LEGAL & POLICY BRIEFING: MAKING BIRMINGHAM A SANCTUARY CITY
March 6, 2017

Introduction & Executive Summary

On January 31, 2017 the Birmingham City Council passed a resolution declaring the intention to make Birmingham a sanctuary city. The Mayor of Birmingham has expressed his commitment to making Birmingham a welcoming city for immigrants and refugees. The City of Birmingham and many other local jurisdictions across the country that have not yet passed strong sanctuary policies are currently entangled with immigration enforcement in a wide variety of ways that undermine public safety, hurt the local economy, and impair the rights and wellbeing of the city's immigrant population. Birmingham has the legal authority to implement a strong, comprehensive, and clear set of sanctuary policies. As described herein, these policies will violate neither state nor federal law. To the contrary, they will uphold fundamental constitutional values for *all* of our city's residents. Moreover, it is highly unlikely that the Trump Administration will be capable of following through on its threat of revoking all federal funding from so-called sanctuary cities.

What is a "Sanctuary" City?

The term "sanctuary" has been on everyone's lips lately—including reporters, immigrant rights' advocates, anti-immigrant spokespersons, local government officials, university students and faculty, congresspersons, and even the President of the United States. But it does not have any consistent, established legal or popular meaning. The current use of the term traces back to the sanctuary movement in the 1980s, in which hundreds of churches across the country took in Central American refugees who fled civil war in their home countries and then were denied asylum in the U.S., and thus subject to detention and deportation by immigration authorities. Some of the churches and individuals who participated in the sanctuary movement risked state and federal prosecution in order to defend what they believed was a moral and faith-based imperative to provide refuge to those in need.

A sanctuary city, county, state, or campus is distinct from a sanctuary church. **Sanctuary jurisdictions do *not* violate state or federal law**. In fact, many local "sanctuary" policies actually help guarantee that the city or county follows the law by ensuring compliance with the Fourth Amendment and other legal requirements.[1] So-called local "sanctuary" policies, as well as "welcoming city" and "community trust" policies, can involve everything from a symbolic declaration of support and inclusion of immigrant residents to specific limitations on local police collusion with immigration enforcement to affirmative policies supporting protection and integration for immigrant communities. **Hundreds of local jurisdictions** across the country have enacted policies declining to expend local resources to detain local residents solely based on suspected immigration violations, and placing other limits on local police collusion with U.S. Immigration and Customs Enforcement (ICE).[2]

Why Do We Need Strong Sanctuary Policies Now?

President Trump has vowed to round up and deport all eleven million undocumented individuals in the U.S.—which would include longtime and beloved Birmingham residents, business owners and workers who contribute to the city's economy, and family members of U.S. citizens—and to take more severe enforcement actions against certain green card and visa holders as well. In a January 25, 2017 executive order and a recently-issued implementation memorandum from the Department of Homeland Security (DHS), the Trump Administration has committed to tripling the number of ICE agents from 5,000 to 15,000, scrapped the Obama Administration's deportation priorities, and created a new, vastly expansive definition of "criminal" that encompasses virtually all undocumented and some documented immigrants.[3] The White House may have even considered deploying National Guard troops to act as immigration enforcers.[4] President Trump has already issued executive orders specifically targeting Muslims and refugees, sowing chaos across the country.[5] Yet the federal government cannot carry out the President's deeply misguided immigration policies on its own. **ICE has been explicit that it intends to rely extensively on local government personnel and resources to do their job for them.**

Now is a crucial time for cities like Birmingham to take a strong, clear, and fully lawful stand against becoming an arm of the draconian detention and deportation system. Because enforcing the nation's immigration laws is exclusively the authority of the federal government,[6] and because the federal government cannot "commandeer" local governments to carry out federal programs,[7] local policies that limit or prohibit police collusion with ICE are completely in keeping with the U.S. legal and constitutional structure. Moreover, local sanctuary policies **improve public safety**[8] and **boost the local economy**[9] by ensuring that all residents, regardless of immigration status, race, ethnicity, national origin, and language ability, are not afraid to call the police when they are victims or witnesses of crime, have access to essential municipal services, and receive equal treatment in their workplaces, homes, and in the streets. Major Southeastern cities like Birmingham play a particularly important role in welcoming and integrating immigrants, refugees, and visitors from all over the world, and thus stand to benefit greatly from concrete policies that put this commitment in practice.

How Are Local Jurisdictions Currently Entangled with Federal Immigration Enforcement?

In order to determine how Birmingham can make good on its promise to protect and support its immigrant residents, it is important to first understand the many ways in which local jurisdictions are currently entangled in federal immigration enforcement. The most important of these are the web of programs and practices that make up the "**jail-to-deportation pipeline**," coopting the resources of local jails and police forces to carry out heavy-handed immigration enforcement actions against community members. Some of the forms of collusion and entanglement listed below—such as 287(g) agreements and detention contracts—are not currently in operation in Birmingham, but could be proposed by the federal government in the near future. Others, such as fingerprint and information sharing and the use of civil detainer requests, are in full force.

Fingerprint Sharing Under Secure Communities/PEP: Under the federal "Secure Communities" program,[10] each time an individual is fingerprinted at a local jail or police station, those prints are automatically shared with federal immigration officials and cross-checked against federal civil immigration databases (in addition to federal criminal databases) that contain information—which is frequently false and incomplete—on immigration status, deportation orders, administrative immigration warrants, and other

data. Based on the information received from the local law enforcement agency, immigration authorities can then decide whether to issue a detainer request (see below) to the agency where the individual is being held. It is important to keep in mind that prints are taken and shared at the moment of booking—before the individual has been convicted of any crime, whether minor or serious.

Civil Immigration Detainer Requests, Notification Requests, and Administrative Warrants: An immigration detainer request, also known as an "ICE hold," is a request from federal immigration authorities to a local law enforcement agency asking the local agency (usually a city or county jail or state prison) to detain someone in its custody—and on its own dime—for up to 48 hours after she would normally be released in order to await her pickup by ICE. Detainer requests are **not** criminal warrants or detainers, and are **not** supported by probable cause as required by the Fourth Amendment. Rather, they are voluntary requests; **local jurisdictions have the authority to decide whether or not to comply with the request, and may be subject to civil liability for unlawful detention if they hold individuals solely based on a detainer request**.[11] Detainer requests become active at the moment when the individual would otherwise be released from custody—for example, when she posts bond, when the charges against her are dismissed or she is acquitted at trial, or when she pleads guilty to an offense that does not carry a jail sentence. ICE also issues a similar-looking document to local jails called a "notification request," which asks the local agency to notify ICE of the individual's release from local custody. ICE may also provide local police with other documents, such as an I-201 administrative warrant, for individuals in the agency's custody; those documents are also an insufficient basis for detention because they do not require a probable cause finding or judicial review.

"Criminal Alien Program" (CAP): CAP is a poorly understood, expansive and loose-knit web of several different programs wherein ICE identifies, investigates, interviews, and in many cases initiates deportation proceedings against individuals—including individuals with no or only minor criminal history—detained in local jails and state prisons.[12] CAP is the *primary* channel for interior immigration enforcement, generating more than two thirds of deportations from the interior of the U.S.[13]

287(g) Agreements: Under federal regulations, federal immigration authorities can enter into agreements with local jurisdictions (usually counties) to train and cross-deputize local law enforcement officers to enforce federal immigration law. The 287(g) program was scaled back significantly and nearly abolished several years ago in the face of strident criticism[14] and changing enforcement tactics, but President Trump has vowed to bring the program back and enter into new agreements.

Detention Contracts: The federal government can enter into contracts, known as intergovernmental service agreements (IGSAs), with local law enforcement agencies to house immigration detainees, often placing a strain on already-crowded local jails. The government pays the jail a per diem rate based on the number of detention beds provided and filled, creating a financial incentive for local jails to cut corners, keep individuals detained longer, and place detainees' basic health and safety at risk.

Joint Patrols, Raids & Operations: Local police can engage in joint operations with federal immigration agents, including motor vehicle checkpoints, workplace and community raids, arrests, neighborhood patrols, and other enforcement activities. It is important to note that although ICE and joint police-ICE community arrests, checkpoints,

and raids sow terror in local immigration communities and often receive extensive media exposure, they actually represent a small fraction of the ICE apprehensions leading to deportations—most of those come from the jail-to-deportation programs summarized above.[15]

Physical and Remote Access & Other Forms of Information Gathering and Surveillance: Local jurisdictions can choose to allow immigration authorities physical access, for example, to detainees in the city jail, to municipal courthouses, and other public facilities, and can permit remote access to local databases containing biographical information of local residents. In jurisdictions lacking strong confidentiality policies, local government employees may collect and share—either intentionally or unwittingly—information about local residents' immigration status with federal immigration authorities, as well as other sensitive information such as crime victim status, sexual orientation, and public benefits recipient status that could infringe on individuals' privacy and expose them to differential treatment.

Discriminatory Questioning, Stops, and Arrests: Local police and other local government officials who question, stop, arrest, or otherwise subject local residents to differential treatment based on their suspected immigration status, national origin, race, ethnicity, and language ability are also contributing a deportation system that disproportionately affects people of color. As explained above, under Secure Communities/PEP, any contact with local police, even when the police are not actively attempting to notify ICE or enforce the federal immigration laws, can lead to that person being flagged for deportation, regardless of their extensive ties to the community, their status as a victim, civil rights plaintiff or community leader, and whether or not they have a criminal record.

What Types of Local Policy Changes Can We Make in Birmingham?

In many ways, *counties* are the most important sites for local policy changes to protect immigrant community members and disentangle local police from immigration enforcement. County sheriff's offices control large jails that can act as feeders into the immigration detention and deportation system. IGSA and 287(g) agreements (see above) that coopt local law enforcement officers and facilities to carry out federal immigration enforcement are usually entered into between the federal government and a county or one of its agencies. Thus, **the strongest local sanctuary policies involve commitments at both the county and city level**.

Nonetheless, cities can also play an important role, both symbolically and concretely, in protecting immigrant communities. **The City of Birmingham can, for example**:

- Prohibit warrantless detention in the city jail on the sole basis of civil immigration detainer requests, ICE administrative warrants, or suspected immigration violations,
- Create robust anti-profiling protections that prohibit questioning, arresting, detaining, interrogating or investigating an individual based on her race, ethnicity, national origin, suspected immigration status, or language ability,
- Deny ICE access to jails and city databases,
- Deny ICE access to municipal courthouses, and work with the relevant bodies to pass policies to deny ICE access to schools, hospitals and other sensitive locations,
- Refuse to participate in illegal federal registries or surveillance programs that target individuals based on their religion or national origin,

- Deny the use of city resources to engage in joint patrols, raids, or operations with immigration agents or otherwise carry out federal civil immigration enforcement,
- Implement strong confidentiality policies to protect all city residents' privacy,
- Ensure that all residents have equal access to city services regardless of immigration status,
- Establish a streamlined and transparent certification process for immigrant victims of serious crimes,
- Create a municipal identification card that is accessible for all Birmingham residents,
- Improve language access by providing interpretation and translation for municipal forms, offices, and services,
- Implement smart policies for the police department and municipal court that reduce arrests and convictions for minor and first-time offenses and adopt a public health and community policing approach to law enforcement, and
- Create a community board or task force to monitor implementation of these policies.

Many of these policy changes would be **revenue-generating or revenue-neutral** because they largely involve *abstaining* from expending city resources to carry out federal immigration enforcement. Additionally, many of these proposals—such as the creation of a municipal ID and establishment of strong confidentiality and anti-profiling policies—would directly benefit many Birmingham residents beyond the immigrant community. Some changes could be implemented through an ordinance or resolution passed by the city council, while others could be achieved through policies established by the Mayor's Office, Police Department, and other city agencies without requiring local legislation.

Does Alabama Law—In Particular, Section 5 of HB 56—Prohibit Local Jurisdictions like Birmingham from Implementing these Types of Policies?

No. Various provisions of the Beason-Hammon Alabama Taxpayer and Citizen Protection Act of 2011 (commonly referred to as HB 56) purport to regulate the relationship between local law enforcement and immigration authorities. Some of those provisions have been permanently enjoined by the federal courts, and others have been expressly limited by a settlement agreement between the parties to a major civil rights lawsuit challenging HB 56.

One provision of HB 56 that remains in effect—Section 5,[16] referred to by some as the "sanctuary cities provision"—provides **some narrow limitations** on what local jurisdictions can do (or decline to do) with respect to federal immigration enforcement. Namely, Section 5 provides for certain state-imposed sanctions and a citizen complaint process against local agencies and officials that "limit[] communication between [local] officers and federal immigration officials in violation of" certain federal immigration laws, "restrict[] [local] officers in the enforcement of" HB 56, or restrict "sending, receiving, or maintaining information regarding immigration status, except as provided by federal law" for certain official purposes.[17] In other words, Section 5 **only applies to communications and information sharing regarding information status** between local police and the federal government. A local policy of declining to detain individuals on the basis of ICE holds, for example, would **not** violate Section 5. Nor would any of the other policy proposals listed above. Furthermore, the provision lacks a robust and effective enforcement mechanism. To date, it appears that the state has not imposed money penalties or any other sanctions against a local jurisdiction pursuant to Section 5.

Several other non-enjoined provisions of HB 56 that deal with local law enforcement, including Sections 12, 18 and 19[18]—which require the police to inquire into an individual's

immigration status under certain circumstances, share that information with the federal government, and facilitate their transfer to ICE—were only saved from being struck down by the court as unconstitutional because the state agreed to a limiting interpretation in its settlement agreement with the plaintiffs: the provisions cannot be interpreted to authorize arrest or detention (or any prolonging of an individual's detention, *e.g.*, during a roadside stop or when out-processing from a jail) solely to perform an immigration check, or to deny bond solely based on immigration status.[19] Therefore, these provisions do not prohibit local policies barring arrests and detention solely for immigration enforcement purposes. In fact, the settlement in the HB 56 litigation makes clear that such local policies are essential for upholding constitutional guarantees.

It is possible that the Alabama state legislature will attempt to pass new legislation that contains broader prohibitions or sanctions against local sanctuary policies or even specifically targets policies implemented by the city of Birmingham. That is why it is important that any city implementing sanctuary policies also makes a concrete commitment to **defend the legality** of those policies from attack by state, federal, and private actors.

Do Local Sanctuary Policies Violate Federal Law?

No. There is a federal statute—8 U.S.C. § 1373—that prohibits local government entities from restricting the sending or receiving of information regarding an individual's immigration status to and from federal immigration authorities. This prohibition is similar to HB 56 Section 5 in that it only applies to limitations on a narrow category of communications and information sharing. It does **not** authorize or require local governments to carry out warrantless detentions or other actions to enforce the federal civil immigration laws. Additionally, it only applies to a specific category of information: "information regarding the citizenship or immigration status, lawful or unlawful, of any individual." Thus, the plain language of the statute does **not** apply to other categories of information, such as individuals' work and home addresses, jail release dates, or any other information not related to immigration status. Therefore, **none of the sanctuary policies listed above would violate Section 1373**.

Moreover, under the principle of constitutional avoidance—whereby courts construe statutes to avoid conflict with the Constitution wherever possible—the federal courts are likely to interpret Section 1373 in a manner to avoid running afoul of the Tenth Amendment, which prohibits the federal government from commandeering or coercing states and localities to carry out federal prerogatives. The Supreme Court has never ruled on the constitutionality of Section 1373 or any of its applications, but the Court has struck down other federal laws that go too far in forcing states and localities to do what the federal government wants them to do.[20] Therefore, any interpretation of Section 1373 that forces states and localities to honor warrantless immigration detainer requests or otherwise carry out federal immigration enforcement mandates likely would not survive a constitutional challenge.

If Birmingham is Labeled a "Sanctuary City" by the Trump Administration, Could the Administration Follow Through on its Threat to Revoke All Federal Funding from the City?

In all likelihood, no. President Trump's executive order on interior immigration enforcement threatens to withhold almost all federal grants from localities designated as "sanctuary jurisdictions" by the Department of Homeland Security.[21] The order provides little information on the process for designating a jurisdiction as a sanctuary or how that term is defined, other than referring to "jurisdictions that willfully refuse to comply with 8 U.S.C. 1373."

As described above, local sanctuary policies do **not** violate Section 1373. Thus, **Birmingham should not be at risk of losing federal funding under the executive order if it implements any or all of the policy changes described above**.

Furthermore, even in the situation where a city is clearly in willful violation of Section 1373 or is otherwise designated by DHS to be a "sanctuary," **our nation's constitutional system places strict limitations on the federal government's ability to simply revoke all federal funds**. The Supreme Court has repeatedly ruled that any conditions on federal grants to states and localities must be "unambiguously" stated in the text of the law passed by Congress.[22] Trump's order—which threatens to revoke existing grants without any approval from Congress, advance notice or a process for affected jurisdictions to contest a designation, or even clear criteria for how the funding determinations will be made—fails to meet this "clear statement" requirement.

Additionally, even when the clear statement requirement is met, the **Tenth Amendment bars the federal government from "commandeering" state and local governments to carry out federal mandates through overly coercive funding restrictions**. Instead, the restrictions must be related to the purpose of the grant, and the withheld funds cannot constitute an overly large share of the local government's budget.[23] Thus, revoking all federal grants to the city of Birmingham, including those funds—*e.g.*, for education, healthcare, or transportation—with no relation to immigration enforcement, would be impermissible. Finally, the federal government cannot use the spending power to induce states and localities "to engage in activities that would themselves be unconstitional,"[24] such as detaining individuals on the basis of immigration detainer requests, which have been found to violate the Fourth Amendment.[25] Therefore, any attempt to revoke federal funding from Birmingham pursuant to the executive order would very likely be found unconstitutional for multiple reasons.

Several jurisdictions that risk being designated as "sanctuaries" under the executive order and losing essential federal funding have already filed suit against the federal government challenging the constitutionality of the order.[26] It is also worth noting that the threat to defund sanctuary jurisdictions is conspicuously absent from DHS's February 20, 2017 memorandum implementing the executive order,[27] perhaps signaling a retreat from this approach on behalf of the administration.

Conclusion: Birmingham Can and Should Enact Strong and Comprehensive Policies to Protect its Immigrant Residents

Birmingham's elected leaders have the authority and the responsibility to make good on their commitments to protect the city's immigrant residents and promote inclusion and diversity instead of fear and division by implementing strong, concrete, smart and lawful sanctuary policies. What matters is not what we call the policies, but their content. Birmingham can move quickly to implement policies to disentangle local police from immigration enforcement and uphold the safety, privacy, and constitutional liberties of all residents without violating state or federal law. In doing so, the city's elected officials should listen closely to immigrant community members and their loved ones, who will bear the brunt of the Trump Administration's deeply misguided and unlawful immigration enforcement policies.

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About Adelante:

Adelante Alabama Worker Center unites day laborers, domestic workers, and other low-wage and immigrant workers and their families in the Birmingham area to defend our rights, promote our dignity, and pursue justice for all.

We envision a multiracial worker-led movement for justice, dignity and human rights that lifts up the voices of the most vulnerable and excluded workers, and welcomes individuals of all races, ethnicities, genders, ages, sexualities, faiths, and immigration statuses. We strive to move our communities forward (adelante) *to a world where immigrants, people of color, and all working-class families are respected and safe at work, in the streets, and where they live.*

For inquires, please contact Jessica Vosburgh, Esq., Executive and Legal Director: jessica@adelantealabama.org, 205.317.1481

[1] *See* Immigrant Legal Resource Center, *Legal Issues with Immigration Detainers*, November 2016, https://www.ilrc.org/sites/default/files/resources/detainer_law_memo_november_2016_updated.pdf

[2] *See* https://www.ilrc.org/local-enforcement-map for a map of jurisdictions that have limited local entanglement with immigration enforcement. ICE agents are the nation's interior immigration enforcers. Customs & Border Protection (CBP) is the component primarily responsible for enforcing immigration laws at the borders and ports of entry. ICE/CBP is the largest federal law enforcement agency, and the federal government spends more on immigration enforcement than all other major federal law enforcement agencies (e.g., FBI, DEA, U.S. Marshals Service, Secret Service, and ATF) *combined*. *See* Doris Meissner, *et al*., *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, Migration Policy Institute, January 2013, http://www.migrationpolicy.org/pubs/enforcementpillars.pdf. Immigration enforcement grew exponentially in the wake of September 11th, as our nation entered into an era of fear-based immigration policies, wherein immigration went from being treated as primarily an economic and humanitarian issue to a national security priority.

[3] *See* Executive Order: Enhancing Public Safety in the Interior of the United States, January 25, 2017, *available at* https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united; DHS Memorandum, "Enforcement of the Immigration Laws to Serve the National Interest," February 20, 2017, https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf

[4] *See* Garance Burke, "DHS weighed Nat Guard for immigration roundups," *Associated Press*, February 17, 2017, http://bigstory.ap.org/article/5508111d59554a33be8001bdac4ef830/trump-weighs-mobilizing-nat-guard-immigration-roundups. The White House has denied that it considered such a proposal.

[5] *See* Glenn Thrush, "Trump's Revised Travel Ban Spares Iraqi," *New York Times*, March 6, 2017, https://www.nytimes.com/2017/03/06/us/politics/travel-ban-muslim-trump.html?_r=0. In the wake of the Ninth Circuit Court of Appeals' decision to uphold the temporary injunction against the original executive order, President Trump issued a revised order that still targets all refugees, and immigrants from the same seven countries, minus Iraq.

[6] *See Arizona v. United States*, 132 S.Ct. 2492 (2012)

[7] *See infra* note 20-24 and accompanying text

[8] *See* Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, University of Illinois at Chicago, May 2013, http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF

[9] *See* Tom K. Wong, *The Effects of Sanctuary Policies on Crime and the Economy,* Center for American Progress, January 26, 2017, https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy/

[10] Secure Communities, commonly known as S-Comm, was replaced by the Obama Administration in November 2014 a new program entitled the Priority Enforcement Program (PEP). PEP relied on the same basic mechanism of fingerprint sharing and detainer and notification requests to local jails. The Trump Administration stated its intent to reinstitute S-Comm in the executive order on the interior enforcement. *See* Interior Enforcement EO*, supra* note 3.

[11] *See* Letter from Matthew J. Piers, *et al*., to the U.S. Conference of Mayors and Major Cities Chiefs Association re: *Legal Issues Regarding Local Policies Limiting Local Enforcement of Immigration Laws and Potential Federal Response* at 10 n.43, January 13, 2017, http://bit.ly/2kydaa5 (listing federal cases ruling that continued detention on

the basis of an ICE detainer request without probable cause states a claim for violation the Fourth Amendment and subject the detaining officer and jurisdiction to civil liability)

[12] *See* "Fact Sheet: The Criminal Alien Program (CAP): Immigration Enforcement in Prisons and Jails," American Immigration Council, August 1, 2013, https://www.americanimmigrationcouncil.org/research/criminal-alien-program-cap-immigration-enforcement-prisons-and-jails

[13] *See* Guillermo Cantor, *et al*., *Enforcement Overdrive: A Comprehensive Assessment of ICE's Criminal Alien Program*, American Immigration Council, November 2015, https://www.americanimmigrationcouncil.org/sites/default/files/research/enforcement_overdrive_a_comprehensive_assessment_of_ices_criminal_alien_program_final.pdf

[14] *See* "Fact Sheet: The 287(g) Program: A Flawed and Obsolete Method of Immigration Enforcement*,"* American Immigration Council, November 29, 2012, https://www.americanimmigrationcouncil.org/research/287g-program-flawed-and-obsolete-method-immigration-enforcement

[15] *See* Transactional Records Clearinghouse, "ICE Immigration Raids: A Primer," Syracuse University, February 13, 2017, http://trac.syr.edu/immigration/reports/459/

[16] Ala. Code § 31-13-5

[17] *Id*.

[18] Ala. Code §§ 31-13-12, 31-13-18(a) & 31-13-19

[19] *See* Dismissal Order and Stipulated Permanent Injunction at 2 n.4, *Hispanic Interest Coalition of Alabama v. Bentley*, No. 5:11-cv-2484-SLB (N.D. Ala. Nov. 25, 2013) (ECF No. 180).

[20] *See New York v. United States*, 505 U.S. 144 (1992); *Printz v. United States*, 521 U.S. 898 (1997)

[21] *See supra* note 3

[22] *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981)

[23] *See South Dakota v. Dole*, 483 U.S. 203, 207-08 (1987); *Nat'l Fed'n of Indep. Bus. v. Sebelius,* 132 S. Ct. 2566, 2581, 2601, 2604 (2012)

[24] *See Dole*, 483 U.S. at 210

[25] *See, e.g., Miranda-Olivares v. Clackamas Cnty.*, No. 12-02317, 2014 WL 1414305, at *10 (D. Or. Apr. 11, 2014); *see also supra* note 11

[26] *See* Complaint, *City and County of San Francisco v. Donald Trump*, No. 3:17-cv-00485 (N.D. Cal. Jan. 31, 2017); Complaint, *County of Santa Clara v. Donald Trump*, No. 5:17-cv-00574 (N.D. Cal. Feb. 3, 2017).

[27] *See* DHS Interior Enforcement Memo*, supra* note 3