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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

CITY OF LOS ANGELES,

Plaintiff,

v.

JEFFERSON B. SESSIONS, III, in his
official capacity as Attorney General of the
United States; ALAN R. HANSON, in his
official capacity as Acting Assistant

Case No. 2:17-cv-07215-R-JCx

**CITY OF LOS ANGELES’
MEMORANDUM IN SUPPORT OF
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Judge: The Honorable Manuel L. Real
Date: February 5, 2018
Time: 10:00 a.m.

1 Attorney General of the Office of Justice
2 Programs; RUSSELL WASHINGTON, in
3 his official capacity as Acting Director of
4 the Office of Community Oriented Policing
5 Services; UNITED STATES
6 DEPARTMENT OF JUSTICE.

Defendants.

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1 **I. INTRODUCTION**

2 This is a case about a federal agency abusing its power—offending the separation
3 of powers and federalism all at once. Congress created a grant program to support state
4 and local governments in hiring officers for deployment in “community-oriented
5 policing” (the “COPS Hiring Program” or “COPS”). The U.S. Department of Justice
6 (“DOJ”) is charged with administering that grant program. DOJ’s stewardship over this
7 program requires it to make discretionary judgments about what communities most need
8 the money, what grant proposals are most likely to meet Congress’s goals, and other
9 salient factors. But Congress did not write DOJ a blank check. DOJ cannot use its hold
10 of the purse strings to pressure sovereign governments to change unrelated policies, or to
11 misdirect funds away from the types of programs Congress directed DOJ to support.

12 That is what DOJ has done in two unlawful manipulations of the COPS grant
13 competition. *First*, DOJ decided to award “additional consideration”—effectively bonus
14 points—to applicants that adopt regulations, policies, and practices reflecting particular
15 types of “partnership” with federal civil immigration authorities, and sign a “Certification
16 of Illegal Immigration Cooperation.” This necessarily means that communities that are
17 *not* willing or able to certify that they have adopted these DOJ-preferred regulations or
18 policies are disfavored in the grant process. These disfavored communities are then less
19 likely to receive federal support to hire officers for deployment in community-oriented
20 policing. This attempt to induce state and local governments to change their regulations,
21 policies, and practices is directly contrary to DOJ’s statutory authority. The COPS
22 statute identifies just one narrow area (treatment of victims of human trafficking) where
23 DOJ is authorized to favor applicants based on laws and policies unrelated to their use of
24 grant funds. DOJ plainly lacks broader authority to use the COPS grant program as
25 leverage to extract policy concessions from state and local governments.

26 *Second*, DOJ decided to award grants to applicants that focus on “Illegal
27 Immigration”—and to give preferential treatment in the grant competition to applicants
28 who choose that focus. This too is unlawful. No plausible interpretation of “community-

1 oriented policing” includes participating in civil immigration enforcement. Congress
2 certainly does not think so; it enacted a detailed list of twenty-two statutory purposes it
3 considered relevant to its goal of promoting community-oriented policing, and civil
4 immigration enforcement is conspicuously absent. DOJ’s attempt to fund state and local
5 officers to perform the duties of federal civil immigration agents is not only contrary to
6 the text and structure of the COPS statute, but squarely contradicts provisions of the
7 immigration laws that DOJ purports to be championing.

8 These forms of preferential treatment are no small detail. In a recent press release
9 announcing this year’s COPS awards, DOJ made clear that immigration-related
10 considerations were critical to award decisions—and that the agency is treating its
11 statutory mandate of promoting community-oriented policing as all but incidental. *See*
12 Request for Judicial Notice (“RJN”) Ex. H, DOJ, Office of Public Affairs, Attorney
13 General Sessions Announces \$98 Million To Hire Community Policing Officers (Nov.
14 20, 2017) (“November Press Release”).

15 Defendants’ abuse of the COPS program must be rejected. It is *ultra vires* and a
16 violation of the separation of powers, it is an unconstitutional attempt to use Congress’s
17 Spending Clause power, and it is arbitrary and capricious. The Court should grant partial
18 summary judgment and enter final judgment under Federal Rule of Civil Procedure 54(b)
19 in favor of Plaintiff on Counts Four, Five, and Six; declare that Defendants’ actions are
20 unlawful; and enjoin them from administering the COPS program in this unlawful
21 manner going forward.

22 **II. FACTUAL BACKGROUND**

23 **A. Congress Establishes the COPS Grant Program to Support the Hiring** 24 **of Police Officers to Engage in Community-Oriented Policing.**

25 Community-oriented policing, according to the component of DOJ responsible for
26 promoting it, “begins with a commitment to building trust and mutual respect between
27 police and communities.” RJN Ex. A, Office of Community Oriented Policing Services,
28 “About”. Congress created the COPS program to support state and local government

1 efforts to engage in community-oriented policing. To achieve that purpose, the COPS
2 statute authorized the Attorney General to “make[] grants to States, units of local
3 government, Indian tribal governments, other public and private entities, and multi-
4 jurisdictional or regional consortia.” 34 U.S.C. § 10381(a).

5 Congress authorized the COPS program as a “single grant program” and
6 enumerated twenty-two “purposes for which grants . . . may be made.” *Id.* § 10381(b).
7 These purposes include “to rehire” and “to hire and train new” law enforcement officers
8 “for deployment in community-oriented policing.” *Id.* § 10381(b)(1), (2).

9 DOJ administers the COPS grant program through its Office of Community
10 Oriented Policing Services (“COPS Office”). *See* Decl. of Stella Larracas, Ex. B, 2017
11 CHP Application Guide at 61. The COPS Office administers several types of COPS
12 programs each year, including the COPS Hiring Program (“CHP”) grant, which
13 “provides funding directly to law enforcement agencies to hire and/or rehire career law
14 enforcement officers in an effort to increase their community policing capacity and crime
15 prevention efforts.” *Id.* at 1, 7. Each fiscal year, the COPS Office issues applications for
16 the CHP grant and selects local government awardees to receive funds that can typically
17 be used over a three-year period.

18 Congress has generally not appropriated sufficient money to fund all of the grant
19 requests the COPS Office receives. Decl. of Andrew Dorr in Opposition to Plaintiff’s
20 Motion for Preliminary Injunction, filed Oct. 12, 2017 (Doc. 33-1), at ¶ 12 (“Dorr.
21 Decl.”). The COPS Office has therefore created a scoring system tailored to the statutory
22 purpose of awarding funds to communities that most need federal assistance to engage in
23 community policing, and have the best plans for promoting that type of police work.
24 Thus, the Office awards points based on criteria falling in three categories: Fiscal Health,
25 Crime, or Community Policing. *Id.* ¶ 20. “Community Policing” generally accounts for
26 50% of the score, “Crime” for 30%, and “Fiscal Health” for 20%. *Id.*

27 The COPS Office also generally allocates “additional consideration”—in the form
28 of extra points under its scoring system—for specified reasons. Applicants are directed

1 to select particular “community policing problems or focus areas” that their proposed
2 program will address, and the Office awards extra points to communities that select a
3 focus area that is prioritized for that year. *See* Larracas Decl., Ex. C, 2016 CHP
4 Application Guide at 21; Dorr. Decl. ¶ 18 (“[T]he application system assigns extra points
5 for applications that are focused on that year’s priority areas.”). The COPS Office has in
6 prior years also provided extra points under its scoring system to communities affected
7 by an unanticipated catastrophic event, reflecting the heightened needs of such
8 communities. Larracas Decl., Ex. C, 2016 CHP Application Guide at 21.

9 Congress has also authorized one basis for the COPS Office to award preferential
10 consideration that does not relate to an applicant’s need for, or use of, COPS grant funds.
11 Section 10381(c) of the statute provides that DOJ “may” give an application “preferential
12 consideration” if the applicant is in a state that has in effect particular types of laws that
13 grant leniency to victims of human trafficking. 34 U.S.C. § 10381(c)(2), (3). The COPS
14 Office, acting on this express authorization, generally provides extra points to applicants
15 in states with these congressionally-favored human trafficking laws. *See* Larracas Decl.
16 Ex. C, 2016 CHP Application Guide at 21.

17 The COPS Office does not disclose the weight that individual factors are given in
18 scoring, or the relative weight given to additional considerations in the overall scoring
19 system. *See id.*; Dorr Decl. ¶ 15.

20 **B. Defendants’ Attempts to Use Federal Funds as a Weapon to Pressure**
21 **State and Local Governments to Participate in Federal Civil**
22 **Immigration Enforcement.**

23 Early in his presidency, President Donald J. Trump declared that he would use
24 federal funds as a “weapon” to require state and local support for his federal civil
25 immigration enforcement policies.¹ His Administration has sought to make good on this
26 announcement by conditioning federal grants on state and local enforcement of federal

27 ¹ Harriet Taylor, Trump to Fox News: “I May Defund California as ‘a weapon’ to fight
28 illegal immigration,” CNBC.com (Feb. 5, 2017), <https://tinyurl.com/TaylorCNBC>.

1 civil immigration law. The Administration’s two prior attempts have thus far been
2 enjoined as unconstitutional; the latest is the subject of this motion.

3 On January 25, 2017, President Trump issued Executive Order 13768, directing the
4 Attorney General and Secretary of Homeland Security to withhold federal funds from
5 what he called “Sanctuary Jurisdictions.”² On November 20, 2017, a federal district
6 court permanently enjoined Section 9(a) of the Executive Order, ruling that the order is
7 unconstitutional, because: (1) the Executive Branch is attempting to usurp authority that
8 belongs to Congress under the Spending Clause; (2) the order violates constitutional
9 limits on federal spending authority; (3) the order violates the Tenth Amendment’s
10 prohibition against commandeering local jurisdictions to administer a federal program;
11 (4) the order is unconstitutionally vague; and (5) the order violates requirements of due
12 process. *Cty. of Santa Clara v. Donald J. Trump*; *City and Cty. of San Francisco v.*
13 *Trump*, 2017 WL 5569835 (N.D. Cal. Nov. 20, 2017).

14 DOJ then launched another effort to condition federal funds for states and localities
15 on their participation in federal civil immigration enforcement, attempting to impose such
16 conditions on receipt of funding under the Edward Byrne Memorial Justice Assistance
17 Grants (“Byrne JAG”) program. Defendant Sessions announced in a press release that
18 Byrne JAG grants would be awarded only to cities and states that, *inter alia*, “allow
19 federal immigration access to detention facilities,” and “provide 48 hours notice before
20 they release an illegal alien wanted by federal authorities.” RJN Ex. B, DOJ, Office of
21 Public Affairs, Attorney General Sessions Announces Immigration Compliance
22 Requirements for Edward Byrne Memorial Justice Assistance Grant Programs (July 25,
23 2017). Again, this effort was rejected—by two different courts—as an overreach by DOJ
24 of its statutory authority. *City of Chicago v. Sessions*, 2017 WL 4081821 (N.D. Ill. Sept.

25 _____
26 ² The White House Office of the Press Secretary, “Executive Order: Enhancing the Public
27 Safety on the Interior of the United States,” Whitehouse.gov (January 25, 2017), § 9(a),
28 *available at* <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>.

1 15, 2017), *appeal filed*; *City of Philadelphia v. Sessions*, 2017 WL 5489476 (E.D. Pa.
2 Nov. 15, 2017).

3 Defendants now seek to use the COPS grant to pressure states and localities into
4 changing their laws and policies, and otherwise participating in federal civil immigration
5 enforcement. In the fiscal year (“FY”) 2017 application cycle for the COPS grant
6 program, the COPS Office added a “focus area” it called “Illegal Immigration.” The
7 Office described this focus area as involving “partnering with federal law enforcement to
8 combat illegal immigration,” including by participating in “287(g) partnerships” and
9 “honoring detainers.” Dorr Decl. ¶ 24; *see also* Larracas Decl. Ex. B, 2017 CHP
10 Application Guide at 27.³ Defendants did not just create this “Illegal Immigration”
11 category as an available use of COPS grant funds, but encouraged applicants to select it
12 by offering additional consideration in the form of extra points for that choice. *See*
13 Larracas Decl. Ex. B, 2017 CHP Application Guide at 27.

14 Defendants further stated in the Application Guide that “[a]dditional consideration
15 . . . may be given” to “applicants that partner with federal law enforcement to address
16 illegal immigration.” *See id.* at 27-28. Defendants offered no additional explanation of
17 this possibility until two months after the due date for grant applications. Then, in early
18

19 ³ A “287(g) partnership” is a carefully limited and regulated statutory mechanism by
20 which state and local police officers can be authorized to act as immigration officers. *See*
21 8 U.S.C. § 1357(g)(1). “Honoring detainers,” though imprecise in its terminology,
22 presumably refers to DHS’s practice of requesting state and local law enforcement to
23 detain individuals who otherwise would be released, so that DHS can decide whether to
24 take custody and then do so. *See* DHS, Form I-247A, Immigration Detainer-Notice of
25 Action (2017). Courts have held municipalities liable for violating the Fourth
26 Amendment for “honoring detainers.” *See, e.g., Ochoa v. Campbell*, 2017 WL 3476777
27 at *7, *14 (E.D. Wash. July 31, 2017), *appeal filed*, No. 17-35679; *Santoyo v. United*
28 *States*, 2017 WL 2896021 at **3-8 (W.D. Tex. June 5, 2017); *Miranda-Olivares v.*
Clackamas Cty., 2014 WL 1414305 at *11 (D. Or. Apr. 11, 2014); *see also Morales v.*
Chadbourn, 793 F.3d 208, 215-19 (1st Cir. 2015) (holding that detaining an individual
pursuant to an immigration detainer without additional probable cause is a clearly
established violation of the Fourth Amendment).

1 September 2017, the COPS Office sent an e-mail to applicants informing them that this
2 additional consideration would be available. *See* Larracas Decl. Ex. A, E-mail from
3 COPS Office (Sept. 7, 2017). The e-mail attached a certification form that would have to
4 be signed and returned within 12 days in order to qualify for the extra points.

5 Defendants called the form “Certification of Illegal Immigration Cooperation,” and
6 required it to be signed by the highest-ranking law enforcement official (*e.g.*, police
7 chief) and government executive (*e.g.*, mayor). *Id.*; *see also id.* Attachment 1. These
8 officials were required to certify versions of the “Access” and “Notice” requirements that
9 DOJ has been enjoined from enforcing as conditions on Byrne JAG grants. Specifically,
10 an applicant was required to certify that it had implemented, or would implement,
11 specific “rules, regulations, policies, and/or practices” relating to federal civil
12 immigration enforcement:

- 13 • “The applicant entity and/or its governing body has implemented or, before
14 drawing down grant funds if awarded, will implement rules, regulations, policies,
15 and/or practices that ensure that U.S. Department of Homeland Security (‘DHS’)
16 personnel have access to any of the governing body’s correctional or detention
17 facilities in order to meet with an alien (or an individual believed to be an alien)
18 and inquire as to his or her right to be or to remain in the United States.” (the
19 “Access Requirement”)
- 20 • “The applicant entity and/or its governing body has implemented or, before
21 drawing down grant funds if awarded, will implement rules, regulations, policies,
22 and/or practices that ensure that any of the governing body’s correctional and
23 detention facilities provide advance notice as early as practicable (at least 48 hours,
24 where possible) to DHS regarding the scheduled release date and time of an alien
25 in the jurisdiction’s custody when DHS requests such notice in order to take
26 custody of the alien. This certification does not require holding an alien beyond his
27 or her scheduled time of release.” (the “Notice Requirement”)

28 *Id.* Attachment 1.

DOJ recognized that the effect of these changes to the COPS program was to give
“additional consideration” to communities that “cooperate[d] with federal law
enforcement to address illegal immigration.” *Id.* at 1. The sole explanation for this

1 change was a press statement that Defendant Sessions believes “[c]ities and states that
2 cooperate with federal law enforcement make all of us safer by helping remove
3 dangerous criminals from our communities,” and “jurisdictions with these policies in
4 place should be acknowledged for their commitment to ending violent crime, including
5 violent crime stemming from illegal immigration.” RJN Ex. D, DOJ, Office of Public
6 Affairs, Department of Justice Announces Priority Consideration Criteria for COPS
7 Office Grants (Sept. 7, 2017).

8 **C. Los Angeles’ Applications for COPS Hiring Program Grant Funding.**

9 Los Angeles has historically been a competitive applicant for COPS funds. The
10 City applied for CHP grants in 2012 and 2016, and obtained grant funding in both years.
11 Larracas Decl. ¶ 3. In 2016, Los Angeles received one of the highest scores out of more
12 than one thousand applications. *Id.* Ex. D, COPS Office, FY 2016 COPS Hiring Program
13 Applicant Rankings.

14 In its FY 2017 application, Los Angeles applied for \$3.125 million in CHP
15 funds—the same amount it received in 2016—to support hiring officers for its
16 Community Safety Partnership (“CSP”) Program. Larracas Decl. Ex. E, Los Angeles
17 2017 CHP Application at 22. The CSP program is a paradigmatic community-oriented
18 policing program. It operates in selected public housing developments located
19 throughout the Los Angeles area. The CSP program deploys officers to implement
20 programs for at-risk youth, ensure safe passage on school routes, and build relationships
21 in the communities through neighborhood watch groups, quality of life committees, and
22 citizen-police enforcement teams. *Id.* at 12. In its application, Los Angeles identified
23 “Building Trust and Respect” as the focus of its grant-supported program. *Id.* at 11.

24 The City did not attempt to create a different program, unrelated to community-
25 oriented policing, in order to select “Illegal Immigration” as its focus area and receive
26 extra points for its application. In addition to its commitment to using grant funds for the
27 community policing purposes Congress intended, Los Angeles has made a longstanding
28

1 decision that it can best protect public safety by not participating in federal civil
2 immigration enforcement. Specifically, Los Angeles has implemented “policies and
3 practices designed to promote the public safety of all Los Angeles residents by
4 engendering cooperation and trust between members of the City’s many immigrant
5 communities and law enforcement.” Decl. of Michael Hyams ¶ 4. This includes the Los
6 Angeles Police Department’s longstanding policy that “restricts an officer from initiating
7 a police action with the objective of discovering a person’s immigration status, and also
8 prohibits arrest based solely on civil immigration status.” *Id.* ¶ 3.

9 Los Angeles also did not submit a signed “Certification of Illegal Immigration
10 Cooperation” in the twelve days it was allotted. Los Angeles was unable to determine in
11 that time whether DOJ would consider its detention facility practices to comply with the
12 Access and Notice Requirements, or whether a “Certification of Illegal Immigration
13 Cooperation,” bearing the signatures of the Mayor and Chief of the LAPD, would erode
14 the community trust Los Angeles has long fostered. Hyams Decl. ¶ 7. Thus, because
15 Los Angeles was unwilling to use a COPS grant in order to “partner[] with federal law
16 enforcement to address illegal immigration,” Larracas Decl. Ex. B, 2017 CHP
17 Application Guide at 28, or to complete a “Certification of Illegal Immigration
18 Cooperation,” the deck was doubly stacked against the City in the competition for COPS
19 funds.

20 An official in the COPS Office has made the unsupported assertion that Los
21 Angeles would not have received an FY 2017 grant even in the absence of the
22 immigration-related considerations. Dorr Decl. ¶ 32. There is every reason to believe,
23 however, that the COPS Office will continue to disfavor cities like Los Angeles in
24 subsequent award decisions. Indeed, in announcing FY 2017 awards, DOJ advertised
25 that 80% of successful applicants completed the “Certification of Illegal Immigration
26 Cooperation.” *See* RJN Ex. H, November Press Release. The City therefore seeks relief
27 to restore an equal playing field for future grant cycles. Specifically, Los Angeles seeks a
28 declaration and an injunction preventing DOJ from giving applicants extra points if they

1 adopt particular laws and policies supporting “Illegal Immigration Cooperation,” and if
 2 they commit to a grant-supported program involving partnership with federal authorities
 3 in combatting “Illegal Immigration.”⁴

4 **III. STANDARD OF REVIEW**

5 Rule 56 requires summary judgment be granted for the moving party where the
 6 evidence, viewed in the light most favorable to the nonmoving party, shows that there is
 7 no genuine issue as to any material fact, and that the moving party is entitled to judgment
 8 as a matter of law. *See* Fed. R. Civ. P. 56(c); *Tarin v. Cty. of Los Angeles*, 123 F.3d
 9 1259, 1263 (9th Cir. 1997), *superseded by statute on other grounds*. Partial summary
 10 judgment may be granted on particular claims. Fed. R. Civ. P. 56(a).

11 Summary judgment is generally appropriate to decide challenges to administrative
 12 agency action that turn on the lawfulness of that action or whether, on the existing
 13 administrative record, the action is arbitrary and capricious. *See, e.g., City & Cty. of San*
 14 *Francisco v. United States*, 130 F.3d 873, 877 (9th Cir. 1997) (“In reviewing an
 15 administrative agency decision, summary judgment is an appropriate mechanism for
 16

17 ⁴ Los Angeles’ standing to bring this action is based on the uneven playing field
 18 Defendants created by favoring or disfavoring applicants on the basis of improper
 19 immigration-related considerations. This is precisely the sort of competitive injury that
 20 has “often been recognized as grounds for standing.” *Bullfrog Films, Inc. v. Wick*, 847
 21 F.2d 502, 507 (9th Cir. 1988); *see also Preston v. Heckler*, 734 F.2d 1359, 1365 (9th Cir.
 22 1984); *Ne. Fla. Chapter of Associated Gen. Contractors of America v. Jacksonville*, 508
 23 U.S. 656, 664-669 (1993) (summarizing competitive harm standing cases); *Regents of the*
 24 *Univ. of Cal. v. Bakke*, 438 U.S. 265, 281 n.14 (1978).

25 The agency’s apparent decision not to award Los Angeles a grant in the 2017 cycle
 26 does not render Los Angeles’ claims moot. The important issues raised by the City’s
 27 Complaint are capable of repetition in a manner that evades meaningful judicial review.
 28 *See Kingdomware Technologies, Inc. v. United States*, 136 S. Ct. 1969, 1976 (2016);
 Wright & Miller, Fed. Prac. & Proc. § 3533.8 (noting the “wide array of circumstances
 [that] have led courts to deny mootness” as capable of repetition yet evading review,
 including “disputes over the terms or awards of government contracts or grants [which]
 often involve short contract periods and repeat bidders”).

1 deciding the legal question of whether the agency could reasonably have found the facts
2 as it did.” (citation omitted)).

3 **IV. ARGUMENT**

4 Defendants have transformed the COPS program from the one that Congress
5 enacted. Defendants are giving extra points in the application process to applicants that
6 certify that they have in place particular regulations or policies reflecting what
7 Defendants call “Illegal Immigration Cooperation.” And Defendants are authorizing the
8 use of grant funds for programs focusing not on community-oriented policing but on civil
9 immigration enforcement—a job that belongs to the federal government—and giving
10 extra points to applicants willing to adopt this focus. Together, Plaintiff refers to these as
11 the “Challenged Considerations.”

12 The Challenged Considerations are unlawful. First, they exceed the authority that
13 Congress delegated to DOJ and thus violate the separation of powers. Second, even if
14 Congress had delegated to DOJ the authority to disfavor communities like Los Angeles
15 on the basis of the Challenged Considerations, they would not pass constitutional muster
16 under the Spending Clause. Third, DOJ’s actions are arbitrary and capricious.

17 **A. The Challenged Considerations Are *Ultra Vires* and Violate the** 18 **Separation of Powers.**

19 An agency “has no power to act . . . unless and until Congress confers power upon
20 it.” *Louisiana Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 374 (1986). The power
21 conferred on DOJ in this case is to administer the COPS grant program to support state
22 and local governments in hiring police officers to engage in community-oriented
23 policing. *See* 34 U.S.C. § 10381. That authority certainly requires DOJ to exercise a
24 degree of discretion in determining how best to allocate the limited resources Congress
25 appropriates for this statutory purpose. But that discretion is not limitless. “When
26 Congress limits the purpose for which a grant can be made,” as it did with the COPS
27 program, “it can be presumed that it intends that the dispersing agency make its
28 allocations based on factors *solely* related to the goal of implementing the stated statutory

1 purposes in a reasonable fashion, rather than taking irrelevant or impermissible factors
2 into account.” *Robbins v. Reagan*, 780 F.2d 37, 55, 48 (D.C. Cir. 1985) (emphasis
3 added).

4 DOJ has done exactly what it may not do: it has changed the COPS program to
5 focus on irrelevant and impermissible factors. There are two fundamental problems with
6 DOJ’s actions. *First*, by giving extra points to communities that certify specified forms
7 of “partnership” with federal civil immigration authorities, DOJ is attempting to pressure
8 state and local governments to change their laws and policies, in a way that has nothing
9 to do with their use of, or need for, grant funds. *Second*, by authorizing grant recipients
10 to use funds to focus on “illegal immigration,” and then awarding extra points to
11 communities that adopt that focus, DOJ is diverting COPS funds away from their
12 statutorily-assigned purpose and disfavoring communities that are unwilling to participate
13 in the diversion.

14 The text and structure of the COPS statute make clear that DOJ is not faithfully
15 administering the COPS grant program but unilaterally altering it. Indeed, it is striking
16 that DOJ announced this year’s grant awards by boasting of the importance of its
17 immigration-related considerations—rather than any achievement having to do with
18 community-oriented policing. RJN Ex. H, November Press Release. DOJ’s actions are
19 “an improper attempt to wield Congress’s exclusive spending power” and “a violation of
20 the Constitution’s separation of powers principles.” *Cty. of Santa Clara v. Donald J.*
21 *Trump; City and Cty. of San Francisco v. Trump*, 2017 WL 5569835 at *12.

22 **1. DOJ Cannot Use COPS Grant Decisions to Pressure State and**
23 **Local Governments to Change Their Regulations, Policies, and**
24 **Practices.**

25 DOJ favors COPS applications from state and local governments that are willing
26 and able to certify particular forms of “partnership” with federal civil immigration
27 enforcement efforts. This “partnership” has nothing to do with how the COPS funding
28 will actually be used. The Access and Notice Requirements, which local law

1 enforcement are asked to adopt in their detention operations, do not concern the hiring of
2 local police officers to engage in community oriented policing. The requirement of
3 adopting such regulations and policies is focused only on whether and how local
4 governments partner with *federal* immigration officers performing *federal* civil
5 immigration enforcement duties. Those duties fall squarely within the province of the
6 federal government, not states or localities. *Arizona v. United States*, 132 S. Ct. 2492,
7 2498 (2012) (“The Government of the United States has broad, undoubted power over the
8 subject of immigration and the status of aliens.”); *Valle de Sol Inc. v. Whiting*, 732 F.3d,
9 1006, 1023 (9th Cir. 2013) (“[p]ower to regulate immigration is unquestionably exclusive
10 federal power” (quoting *DeCanas v. Bica*, 424 U.S. 351, 354 (1976))). DOJ is thus using
11 its control over funds appropriated to support the hiring of police officers in order to
12 advance an unrelated policy agenda. *See Philadelphia*, 2017 WL 5489476 at *48
13 (“Immigration law has nothing to do with the enforcement of local criminal laws.”). The
14 COPS statute makes clear that this action oversteps DOJ’s delegated authority.

15 Congress specifically defined the circumstances in which “the Attorney General
16 may give preferential consideration” to COPS applicants. 34 U.S.C. § 10381(c). In order
17 for this authorization to make any sense, the agency cannot be permitted to invent
18 entirely new grounds on which to award preferential treatment. Otherwise, the statutory
19 provision allowing limited grounds for preference would be wholly superfluous. *See*
20 *Chubb Custom Ins. Co. v. Space Systems/Loral, Inc.*, 710 F.3d 946, 966 (9th Cir. 2013)
21 (“It is a well-established rule of statutory construction that courts should not interpret
22 statutes in a way that renders a provision superfluous.”).

23 Significantly, the limited authorization to give preferential consideration is the only
24 place in the statute where Congress contemplates DOJ looking *beyond* the actual need
25 for, or use of, the grant funds involved, and awarding points simply to encourage states to
26 pass laws or enact policies or practices that the federal government favors. Thus, the
27 Attorney General “may” give preferential consideration for a COPS “applicant in a State
28 that has in effect a law” providing for lenient treatment of human trafficking victims. *See*

1 34 U.S.C. § 10381(c)(2)-(3). In providing that DOJ “may” give preferential
2 consideration for this carefully defined reason, Congress made clear that the agency does
3 not have blanket authority to use COPS funding to encourage state and local governments
4 to make any law or policy change DOJ desires. Because the list of preferential factors
5 the Attorney General may consider makes no mention of immigration enforcement at all,
6 Congress cannot be said to have allowed the Attorney General to give preferential
7 consideration to state and local governments that are willing to adopt laws, regulations,
8 ordinances, or policies that support federal civil immigration enforcement efforts.

9 In our federal system, it is a serious matter when the federal government attempts
10 to pressure a state or local government to change its laws and policies. This is precisely
11 the type of action requiring a “clear statement” from Congress, to ensure that the national
12 legislature—not unaccountable bureaucrats—“in fact faced, and intended to bring into
13 issue, the critical matters involved.” *Gregory v. Ashcroft*, 501 U.S. 452, 461 (1991).
14 Thus, in the grant context, courts do not allow agencies to invent their own conditions on
15 state and local governments, but require “unambiguous statutory expression of
16 congressional intent to condition the States’ receipt of federal funds in a particular
17 manner.” *Com. Va., Dep’t of Educ. v. Riley*, 106 F.3d 559, 566 (4th Cir. 1997) (en banc)
18 (adopting the dissenting panel opinion of Luttig, J.), *superseded by statute*. Congress
19 paid heed to these federalism principles in spelling out the limited circumstances in
20 which DOJ may favor a grant applicant because of the unrelated policies it has in effect.
21 It would subvert this canon of construction, in addition to the plain text of the statute
22 itself, to read into the law a broader authorization for DOJ to give preferential treatment
23 to jurisdictions with laws and policies the agency prefers—and to disfavor those that are
24 unwilling to change their laws and policies to meet DOJ’s demands.

25 Congress further recognized that seeking to change the policies of state and local
26 *law enforcement* is especially sensitive. Thus, Congress provided that nothing in DOJ’s
27 grant-making authorities (or any other Act) “shall be construed to authorize any
28 department, agency, officer, or employee of the United States to exercise any direction,

1 supervision, or control over any police force or any other criminal justice agency of any
2 State or any political subdivision thereof.” 34 U.S.C. § 10228(a). Here, DOJ seeks to
3 direct, supervise, and control local police forces by pressuring them to change their
4 policies and operations in order to compete for valuable federal resources on an even
5 playing field. Congress’s clear reason for including this rule of construction was its
6 recognition that DOJ may attempt to do exactly what it is now doing—using its
7 stewardship of federal grant funds, and the leverage that comes with it, to tell state and
8 local law enforcement what unrelated policies they should adopt.

9 Finally, although the text of the statute is more than sufficient to conclude that DOJ
10 lacks this authority, the legislative history confirms that conclusion. The House Report
11 listed the types of factors Congress expected DOJ to consider in making grant decisions:
12 “the needs of areas with high crime rates, low officer to population ratios, understaffing
13 of law enforcement agencies in relation to the size of the geographic areas for which they
14 are responsible, high unemployment and economic dislocation rates that may contribute
15 to increased crime problems, and other relevant trends.” H.R. Rep. 103-324, at 10. What
16 is notable about this list is that every item has to do with the need for police officers on
17 the street to combat crime, and thus falls squarely within the statutory purposes of the
18 COPS program. Not one suggests that DOJ could use COPS funds as a tool to extract
19 any policy commitments it wishes, including relating to civil immigration enforcement,
20 from state and local governments.

21 It is thus clear that DOJ lacks authority to award extra points to COPS applicants
22 that adhere to the “partnership” policies DOJ demands. DOJ’s contrary view—that it *can*
23 discriminate against COPS applicants that are unwilling to change their laws and policies
24 to accord with the agency’s preferences—lacks any limiting principle. Today, the agency
25 is using federal funds to promote state and local governments adopting particular laws
26 and policies concerning federal civil immigration enforcement. The next administration
27 might wish to use federal grant funds to encourage states to abolish capital punishment,
28 or to resort to capital punishment more frequently. To stop prosecuting marijuana

1 offenses, or to prosecute marijuana offenses more vigorously. None of this fits within the
2 role Congress assigned to DOJ in administering the COPS grant, a program designed to
3 support the hiring of police officers to engage in community-oriented policing. Congress
4 did not authorize DOJ to take advantage of that administrative role to impose the
5 agency's own policy agenda on state and local governments, whatever that agenda
6 happens to be.

7 **2. DOJ Cannot Redirect COPS Funds Toward Civil Immigration**
8 **Enforcement and Disfavor Communities That Intend to Use**
9 **COPS Funds to Engage in Community-Oriented Policing.**

10 DOJ also favors COPS applicants willing to use their grant funds to engage in civil
11 immigration enforcement. Congress not only excluded immigration as a ground for
12 preferential consideration, but it did not consider state and local participation in civil
13 immigration enforcement to be even an appropriate use of COPS funding at all. The
14 agency's attempt to redirect COPS funding to promote federal civil immigration
15 enforcement, and then to favor state and local governments willing to participate in that
16 enforcement, is thus doubly flawed.

17 DOJ has taken the position that the only statutory authority for the COPS Hiring
18 Program is paragraphs (b)(1) and (2) of 34 U.S.C. § 10381. (*See* Doc. 33 at 3). These
19 paragraphs expressly limit DOJ's authority to support the hiring of police officers "for
20 deployment in community-oriented policing." 34 U.S.C. § 10381(b)(1), (2). Congress
21 did not include the "community-oriented" modifier as surplusage. It did not intend for
22 grant funding to be used for any police activity DOJ wishes to support at a given time,
23 but rather for a subset of that work: *community-oriented* policing.

24 DOJ itself defines community-oriented policing as "begin[ning] with a
25 commitment to building trust and mutual respect between police and communities." *See*
26 RJN Ex. A, COPS Office, "About". Law enforcement veterans, including the chiefs of
27 police of the country's major cities, have concluded that state and local police
28 participation in civil immigration enforcement "undermines the trust and cooperation

1 with immigrant communities which are essential elements of *community oriented*
2 *policing.*” See RJN Ex. E, Major Cities Chiefs Association, *Immigration Policy*
3 (emphasis added). This Court need not go so far as to agree with that view. But given
4 the widespread recognition that civil immigration enforcement is *in tension with*
5 *community-oriented policing*, it is highly unlikely that Congress intended funds
6 appropriated for community-oriented policing to be used to *subsidize* state and local
7 participation in civil immigration enforcement.

8 Indeed, it is difficult to see how the particular activities DOJ wishes to subsidize
9 bear any connection to “community-oriented policing.” The agency has said, for
10 example, that it intends to use the COPS program to fund “287(g) partnerships,” under
11 which state and local police are empowered to act as immigration officers. RJN Ex. F,
12 DOJ FY 2018 COPS Office Congressional Justification at 31; see 8 U.S.C. § 1357(g)(1).
13 Carrying out civil immigration raids in support of federal enforcement efforts bears no
14 logical connection to “building trust and mutual respect between police and
15 communities.” Neither does “honoring detainees,” a practice that concerns a state or
16 local government’s internal detention operations, and has led to several cases holding
17 municipalities to be in violation of the Fourth Amendment. See, e.g., *Ochoa*, 2017 WL
18 3476777 at *7, *14; *Santoyo*, 2017 WL 2896021 at **3-8; *Miranda-Olivares*, 2014 WL
19 1414305 at *11. Unless all policing can be characterized as “community-oriented
20 policing”—turning Congress’s carefully chosen words into surplusage—this is not an
21 authorized use of COPS funds.

22 The broader structure of the statute further demonstrates that DOJ is not authorized
23 to redirect COPS funding toward civil immigration enforcement. Congress enacted a
24 detailed list of twenty-two purposes that the COPS grant, as “a single grant program,”
25 could be used to advance. See 34 U.S.C. § 10381(a), (b)(1)-(22). These statutory
26 purposes highlight, among other things, crime control and terrorism. See *id.*
27 § 10381(b)(4), (5), (8), (9), (11), (12), (15). But civil immigration enforcement is notably
28 absent from this long list of congressionally authorized purposes of COPS grants. If

1 Congress had reached the counterintuitive conclusion that funds for “community-oriented
2 policing” can be spent to promote state and local participation in federal civil
3 immigration enforcement, surely it would have given some hint of that somewhere in a
4 statute that is otherwise quite specific.

5 DOJ’s view is not just at odds with the COPS statute but with immigration laws as
6 well. Congress has mandated that state and local participation in civil immigration
7 enforcement through 287(g) partnerships be undertaken “*at the expense of the State or*
8 *political subdivision.*” 8 U.S.C. § 1357(g)(1) (emphasis added). DOJ is contravening
9 that clear mandate: it is *offering federal funds*, through the COPS program, to sponsor
10 287(g) partnerships, even though Congress directed that such partnerships be at state and
11 local expense. And it does so in order to fund partnerships with the federal government
12 that have nothing to do with “community-oriented policing.”⁵

13 DOJ’s decision to give extra points in the COPS application process to
14 communities that are willing to focus on “illegal immigration” with their COPS funds
15 only compounds its error. Because civil immigration enforcement is not one of the
16 purposes Congress recognized as relevant to community-oriented policing, DOJ plainly
17 lacks authority to *disfavor* communities unwilling to participate in this diversion of COPS
18 resources.

19 **B. The Challenged Considerations Violate the Spending Clause Because**
20 **They Are Not Reasonably Related to Congress’s Purpose of Promoting**
21 **Community-Oriented Policing.**

22 The Challenged Considerations operate as a type of condition on COPS funding.
23 If a community is unwilling or unable to certify that it has in place certain laws or
24 policies demonstrating “partnership” with federal civil immigration authorities, it is less
25

26 ⁵ To the extent DOJ means to sponsor state and local governments to engage in civil
27 immigration enforcement *without* 287(g) agreements, it is exceeding Congress’s
28 “limit[s]” on the “circumstances in which state officers may perform the functions of an
immigration officer.” *Arizona*, 132 S. Ct. at 2506.

1 likely to get the grant. Likewise, if a community is unwilling to pledge to use its COPS
2 award to focus on “illegal immigration,” it is less likely to get the grant. In at least some
3 cases, a community’s unwillingness or inability to comply with the Challenged
4 Considerations will be the difference between receiving a grant and not receiving a grant.
5 In fact, DOJ has emphasized that the vast majority of successful COPS applicants for FY
6 2017 certified compliance with the Notice and Access Requirements, demonstrating how
7 important that additional consideration was. *See* RJN Ex. H, November Press Release.

8 Accordingly, even if DOJ had statutory authority to adopt these funding
9 conditions—which it does not—the agency would still need to comply with constitutional
10 restrictions in exercising that authority. *See S. Dakota v. Dole*, 483 U.S. 203, 207-09
11 (1987). The Challenged Considerations violate at least one such restriction.

12 An exercise of Spending Clause authority is unconstitutional if it is not
13 “reasonably related to the articulated goal” of the grant program Congress established.
14 *Nevada v. Skinner*, 884 F.2d 445, 447 (9th Cir. 1989). Here, the program Congress
15 established is concerned with hiring police officers to be deployed in community-oriented
16 policing. 34 U.S.C. § 10381(b)(1), (2); *see also id.* § 10381(b)(1)-(22) (identifying
17 twenty-two authorized purposes for the “single grant program” Congress created). As the
18 COPS Office itself recently explained, the goal of the program is to “advanc[e] public
19 safety through the implementation of community policing strategies,” which “entails
20 developing partnerships between law enforcement agencies and the communities they
21 serve.” RJN Ex. F, DOJ FY 2018 COPS Office Congressional Justification at 4.

22 The Challenged Considerations are not at all related to this fundamental goal. *See*
23 *Philadelphia*, 2017 WL 5489476 at *48 (concluding that “the argument that enforcement
24 of federal immigration laws is related to this objective [of enhancing local criminal
25 justice under a different law enforcement assistance grant] is unsustainable”). Whether
26 or not a community’s regulations, policies, and practices provide the access to detention
27 facilities that DOJ demands, or the notice of a detainee’s release time that DOJ demands,
28 has nothing to do with its hiring of police officers to develop better “partnerships between

1 law enforcement agencies and the communities they serve.” *See supra* 12-16. Neither
2 does developing a program to assist federal authorities in civil immigration enforcement
3 have anything to do with community-oriented policing. *See supra* 16-18. Indeed, there
4 is no mention of civil immigration enforcement in the COPS statute—an omission that is
5 especially conspicuous in light of Congress’s detailed list of twenty-two authorized
6 purposes of the grant program. *See* 34 U.S.C. § 10381(b)(1)-(22); *see also* *Schneider v.*
7 *Chertoff*, 450 F.3d 944, 954 (9th Cir. 2006) (“[I]t is a well-established maxim of statutory
8 interpretation that the expression of one thing is the exclusion of another.”).

9 Put simply, Defendants cannot show any reasonable relationship between its new
10 immigration-related considerations and the express goals of the COPS program. Under
11 *Dole*, DOJ cannot penalize COPS applicants on the basis of these unrelated factors.⁶

12 **C. The Challenged Considerations Are Invalid Under the Administrative**
13 **Procedure Act.**

14 Agency actions must be set aside under the Administrative Procedure Act if they
15 are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with
16 law.” 5 U.S.C. § 706(2)(A). For the reasons noted above, the Challenged Considerations
17 are not in accordance with law. They also cannot survive scrutiny under the arbitrary and
18 capricious standard.

19
20
21 ⁶ The Notice and Access Requirements that DOJ articulated in its September 7, 2017 e-
22 mail also fail to meet the requirement that conditions attached to grant funding be
23 unambiguous on their face. *See Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1,
24 17 (1981); *Dole*, 483 U.S. at 207-09. Implicitly acknowledging this defect, DOJ has
25 taken the position in this lawsuit that it does not understand those Requirements to
26 “forbid a jurisdiction from informing detainees, where required by law, that they may
27 choose not to meet with federal immigration authorities, or to require that a jurisdiction
28 notify DHS before the release of a noncitizen under short-term detention whose release
time is unknown.” *Opp. to PI* at 20 (Doc. 33) (citing *Dorr Decl.* ¶ 26). Los Angeles does
not intend to press the ambiguity defect in the Notice and Access Requirements so long
as DOJ adheres to its representations.

1 In subjecting an agency decision to arbitrary-and-capricious review, the Court
2 “must consider whether the decision was based on a consideration of the relevant factors
3 and whether there has been a clear error of judgment.” *San Luis & Delta-Mendota Water*
4 *Auth. v. Jewell*, 747 F.3d 581, 601 (9th Cir. 2014) (citation omitted); *Az. Cattle Growers’*
5 *Ass’n v. U.S. Fish & Wildlife, Bureau of Land Mgmt.*, 273 F.3d 1229, 1236 (9th Cir.
6 2001) (“[W]e carefully review the record to ensure that agency decisions are founded on
7 a reasoned evaluation of the relevant factors.” (citation omitted)).

8 Here, there is no evidence in the record to suggest that DOJ adopted the
9 Challenged Considerations following any reasoned evaluation at all, nor is there any
10 support for the agency’s attempt to tie federal civil immigration enforcement to
11 Congress’s community policing goals in establishing and designing the COPS grant
12 program. Indeed, before announcing its new policy, or even at the time of its
13 announcement, DOJ did not offer any justifiable basis for how that policy advances the
14 purposes of the COPS program.

15 Since then, DOJ has made vague allusions about how city and state cooperation
16 with federal law enforcement “make all of us safer by helping remove dangerous
17 criminals from our communities,” including by ending “violent crime stemming from
18 illegal immigration.” *See* RJN Ex. D, DOJ, Office of Public Affairs, Department of
19 Justice Announces Priority Consideration Criteria for COPS Office Grants (Sept. 7,
20 2017). But these conclusory, post-hoc justifications have nothing to do with the statute
21 DOJ purports to be administering. In other words, DOJ has articulated no justification at
22 all for how the extra points it is awarding for immigration-related reasons have anything
23 to do with its statutory responsibility to allocate funds for use in community-oriented
24 policing.

25 DOJ’s thin justifications in any event do not amount to the sort of tangible
26 evidence and reasoned justification required to survive arbitrary-and-capricious review.
27 *See Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168-69 (1962) (stating
28 that post-hoc rationalizations are irrelevant as “an agency’s discretionary order [must] be

1 upheld, if at all, on the same basis articulated in the order by the agency itself”);
2 *Arrington v. Daniels*, 516 F.3d 1106, 1111-12 (9th Cir. 2008) (holding that even when an
3 agency had discretion to promulgate a rule, the rule was arbitrary and capricious because
4 “the administrative record contains no rationale explaining the Bureau’s decision”).
5 Indeed, the agency has not pointed to any *actual evidence* to support its implied premise
6 that undocumented immigrants or other non-citizens commit violent crimes at higher
7 rates than the general population, or to indicate that the investigations of federal civil
8 immigration violations facilitated by the Challenged Considerations are focused on
9 individuals involved in violent crime. *See Philadelphia*, 2017 WL 5489476 at *32
10 (concluding that DOJ’s imposition of a similar immigration enforcement condition on the
11 Byrne JAG program was arbitrary and capricious where the court could not “find a link
12 between, on one hand, imposing the Certification Condition, and on the other hand,
13 ‘protect[ing] the public and reduc[ing] crime and violence’” (alterations in original)); *see*
14 *also Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305, 1308 (9th Cir. 1984)
15 (“We have held it an abuse of discretion for the [INS] to act if there is no evidence to
16 support the decision”) (internal citation and quotation marks omitted).

17 In fact, the little evidence the Attorney General has cited in other contexts belies
18 his claim that there is a relationship between so-called “sanctuary” policies and violent
19 crime, as that evidence indicates no such relationship at all, while other studies show an
20 *inverse* relationship. *See* RJN Ex. C, Nick Roll, *Correcting Jeff Sessions*, Inside Higher
21 Ed (July 17, 2017); *see also id.* at Ex. G, *Contrary to Trump’s Claims, Immigrants Are*
22 *Less Likely to Commit Crimes*, N.Y. Times (Jan. 26, 2017).⁷ These studies demonstrate
23 that, not only does the agency lack any reasoned explanation for implementing the
24 Challenged Considerations, but also that it failed to consider relevant and available
25 evidence before announcing its new policy. *See Motor Vehicle Mfrs. Ass’n of U.S., Inc.*
26

27 ⁷ Los Angeles introduces these articles to demonstrate the information that was publicly
28 available at the time DOJ decided to implement the Challenged Considerations.

1 *v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983) (“[A]n agency rule would be
2 arbitrary and capricious if the agency . . . offered an explanation for its decision that runs
3 counter to the evidence before the agency.”).

4 The irony of Defendants’ position is that DOJ’s policy actually undermines public
5 safety. It deprives states and localities of critical funds needed to hire new police
6 officers, or alternatively, forces them to adopt policies that erode the trust they have
7 worked hard to cultivate. Either way, the Challenged Considerations work against the
8 purposes Congress had in mind when it created the COPS program, further demonstrating
9 that the agency failed to adequately consider all relevant factors before announcing its
10 new preferential criteria.

11 **D. The Court Should Enter a Permanent Injunction.**

12 Because the Challenged Considerations are unlawful, this Court should
13 permanently enjoin Defendants from considering them in connection with any future
14 evaluation of COPS grant applications. A court may grant a permanent injunction if the
15 moving party demonstrates:

16 (1) that it has suffered an irreparable injury; (2) that remedies
17 available at law, such as monetary damages, are inadequate to
18 compensate for that injury; (3) that, considering the balance of
19 hardships between the plaintiff and defendant, a remedy in
20 equity is warranted; and (4) that the public interest would not be
disserved by a permanent injunction.

21 *Monsanto Co v. Geertson Seed Farms*, 561 U.S. 139, 157-58 (2010); accord *Sierra*
22 *Forest Legacy v. Sherman*, 646 F.3d 1161, 1184 (9th Cir. 2011). All four factors are met
23 here.

24 First, it is well-established that “[a] rule putting plaintiffs at a competitive
25 disadvantage constitutes irreparable harm.” *Int’l Franchise Ass’n, Inc. v. City of Seattle*,
26 803 F.3d 389, 411 (9th Cir. 2015). Absent an injunction, Los Angeles will be at a
27 competitive disadvantage, and thus suffer irreparable harm, in future grant cycles. The
28 fact that DOJ used the Challenged Considerations in violation of the Constitution further

1 confirms the existence of irreparable harm. *See Monterey Mechanical Co. v. Wilson*, 125
2 F.3d 702, 715 (9th Cir. 1997) (“[A]n alleged constitutional infringement will often alone
3 constitute irreparable harm.”).

4 Second, monetary damages cannot adequately remedy the competitive injury Los
5 Angeles has suffered. The only way to prevent future harm is to ensure Los Angeles can
6 compete on an even playing field in future grant cycles. Moreover, the Ninth Circuit has
7 held that a permanent injunction is an appropriate remedy for the government’s unlawful
8 allocation of funds. *See Planned Parenthood Arizona Inc. v. Betlach*, 727 F.3d 960, 975
9 (9th Cir. 2013) (granting a permanent injunction against Arizona’s *ultra vires* condition
10 on Medicaid reimbursement).

11 Third, the balance of equities weighs strongly in favor of granting a permanent
12 injunction. The City has a strong interest in protecting itself against unwarranted federal
13 pressure that the City change its long-held views on the public safety dangers of
14 enmeshing local law enforcement in federal civil immigration enforcement. *See Hyams*
15 Decl. ¶¶ 3-5. It also has a related interest in maintaining the trust and cooperation of Los
16 Angeles residents to effectively police local communities and promote public safety
17 amongst some of the City’s most vulnerable residents. In contrast, the government has
18 no legitimate interest in awarding funds on the basis of unconstitutional factors. For
19 similar reasons, an injunction is in the public interest, in addition to the fact that it is
20 “always in the public interest” to issue an injunction in order to “prevent the violation of
21 a party’s constitutional rights.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012).

22 **V. CONCLUSION**

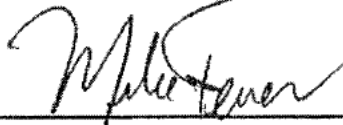
23 For the foregoing reasons, the Court should grant partial summary judgment to the
24 City of Los Angeles as to each of its claims concerning the COPS grant program (Counts
25 Four, Five, and Six), and enter final judgment pursuant to Rule 54(b) on those claims.
26 The Court should declare that the Challenged Considerations are (1) *ultra vires* and a
27 violation of the Separation of Powers, (2) in violation of the Spending Clause, and (3) an
28 arbitrary and capricious agency action in violation of the Administrative Procedure Act.

1 The Court should further enjoin Defendants from using the Challenged Considerations in
2 making COPS grant determinations in future grant cycles.

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2 Dated: November 21, 2017

Respectfully Submitted,

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