.” Cal. Welf. & Inst.
7 Code § 831(a). As a general rule, juvenile court records and the information therein is
8 confidential except to statutorily designated parties. *Id.* § 827; *see also* Cal. R. of Ct. 5.552(b)-
9 (c). Consistent with that general requirement, the State implemented its role in the federal Special
10 Immigrant Juvenile process, through its dependency court system, by directing that “information
11 regarding the child’s immigration status . . . remain confidential and shall be available for
12 inspection only” to a handful of enumerated parties. Cal. Civ. Proc. Code § 155(c). Information
13 about a child’s immigration status in any juvenile court proceeding must “remain confidential”
14 just like all other information in the youth’s court records. *See* Cal. Welf. & Inst. Code § 831(e).

15 **C. The History and Purpose of JAG**

16 JAG is a formula grant authorized by Congress and administered by OJP. 34 U.S.C. §§
17 10151-58. The statutory formula guarantees to each state a minimum allocation based on the
18 state’s population and violent crime rate. *Id.* § 10156(a). Sixty percent of a state’s total
19 allocation goes directly to the state and the remainder goes directly to local governments. *Id.* §
20 10156(b)(1), (d).

21 The current JAG program descended from two earlier programs. Congress created the
22 Edward Byrne Memorial State and Local Law Enforcement Assistance Program grants (“Byrne
23 Grants”) as part of the Anti-Drug Abuse Act of 1988. The purpose was “to assist States and units
24 of local government in carrying out specific programs which offer a high probability of
25 improving the functioning of the criminal justice system.” Anti-Drug Abuse Act of 1988, Pub. L.
26 No. 100-690, tit. VI, § 6091(a), 102 Stat. 4181, 4329 (1988). Between 1988 and 2006, Congress
27 identified 29 purposes for which Byrne Grants could be used. *See* 42 U.S.C. § 3751(b) (Dec.
28 2000) (as it existed on Jan. 4, 2006). Separately, Congress identified nine purposes for Local

1 Law Enforcement Block Grants (“LLEBG”).¹⁰ Immigration enforcement never appeared as a
 2 purpose for either the Byrne Grants or LLEBG.¹¹

3 In 2006, Congress merged Byrne Grant and LLEBG, creating the current JAG program,
 4 Pub. L. No. 109-162, 119 Stat. 2960, 3094 (2006), to provide state and local governments “more
 5 flexibility to spend money for programs that work for them rather than to impose a ‘one size fits’
 6 all solution.” to local law enforcement. H.R., Rep. No. 109-233, at 89 (2005). Following that
 7 merger, Congress consolidated the “purpose areas” down to eight: (A) law enforcement
 8 programs; (B) prosecution and court programs; (C) prevention and education programs; (D)
 9 corrections and community corrections programs; (E) drug treatment and enforcement programs;
 10 (F) planning, evaluation, and technology improvement programs; (G) crime victim and witness
 11 programs; and (H) mental health programs. 34 U.S.C. § 10152(a)(1).

12 Congress never created a “purpose area” of immigration enforcement in either the former or
 13 current iterations of JAG. Only one immigration-related requirement ever existed in any iteration
 14 of the JAG authorizing statute: a requirement that the chief executive officer of the recipient state
 15 provide certified records of “criminal convictions of aliens.”¹² Congress repealed that
 16 requirement in the 2006 merger that created the current JAG program. *See* 34 U.S.C. § 10153(a).

17 **D. California’s Use of JAG and COPS Funds**

18 California’s Board of State and Community Corrections (“BSCC”) is the State entity that
 19 receives California’s allocation of JAG’s formula grant funds. The State has received \$252.7
 20 million pursuant to JAG since 2006, excluding funding that the federal government granted
 21 directly to the State’s local jurisdictions. *See* Decl. of Mary Jolls in Supp. of Pl.’s Am. Mot. for
 22 Prelim. Inj. (“Jolls Decl.”), ¶ 7. Based on the statutory formula, California is expected to receive

23 _____
 24 ¹⁰ Local Government Law Enforcement Block Grants Act of 1995, H.R. 728, 104th Cong. (1995)
 25 first authorized as part of the Dep’t of Commerce, Justice, and State, the Judiciary, and Related
 Agencies Appropriations Act of 1996, Pub. L. No. 104-134, tit. I, 110 Stat. 1321, 1321-12 (1996).

26 ¹¹ *See* Decl. of Lee Sherman in Supp. of Pl.’s Mot. for Prelim. Inj. (“Sherman Decl.”) Exs. H
 (identifying the 29 Byrne Grant purposes), I (identifying the 9 LLEBG purposes).

27 ¹² Immigration Act of 1990, Pub. L. No. 101-649, tit. V, § 507(a), 104 Stat. 4978, 5050-51
 28 (1990); Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub.
 L. No. 102-232, tit. III, § 306(a)(6), 105 Stat. 1733, 1751 (1991) (repealed 2006).

1 approximately \$28.3 million in JAG funding in FY 2017, with \$17.7 million going to the BSCC.
2 *Id.* ¶ 5. The BSCC uses the State’s share of the JAG award to issue subgrants to jurisdictions that
3 propose using the funds for education and crime prevention programs, law enforcement
4 programs, and court programs, including toward the goals of improving educational outcomes,
5 increasing graduation rates, curbing truancy, reducing substance abuse, and curtailing
6 delinquency and recidivism for at-risk youth and young adults. *Id.* ¶¶ 8, 10 & Ex. A. For
7 example, L.A. County uses JAG funding to support anti-drug trafficking programs and
8 investigations, intervention programs for vulnerable youth, mental health programs, and anti-gang
9 enforcement activities. McDonnell Decl., ¶¶ 4-9. The City and County of San Francisco relies
10 on JAG to fund, among other thing, projects that seek to reduce recidivism by providing an
11 alternative to suspension and other services for at-risk juveniles and young adults. S.F. Compl., ¶¶
12 42-45. The BSCC currently funds programs for 32 local jurisdictions, as well as the California
13 Department of Justice (“CalDOJ”) to support task forces focused on criminal drug enforcement,
14 violent crime, and gang activity. Jolls Decl., ¶ 10; Decl. of Christopher Caligiuri in Supp. of Pl.’s
15 Am. Mot. for Prelim. Inj. (“Caligiuri Decl.”), ¶¶ 19-21. The BSCC plans on using FY 2017 JAG
16 funds to support programs similar to those that it has funded in the past. Jolls Decl., ¶ 11.

17 The Division of Law Enforcement (“DLE”) within CalDOJ is the State entity that receives
18 COPS competitive grants. Since the inception of the COPS program, CalDOJ has received over
19 \$11 million to support law enforcement efforts around the State, including work on multi-
20 jurisdictional task forces. Caligiuri Decl., ¶ 4. For this fiscal year, CalDOJ applied for two COPS
21 grants worth \$2.8 million. *See id.* ¶¶ 10, 16. CalDOJ applied for the COPS Anti-
22 Methamphetamine Program (“CAMP”) grant to cover salaries, benefits, and other costs to
23 continue the State’s leadership in a task force whose targeted enforcement against large-scale
24 methamphetamine drug trafficking organizations has resulted in the seizure of upwards of \$60
25 million of methamphetamine, cocaine, and heroin. *See id.* ¶¶ 6-8, 10. CalDOJ also applied for
26 the COPS Anti-Heroin Task Force (“AHTF”) grant to cover equipment, including potentially-
27 lifesaving TruNarc handheld narcotics analyzers, consultants, and other costs in support of 14
28 heroin-related task forces that conduct large scale heroin investigations, share data and

1 intelligence among law enforcement personnel throughout the State, and hold education sessions
2 in the community about drug abuse awareness. *See id.* ¶¶ 12-14, 16. CalDOJ has been awarded
3 CAMP and AHTF grants for each year these programs have been in existence. *Id.* ¶¶ 5, 12.

4 **E. JAG and COPS Requirements in Relation to Section 1373**

5 In FY 2016, USDOJ declared Section 1373 an “applicable law” for JAG, RJN, Ex. H, and
6 specifically required BSCC to submit a legal opinion validating its compliance with Section 1373.
7 Jolls Decl., Ex. B, ¶ 55. For FY 2017, Defendants announced that all jurisdictions receiving JAG
8 funds must certify compliance with Section 1373. *E.g.*, RJN, Ex. A at 1, Ex. B at 1. Each grant
9 recipient’s chief law officer, the Attorney General in the State’s case, must sign a standard
10 affidavit, under penalty of perjury, affirming compliance with Section 1373 on behalf of the State
11 and “any entity, agency, or official” of the State as applicable to the “program or activity to be
12 funded.” RJN, Ex. A, Appx. II. The grant recipient’s chief executive officer, the Governor in the
13 State’s case, must adopt that certification, under penalty of perjury. *Id.*, Appx. I. Grant recipients
14 must collect Section 1373 certifications from all subgrant recipients before issuing an award.
15 RJN, Ex. J, ¶ 53(2). In addition, USDOJ’s represented final award conditions require grantees to
16 monitor their subgrantees’ compliance with Section 1373 and to promptly notify OJP if any
17 subgrantee does not comply. *Id.* ¶¶ 53(3), 54(1)(D). USDOJ’s Financial Guide explains that
18 jurisdictions “have 45 days from the award date to accept [an] OJP . . . award document or the
19 award may be rescinded,” which includes the requisite certifications. *See* RJN, Ex. K, § 2.2.

20 USDOJ announced that COPS applicants for 2017 must execute a similar Section 1373
21 certification of compliance with respect to the “program or activity to be funded.” RJN, Ex. C at
22 2 & Appx. D; Ex. D at 1-2 & Appx. D. CalDOJ submitted its applications with the executed
23 certifications for AHTF and CAMP on July 7 and 10, respectively. Caligiuri Decl., ¶¶ 9, 15 &
24 Exs. B, D. As part of their applications, DLE included a supplemental statement by CalDOJ in
25 connection with the COPS Section 1373 Certifications. *Id.* There, CalDOJ clarified that the
26 COPS Section 1373 Certifications were made “as that federal statute is lawfully interpreted,” and
27 reserved its rights to challenge “any unconstitutional enforcement of Section 1373.” *Id.*, Exs. B,
28 D. On September 7, 2017, USDOJ communicated to applicants that it was “committed” to

1 “announcing this year’s award recipients as quickly as possible.” Sherman Decl., Ex. J. As has
2 been required in years’ past, once CAMP and AHTF COPS awards are announced, recipients will
3 have to execute award conditions certifying that they will comply with all applicable laws, which
4 includes Section 1373. *See* Caligiuri Decl., ¶¶ 5, 13 & Exs. A, ¶ 1, C, ¶ 1. On October 23, 2017,
5 USDOJ announced COPS awards for other programs, RJN, Ex. L, but as of the date of this filing,
6 DLE has not received any response to its applications. *See id.* ¶¶ 11, 17.

7 **F. Defendants’ Other Actions Threatening to Find the State in Violation of**
8 **Section 1373**

9 On April 21, 2017, Defendants sent letters to nine jurisdictions that received the JAG award
10 in 2016, including the BSCC, demanding they submit an official legal opinion validating their
11 compliance with Section 1373. RJN, Exs. I, M. That same day, Defendants Sessions and USDOJ
12 both stated that the State of California has laws “that potentially violate 8 U.S.C. § 1373,” relying
13 on an Office of Inspector General Report.¹³ RJN, Exs. M, N. On June 29, the BSCC submitted
14 the requested legal opinion explaining the State’s laws do not violate Section 1373, focusing on
15 the applications of Section 1373 discussed in that OIG Report. *See* Jolls Decl., Ex. C.

16 In August 2017, Defendants informed two of the nine jurisdictions that they comply with
17 Section 1373. On October 12, 2017, Defendants announced that they made preliminary
18 compliance assessments on six of the other jurisdictions (plus one other jurisdiction). *See* RJN,
19 Ex. Q. Defendants announced that they found no evidence of non-compliance with Section 1373
20 as to two jurisdictions, and preliminarily determined that the remaining five appeared not to
21 comply with Section 1373. *Id.* For one jurisdiction’s negative preliminary determination,
22 Defendants based their determination, in part, on the jurisdiction’s protections against the
23 disclosure of crime victims’ information, *see* RJN, Ex. R at 1-2, which California’s laws also
24 protect against in some instances.

25
26 ¹³ Defendants are incorrect in claiming that the OIG Report found California in “potential”
27 violation of Section 1373. The State of California was identified in the OIG report, in large part,
28 because of the relatively large amount of money it receives in federal funding from USDOJ. *See*
RJN, Ex. O at 3. While the OIG Report commented about some jurisdictions’ compliance with
Section 1373, the report did not discuss in detail California’s law as it existed at that time.

1 Having not received a preliminary assessment letter, on October 31, California filed its
2 initial PI Motion to prevent enforcement of the Section 1373 conditions as to the TRUTH Act and
3 the State’s Confidentiality Statutes, but not the laws that have yet to go in effect. On November
4 1, Defendants sent the State a preliminary compliance assessment letter asserting that three
5 provisions of the Values Act may “violate 8 U.S.C. § 1373, depending on how [the State]
6 interprets and applies them.” RJN, Ex. P at 1. Those are the provisions regulating: (i) inquiries
7 into an individual’s immigration status (Gov’t Code, § 7284.6(a)(1)(A)); (ii) responses to
8 notification requests (*id.* § 7284.6(a)(1)(C)); and (iii) the sharing of “personal information” (*id.* §
9 7284.6(a)(1)(D)). RJN, Ex. P at 1-2. As to the first provision, Defendants said that to comply
10 with Section 1373, the State must certify it interprets that provision as “not restrict[ing] California
11 officers and employees from requesting information regarding immigration status from federal
12 immigration officers.” *Id.* at 2. For the notification request and personal information provisions
13 to comply with Section 1373, Defendants said the State must certify it “interprets and applies
14 these provisions to not restrict California officers from sharing information regarding immigration
15 status with federal immigration officers, including information regarding release date[s] and
16 home address[es].” *Id.* at 1. If the State cannot so “certify,” then “[USDOJ] has determined that
17 these provisions violate [Section 1373].” *Id.* at 1-2. Defendants further “reserve[d] [their] right to
18 identify additional bases of potential violation of 8 U.S.C. § 1373.” *Id.* at 2.

19 The Administration has made additional statements suggesting it has an even broader
20 interpretation of Section 1373 than communicated in the preliminary assessment letters, and a
21 misunderstanding about California’s laws. On June 13, 2017, the Acting Director of Immigration
22 and Customs Enforcement (“ICE”), Thomas Homan, testified before Congress that jurisdictions
23 that “have some sort of policy where they don’t . . . allow [ICE] access to the jails” violate
24 Section 1373. *See* RJN, Ex. S at 35, 47-48. Although California’s TRUTH Act does not prohibit
25 LEAs from providing such access, Defendant Sessions has stated that “the State of California . . .
26 [has] enacted statutes . . . designed to specifically prohibit or hinder ICE from enforcing
27 immigration law by . . . denying requests by ICE officers and agents to enter prisons and jails to
28 make arrests.” RJN, Ex. T at 2.

LEGAL ARGUMENT

I. LEGAL STANDARD

“The purpose of a preliminary injunction is merely to preserve the relative position of the parties until a trial on the merits can be held.” *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). A preliminary injunction is “often dependent as much on the equities of [the] case as the substance of the legal issues it presents.” *Trump v. Int’l Refugee Assistance Project*, 137 S.Ct. 2080, 2087 (2017).

II. CALIFORNIA IS LIKELY TO SUCCEED ON ITS CLAIMS THAT THE JAG SECTION 1373 CONDITION IS UNLAWFUL

Before considering whether California’s laws comply with Section 1373, the Court must first determine whether Defendants may even lawfully impose the JAG Section 1373 Condition. They cannot: the State is likely to succeed on its claims that this Section 1373 Condition violates the Spending Clause and is arbitrary and capricious under the Administrative Procedure Act.

A. The JAG Section 1373 Condition Violates the Spending Clause Because it is Unrelated to the Purpose of JAG

Congress may only use its spending power to place conditions on federal funds that are related “to the federal interest in particular national projects or programs.” *South Dakota v. Dole*, 483 U.S. 203, 207 (1987) (quoting *Massachusetts v. United States*, 435 U.S. 444, 461 (1978)). This Court has determined that the same test applies when the Executive Branch imposes a condition by purported delegation from Congress, and that “funds conditioned on compliance with Section 1373 must have some nexus to immigration enforcement.” *See Cty. of Santa Clara v. Trump*, 250 F. Supp. 3d 497, 532 (N.D. Cal. 2017).

Section 1373 has no such nexus to the JAG program. Congress has never identified immigration enforcement as a “purpose area” for JAG, and repealed the only immigration-enforcement related condition that it had ever authorized for JAG funding. *Supra* at 9-10. The

1 present statute identifies eight purpose areas for JAG, which the State predominantly uses to fund
2 community policing initiatives for crime prevention and education for at-risk youth, drug
3 treatment and enforcement, and mental health programs. *See* Jolls Decl., ¶¶ 8, 10.

4 Congress has been clear in identifying these as purposes areas to fund “*criminal justice*”
5 initiatives, 34 U.S.C. § 10152, (emphasis added), whereas, immigration enforcement is generally
6 *civil* in nature and predominantly the responsibility of the federal government. *See Arizona v.*
7 *United States*, 567 U.S. 387, 396 (2012). In reinforcement of this distinction, the only
8 immigration enforcement related condition that ever existed for JAG required jurisdictions to
9 provide records for “criminal convictions of aliens.” *Supra* at 10. The Executive Branch’s
10 unilateral act to add Section 1373 as an “applicable law” violates the nexus prong of the Spending
11 Clause as it requires state and local jurisdictions to comply with a condition to support a different
12 program (the federal government’s civil immigration priorities) than the “criminal justice”
13 program being funded. 34 U.S.C. §§ 10152; *see Texas v. United States*, No. 15-cv-151, 2016 WL
14 4138632, at *17 (N.D. Tex. Aug. 4, 2016) (holding that a Spending Clause claim was viable
15 because a challenged health insurance fee was not “‘directly related,’ let alone ‘reasonably
16 related’” to Medicaid since its purpose was to fund a different federal program).

17 **B. Imposition of the JAG Section 1373 Condition is Arbitrary and Capricious**

18 Defendants’ identification of Section 1373 as an “applicable law” for JAG is arbitrary and
19 capricious in violation of the Administrative Procedure Act. 5 U.S.C. § 706(2)(A). “[A]n agency
20 must cogently explain why it has exercised its discretion in a given manner.” *Motor Vehicle*
21 *Mfrs. Ass’n of the U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 48 (1983). Before 2016,
22 JAG was never linked to Section 1373 at any point in the nearly twenty years that Section 1373
23 has been law. In response to an inquiry by one Congressman, and without providing any
24 evidence that Congress intended for immigration enforcement to be a purpose area for JAG, in
25 2016, USDOJ declared Section 1373 an “applicable law,” with which JAG recipients must
26 comply. *See* RJN, Ex. H. At no point, either for FY 2016 or 2017, have Defendants “show[n]
27 that there are good reasons for the new policy.” *FCC v. Fox Television Stations, Inc.*, 556 U.S.

28

1 502, 515 (2009); *see also State Farm*, 463 U.S. at 50 (“It is well established that an agency’s
2 action must be upheld, if at all, on the basis articulated by the agency itself.”).

3 Indeed, Defendants have put forth *nothing*—no studies, no reports, no analysis—to support
4 the JAG Section 1373 Condition. The OIG Report does not discuss or contemplate how the
5 Section 1373 Condition is consistent with the underlying goals of JAG, or Congress’ intent in
6 adopting JAG. *See Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967,
7 981 (2005) (“Unexplained inconsistency is . . . a reason for holding an interpretation to be an
8 arbitrary and capricious change from agency practice under the Administrative Procedure Act.”);
9 *Cape May Greene, Inc. v. Warren*, 698 F.2d 179, 186-87 (3d Cir. 1983) (invalidating agency
10 action on grant conditions as arbitrary and capricious where the agency sought “to accomplish
11 matters not included in that statute”). Neither do the JAG Solicitations. A general recitation of
12 “Border Security” as an area of emphasis in the JAG Solicitations, RJN, Ex. A at 11, falls “short
13 of the agency’s duty to explain why it deemed it necessary to overrule its previous position,”
14 particularly where Congress never identified Border Security as a purpose. *Encino Motorcars,*
15 *LLC v. Navarro*, 136 S.Ct. 2117, 2125, 2126 (2016); *see id.* (“Agencies are free to change their
16 existing policies as long as they provide a reasoned explanation for the change.”).

17 There is also nothing to suggest that Defendants considered the empirical evidence and law
18 enforcement perspectives that jurisdictions around the country, including the State and its
19 political subdivisions, have relied upon in exercise of their sovereign discretion, that policies that
20 build trust and cooperation with immigrant communities result in positive criminal enforcement
21 and safety outcomes. *See, e.g.,* RJN, Exs. E-G, X; McDonnell Decl., ¶ 12; S.F. Compl., ¶ 28; *see*
22 *also State Farm*, 463 U.S. at 43 (“Normally, an agency rule would be arbitrary and capricious if
23 the agency has . . . entirely failed to consider an important aspect of the problem. . . .”).

24 **III. CALIFORNIA IS LIKELY TO SUCCEED IN SHOWING THAT CALIFORNIA’S STATUTES** 25 **DO NOT VIOLATE SECTION 1373**

26 Even if the JAG Section 1373 Condition is lawful, the State is likely to succeed in showing
27 that the applicable state statutes do not conflict with Section 1373, or, alternatively, Section 1373
28 cannot be enforced against those statutes, which is relevant to both JAG and COPS. The Values,

1 TRUST, and TRUTH Acts do not regulate the activities covered by Section 1373. The State's
2 Confidentiality Statutes do not conflict with Section 1373 when read in the context of the rest of
3 the INA. And reading Section 1373 to invalidate all of these statutes would constitute
4 unconstitutional commandeering that the Tenth Amendment prohibits.

5 **A. The Values, TRUST, and TRUTH Acts Do Not Conflict with Section 1373**

6 The TRUST, TRUTH, and Values Acts do not conflict with Section 1373 because they do
7 not regulate the sharing of “information regarding the citizenship or immigration status” of
8 individuals. 8 U.S.C. § 1373. The TRUTH Act simply provides transparency surrounding LEAs’
9 interactions with ICE. The Values and amended TRUST Acts identify when LEAs have
10 discretion to respond to “notification requests,” *i.e.*, requests for release dates. Cal. Gov’t Code
11 §§ 7282.5(a); 7284.6(a)(1)(C) (both chaptered Oct. 5, 2017). These provisions do not fall within
12 the ambit of Section 1373 because “no plausible reading of ‘information regarding . . . citizenship
13 or immigration status’ encompasses the release date of an undocumented inmate.” *Steinle v. City*
14 *& Cty. of San Francisco*, 230 F. Supp. 3d 994, 1015 (N.D. Cal. 2017).

15 In fact, the Values Act’s savings clause explicitly permits the exchange of such information
16 in complete accordance with Section 1373. *See* Cal. Gov’t Code § 7284.6(e). The “authoritative
17 statement” of a statute is its “plain text,” including its “savings clause.” *Chamber of Commerce*
18 *of U.S. v. Whiting*, 563 U.S. 582, 599 (2011). In light of the Values Act’s plain text, including its
19 savings clause, *none* of the Values Act’s provisions restrict communications on immigration
20 status information between LEAs and federal immigration authorities. For instance, the
21 prohibition on “[i]nquiring into an individual’s immigration status” means that LEAs may not ask
22 an individual about his or her immigration status, or may not ask for that information from non-
23 governmental third parties. Although Defendants suggested in their letter to the State, RJN, Ex.
24 P, that this prohibition may restrict requesting immigration status information from federal
25 officials, the savings clause makes clear that is not the case. The savings clause, however, does
26 not limit the scope of the notification request or “personal information” provisions since such
27 information, including home addresses, are not covered by Section 1373.

28

1 **B. California’s Confidentiality Statutes Do Not Conflict with Section 1373**

2 Section 1373 must be read in the context of the rest of the INA. *See Davis v. Mich. Dep’t.*
3 *of Treasury*, 489 U.S. 803, 809 (1989) (“It is a fundamental canon of statutory construction that
4 the words of a statute must be read in their context and with a view to their place in the overall
5 statutory scheme.”). The INA specifically protects the confidentiality of information about those
6 who have been victims of or witnesses to certain crimes. Section 1367(a)(2), enacted as part of
7 the same legislative act as Section 1373, prevents federal employees from “disclos[ing] to anyone
8 [with exceptions] any information which relates to an alien who is the beneficiary of an
9 application for relief” under the statute, *i.e.* certain victims and witnesses of crime including U-
10 and T-visa recipients. The Defendants’ reading of Section 1373 would require federal employees,
11 in implementing Section 1367(a)(2)’s general disclosure prohibitions, to violate Section
12 1373(b)(3)’s prohibitions on limits to the disclosure of immigration status information from
13 federal employees to other governmental entities.

14 The INA also provides protections and support for certain juveniles. For example, the
15 “Special Immigrant Juvenile” process allows abused, abandoned and neglected immigrant youth
16 to secure lawful immigration status, demonstrating the INA’s broader concern with the long-term
17 safety of such children generally. *See* 8 U.S.C. § 1101(a)(27)(J). Furthermore, in implementing
18 the Deferred Action for Childhood Arrivals (“DACA”) program, United States Citizenship and
19 Immigration Services (“USCIS”) specifically determined that the information provided by DACA
20 applicants must be “protected from disclosure to ICE and CBP for the purpose of immigration
21 enforcement proceedings,” with limited exceptions. *See* RJN, Ex. U, Q19.

22 Accordingly, reading the text of Section 1373 in the context of the rest of the INA shows
23 that the prohibition on limiting information-sharing should not be properly interpreted to cover
24 the limited circumstances encompassed by the State’s Confidentiality Statutes. The persons
25 covered by the State’s statutes are similar classes of individuals to those that the INA (and the
26 federal government) itself seeks to protect both through confidentiality and other protections: (a)
27 victims and witnesses of crime (Cal. Penal Code §§ 422.93, 679.10(k), and 679.11(k)); and (b)
28 vulnerable youth (Cal. Civ. Proc. Code § 155(c); Welf. & Inst. Code §§ 827, 831).

1 The plain language of Section 1373 does not demand a different reading. The words in
2 Section 1373 regarding the immigration status of “any individual,” must “be read in their context
3 and with a view to their place in the overall statutory scheme.” *Davis*, 489 U.S. at 809. For
4 example, in *Atascadero State Hospital v. Scanlon*, 473 U.S. 234 (1985), the Supreme Court read
5 “any recipient of Federal assistance” to not include every recipient, but instead to exclude state
6 defendants. *Id.* at 245-46 (emphasis in original), *superseded by statute*; *see also Raygor v.*
7 *Regents of Univ. of Minn.*, 534 U.S. 533, 545-46 (2002) (“any claim” did not include every claim,
8 but instead excluded certain claims against state defendants). In this instance, “any individual”
9 should be read in the context of the rest of the INA to exclude those individuals protected by
10 other specific sections of the INA. That is particularly so given the serious constitutional
11 questions about the statute that would otherwise arise, as discussed below. *See Bond v. United*
12 *States*, 134 S. Ct. 2077, 2089 (2014) (“[I]t is incumbent upon the federal courts to be certain of
13 Congress’ intent before finding that federal law overrides’ the ‘usual constitutional balance of
14 federal and state powers.’”) (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991)).

15 **C. The Tenth Amendment Does Not Allow for Section 1373 to Commandeer**
16 **the State in its Control over Governmental Employees and its Residents’**
17 **Confidential Personal Information**

18 The Supreme Court has read the Tenth Amendment to impose recognized limits on
19 Congressional enactments. The Framers “explicitly chose a Constitution that confers upon
20 Congress the power to regulate individuals, not States” and the Constitution “has never been
21 understood to confer upon Congress the ability to require the States to govern according to
22 Congress’ instructions.” *New York v. United States*, 505 U.S. 144, 162, 166 (1992). As such, the
23 Supreme Court held in *New York* and *Printz v. United States*, 521 U.S. 898 (1997) that the federal
24 government may not “commandeer” state and local governments and officials “by directly
25 compelling them to enact and enforce a federal regulatory program.” *Printz*, 521 U.S. at 935;
26 *New York*, 505 U.S. at 162. Both cases advance the principles that: (i) “the federal government
27 may not compel the States to enact or administer a federal regulatory program” *e.g.*, *New York*,
28 505 U.S. at 188; (ii) such coercion is impermissible where the “whole object” of the
Congressional action is direction of state functions, *e.g.*, *Printz*, 521 U.S. at 932; and (iii) the

1 intrusion on state sovereignty is “worse” where the federal government “strips” away at state and
2 local government’s discretion at policy-making. *E.g.*, *Printz*, 521 U.S. at 927-28; *see also Koog*
3 *v. U.S.*, 79 F.3d 452, 457-60 (5th Cir. 1996). These principles ensure that state and local
4 governments remain politically accountable to their residents. *See Printz*, 521 U.S. at 920, 922-
5 23; *Koog*, 79 F.3d at 460-61. Reading Section 1373 to cover the Values, TRUST, and TRUTH
6 Acts and the State’s Confidentiality Statutes violates these principles and upsets constitutional
7 notions of political accountability. The Court should thus construe Section 1373 in a manner that
8 prevents its “invalidation.” *See Zadvydas v. Davis*, 533 U.S. 678, 689 (2001) (“We have read
9 significant limitations into other immigration statutes in order to avoid their constitutional
10 invalidation.”).

11 First, construing Section 1373 to cover these statutes would compel the State to participate
12 in the administration of a federal regulatory program of immigration enforcement. *See New York*,
13 505 U.S. at 176, 188. The state statutes at issue here apply to criminal and juvenile systems,
14 which the State and local governments must provide for. To comply with Defendants’ reading of
15 Section 1373, the State Legislature, in setting policy for those systems where the State’s
16 residents’ immigration status information may be relevant, would either have to make no
17 assurances about the confidentiality of that information, or affirmatively make exceptions to
18 allow for disclosure to federal immigration authorities, even when disclosure is prohibited in
19 other instances. *See Cal. Penal Code §§ 679.10-.11*; *Cal. Civ. Proc. Code § 155(c)*; *Cal. Welf. &*
20 *Inst. Code §§ 827, 831*. Regardless of what the State does, it would have to act in furtherance of
21 a federal program that is not its own. Furthermore, where the whole purpose of the statute is to
22 encourage residents to report crimes (*see, e.g.*, *Cal. Penal Code §§ 422.93, 679.10-.11*), or to
23 define the roles of state and local law enforcement (*see, e.g.*, *Cal. Gov’t Code §§ 7282.5(a)*
24 *(chaptered Oct. 5, 2017), 7283.1, 7284.6(a)(1)(C)-(D)*), the enforcement of Section 1373 against
25 these statutes would force the State to surrender its own judgment regarding the public safety risk
26 of entangling local law enforcement in federal immigration matters in favor of the federal
27 government’s preference that federal immigration enforcement prevails over all other concerns.
28 This is “tantamount to forced state legislation” and coercion to administer a federal program that

1 the Tenth Amendment prohibits. *See Koog*, 79 F.3d at 458.

2 Second, construing Section 1373 in a manner to negate the Values, TRUST, and TRUTH
3 Acts and the State’s Confidentiality Statutes would make the “whole object of [Section 1373] to
4 direct the functioning of the state executive,” *see Printz*, 521 U.S. at 932, by commanding solely
5 state and local governments to allow the unfettered use of their resources and personnel to act in
6 furtherance of a federal immigration enforcement program. Whether Section 1373 could be
7 enforced against a categorical prohibition on sharing of immigration status information with
8 federal immigration authorities, *see City of New York v. United States*, 179 F.3d 29, 35 (2d Cir.
9 1999), is not at issue in this case. When applied to these State statutes, however, Section 1373
10 directs action at the core of the State’s sovereign power to make its own determination about how
11 to best address crime and public safety. *See United States v. Morrison*, 529 U.S. 598, 618 (2000)
12 (“[W]e can think of no better example of the police power, which the Founders denied the
13 National Government and reposed in the States, than the suppression of violent crime and
14 vindication of its victims.”). It is the State or its political subdivisions that have the responsibility
15 to manage detention facilities, operate the juvenile court system, certify U- or T-visa requests, and
16 receive reports from victims and witnesses of crime. If applied to these statutes, Section 1373
17 would be enforced against the use of information that “belongs to the State” and that is “available
18 to [law enforcement officers] only in their official capacity.” *Printz*, 521 U.S. at 932 n.17.
19 Section 1373 is, thus, inevitably an “object ... to direct the functioning of the State” if the statute
20 is enforced against these aspects of the State’s sovereignty. *See id.* at 932; *see also Romero v.*
21 *United States*, 883 F. Supp. 1076, 1086-87 (W.D. La. 1994) (the Tenth Amendment limits
22 Congress from preempting “state regulation for the maintenance of public order” that “remove[d]
23 [the sheriff’s] ability to perform certain tasks assigned him by the state which preserve the public
24 order and therefore remove their sovereign authority to maintain public order”).

25 Third, construing Section 1373 to encompass the Values, TRUST, and TRUTH Acts and
26 the State’s Confidentiality Statutes would take away the State’s discretion in establishing policies
27 about how governmental employees may handle private information about the State’s residents
28 within the custody and control of the State and local governments, thus “worsen[ing] the intrusion

1 upon state sovereignty.” See *Printz*, 521 U.S. at 927-28. The State has no blanket prohibition on
2 government employees sharing immigration status information with federal immigration
3 enforcement agents. Instead, the State has made nuanced decisions regulating the specific
4 circumstances where immigration status information, personal information, and release dates are
5 protected from disclosure in general (not solely as to immigration enforcement agents), and/or the
6 limited class of individuals to whom such protections apply. See Cal. Penal Code §§ 422.93
7 (limited to hate crime victims and witnesses, who are not perpetrators of crime); 679.10-11
8 (limited to U- or T-visa applicants); Cal. Civ. Proc. Code § 155(c) (limited to “Special Immigrant
9 Juvenile” applicants); Cal. Welf & Inst. Code §§ 827 & 831 (limiting disclosure of juvenile case
10 files to all except statutorily designated parties); Cal. Gov’t Code, §§ 7282.5(a) (chaptered Oct. 5,
11 2017), 7284.6(a)(1)(C)-(D) (defining when release dates and personal information may be
12 disclosed, including when “available to the public”). The enforcement of Section 1373 as to these
13 statutes would weaken the State’s ability to regulate the actions of their own governmental
14 employees, see *Gregory*, 501 U.S. at 160, and “foreclose[] the State[] from experimenting and
15 exercising [its] own judgment in an area to which States lay claim by right of history and
16 expertise.” See *United States v. Lopez*, 514 U.S. 549, 583 (1995). “Whatever the outer limits of
17 state sovereignty may be, it surely encompasses the right to set the duties of office for state-
18 created officials and to regulate the internal affairs of government bodies.” *Koog*, 79 F.3d at 460
19 (citing *FERC v. Mississippi*, 456 U.S. 742, 761 (1982)).

20 Fourth, commandeering the State in the handling of its residents’ personal information
21 undermines state and local accountability. The U.S. Constitution’s structure of dual sovereignty
22 between the federal government and the states “reduce[s] the risk of tyranny and abuse from
23 either front.” *Printz*, 521 U.S. at 921 (quoting *Gregory*, 501 U.S. at 458). Commandeering
24 forces the states to “bear the brunt of public disapproval.” *New York*, 505 U.S. at 169. As the
25 Court warned in *Printz*, “[t]he power of the Federal Government would be augmented
26 immeasurably if it were able to impress into its service—and at no cost to itself—the police
27 officers of the 50 States.” 521 U.S. at 922. This is exactly what Defendants would be permitted
28 to accomplish if Section 1373 were construed to forbid states and localities from ensuring that

1 LEAs safeguard the confidentiality of victims' and witness' personal information, or to prevent
2 the setting of boundaries on law enforcement's involvement in immigration enforcement. Should
3 Section 1373 be enforced as to the Values, TRUST, and TRUTH Acts and the Confidentiality
4 Statutes, witnesses and victims will be less inclined to report crimes, *see, e.g.*, RJN, Ex. V, and
5 relationships between immigrant communities and state and local officials would be strained.
6 State and local governments would "face the brunt of public disapproval," rather than the
7 Defendants who effectively coerced the State and localities to act according to a federal program.

8 Although two federal courts have upheld Section 1373 against facial constitutional
9 challenges, neither ruling is dispositive to the issues presented in this case. In fact, both decisions
10 reflect significant concern about extending Section 1373 to apply to statutes such as those at issue
11 here. In *City of Chicago v. Sessions*, while the district court held that there was a likelihood that
12 Section 1373 was facially constitutional, it also expressed concern about its potential applications.
13 The court noted that Section 1373 "mandate[s]" state and local governments to give employees
14 the option of providing information to federal immigration agents. 2017 WL 4081821, at *12.
15 The court found that the "practical" impact is that state and local governments are "limited [in
16 their] ability to decline to administer or enforce a federal regulatory program" and "extricate their
17 state or municipality's involvement in a federal program." *Id.*

18 In *City of New York*, the city argued that Section 1373 was facially unconstitutional, in part,
19 because it interfered with the use of confidential information and control over the city's
20 employees in a range of local government functions. The Second Circuit held Section 1373
21 facially constitutional, but recognized:

22 The City's concerns [about confidentiality] are not insubstantial. The obtaining of
23 pertinent information, which is essential to the performance of a wide variety of state
24 and local governmental functions, may in some cases be difficult or impossible if
25 some expectation of confidentiality is not preserved. Preserving confidentiality may
in turn require that state and local governments regulate the use of such information
by their employees.

26 179 F.3d at 36. The Second Circuit acknowledged that the Tenth Amendment may limit Section
27 1373 from being "an impermissible intrusion on state and local power to control information
28 obtained in the course of official business or to regulate the duties and responsibilities of state and

1 local governmental employees,” but it did not consider these arguments in earnest because the
2 city’s executive order promoted a policy of “non-cooperation while allowing City employees to
3 share freely the information in question with the rest of the world.” *See id.* at 37. The Second
4 Circuit determined that the city was attempting to transform “the Tenth Amendment’s shield
5 against the federal government’s using state and local governments to enact and administer
6 federal programs into a sword allowing states and localities to engage in passive resistance that
7 frustrates federal programs.” *Id.* at 35.

8 That is not so with the State’s Confidentiality Statutes, the only statutes that are arguably
9 relevant to the grants at issue that place limited regulations on the sharing of immigration status
10 information. They either generally prohibit disclosure to a wide range of individuals, not just to
11 federal agents, or narrowly tailor the segment of the population that is protected. The same is true
12 of the notification request provision in the Values and amended TRUST Acts and the personal
13 information provision in the Values Act which allow for disclosure when the information is
14 already “available to the public.” And the TRUTH Act does not regulate the sharing of any
15 information. As a result, these statutes possess the qualities that eluded the jurisdictions’ facial
16 challenges in *City of New York* and *Chicago*, and underscore the serious constitutional issues that
17 the Second Circuit and the Northern District of Illinois found troubling in Section’s 1373’s
18 practical application. *See Chicago*, 2017 WL 4081821, at *12 (“practically limit[ing] the ability
19 of state and local governments to decline to administer or enforce a federal regulatory program”
20 could “implicate the logic underlying the *Printz* decision”).

21 **IV. WITHOUT COURT INTERVENTION, THE SECTION 1373 CONDITIONS WILL CAUSE**
22 **THE STATE IMMINENT AND IRREPARABLE HARM**

23 “[C]onstitutional violation[s] alone, coupled with the damages incurred, can suffice to show
24 irreparable harm.” *Am. Trucking Ass’ns, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1058-59 (9th
25 Cir. 2009) (relying on *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374 (1992)). Moreover,
26 injuries where “sovereign interests and public policies [are] at stake” are irreparable. *Kansas v.*
27 *United States*, 249 F.3d 1213, 1228 (10th Cir. 2001).

28

1 California will suffer a constitutional injury to the State's sovereignty if Defendants
2 effectively coerce the State and its political subdivisions to carry out their federal immigration
3 enforcement agenda, particularly under their misinterpretation of Section 1373. A plaintiff can
4 suffer a constitutional injury by being forced either to comply with an unconstitutional law or else
5 face community and financial injury. *See Am. Trucking Ass'ns, Inc.*, 559 F.3d at 1058-59
6 (plaintiffs were injured where they faced the choice of signing unconstitutional agreements or a
7 loss of customer goodwill and business). Such is the case here where the State is confronted with
8 making an unqualified certification of compliance under penalty of perjury under the shadow of
9 Defendants' misinterpretation of Section 1373, specifically as to the State's law. Defendants'
10 November 1 letter makes clear that Defendants view the State as currently ineligible to receive
11 grant funds because of the Values Act, and that the State likely will face legal jeopardy should it
12 execute the certification based on Defendants' erroneous interpretation of Section 1373.¹⁴ *See*
13 *Morales*, 504 U.S. at 380-81 (injunctive relief proper where "respondents were faced with a
14 Hobson's choice: continually violate the Texas law and expose themselves to potentially huge
15 liability; or violate the law once as a test case and suffer the injury of obeying the law during the
16 pendency of the proceedings").

17 Construing Section 1373 to invalidate the State's statutes will also cause real harm to our
18 communities, no matter what the State does. If the State changes its laws to comply with an
19 unlawful and constitutionally impermissible interpretation of Section 1373, the relationship of
20 trust that these State statutes are intended to build between law enforcement and immigrant
21 communities will erode. *See McDonnell Decl.*, ¶¶ 10, 12; *San Francisco Compl.*, ¶ 28.
22 Alternatively, if the State preserves its laws and Defendants cut millions of dollars in JAG
23 funding that the State is otherwise entitled to by statutory formula, the State would be unable to
24 fund critical public safety programs, *see Jolls Decl.*, ¶ 19; *Caligiuri Decl.*, ¶¶ 19-22, and local
25 jurisdictions' programs will be detrimentally impacted, including the possibility that programs

26 _____
27 ¹⁴ Even if the State submits a statement explaining why the State's laws comply with Section
28 1373, notwithstanding Defendants' misinterpretation, the State still has to submit the standard
certification required by Defendants in order to receive funding, and Defendants may deny the
State funding on the basis of this explanatory statement.

1 and staff positions will be eliminated in their entirety. *See* McDonnell Decl., ¶¶ 8-9, 15; S.F.
 2 Compl., ¶ 46; *see United States v. North Carolina*, 192 F. Supp. 3d 620, 629 (M.D.N.C. 2016)
 3 (finding irreparable harm where the lack of funds was “likely to have an immediate impact on
 4 [the state’s] ability to provide critical resources to the public, causing damage that would persist
 5 regardless of whether funding [was] subsequently reinstated”). Furthermore, without any
 6 guidance from Defendants, BSCC will be placed in the position of having to monitor subgrantees
 7 and report them for having policies that the State and/or the subgrantees determined benefit
 8 public safety. *See* RJN, Ex. J, ¶¶ 53(3), 54(1)(D); *see also* Jolls Decl., ¶¶ 21-22.

9 The harm to the State from the loss of COPS grants is at least as immediate. USDOJ is
 10 poised to issue COPS awards and demand compliance with applicable laws, including Section
 11 1373, based on their apparent misreading of the statute. *See supra* at 12-13. If CalDOJ does not
 12 receive the COPS grants based on Defendants’ interpretation of Section 1373 or they are
 13 conditioned based on this misinterpretation, CalDOJ will be unable to fund task forces and
 14 equipment that combat heroin and methamphetamine distribution, creating harm that will extend
 15 to the local jurisdictions that those task forces serve. *See* Caligiuri Decl., ¶¶ 10, 16.

16 The damages incurred here—the deprivation of constitutional rights, the loss of community
 17 goodwill, decrease in public safety, and the loss of millions of dollars of funding —“suffice to
 18 show irreparable harm.” *See Am. Trucking Ass’ns, Inc.*, 559 F.3d at 1058; *Stuller, Inc. v. Steak N*
 19 *Shake Enterprises, Inc.*, 695 F.3d 676, 680 (7th Cir. 2012) (injuries to goodwill not easily
 20 measurable and often irreparable). These are the same types of damages that the court in *Chicago*
 21 recently found to be irreparable in enjoining other immigration enforcement related conditions for
 22 JAG. *See Chicago*, 2017 WL 4081821, at *12-14.

23 **V. THE BALANCE OF HARDSHIPS FAVORS GRANTING A PRELIMINARY INJUNCTION**

24 A party seeking a preliminary injunction “must establish . . . that the balance of equities tips
 25 in his favor, and that an injunction is in the public interest.” *Winter*, 555 U.S. at 20. These two
 26 factors merge when the government is a party. *Nken v. Holder*, 556 U.S. 418, 435 (2009). And
 27 the balance of the hardships and public interest both favor “prevent[ing] the violation of a party’s
 28

1 constitutional rights.” *Ariz. Dream Act Coalition v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014)
2 (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)).

3 Here, the balance of the hardships and the public interest favors an injunction. California
4 has determined that the public safety requires protecting its residents’ personal information and
5 limiting law enforcement’s entanglement in immigration enforcement. Defendants are forcing
6 California, under extreme time pressure, to consider undermining these policies to avoid losing
7 critical federal funding. An injunction protects the public interest in shielding the State’s
8 sovereignty from unconstitutional conditions without harm to the federal government’s ability to
9 enforce federal laws with federal resources.

10 The Government “is in no way harmed by issuance of a preliminary injunction which
11 prevents the [federal government] from enforcing restrictions likely to be found unconstitutional.
12 If anything, the system is improved by such an injunction.” *See Giovanni Carandola, Ltd. v.*
13 *Bason*, 303 F.3d 507, 521 (4th Cir. 2002) (citation omitted). This is particularly true when an
14 injunction protects a State’s interest in “the exercise of sovereign power over individuals and
15 entities within . . . [their] jurisdiction that involves the power to create and enforce a legal code,
16 both civil and criminal.” *See Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S.
17 592, 601 (1982). The potential impact on numerous local jurisdictions further tips the balance of
18 interests. *See, e.g., McDonnell Decl.*, ¶ 8-9, 15; *S.F. Compl.*, ¶ 46. In contrast, Defendants face
19 no harm since the status quo would remain, and they would only have to provide money that
20 Congress has already appropriated.

21 CONCLUSION

22 For the foregoing reasons, California requests this Court grant its Motion.
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1 Dated: November 7, 2017

Respectfully Submitted,

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9
 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 12 SAN FRANCISCO DIVISION

13
 14 **STATE OF CALIFORNIA, ex rel, XAVIER**
BECCERRA, in his official capacity as
 15 **Attorney General of the State of California,**

16 Plaintiff,

17 v.

18 **JEFFERSON B. SESSIONS, in his official**
capacity as Attorney General of the United
 19 **States; ALAN R. HANSON, in his official**
 20 **capacity as Acting Assistant Attorney**
General; UNITED STATES
 21 **DEPARTMENT OF JUSTICE; and DOES**
1-100,

22 Defendants.
 23

Case No. 17-cv-4701

**[PROPOSED] ORDER GRANTING
 PLAINTIFF STATE OF CALIFORNIA'S
 AMENDED MOTION FOR
 PRELIMINARY INJUNCTION**

Date: December 13, 2017
 Time: 2 p.m.
 Dept: 2
 Judge: Honorable William H. Orrick
 Trial Date: None Set
 Action Filed: 8/14/2017

1 On November 7, 2017, Plaintiff State of California, ex rel. Xavier Becerra, California
2 Attorney General (“the State” or “California”) filed an Amended Motion for Preliminary
3 Injunction (“Motion”) and a hearing on the Motion was held on Wednesday, December 13, 2017
4 at 2:00 p.m.

5 The Court has considered the Motion and documents filed therewith, all of the papers on
6 file in this action, and the evidence and arguments presented at the hearing, and hereby GRANTS
7 California’s Motion. The Court finds that each of the necessary elements for issuing a
8 preliminary injunction are met. In particular, the Court finds that California is likely to prevail on
9 the merits of its claims; absent a preliminary injunction, California would be likely to suffer an
10 irreparable injury in the form of constitutional, community, and economic injury; the balance of
11 the equities favors California; and the requested relief is in the public interest.

12 **PRELIMINARY INJUNCTION**

13 Now, therefore, it is hereby ORDERED that:

14 Defendants Jefferson B. Sessions, in his official capacity as Attorney General of the United
15 States, Alan R. Hanson, in his official capacity as Assistant Attorney General of the United
16 States, and the United States Department of Justice, and their officers, agents, servants,
17 employees, and attorneys, and any other persons who are in active concert or participation with
18 them, ARE HEREBY RESTRAINED AND ENJOINED from committing, or performing,
19 directly and indirectly, any and all of the following acts: Requiring compliance with 8 U.S.C. §
20 1373 (“Section 1373”) as a condition for the State and its political subdivisions to receive funding
21 pursuant to the Edward Byrne Memorial Justice Assistance Grant (“JAG”) program.

22 It is further ORDERED that Defendants and their officers, agents, servants, employees, and
23 attorneys, and any other persons who are in active concert or participation with them, ARE
24 HEREBY RESTRAINED AND ENJOINED from withholding, terminating, or clawing back
25 funding from, or disbaring or making ineligible, the State and its political subdivisions for JAG
26 or Community Oriented Policing Service grants based on an interpretation of Section 1373 as
27 applied to California Government Code Sections 7282 *et seq.* (the “TRUST Act”) (chaptered Oct.
28 5, 2017), 7283 *et seq.* (the “TRUTH Act”), or 7284 *et seq.* (the “California Values Act”)

1 (chaptered Oct. 5, 2017); California Penal Code Sections 422.93, 679.10, or 679.11; California
2 Code of Civil Procedure Section 155; or California Welfare and Institutions Code Sections 827 or
3 831.

4 The State has demonstrated a likelihood of success on its claim that these statutes comply
5 with Section 1373 as lawfully interpreted and/or Section 1373 cannot be constitutionally enforced
6 as to these statutes.

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8 Dated: _____
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_____ The Honorable William H. Orrick