



U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Assistance

Grant

1. RECIPIENT NAME AND ADDRESS (Including Zip Code) City and County of San Francisco 1245 3rd Street San Francisco, CA 94158-2134		4. AWARD NUMBER: 2018-DG-BX-0007	
2a. GRANTEE IRS/VENDOR NO. 946000484		5. PROJECT PERIOD: FROM 10/01/2018 TO 09/30/2021 BUDGET PERIOD: FROM 10/01/2018 TO 09/30/2021	
2b. GRANTEE DUNS NO. 120802983		6. AWARD DATE 10/01/2018	7. ACTION Initial
3. PROJECT TITLE San Francisco Crime Gun Intelligence Center		8. SUPPLEMENT NUMBER 00	
		9. PREVIOUS AWARD AMOUNT \$ 0	
		10. AMOUNT OF THIS AWARD \$ 800,000	
		11. TOTAL AWARD \$ 800,000	
12. SPECIAL CONDITIONS THE ABOVE GRANT PROJECT IS APPROVED SUBJECT TO SUCH CONDITIONS OR LIMITATIONS AS ARE SET FORTH ON THE ATTACHED PAGE(S).			
13. STATUTORY AUTHORITY FOR GRANT This project is supported under FY18(BJA - JAG Reserved Funds Award - Crime Gun Intelligence Ctr Integration) Title I of Public Law 90-351 (generally codified at 34 USC ch. 101), including section 506 (codified at 34 USC 10157); see also 28 USC 530C(a)			
14. CATALOG OF DOMESTIC FEDERAL ASSISTANCE (CFDA Number) 16.738 - Edward Byrne Memorial Justice Assistance Grant Program			
15. METHOD OF PAYMENT GPRS			
AGENCY APPROVAL		GRANTEE ACCEPTANCE	
16. TYPED NAME AND TITLE OF APPROVING OFFICIAL Matt Dummermuth Principal Deputy Assistant Attorney General		18. TYPED NAME AND TITLE OF AUTHORIZED GRANTEE OFFICIAL William Scott Chief	
17. SIGNATURE OF APPROVING OFFICIAL 		19. SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL 	19A. DATE 11/8/18
		AGENCY USE ONLY	
20. ACCOUNTING CLASSIFICATION CODES FISCAL FUND BUD. DIV. YEAR CODE ACT. OFC. REG. SUB. POMS AMOUNT X B DG 80 00 00 800000		21. TDGUGT0974	



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SPECIAL CONDITIONS

1. Requirements of the award; remedies for non-compliance or for materially false statements

The conditions of this award are material requirements of the award. Compliance with any certifications or assurances submitted by or on behalf of the recipient that relate to conduct during the period of performance also is a material requirement of this award.

Failure to comply with any one or more of these award requirements -- whether a condition set out in full below, a condition incorporated by reference below, or a certification or assurance related to conduct during the award period -- may result in the Office of Justice Programs ("OJP") taking appropriate action with respect to the recipient and the award. Among other things, the OJP may withhold award funds, disallow costs, or suspend or terminate the award. The Department of Justice ("DOJ"), including OJP, also may take other legal action as appropriate.

Any materially false, fictitious, or fraudulent statement to the federal government related to this award (or concealment or omission of a material fact) may be the subject of criminal prosecution (including under 18 U.S.C. 1001 and/or 1621, and/or 34 U.S.C. 10271-10273), and also may lead to imposition of civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. 3729-3730 and 3801-3812).

Should any provision of a requirement of this award be held to be invalid or unenforceable by its terms, that provision shall first be applied with a limited construction so as to give it the maximum effect permitted by law. Should it be held, instead, that the provision is utterly invalid or -unenforceable, such provision shall be deemed severable from this award.

2. Applicability of Part 200 Uniform Requirements

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, as adopted and supplemented by DOJ in 2 C.F.R. Part 2800 (together, the "Part 200 Uniform Requirements") apply to this FY 2018 award from OJP.

The Part 200 Uniform Requirements were first adopted by DOJ on December 26, 2014. If this FY 2018 award supplements funds previously awarded by OJP under the same award number (e.g., funds awarded during or before December 2014), the Part 200 Uniform Requirements apply with respect to all funds under that award number (regardless of the award date, and regardless of whether derived from the initial award or a supplemental award) that are obligated on or after the acceptance date of this FY 2018 award.

For more information and resources on the Part 200 Uniform Requirements as they relate to OJP awards and subawards ("subgrants"), see the OJP website at <https://ojp.gov/funding/Part200UniformRequirements.htm>.

Record retention and access: Records pertinent to the award that the recipient (and any subrecipient ("subgrantee") at any tier) must retain -- typically for a period of 3 years from the date of submission of the final expenditure report (SF 425), unless a different retention period applies -- and to which the recipient (and any subrecipient ("subgrantee") at any tier) must provide access, include performance measurement information, in addition to the financial records, supporting documents, statistical records, and other pertinent records indicated at 2 C.F.R. 200.333.

In the event that an award-related question arises from documents or other materials prepared or distributed by OJP that may appear to conflict with, or differ in some way from, the provisions of the Part 200 Uniform Requirements, the recipient is to contact OJP promptly for clarification.

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3. Compliance with DOJ Grants Financial Guide

References to the DOJ Grants Financial Guide are to the DOJ Grants Financial Guide as posted on the OJP website (currently, the "DOJ Grants Financial Guide" available at <https://ojp.gov/financialguide/DOJ/index.htm>), including any updated version that may be posted during the period of performance. The recipient agrees to comply with the DOJ Grants Financial Guide.

4. Reclassification of various statutory provisions to a new Title 34 of the United States Code

On September 1, 2017, various statutory provisions previously codified elsewhere in the U.S. Code were editorially reclassified to a new Title 34, entitled "Crime Control and Law Enforcement." The reclassification encompassed a number of statutory provisions pertinent to OJP awards (that is, OJP grants and cooperative agreements), including many provisions previously codified in Title 42 of the U.S. Code.

Effective as of September 1, 2017, any reference in this award document to a statutory provision that has been reclassified to the new Title 34 of the U.S. Code is to be read as a reference to that statutory provision as reclassified to Title 34. This rule of construction specifically includes references set out in award conditions, references set out in material incorporated by reference through award conditions, and references set out in other award requirements.

5. Required training for Point of Contact and all Financial Points of Contact

Both the Point of Contact (POC) and all Financial Points of Contact (FPOCs) for this award must have successfully completed an "OJP financial management and grant administration training" by 120 days after the date of the recipient's acceptance of the award. Successful completion of such a training on or after January 1, 2016, will satisfy this condition.

In the event that either the POC or an FPOC for this award changes during the period of performance, the new POC or FPOC must have successfully completed an "OJP financial management and grant administration training" by 120 calendar days after-- (1) the date of OJP's approval of the "Change Grantee Contact" GAN (in the case of a new POC), or (2) the date the POC enters information on the new FPOC in GMS (in the case of a new FPOC). Successful completion of such a training on or after January 1, 2016, will satisfy this condition.

A list of OJP trainings that OJP will consider "OJP financial management and grant administration training" for purposes of this condition is available at <https://www.ojp.gov/training/fmts.htm>. All trainings that satisfy this condition include a session on grant fraud prevention and detection.

The recipient should anticipate that OJP will immediately withhold ("freeze") award funds if the recipient fails to comply with this condition. The recipient's failure to comply also may lead OJP to impose additional appropriate conditions on this award.

6. Requirements related to "de minimis" indirect cost rate

A recipient that is eligible under the Part 200 Uniform Requirements and other applicable law to use the "de minimis" indirect cost rate described in 2 C.F.R. 200.414(f), and that elects to use the "de minimis" indirect cost rate, must advise OJP in writing of both its eligibility and its election, and must comply with all associated requirements in the Part 200 Uniform Requirements. The "de minimis" rate may be applied only to modified total direct costs (MTDC) as defined by the Part 200 Uniform Requirements.



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7. Requirement to report potentially duplicative funding

If the recipient currently has other active awards of federal funds, or if the recipient receives any other award of federal funds during the period of performance for this award, the recipient promptly must determine whether funds from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items for which funds are provided under this award. If so, the recipient must promptly notify the DOJ awarding agency (OJP or OVW, as appropriate) in writing of the potential duplication, and, if so requested by the DOJ awarding agency, must seek a budget-modification or change-of-project-scope grant adjustment notice (GAN) to eliminate any inappropriate duplication of funding.

8. Requirements related to System for Award Management and Universal Identifier Requirements

The recipient must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at <https://www.sam.gov/>. This includes applicable requirements regarding registration with SAM, as well as maintaining the currency of information in SAM.

The recipient also must comply with applicable restrictions on subawards ("subgrants") to first-tier subrecipients (first-tier "subgrantees"), including restrictions on subawards to entities that do not acquire and provide (to the recipient) the unique entity identifier required for SAM registration.

The details of the recipient's obligations related to SAM and to unique entity identifiers are posted on the OJP web site at <https://ojp.gov/funding/Explore/SAM.htm> (Award condition: System for Award Management (SAM) and Universal Identifier Requirements), and are incorporated by reference here.

This condition does not apply to an award to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

9. Requirement to report actual or imminent breach of personally identifiable information (PII)

The recipient (and any "subrecipient" at any tier) must have written procedures in place to respond in the event of an actual or imminent "breach" (OMB M-17-12) if it (or a subrecipient)-- 1) creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of "personally identifiable information (PII)" (2 CFR 200.79) within the scope of an OJP grant-funded program or activity, or 2) uses or operates a "Federal information system" (OMB Circular A-130). The recipient's breach procedures must include a requirement to report actual or imminent breach of PII to an OJP Program Manager no later than 24 hours after an occurrence of an actual breach, or the detection of an imminent breach.

10. All subawards ("subgrants") must have specific federal authorization

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements for authorization of any subaward. This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a "subaward" (and therefore does not consider a procurement "contract").

The details of the requirement for authorization of any subaward are posted on the OJP web site at <https://ojp.gov/funding/Explore/SubawardAuthorization.htm> (Award condition: All subawards ("subgrants") must have specific federal authorization), and are incorporated by reference here.



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11. Specific post-award approval required to use a noncompetitive approach in any procurement contract that would exceed \$150,000

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements to obtain specific advance approval to use a noncompetitive approach in any procurement contract that would exceed the Simplified Acquisition Threshold (currently, \$150,000). This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a procurement "contract" (and therefore does not consider a subaward).

The details of the requirement for advance approval to use a noncompetitive approach in a procurement contract under an OJP award are posted on the OJP web site at <https://ojp.gov/funding/Explore/NoncompetitiveProcurement.htm> (Award condition: Specific post-award approval required to use a noncompetitive approach in a procurement contract (if contract would exceed \$150,000)), and are incorporated by reference here.

12. Requirements pertaining to prohibited conduct related to trafficking in persons (including reporting requirements and OJP authority to terminate award)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of recipients, subrecipients ("subgrantees"), or individuals defined (for purposes of this condition) as "employees" of the recipient or of any subrecipient.

The details of the recipient's obligations related to prohibited conduct related to trafficking in persons are posted on the OJP web site at <https://ojp.gov/funding/Explore/ProhibitedConduct-Trafficking.htm> (Award condition: Prohibited conduct by recipients and subrecipients related to trafficking in persons (including reporting requirements and OJP authority to terminate award)), and are incorporated by reference here.

13. Compliance with applicable rules regarding approval, planning, and reporting of conferences, meetings, trainings, and other events

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable laws, regulations, policies, and official DOJ guidance (including specific cost limits, prior approval and reporting requirements, where applicable) governing the use of federal funds for expenses related to conferences (as that term is defined by DOJ), including the provision of food and/or beverages at such conferences, and costs of attendance at such conferences.

Information on the pertinent DOJ definition of conferences and the rules applicable to this award appears in the DOJ Grants Financial Guide (currently, as section 3.10 of "Postaward Requirements" in the "DOJ Grants Financial Guide").

14. Requirement for data on performance and effectiveness under the award

The recipient must collect and maintain data that measure the performance and effectiveness of work under this award. The data must be provided to OJP in the manner (including within the timeframes) specified by OJP in the program solicitation or other applicable written guidance. Data collection supports compliance with the Government Performance and Results Act (GPRA) and the GPRA Modernization Act of 2010, and other applicable laws.

15. OJP Training Guiding Principles

Any training or training materials that the recipient -- or any subrecipient ("subgrantee") at any tier -- develops or delivers with OJP award funds must adhere to the OJP Training Guiding Principles for Grantees and Subgrantees, available at <https://ojp.gov/funding/Implement/TrainingPrinciplesForGrantees-Subgrantees.htm>.



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16. Effect of failure to address audit issues

The recipient understands and agrees that the DOJ awarding agency (OJP or OVW, as appropriate) may withhold award funds, or may impose other related requirements, if (as determined by the DOJ awarding agency) the recipient does not satisfactorily and promptly address outstanding issues from audits required by the Part 200 Uniform Requirements (or by the terms of this award), or other outstanding issues that arise in connection with audits, investigations, or reviews of DOJ awards.

17. Potential imposition of additional requirements

The recipient agrees to comply with any additional requirements that may be imposed by the DOJ awarding agency (OJP or OVW, as appropriate) during the period of performance for this award, if the recipient is designated as "high-risk" for purposes of the DOJ high-risk grantee list.

18. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 42

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 42, specifically including any applicable requirements in Subpart E of 28 C.F.R. Part 42 that relate to an equal employment opportunity program.

19. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 54

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 54, which relates to nondiscrimination on the basis of sex in certain "education programs."

20. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 38

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 38, specifically including any applicable requirements regarding written notice to program beneficiaries and prospective program beneficiaries.

Among other things, 28 C.F.R. Part 38 includes rules that prohibit specific forms of discrimination on the basis of religion, a religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. Part 38 also sets out rules and requirements that pertain to recipient and subrecipient ("subgrantee") organizations that engage in or conduct explicitly religious activities, as well as rules and requirements that pertain to recipients and subrecipients that are faith-based or religious organizations.

The text of the regulation, now entitled "Partnerships with Faith-Based and Other Neighborhood Organizations," is available via the Electronic Code of Federal Regulations (currently accessible at <https://www.ecfr.gov/cgi-bin/ECFR?page=browse>), by browsing to Title 28-Judicial Administration, Chapter 1, Part 38, under e-CFR "current" data.



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21. Restrictions on "lobbying"

In general, as a matter of federal law, federal funds awarded by OJP may not be used by the recipient, or any subrecipient ("subgrantee") at any tier, either directly or indirectly, to support or oppose the enactment, repeal, modification, or adoption of any law, regulation, or policy, at any level of government. See 18 U.S.C. 1913. (There may be exceptions if an applicable federal statute specifically authorizes certain activities that otherwise would be barred by law.)

Another federal law generally prohibits federal funds awarded by OJP from being used by the recipient, or any subrecipient at any tier, to pay any person to influence (or attempt to influence) a federal agency, a Member of Congress, or Congress (or an official or employee of any of them) with respect to the awarding of a federal grant or cooperative agreement, subgrant, contract, subcontract, or loan, or with respect to actions such as renewing, extending, or modifying any such award. See 31 U.S.C. 1352. Certain exceptions to this law apply, including an exception that applies to Indian tribes and tribal organizations.

Should any question arise as to whether a particular use of federal funds by a recipient (or subrecipient) would or might fall within the scope of these prohibitions, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

22. Compliance with general appropriations-law restrictions on the use of federal funds (FY 2018)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable restrictions on the use of federal funds set out in federal appropriations statutes. Pertinent restrictions, including from various "general provisions" in the Consolidated Appropriations Act, 2018, are set out at <https://ojp.gov/funding/Explore/FY18AppropriationsRestrictions.htm>, and are incorporated by reference here.

Should a question arise as to whether a particular use of federal funds by a recipient (or a subrecipient) would or might fall within the scope of an appropriations-law restriction, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

23. Reporting Potential Fraud, Waste, and Abuse, and Similar Misconduct

The recipient and any subrecipients ("subgrantees") must promptly refer to the DOJ Office of the Inspector General (OIG) any credible evidence that a principal, employee, agent, subrecipient, contractor, subcontractor, or other person has, in connection with funds under this award -- (1) submitted a claim that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct.

Potential fraud, waste, abuse, or misconduct involving or relating to funds under this award should be reported to the OIG by-- (1) mail directed to: Office of the Inspector General, U.S. Department of Justice, Investigations Division, 1425 New York Avenue, N.W. Suite 7100, Washington, DC 20530; and/or (2) the DOJ OIG hotline: (contact information in English and Spanish) at (800) 869-4499 (phone) or (202) 616-9881 (fax).

Additional information is available from the DOJ OIG website at <https://oig.justice.gov/hotline>.



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24. Restrictions and certifications regarding non-disclosure agreements and related matters

No recipient or subrecipient ("subgrantee") under this award, or entity that receives a procurement contract or subcontract with any funds under this award, may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information.

The foregoing is not intended, and shall not be understood by the agency making this award, to contravene requirements applicable to Standard Form 312 (which relates to classified information), Form 4414 (which relates to sensitive compartmented information), or any other form issued by a federal department or agency governing the nondisclosure of classified information.

1. In accepting this award, the recipient--

a. represents that it neither requires nor has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

b. certifies that, if it learns or is notified that it is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

2. If the recipient does or is authorized under this award to make subawards ("subgrants"), procurement contracts, or both--

a. it represents that--

(1) it has determined that no other entity that the recipient's application proposes may or will receive award funds (whether through a subaward ("subgrant"), procurement contract, or subcontract under a procurement contract) either requires or has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

(2) it has made appropriate inquiry, or otherwise has an adequate factual basis, to support this representation; and

b. it certifies that, if it learns or is notified that any subrecipient, contractor, or subcontractor entity that receives funds under this award is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds to or by that entity, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.



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25. Compliance with 41 U.S.C. 4712 (including prohibitions on reprisal; notice to employees)

The recipient (and any subrecipient at any tier) must comply with, and is subject to, all applicable provisions of 41 U.S.C. 4712, including all applicable provisions that prohibit, under specified circumstances, discrimination against an employee as reprisal for the employee's disclosure of information related to gross mismanagement of a federal grant, a gross waste of federal funds, an abuse of authority relating to a federal grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal grant.

The recipient also must inform its employees, in writing (and in the predominant native language of the workforce), of employee rights and remedies under 41 U.S.C. 4712.

Should a question arise as to the applicability of the provisions of 41 U.S.C. 4712 to this award, the recipient is to contact the DOJ awarding agency (OJP or OVW, as appropriate) for guidance.

26. Encouragement of policies to ban text messaging while driving

Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), DOJ encourages recipients and subrecipients ("subgrantees") to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this award, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

27. Requirement to disclose whether recipient is designated "high risk" by a federal grant-making agency outside of DOJ

If the recipient is designated "high risk" by a federal grant-making agency outside of DOJ, currently or at any time during the course of the period of performance under this award, the recipient must disclose that fact and certain related information to OJP by email at OJP.ComplianceReporting@ojp.usdoj.gov. For purposes of this disclosure, high risk includes any status under which a federal awarding agency provides additional oversight due to the recipient's past performance, or other programmatic or financial concerns with the recipient. The recipient's disclosure must include the following: 1. The federal awarding agency that currently designates the recipient high risk, 2. The date the recipient was designated high risk, 3. The high-risk point of contact at that federal awarding agency (name, phone number, and email address), and 4. The reasons for the high-risk status, as set out by the federal awarding agency.

28. FFATA reporting: Subawards and executive compensation

The recipient must comply with applicable requirements to report first-tier subawards ("subgrants") of \$25,000 or more and, in certain circumstances, to report the names and total compensation of the five most highly compensated executives of the recipient and first-tier subrecipients (first-tier "subgrantees") of award funds. The details of recipient obligations, which derive from the Federal Funding Accountability and Transparency Act of 2006 (FFATA), are posted on the OJP web site at <https://ojp.gov/funding/Explore/FFATA.htm> (Award condition: Reporting Subawards and Executive Compensation), and are incorporated by reference here.

This condition, including its reporting requirement, does not apply to-- (1) an award of less than \$25,000, or (2) an award made to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).



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29. The recipient agrees to submit to BJA for review and approval any curricula, training materials, proposed publications, reports, or any other written materials that will be published, including web-based materials and web site content, through funds from this grant at least thirty (30) working days prior to the targeted dissemination date. Any written, visual, or audio publications, with the exception of press releases, whether published at the grantee's or government's expense, shall contain the following statements: "This project was supported by Grant No. 2018-DG-BX-0007 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice." The current edition of the DOJ Grants Financial Guide provides guidance on allowable printing and publication activities.
30. The recipient agrees to cooperate with any assessments, national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within this project.
31. Justification of consultant rate

Approval of this award does not indicate approval of any consultant rate in excess of \$650 per day. A detailed justification must be submitted to and approved by the OJP program office prior to obligation or expenditure of such funds.
32. With respect to this award, federal funds may not be used to pay cash compensation (salary plus bonuses) to any employee of the award recipient at a rate that exceeds 110% of the maximum annual salary payable to a member of the federal government's Senior Executive Service (SES) at an agency with a Certified SES Performance Appraisal System for that year. (An award recipient may compensate an employee at a higher rate, provided the amount in excess of this compensation limitation is paid with non-federal funds.)

This limitation on compensation rates allowable under this award may be waived on an individual basis at the discretion of the OJP official indicated in the program announcement under which this award is made.
33. Verification and updating of recipient contact information

The recipient must verify its Point of Contact(POC), Financial Point of Contact (FPOC), and Authorized Representative contact information in GMS, including telephone number and e-mail address. If any information is incorrect or has changed, a Grant Adjustment Notice (GAN) must be submitted via the Grants Management System (GMS) to document changes.
34. Any Web site that is funded in whole or in part under this award must include the following statement on the home page, on all major entry pages (i.e., pages (exclusive of documents) whose primary purpose is to navigate the user to interior content), and on any pages from which a visitor may access or use a Web-based service, including any pages that provide results or outputs from the service: "This Web site is funded in whole or in part through a grant from the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. Neither the U.S. Department of Justice nor any of its components operate, control, are responsible for, or necessarily endorse, this Web site (including, without limitation, its content, technical infrastructure, and policies, and any services or tools provided)." The full text of the foregoing statement must be clearly visible on the home page. On other pages, the statement may be included through a link, entitled "Notice of Federal Funding and Federal Disclaimer," to the full text of the statement.



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35. Cooperating with OJP Monitoring

The recipient agrees to cooperate with OJP monitoring of this award pursuant to OJP's guidelines, protocols, and procedures, and to cooperate with OJP (including the grant manager for this award and the Office of Chief Financial Officer (OCFO)) requests related to such monitoring, including requests related to desk reviews and/or site visits. The recipient agrees to provide to OJP all documentation necessary for OJP to complete its monitoring tasks, including documentation related to any subawards made under this award. Further, the recipient agrees to abide by reasonable deadlines set by OJP for providing the requested documents. Failure to cooperate with OJP's monitoring activities may result in actions that affect the recipient's DOJ awards, including, but not limited to: withholdings and/or other restrictions on the recipient's access to award funds; referral to the DOJ OIG for audit review; designation of the recipient as a DOJ High Risk grantee; or termination of an award(s).

36. The award recipient agrees to participate in a data collection process measuring program outputs and outcomes. The data elements for this process will be outlined by the Office of Justice Programs.

37. Protection of human research subjects

The recipient (and any subrecipient at any tier) must comply with the requirements of 28 C.F.R. Part 46 and all OJP policies and procedures regarding the protection of human research subjects, including obtainment of Institutional Review Board approval, if appropriate, and subject informed consent.

38. Confidentiality of data

The recipient (and any subrecipient at any tier) must comply with all confidentiality requirements of 42 U.S.C. 3789g and 28 C.F.R. Part 22 that are applicable to collection, use, and revelation of data or information. The recipient further agrees, as a condition of award approval, to submit a Privacy Certificate that is in accord with requirements of 28 C.F.R. Part 22 and, in particular, 28 C.F.R. 22.23.

39. Applicants must certify that Limited English Proficiency persons have meaningful access to the services under this program(s). National origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI and the Safe Streets Act, recipients are required to take reasonable steps to ensure that LEP persons have meaningful access to their programs. Meaningful access may entail providing language assistance services, including oral and written translation when necessary. The U.S. Department of Justice has issued guidance for grantees to help them comply with Title VI requirements. The guidance document can be accessed on the Internet at www.lep.gov.



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Grant

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PROJECT NUMBER 2018-DG-BX-0007

AWARD DATE 10/01/2018

SPECIAL CONDITIONS

40. Copyright; Data rights

The recipient acknowledges that OJP reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use (in whole or in part, including in connection with derivative works), for Federal purposes: (1) any work subject to copyright developed under an award or subaward; and (2) any rights of copyright to which a recipient or subrecipient purchases ownership with Federal support.

The recipient acknowledges that OJP has the right to (1) obtain, reproduce, publish, or otherwise use the data first produced under an award or subaward; and (2) authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes. "Data" includes data as defined in Federal Acquisition Regulation (FAR) provision 52.227-14 (Rights in Data - General).

It is the responsibility of the recipient (and of each subrecipient, if applicable) to ensure that this condition is included in any subaward under this award.

The recipient has the responsibility to obtain from subrecipients, contractors, and subcontractors (if any) all rights and data necessary to fulfill the recipient's obligations to the Government under this award. If a proposed subrecipient, contractor, or subcontractor refuses to accept terms affording the Government such rights, the recipient shall promptly bring such refusal to the attention of the OJP program manager for the award and not proceed with the agreement in question without further authorization from the OJP program office.

41. The recipient is authorized to obligate, expend, or draw down funds in an amount not to exceed 35% of this award for the sole purpose of partaking in a 6-month planning period in collaboration with BJA and ATF. The purpose of this planning period is to convene relevant stakeholders to develop a project action plan, implement policy development, and train staff and stakeholders as appropriate. During this 6-month period, BJA will release 35 percent of funds to assist with planning. The remaining funds will be released upon successful completion of a project action plan. The recipient is not authorized to incur any additional obligations, make any additional expenditures, or draw down any additional funds until BJA has issued a Grant Adjustment Notice (GAN) removing this condition.

42. Recipient may not obligate, expend, or drawdown funds until the Bureau of Justice Assistance, Office of Justice Programs has reviewed and approved the Budget Narrative portion of the application and has issued a Grant Adjustment Notice (GAN) informing the recipient of the approval.

43. Withholding of funds: Disclosure of pending applications

The recipient may not obligate, expend, or draw down any award funds until: (1) it has provided to the grant manager for this OJP award either an "applicant disclosure of pending applications" for federal funding or a specific affirmative statement that no such pending applications (whether direct or indirect) exist, in accordance with the detailed instructions in the program solicitation, (2) OJP has completed its review of the information provided and of any supplemental information it may request, (3) the recipient has made any adjustments to the award that OJP may require to prevent or eliminate any inappropriate duplication of funding (e.g., budget modification, project scope adjustment), (4) if appropriate adjustments to a discretionary award cannot be made, the recipient has agreed in writing to any necessary reduction of the award amount in any amount sufficient to prevent duplication (as determined by OJP), and (5) a Grant Adjustment Notice has been issued to remove this condition.

44. Within 120 days of the award date, the recipient shall submit to the Office of Justice Programs a finalized Memorandum of Understanding (MOU) that reflects the goals and objectives of the project and lists the identities, roles, and contributions of the participating agencies. The MOU must be signed by the Chief Executive Officer of each collaborating agency. The grantee also agrees to notify the Bureau of Justice Assistance of any change in the status or duties of the collaborating agency partners or individuals.



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45. The recipient may not obligate, expend or draw down funds until the Office of the Chief Financial Officer (OCFO) has approved the budget and budget narrative and a Grant Adjustment Notice (GAN) has been issued to remove this special condition.



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SPECIAL CONDITIONS

46. Noninterference (within the funded "program or activity") with federal law enforcement: 8 U.S.C. 1373 and 1644; ongoing compliance

1. With respect to the "program or activity" funded in whole or part under this award (including any such program or activity of any subrecipient at any tier), throughout the period of performance, no State or local government entity, -agency, or -official may prohibit or in any way restrict-- (1) any government entity or -official from sending or receiving information regarding citizenship or immigration status as described in 8 U.S.C. 1373(a); or (2) a government entity or -agency from sending, requesting or receiving, maintaining, or exchanging information regarding immigration status as described in either 8 U.S.C. 1373(b) or 1644. Any prohibition (or restriction) that violates this condition is an "information-communication restriction" under this award.

2. Certifications from subrecipients. The recipient may not make a subaward to a State, a local government, or a "public" institution of higher education, unless it first obtains a certification of compliance with 8 U.S.C. 1373 and 1644, properly executed by the chief legal officer of the government or educational institution that would receive the subaward, using the appropriate form available at <https://ojp.gov/funding/Explore/SampleCertifications-8USC1373.htm>. Also, the recipient must require that no subrecipient (at any tier) may make a further subaward to a State, a local government, or a public institution of higher education, unless it first obtains a certification of compliance with 8 U.S.C. 1373 and 1644, properly executed by the chief legal officer of the government or institution that would receive the further subaward, using the appropriate OJP form.

3. The recipient's monitoring responsibilities include monitoring of subrecipient compliance with the requirements of this condition.

4. Allowable costs. Compliance with these requirements is an authorized and priority purpose of this award. To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) that the recipient, or any subrecipient at any tier that is a State, a local government, or a public institution of higher education, incurs to implement this condition.

5. Rules of Construction

A. For purposes of this condition:

- (1) "State" and "local government" include any agency or other entity thereof, but not any institution of higher education or any Indian tribe.
- (2) A "public" institution of higher education is defined as one that is owned, controlled, or directly funded (in whole or in substantial part) by a State or local government. (Such a public institution is considered to be a "government entity," and its officials to be "government officials.")
- (3) "Program or activity" means what it means under title VI of the Civil Rights Act of 1964 (see 42 U.S.C. 2000d-4a).
- (4) "Immigration status" means what it means under 8 U.S.C. 1373 and 8 U.S.C. 1644; and terms that are defined in 8 U.S.C. 1101 mean what they mean under that section 1101, except that "State" also includes American Samoa.
- (5) Pursuant to the provisions set out at (or referenced in) 8 U.S.C. 1551 note ("Abolition ... and Transfer of Functions"), references to the "Immigration and Naturalization Service" in 8 U.S.C. 1373 and 1644 are to be read as references to particular components of the Department of Homeland Security (DHS).

B. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, any State or local government, any public institution of higher education, or any other entity (or individual) to violate any federal law, including any applicable civil rights or nondiscrimination law.

IMPORTANT NOTE: Any questions about the meaning or scope of this condition should be directed to OJP, before

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SPECIAL CONDITIONS

award acceptance.

47. Authority to obligate award funds contingent on noninterference (within the funded "program or activity") with federal law enforcement (8 U.S.C. 1373 and 1644); unallowable costs; notification

1. If the recipient is a "State," a local government, or a "public" institution of higher education:

A. The recipient may not obligate award funds if, at the time of the obligation, the "program or activity" of the recipient (or of any subrecipient at any tier that is a State, a local government, or a public institution of higher education) that is funded in whole or in part with award funds is subject to any "information-communication restriction."

B. In addition, with respect to any project costs it incurs "at risk," the recipient may not obligate award funds to reimburse itself if -- at the time it incurs such costs -- the program or activity of the recipient (or of any subrecipient at any tier that is a State, a local government, or a public institution of higher education) that would be reimbursed in whole or in part with award funds was subject to any information-communication restriction.

C. Any drawdown of award funds by the recipient shall be considered, for all purposes, to be a material representation by the recipient to OJP that, as of the date the recipient requests the drawdown, the recipient and each subrecipient (regardless of tier) that is a State, local government, or public institution of higher education, is in compliance with the award condition entitled "Noninterference (within the funded 'program or activity') with federal law enforcement: 8 U.S.C. 1373 and 1644 and ongoing compliance."

D. The recipient must promptly notify OJP (in writing) if the recipient, from its requisite monitoring of compliance with award conditions or otherwise, has credible evidence that indicates that the funded program or activity of the recipient, or of any subrecipient at any tier that is either a State or a local government or a public institution of higher education, may be subject to any information-communication restriction. In addition, any subaward (at any tier) to a subrecipient that is a State, a local government, or a public institution of higher education must require prompt notification to the entity that made the subaward, should the subrecipient have such credible evidence regarding an information-communication restriction.

2. Any subaward (at any tier) to a subrecipient that is a State, a local government, or a public institution of higher education must provide that the subrecipient may not obligate award funds if, at the time of the obligation, the program or activity of the subrecipient (or of any further such subrecipient at any tier) that is funded in whole or in part with award funds is subject to any information-communication restriction.

3. Absent an express written determination by DOJ to the contrary, based upon a finding by DOJ of compelling circumstances (e.g., a small amount of award funds obligated by the recipient at the time of a subrecipient's minor and transitory non-compliance, which was unknown to the recipient despite diligent monitoring), any obligations of award funds that, under this condition, may not be made shall be unallowable costs for purposes of this award. In making any such determination, DOJ will give great weight to evidence submitted by the recipient that demonstrates diligent monitoring of subrecipient compliance with the requirements set out in the "Noninterference ... 8 U.S.C. 1373 and 1644 and ongoing compliance" award condition.

4. Rules of Construction

A. For purposes of this condition "information-communication restriction" has the meaning set out in the "Noninterference ... 8 U.S.C. 1373 and 1644 and ongoing compliance" condition.

B. Both the "Rules of Construction" and the "Important Note" set out in the "Noninterference ... 8 U.S.C. 1373 and 1644 and ongoing compliance" condition are incorporated by reference as though set forth here in full.



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SPECIAL CONDITIONS

48. Noninterference (within the funded "program or activity") with federal law enforcement: No public disclosure of certain law enforcement sensitive information

SCOPE. This condition applies with respect to the "program or activity" that is funded (in whole or in part) by the award, as of the date the recipient accepts this award, and throughout the remainder of the period of performance. Its provisions must be among those included in any subaward (at any tier).

1. Noninterference: No public disclosure of federal law enforcement information in order to conceal, harbor, or shield

Consistent with the purposes and objectives of federal law enforcement statutes and federal criminal law (including 8 U.S.C. 1324 and 18 U.S.C. chs. 1, 49, 227), no public disclosure may be made of any federal law enforcement information in a direct or indirect attempt to conceal, harbor, or shield from detection any fugitive from justice under 18 U.S.C. ch. 49, or any alien who has come to, entered, or remains in the United States in violation of 8 U.S.C. ch. 12 -- without regard to whether such disclosure would constitute (or could form a predicate for) a violation of 18 U.S.C. 1071 or 1072 or of 8 U.S.C. 1324(a).

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions (e.g., training) designed to ensure compliance with this condition.

4. Rules of construction

A. For purposes of this condition--

(1) the term "alien" means what it means under section 101 of the Immigration and Nationality Act (see 8 U.S.C. 1101(a)(3));

(2) the term "federal law enforcement information" means law enforcement sensitive information communicated or made available, by the federal government, to a State or local government entity, -agency, or -official, through any means, including, without limitation-- (1) through any database, (2) in connection with any law enforcement partnership or -task-force, (3) in connection with any request for law enforcement assistance or -cooperation, or (4) through any deconfliction (or courtesy) notice of planned, imminent, commencing, continuing, or impending federal law enforcement activity;

(3) the term "law enforcement sensitive information" means records or information compiled for any law enforcement purpose; and

(4) the term "public disclosure" means any communication or release other than one-- (a) within the recipient, or (b) to any subrecipient (at any tier) that is a government entity.

B. Both the "Rules of Construction" and the "Important Note" set out in the "Noninterference (within the funded 'program or activity') with federal law enforcement: 8 U.S.C. 1373 and 1644 and ongoing compliance" award condition are incorporated by reference as though set forth here in full.

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SPECIAL CONDITIONS

49. Recipient integrity and performance matters: Requirement to report information on certain civil, criminal, and administrative proceedings to SAM and FAPIIS

The recipient must comply with any and all applicable requirements regarding reporting of information on civil, criminal, and administrative proceedings connected with (or connected to the performance of) either this OJP award or any other grant, cooperative agreement, or procurement contract from the federal government. Under certain circumstances, recipients of OJP awards are required to report information about such proceedings, through the federal System for Award Management (known as "SAM"), to the designated federal integrity and performance system (currently, "FAPIIS").

The details of recipient obligations regarding the required reporting (and updating) of information on certain civil, criminal, and administrative proceedings to the federal designated integrity and performance system (currently, "FAPIIS") within SAM are posted on the OJP web site at <https://ojp.gov/funding/FAPIIS.htm> (Award condition: Recipient Integrity and Performance Matters, including Recipient Reporting to FAPIIS), and are incorporated by reference here.

In *City and County of San Francisco v. Sessions*, Case No. 3:17-cv-04642-WHO (N.D. Cal.), the United States District Court, on October 5, 2018, held that the City and County of San Francisco's (the "City" or "San Francisco") laws and relevant policies comply with Section 1373. The court also held that Section 1373 is unconstitutional and enjoined the Department of Justice from using Section 1373 certification as a funding restriction for any Byrne JAG awards. A copy of the court's judgment is attached.

Responding to a request for clarification from counsel for San Francisco, in an email dated October 31, 2018, counsel for the Department of Justice (the "Department") informed counsel for San Francisco that compliance with California Government Code Section 7283.1(b) "would not constitute violation of the DOJ/OJP award condition against public disclosure of federal law enforcement information" (the "Department's Representation"). A copy of this email correspondence is attached.

In reliance on these circumstances, San Francisco accepts this award. In particular, the City's acceptance as to Special Conditions 46 and 47 is subject to the District Court's ruling in *City and County of San Francisco v. Sessions* that San Francisco's law and policies comply with Section 1373. Also, the City's acceptance as to Special Condition 48 is contingent upon the Department's Representation. San Francisco expressly reserves its right to challenge any or all of Special Conditions 46-48 as unlawful.

EXHIBIT 1

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO,

Plaintiff,

v.

JEFFERSON BEAUREGARD SESSIONS,
et al.,

Defendants.

Case No. 17-cv-04642-WHO

JUDGMENT AND ORDER

On October 5, 2018, I granted plaintiff's motion for summary judgment and denied defendants' motion for summary judgment. Pursuant to Federal Rule of Civil Procedure 58, I hereby ENTER judgment in favor of plaintiff and against defendants, and grant the following relief as set forth below.

DECLARATION

I find declaratory relief under 28 U.S.C. § 2201 is appropriate in this case. It is hereby DECLARED that:

1. The 8 U.S.C. § 1373 certification condition and the access and notice conditions for Byrne JAG grant funding are unconstitutional because they: (i) exceed the congressional authority conferred to the Executive Branch; and (ii) they exceed the Congress's spending powers under Article I of the Constitution to the extent Congress conferred authority to the Attorney General.
2. San Francisco's Chapters 12H and 12I of the San Francisco Administrative Code comply with 8 U.S.C. § 1373.
3. San Francisco does not have in place a prohibition or restriction that applies to any program or activity funded under the Byrne JAG program, and which deals with

1 sending to, receiving from, or requesting immigration status information with the
2 federal government, or maintaining such information.

3 **PERMANENT INJUNCTION**

4 I also find a permanent injunction is appropriate in this case for the reasons stated in the
5 October 5, 2018, Order granting plaintiff's motion for summary judgment. Pursuant to Federal
6 Rule of Civil Procedure 65, it is now ORDERED that defendants ARE HEREBY RESTRAINED
7 AND ENJOINED from committing, performing, directly or indirectly, the following acts:

- 8 1. Using the Section 1373 certification condition, and the access and notice conditions
9 ("Challenged Conditions") as funding restrictions for any Byrne JAG awards.
10 2. Denying or clawing back San Francisco Byrne JAG funding on the basis of alleged
11 non-compliance with Section 1373.

12 Consistent with my October 5, 2018 Order granting plaintiff's motion for summary
13 judgment, it is now ORDERED that the nationwide aspect of the permanent injunctive relief set
14 forth above is STAYED until the Ninth Circuit has the opportunity to consider it.

15 **IT IS SO ORDERED.**

16 Dated: October 5, 2018

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18 WILLIAM H. ORRICK
19 United States District Judge
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EXHIBIT 2

Eisenberg, Sara (CAT)

From: Simpson, Scott (CIV) <Scott.Simpson@usdoj.gov>
Sent: Wednesday, October 31, 2018 1:44 PM
To: Eisenberg, Sara (CAT); Mere, Yvonne (CAT)
Cc: Lee Sherman; Sarah Belton; Konkoly, Antonia (CIV); Mauler, Dan (CIV)
Subject: RE: Crime Gun Intelligence Center Grant Questions
Attachments: 2018-10-10_Letter to J Husted..pdf

Sara:

Thanks for your email below and for forwarding your Oct. 10 letter to OJP. On your first question, compliance with California Government Code Section 7283.1(b), without more, would not constitute violation of the DOJ/OJP award condition against public disclosure of federal law enforcement information. We note that Section 7283.1(b) contemplates disclosure, to an individual under detention or his/her attorney, of (1) an ICE hold, notification, or transfer request regarding the detainee, or (2) a notification to ICE that the detainee is being released on a certain date.

On your second question, the term "program or activity" under the FY 2018 Local Law Enforcement Crime Gun Intelligence Center Integration Initiative means the same thing as under Title VI of the Civil Rights Act of 1964. See 42 U.S.C. § 2000d-4a; 28 C.F.R. § 42.102(d)(1) (implementing regulation). Government entities receiving federal grant funds have been required to comply with Title VI for many years, so there is a considerable body of case law on the issue. It's also discussed in a USDOJ Civil Rights Division manual at <https://www.justice.gov/crt/fcs/Title-6-Manual>. Pursuant to section 2000d-4a—

the term "program or activity" and the term "program" mean all of the operations of—

(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

any part of which is extended Federal financial assistance.

I'm not sure where this leaves us specifically on your question about San Francisco's CGIC grant. Obviously, a determination of what would and would not be included within the meaning of the term under the statute would require knowledge and analysis of how the City government is organized. What entities other than SFPD and the District Attorney's Office are you concerned might be included?

Scott

From: Eisenberg, Sara (CAT) [mailto:Sara.Eisenberg@sfcityatty.org]
Sent: Thursday, October 25, 2018 2:31 PM
To: Simpson, Scott (CIV) <SSimpson@CIV.USDOJ.GOV>
Subject: Crime Gun Intelligence Center Grant Questions

Scott,

Per our discussion, attached please find a copy of (1) the Crime Gun Intelligence Center ("CGIC") grant award documents and (2) the letter we sent to OJP.



I would appreciate any help you could provide in facilitating a response.

Thank you,
Sara

Sara J. Eisenberg
Deputy City Attorney
Office of City Attorney Dennis Herrera
(415) 554-3857 Direct
www.sfcityattorney.org
Find us on: [Facebook](#) [Twitter](#) [Instagram](#)

This message is subject to attorney-client privilege and/or attorney work product privilege and must not be disclosed.

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

SARA J. EISENBERG
Deputy City Attorney

Direct Dial: (415) 554-3857
Email: sara.elsenberg@sfcityatty.org

October 10, 2018

Joseph Husted
United States Department of Justice
810 Seventh Street NW
Washington, DC 20531

Via U.S. Mail and email (Joseph.Husted@usdoj.gov)

Re: FY 18 Local Law Enforcement Crime Gun Intelligence Center Integration
Initiative Grant

Dear Mr. Husted:

On behalf of San Francisco Police Department ("SFPD") Chief William Scott, we are grateful that the Office of Justice Programs ("OJP") approved SFPD's application for funding under the FY 18 Local Law Enforcement Crime Gun Intelligence Center Integration Initiative. We look forward to accepting and utilizing the award, which will help the City and County of San Francisco ("City") address the critical issue of gun violence. In an abundance of caution, however—and consistent with the instruction to contact OJP prior to accepting the award with any questions about the meaning or scope of the special conditions—we write to confirm two points.

First, California Government Code Section 7283.1(b) provides that:

Upon receiving any ICE hold, notification, or transfer request, the local law enforcement agency shall provide a copy of the request to the individual and inform him or her whether the law enforcement agency intends to comply with the request. If a local law enforcement agency provides ICE with notification that an individual is being, or will be, released on a certain date, the local law enforcement agency shall promptly provide the same notification in writing to the individual and to his or her attorney or to one additional person who the individual shall be permitted to designate.

In order to comply with this requirement, the San Francisco Sheriff's Department has adopted Part II(E) of the attached policy #02-39.

Please confirm that the existence and implementation of Part II(E) of the policy does *not* violate Special Condition 48 ["Noninterference (within the funded 'program or activity') with federal law enforcement: No public disclosure of certain law enforcement sensitive information"].

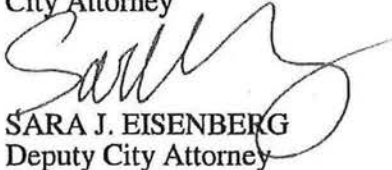
Letter to Joseph Husted
United States Department of Justice
Page 2
October 10, 2018

Second, the funds from this grant award will be utilized by the SFPD and the San Francisco District Attorney's Office as set forth in the grant application. Accordingly, please confirm that the "'program or activity' funded in whole or in part under this award" is limited to those two departments and does not include the City as a whole or any other City departments.



Given the upcoming deadline to accept the award, we ask that you provide a response no later than October 24. If you have any questions or require any additional information, please contact me via email at sara.eisenberg@sfcityatty.org or by phone at 415-554-3857.

Very truly yours,

DENNIS J. HERRERA
City Attorney



SARA J. EISENBERG
Deputy City Attorney

SAN FRANCISCO SHERIFF'S DEPARTMENT	Date Issued: 12/07/2017	Policy #: SFSD 02-39
 <p style="text-align: center;">POLICY AND PROCEDURE</p>	Last Revised:	
	Related Policies: SFSD 01-09 - CORI SFSD 01-17 - CLETS Compliance FODM-07-01 - Central Warrant Bureau Responsibilities	
Chapter: 02 Legal Enforcement and Operations	Approved By:  Vicki L. Hennessy, Sheriff	
	Title: Immigration	

POLICY: The San Francisco Sheriff's Department (SFSD) shall serve all members of the public equally without consideration of immigration status. A person's immigration status shall have no bearing on the manner in which employees execute their duties. The SFSD does not comply with Department of Homeland Security / Immigration and Customs Enforcement Agency (DHS / ICE) requests to detain individuals after they are eligible to be released from SFSD custody.

The Sheriff alone may exercise discretion to respond to DHS / ICE requests for notification of release from SFSD custody, if the subject of that request meets the specific criteria set forth in San Francisco Administrative Code 12I.3(d.)

The SFSD does comply with criminal arrest warrants signed by a judge. This policy does not prohibit or restrict employees "from sending to, or receiving from, DHS / ICE information regarding the citizenship or immigration status, lawful or unlawful, of any individual." (8 U.S.C. 1373.)

Under no circumstances shall employees arrest or detain an individual based solely on their known or suspected immigration status.

PURPOSE: To provide guidelines about SFSD employees duties, and responsibilities associated with the enforcement of immigration law, including DHS / ICE Requests for Release Notification and / or detention, in conformity with federal, state and local law.

I. General:

A. This policy supersedes and replaces all previous SFSD policies and directives concerning immigration.

B. Background

1. Immigration Enforcement Jurisdiction

a. DHS / ICE has primary responsibility to investigate and enforce federal immigration laws. DHS / ICE is responsible for the identification, apprehension, and removal of undocumented persons, where appropriate under federal immigration law.

i. Removal is a civil, not a criminal matter.

b. Federal law does not compel state and local LEA' (LEA) participation

Immigration

in federal civil immigration functions. SFSD employees may not assist DHS / ICE in the enforcement of federal civil immigration laws, except as noted in this policy.

- i.* All employees must forward DHS / ICE requests for SFSD enforcement assistance in the investigation of non-immigration related criminal violations to the Sheriff, through the chain of command, for approval.
- ii.* SFSD employees may assist DHS / ICE by providing emergency assistance when employees determine that an emergency poses an imminent danger to public safety, including to the safety of DHS / ICE agents.
- iii.* If safety permits, employees must seek supervisor approval before providing emergency assistance. On-scene supervisors shall evaluate each request for emergency assistance to ensure the SFSD's participation remains consistent with this policy while protecting human life and property.

2. Federal Criminal Enforcement:

- a.* State and local law permits SFSD cooperation with federal criminal investigations. The Sheriff, through the chain of command, shall direct all SFSD cooperation with federal criminal investigations.

3. DHS / ICE Voluntary Detainer / Notification Requests:

- a.* A DHS / ICE detainer / notification request is typically a written request to a LEA, asking the LEA to:
 - i.* hold an individual beyond the time when the individual is otherwise eligible for release from local custody, so that DHS / ICE may take custody of that individual and / or;
 - ii.* notify DHS / ICE in advance of the individual's scheduled release. DHS / ICE detainer / notification requests are only requests, and compliance is completely voluntary. The form of these requests may vary. Currently, DHS / ICE requests detention and release notification by submitting to LEAs a Form I-247A (Immigration Detainer – Notice of Action). According to DHS / ICE, Form I-247A replaces the following forms:
 - Form I-247D (Immigration Detainer- Request for Voluntary Action)
 - Form I-247N (Request for Voluntary Notification of Release of Suspected Priority Alien)
 - Form I-247X (Request for Voluntary Transfer.)
 - Form I-247 A requests that the receiving local LEA:
 - iii.* Notify DHS / ICE as early as practicable, at least 48 hours, if

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- possible, before a removable alien is released from local custody; and
- iv.* Maintain custody of the alien for a period not to exceed 48 hours beyond the time he / she would otherwise have been released to allow DHS / ICE to assume custody for removal purposes.
- b. Additionally, DHS / ICE requests for detention and release notification may include the following attachments:
- i.* Form I-200, "Warrant for Arrest of Alien" or
 - ii.* Form I-205, "Warrant for Removal/Deportation."
 - iii.* Both Form I-200 and Form I-205 are administrative civil warrants signed by Immigration officials and not by a judge. These documents are not criminal warrants.

II. Procedures:

A. Order

1. When SFSD personnel encounter perceived immigration law violations, members shall be guided by the options set forth in this policy, in compliance with federal, state and local law.
2. Immigration Violation Complaints:
 - a. If members of the public contact SFSD employees to report suspected immigration violations, employees shall inform such persons that DHS / ICE – not SFSD – enforces the civil immigration laws.
3. Immigration Status:
 - a. SFSD employees shall not initiate contact with, investigate, detain, or arrest any person based solely upon their known or suspected immigration status.
 - i.* However, employees may investigate the immigration status of victims, witnesses or suspects if employees reasonably believe that immigration status may be a material fact of an alleged criminal violation, including for example, trafficking, smuggling, harboring and terrorism.
 - b. SFSD personnel shall not conduct sweeps, or assist DHS / ICE sweeps, intended solely to locate and detain undocumented immigrants.
 - c. Employees may assist DHS / ICE by providing emergency assistance when employees determine that an emergency poses an imminent danger to public safety, including to the safety of DHS / ICE agents.
 - i.* If safety permits, employees must seek supervisor approval before providing emergency assistance.
 - ii.* On-scene supervisors shall evaluate each request for emergency assistance ensure the SFSD's participation remains consistent

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with this policy while protecting human life and property.

B. Establishing Identity

1. SFSD personnel shall attempt to identify any person they detain, arrest or who come into the custody of the SFSD.
2. Any person eligible for citation and release, who is unable to present satisfactory evidence of his or her identity, shall be detained for the purpose of establishing his or her identity.

C. Central Warrant Bureau Procedure:

1. SFSD personnel who are tasked with confirming warrants shall continue to process DHS / ICE warrants for booking that are confirmed as criminal warrants per memo (Reference: 2016-037, dated March 11, 2016, see attached.) If there is such a booking, Central Warrant Bureau employees shall notify Sheriff's Legal Counsel immediately.
2. SFSD employees shall process all confirmed criminal arrest warrants received from any law enforcement agency, including DHS / ICE, consistent with SFSD Field Operations Division Policy 17-01, Central Warrant Bureau Responsibilities.
 - a. As noted above, DHS / ICE requests for detention and notification are not criminal arrest warrants.

D. DHS / ICE Immigration Detainers and Requests for Notification / Process

1. Fingerprints:

- a. Once a person is arrested, SFSD scans his / her fingerprints during the booking intake process. The inmate's fingerprints are automatically sent to California Department of Justice (Cal DOJ). According to Cal DOJ, the fingerprints are shared with the Federal Bureau Investigations (FBI), the FBI shares them with DHS / ICE to check for prior contacts, and following a contact, DHS / ICE may then send a Form I-247A – a combination detainer and notification request - to the SFSD requesting action.

2. Detainer Requests:

- a. A DHS / ICE detainer (currently Form I-247A) requests that SFSD detain the subject for up to 48 hours after they are eligible to be released from local custody.
- b. The SFSD does not honor these detainer requests.

3. Notification Requests:

- a. A DHS / ICE release notification request (currently Form I-247A) asks that SFSD notify DHS / ICE at least 48 hours before the inmate is released from custody. All DHS / ICE notification requests for intended release dates of suspected undocumented immigrant inmates in our custody are voluntary in nature. San Francisco Administrative Code 12I.3(d) defines the circumstances under which the Sheriff may honor

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DHS / ICE notification requests. If those conditions are met, the Sheriff may exercise discretion to notify pursuant to that request.

- b. SFSD has established the following process to individually review each request and track the appropriate action in each case.
 - i. The Central Records Unit shall review all Voluntary Requests (DHS Form 1-247 D, 1-247X, 1-247 N) and the consolidated form 247A) to determine if responding to the request complies with local and state law.
 - ii. If an inmate, who is the subject of a voluntary notification request, is held to answer on an open felony case, the Central Records Unit will then review the individual's criminal history to determine if the individual meets the Administrative Code section 12I.3(d) criteria.
 - iii. If the Central Records Unit determines that the individual meets the Administrative Code section 12I.3(d) criteria, Central Records employees shall forward the voluntary request to the Sheriff for final consideration.

E. Truth Act Compliance

1. In conformance with Government Code Section 7283.1, upon receiving a DHS / ICE detention, notification or transfer request, Prisoner Legal Services Employees shall:
 - a. Provide a copy of the request to the inmate in our custody.
 - b. Provide a copy of the attached SFSD Form 17-1, "Information Regarding DHS / ICE Request for Notification of Release", which informs the subject whether the Department intends to comply with the DHS / ICE voluntary request, to the inmate.
 - c. Request that the inmate complete SFSD Form 17-2 "Designation of Persons to Receive DHS / ICE Request Information" so SFSD will know who to notify in the event the Sheriff exercise discretion under 12I to notify DHS / ICE of the inmate's release date or release.
2. The decision whether to honor the voluntary request will be made pursuant to this policy and in compliance with San Francisco Administrative Code 12I.3(d).
3. If SFSD notifies DHS / ICE that an individual is being, or will be, released on a certain date and time, the SFSD employees providing that information to DHS / ICE shall promptly provide the same notification, using Form 17-3 "Decision to Notify ICE", to the inmate and to the inmate's attorney or designee, using the contact information provided by the inmate on Form 17-2.

F. Communications with LEA, Including Agencies Conducting Civil Immigration Enforcement.

1. SFSD employees are authorized to provide to any LEA, including DHS / ICE, upon request, the following information,

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- a. Date and location of Arrest
 - b. Current charges
 - c. Next court date
 - d. Bail amount
2. SFSD employees are NOT authorized to provide the following access or information to any agency representatives or individuals conducting civil immigration enforcement (including DHS / ICE):
 - a. Access to inmates in jail
 - b. Access to SFSD computers and/or databases
 - c. SFSD Logs
 - d. Booking and arrest documents
 - e. Release dates and times
 - f. Home or work contact information
 3. Responses to I-247A or other DHS / ICE release notification requests unless expressly authorized by the Sheriff.
 4. Employees shall refer all DHS / ICE requests for assistance with criminal investigations to the Central Records Unit. The Central Records Unit shall forward those requests to the Sheriff who shall direct any assistance, through the chain of command.

G. Contact:

1. SFSD employees or others with questions regarding this policy shall be referred to Sheriff's Legal Counsel, Monday thru Friday 0800 to 1700 hours:
 - a. Chief Legal Counsel Mark Nicco
415-554-7212
 - b. Assistant Chief Legal Counsel Suzy Loftus
415-554-7295
 - c. Or after hours at the Central Warrant Bureau – emergency notification line to reach Sheriff's Legal Counsel 415-558-2411.

III. Forms:

SFSD Form "Information Regarding ICE Requests for Notification of Release, Initial Statement"

SFSD Form "Information Regarding ICE Requests for Notification of Release, Designation of Persons to Receive ICE Request Information"

SFSD Form "Information Regarding ICE Requests for Notification of Release, Determination to Notify"

IV. Reference:

“The Miranda-Olivares v. Clackamas County decision (Case No. 3:12-cv-02317-ST), a 2014 Federal decision, established that holding a person in custody based solely upon an ICE immigration detainer request may violate the individual’s constitutional rights, and the involved local/state agency can be held liable for this violation of constitutional rights.

“ICE Guidance for Completing FORM I-247A

San Francisco Administrative Code 12I.3(d.)

(8 U.S.C. 1373.)

SFSD Criminal Warrants Memo (Reference: 2016-037, dated March 11, 2016)



**San Francisco Sheriff's Department
Information Regarding ICE Request for Notification of Release
Initial Statement**

- Solicito recibir este formulario en español. / I request to receive this form in Spanish.
- 請寄來中文表格。 / I request to receive this form in Chinese.
- Nais ko pong makiusap na matanggap ang forma na ito sa Tagalog. / I request to receive this form in Tagalog.
- Tôi yêu cầu để nhận mẫu đơn này trong tiếng Việt. / I request to receive this form in Vietnamese.
- 저는 이서류를 한국어로 번역된 것으로 받고 싶습니다 / I request to receive this form in Korean.

Date: _____ Name: _____ DOB: _____

A# _____ Housing Location: _____ SF#: _____

Current charge(s): _____

Under the Transparent Review of Unjust Transfers and Holds (TRUTH) Act, we are required to provide you with the attached copy of the ICE request and inform you of whether we intend to comply with the request. ICE requests that SFSD notify them prior to your release and that SFSD maintain custody of your for up to 48 hours after your scheduled release to allow ICE to take you into their custody.

The San Francisco Sheriff's Department does not intend to comply at this time. However, based on San Francisco Administrative Code 12H and 12I, if you are held to answer on a qualifying felony, a review of your criminal history will be conducted to determine if you qualify for possible notification based on local law.

If your background, current charges and history of convictions and other information conforms to San Francisco Administrative Code 12I and SFSD decides to notify ICE of your release, we will notify you and your attorney or another person that you choose. Please provide the contact information, including phone number and /or email, for your attorney or another person that you choose on the provide SFSD Form 17-02, "Designation of Persons to Receive ICE Information Requests".

Please contact Prisoner Legal Services or your attorney if you have any questions or concerns.

Public Defender Phone: 415-553-1671

Prisoner Legal Services Phone: 415-558-2472

NOTE: A copy of the list of non-profit legal service providers for the San Francisco Immigration Court is also included with the notice. Please consider reaching out to one of the listed Immigration Rights Advocates since you have been informed that you are the subject of ICE proceedings. If you return to the San Francisco County Jail for future charges, ICE may continue to request a notification. If you are re-incarcerated elsewhere, that jurisdiction may elect to notify ICE of your impending release.

For SFSD Use Only:

Delivered By: _____ Title: _____ Date: _____ Time: _____

Copies to: SFSD Records Public Defender/Attorney of Record Prisoner Legal Services



**San Francisco Sheriff's Department
Information Regarding ICE Request for Notification of Release
Designation of Persons to Receive ICE Request Information**

- Solicito recibir este formulario en español. / I request to receive this form in Spanish.
- 請寄來中文表格。 / I request to receive this form in Chinese.
- Nais ko pong makiusap na matanggap ang forma na ito sa Tagalog. / I request to receive this form in Tagalog.
- Tôi yêu cầu để nhận mẫu đơn này trong tiếng Việt. / I request to receive this form in Vietnamese.
- 저는 이서류를 한국어로 번역된 것으로 받고 싶습니다 / I request to receive this form in Korean.

Date: _____ Name: _____ DOB: _____

A#: _____ Housing Location: _____ SF#: _____

Current charge(s): _____

Please complete the following information regarding the person you would like notified regarding any ICE Requests for Notification: (Select one)

Attorney

Other Designee (if applicable)

Name: _____

Name: _____

Address: _____

Address: _____

Email: _____

Email: _____

Phone: _____

Phone: _____

The above selected individuals are to be notified with copies of any documents received from ICE that request notification of my release. In the event the San Francisco Sheriff's Department elects to notify ICE pursuant to the San Francisco Administrative Code 12I, these persons will also be provided with that information at the earliest opportunity.

Inmate Signature: _____ Date: _____

SFSD Use Only:

- I was able to see the above named inmate and complete this form. I subsequently forwarded a copy of this form, Form 17-1 and the request from ICE to the name individual(s)
- I was not able to see the above named inmate due to his/her release from custody via _____
- The person was contacted and did not want to complete this form
- Other _____

Processed by: _____ Unit: _____ Title: _____

Date: _____ Time: _____

Copies to: SFSD Records Public Defender/Attorney of Record Prisoner Legal Services

San Francisco Sheriff's Department
Information Regarding ICE Request for Notification of Release
Determination to Notify

- Solicito recibir este formulario en español. / I request to receive this form in Spanish.
- 請寄來中文表格。 / I request to receive this form in Chinese.
- Nais ko pong makiusap na matanggap ang forma na ito sa Tagalog. / I request to receive this form in Tagalog.
- Tôi yêu cầu để nhận mẫu đơn này trong tiếng Việt. / I request to receive this form in Vietnamese.
- 저는 이서류를 한국어로 번역된 것으로 받고 싶습니다 / I request to receive this form in Korean.

Date: _____ Name: _____ DOB: _____

A#: _____ SF#: _____ Housing Location: _____

Date of Original Notice 17-01 _____

Under the Transparent Review of Unjust Transfers and Holds (TRUTH) Act, we are required to notify you and your attorney or another person that you choose in writing if we inform Immigration and Customs Enforcement (ICE) of your release.

The San Francisco Sheriff's Department makes such notifications only if you meet the criteria as listed in San Francisco Administrative Code section 12I.

It has been determined that you meet the criteria for Notification of Release.

The purpose of this letter is to inform you that on _____ at _____, we
Date of Notice to ICE Time of Notice to ICE

notified ICE that you are scheduled to be released on _____ at _____.
Date of Scheduled Release Time of Release

We will also provide this information to your attorney/designee of record as noted below:

Attorney/Designee Name and Contact Information: (as provided on SFSD Form 17-02)

Name: _____ Contact Info: _____

Date Contacted: _____ Contacted by: _____

Please contact the Sheriff's Department Prisoner Legal Services at 415-558-2472 if you have any questions or concerns.

~~~~~  
SFSD USE ONLY:

- I provided a copy of this form to the above named inmate on: Date \_\_\_\_\_ Time: \_\_\_\_\_
- I was not able to see the above named inmate due to his/her release from custody via \_\_\_\_\_
- Other: \_\_\_\_\_
- 

Processed by: \_\_\_\_\_ Unit: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_

Copies to:      SFSD Records,                      Attorney of Record,                      Prisoner Legal Services