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SUPPLEMENTAL REPORT RE:

**SANCTUARY CITY LITIGATION AND POLICIES RELATING TO
THE CITY'S UNDOCUMENTED IMMIGRANT POPULATION**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 16-1320

Honorable Members:

On May 18, 2017, our Office transmitted Report No. R17-0167 addressing President Trump's Executive Order 13768, which sets forth the Trump administration's policy regarding immigration enforcement and directs the Attorney General and Secretary of Homeland Security to take certain actions against "sanctuary jurisdictions" (EO 13768). We are supplementing our prior report to provide guidance on a memorandum issued by the United States Attorney General on May 22, 2017, regarding the implementation of EO 13768.

The memorandum from the Attorney General was released in the wake of a nationwide preliminary injunction issued on April 25, 2017, by United States District Court Judge William Orrick. Judge Orrick enjoined enforcement of Section 9(a) of EO 13768. Section 9(a) authorizes the Secretary of Homeland Security to designate a jurisdiction as a "sanctuary jurisdiction," according to "his discretion and to the extent consistent with law." Section 9(a) also authorizes the Attorney General to "take appropriate enforcement action" against a jurisdiction that violates 8 U.S.C. Section 1373 (Section 1373), or that has any law, policy or practice "that prevents or hinders the enforcement of Federal law." Section 1373 prohibits state and local entities from

directly restricting the exchange of immigration status information with federal immigration authorities. Judge Orrick found that EO 13768 by its plain terms attempts to reach all federal funding, thus rendering it unconstitutional.

The Attorney General's memorandum appears to be an attempt by the Trump administration to clarify the intent and reach of future enforcement action under Section 9(a) of EO 13768. As stated in the memorandum, the Attorney General has determined that Section 9(a) "will be applied solely to federal grants administered by the Department of Justice or the Department of Homeland Security, and not to other sources of federal funding." In practical terms, the memorandum purports to limit the conditioning of funding eligibility on compliance with federal immigration law to three existing grant programs, namely the State Criminal Alien Assistance Program (SCAAP), the Edward Byrne Memorial Justice Assistance Grant Program (JAG) and the Community Oriented Policing Services Program (COPS).

The Attorney General memorandum also defines, for the first time, the term "sanctuary jurisdiction." Quoting the memorandum:

For purposes of enforcing the Executive Order, the term "sanctuary jurisdiction" will refer only to jurisdictions that "willfully refuse to comply with 8 U.S.C. 1373." A jurisdiction that does not willfully refuse to comply with section 1373 is not a "sanctuary jurisdiction" as that term is used in section 9(a).

The City complies with Section 1373 because it does not restrict the exchange of immigration status information with federal immigration authorities. Thus, we believe the City should not be classified as a sanctuary jurisdiction for purposes of enforcement under EO 13768. Absent some new constitutional condition created by Congress, the City's federal funding is not at risk of being withheld under EO 13768.

The Attorney General makes clear that nothing in his memorandum prohibits or precludes DOJ from conditioning the award of *new* grant programs on compliance with other federal laws – including federal laws that might be enacted in the future. Indeed, the memorandum states that a priority of the Trump administration is to create new grants related to law enforcement programs that will come with compliance requirements that go beyond Section 1373. The City will need to monitor this potential development and consider all funding restrictions before accepting any such grant in the future.

If you have any questions regarding this matter, please contact Deputy City Attorney Mike Dundas at (213) 978-8130.

Very truly yours,

MICHAEL N. FEUER, City Attorney

A handwritten signature in black ink, appearing to read "D. Michaelson", is written over the printed name of David Michaelson.

By

DAVID MICHAELSON
Chief Assistant City Attorney

DM:MD:pj