Congress of the United States
Washington, DC 20515

March 14, 2017

The Honorable Donald J. Trump
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20502

Dear Mr. President:

We write to request that you rescind section 9(a) of Executive Order 13768 (EO 13768),[1] which directs the federal government to withhold federal funds from "sanctuary" jurisdictions, on the grounds that withholding such funds is unworkable and unconstitutional. Over 600 jurisdictions have some sort of policy that could potentially be considered a "sanctuary" policy, policies that disentangle local law enforcement from federal immigration enforcement.[2] Withholding federal funding would reduce public safety and economic development, undermine local governance, and be unconstitutional.

At the outset, the framework outlined by EO 13768 is flawed because "sanctuary" policies do not violate federal law. EO 13768 directs the Attorney General and Secretary of the U.S. Department of Homeland Security (DHS) to designate jurisdictions that are in violation of 8 U.S.C. § 1373 and establish processes to terminate federal grants to these jurisdictions. Yet, the plain language of 8 U.S.C. § 1373 does not require state and local jurisdictions to *affirmatively* collect immigration information, but instead prohibits restrictions on the sharing of that information.[3] Importantly, federal law in no way requires jurisdictions to honor immigration detainers, e.g. forcible use of state resources to detain individuals without a warrant, in violation of the Fourth Amendment.

Sanctuary policies are a lawful and appropriate exercise of local authority and policymaking meant to keep communities safe. Our federal system sets forth limitations on what the federal government's authority and outlines extensive powers of state and local governments to police their communities and promote public safety.[4] The federal government administers a variety of different federal grants to state and local jurisdictions under the U.S. Department of Justice (DOJ), including through Edward Byrne Memorial Justice Assistance Grants, State Criminal Alien Assistance Program, and Office of Community Oriented Policing Services. Communities rely on these funding streams to enhance public safety, fund crime victim and witness initiatives,

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[1] Exec. Order No. 13,768, 82 C.F.R. 8799 § 9 (2016), *available at* https://www.federalregister.gov/documents/2017/01/30/2017-02102/enhancing-public-safety-in-the-interior-of-the-united-states.

[2] Lena Graber, Nikki Marquez, *Searching for Sanctuary: An Analysis of America's Counties & Their Voluntary Assistance With Deportations* 12, Immigrant Legal Resource Center, Dec. 2016, https://www.ilrc.org/searching-sanctuary.

[3] *City of New York v. United States*, 971 F. Supp (S.D.N.Y. 1997) (The court stated that section 1373 does "not require any City official to provide any information to federal authorities" and does "not require the City to legislate, regulate, or enforce or otherwise implement federal immigration policy.").

[4] *Kelley v. Johnson*, 425 U.S. 238, 247 (1976) ("The promotion of safety of persons and property is unquestionably at the core of the State's police power.").

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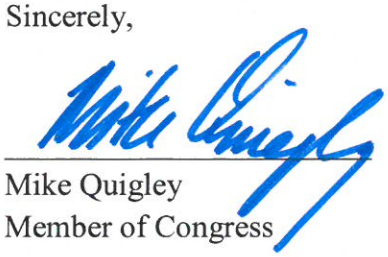
support drug treatment and enforcement, promote economic development and more. These goals are borne out by a recent report, which concludes that sanctuary jurisdictions experience fewer crimes than similarly situated non-sanctuary jurisdictions, have a higher median household income, lower poverty rate, and lower unemployment.[5]

Critically, directing the DOJ to withhold federal funding from jurisdictions that enact sanctuary policies runs afoul of the Tenth Amendment[6] and spending clause of the U.S. Constitution. As over 200 constitutional, administrative, immigration, and international law professors concluded withholding federal funding to force local jurisdictions to implement federal immigration policy would likely constitute "coercion" under the Tenth Amendment and be unconstitutional.[7] Additionally, these same legal experts concluded that unilaterally changing the conditions to receive federal funding would also violate the spending clause of the Constitution.[8] Thus, cutting off funding for sanctuary cities and counties would likely lead to prolonged and costly litigation for the federal government with an unfavorable outcome for the federal government.

In light of the above considerations, we respectfully ask your Administration rescind section 9(a) of EO 13768. If your Administration moves forward regardless, we ask that the Secretary of DHS and the Attorney General provide draft guidance being contemplated for implementation and answer the following questions:

1. What is the timeline for the implementation of section 9(a)?
2. What federal funding streams and grants are at risk for termination under section 9(a)?
3. What is the criteria that you will employ to determine whether a jurisdiction violates 8 U.S.C. § 1373?
4. What due process to contest termination of federal funds will you provide jurisdictions that are designated as "sanctuary" cities under section 9(a)?

Sincerely,



Mike Quigley
Member of Congress

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[5] Tom K. Wong, *The Effects of Sanctuary Policies on Crime and the Economy*, CENTER FOR AMERICAN PROGRESS, Jan. 26, 2017, https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy/.
[6] 132 S.Ct 2566, 2566-67 (2012).
[7] Letter to Donald J. Trump, President from Dale Carpenter, Seth Davis, Annie Lai, Ilya Somin, Shoba Wadhia, Christopher Lasch, Bill Hing, et. al, March 13, 2017, *available at* https://www.ilrc.org/letter-law-profs-1373.
[8] *Id.*

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Cc:

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