

**CITY COUNCIL OF THE CITY OF SONORA
STAFF REPORT**

MEETING DATE: May 21, 2018

TO: CITY COUNCIL

FROM: DOUGLAS L. WHITE, CITY ATTORNEY

SUBJECT: DISCUSSION AND CONSIDERATION OF THE CITY'S OPTIONS RELATED TO THE ENFORCEMENT OF FEDERAL IMMIGRATION LAW AND THE STATE'S PROHIBITION ON LOCAL COOPERATION WITH FEDERAL IMMIGRATION AGENTS.

RECOMMENDATION:

Discussion and consideration of the City's options related to the enforcement of federal immigration law and the state's prohibition on local cooperation with federal immigration agents.

BACKGROUND:

In January 2017, President Donald Trump signed Executive Order 13768, titled "Enhancing Public Safety in the Interior of the United States" (the "Executive Order"). The Executive Order states that "sanctuary jurisdictions" that refuse to comply with immigration enforcement measures will not be "eligible to receive federal grants, except as deemed necessary for law enforcement purposes."¹

On November 21, 2017, federal Judge William Orrick III in the Northern District of California, declared the federal funding portion of the Executive Order unconstitutional under the Tenth Amendment and issued a nationwide permanent injunction against enforcement of the Executive Order.²

In response to the Executive Order, the California legislature adopted Senate Bill 54 ("SB 54") in October 2017. SB 54 prohibits local law enforcement agencies from using department monies to assist in the enforcement of federal immigration law in certain situations. The Federal Government sent California a letter alerting it that three provisions of SB 54 may violate 8 U.S.C. section 1373 ("Section 1373"). Section 1373, makes it illegal for a state or local government to prohibit law enforcement from sending information to the Immigration and Naturalization Service.³

¹ Executive Order 13768, "Enhancing Public Safety in the Interior of the United States."

² *County of Santa Clara v. Trump* (N.D. Cal. 2017) 250 F.Supp.3d 497, reconsideration denied.

³ 8 U.S.C. § 1373.

DISCUSSION

SB 54

The California Legislature adopted SB 54 in October of 2017. SB 54 is codified as the California Values Act (the “Act”) in Government Code sections 7282.5 and 7284 through 7284.12. Under the Act, state and local law enforcement agencies may not use money or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, subject to certain exceptions. The most contentious portion of SB 54 is the prohibition on local law enforcement from “[p]roviding information regarding a person's release date or responding to requests for notification by providing release dates or other information”⁴

Legal Actions

The Department of Justice sent California a preliminary letter in November 2017 explaining that three provisions of the Act may violate Section 1373.⁵ According to the letter, the Act’s provisions relating to inquiries into an individual's immigration status,⁶ responding to notification requests,⁷ and the sharing of “personal information,”⁸ may violate Section 1373.⁹ The letter did not raise any other issues with SB 54. Two separate cases have been initiated, the First by California seeking Section 1373 be declared unconstitutional, and the Second initiated by the Federal Government seeking SB 54 be declared unconstitutional.

The crux of the dispute between the Federal Government and the State concerns the extent that the Supremacy Clause requires the State to cooperate, or not hinder, the Federal Government’s enforcement of immigration law.

a. Federal Government’s Argument

In March 2018, the Federal Government filed a lawsuit against the State of California alleging SB 54 violates the Supremacy Clause of the United States Constitution. According to the Federal Government’s complaint, SB 54 violates the Supremacy Clause because it’s an obstacle to the United States’ enforcement of the immigration laws. Under the Supremacy Clause the State cannot adopt a law that is in conflict with Federal law. The Federal Government believes SB 54, by prohibiting cooperation with immigration authorities, conflicts with Federal law.

b. California’s Argument

After receiving the letter from the Department of Justice regarding Section 1373 compliance, California filed a lawsuit alleging Section 1373 violates the Tenth Amendment of the United States Constitution. Under the Tenth Amendment, the Federal Government cannot compel a state to enact or administer a federal regulatory program. The state believes Section 1373 is unconstitutional, because the law, as implemented, may compel the State to administer a federal program by forcing cooperation with immigration enforcement.

⁴ Gov. Code, § 7284.6, subd. (a)(1)(C).

⁵ *State ex rel. Becerra v. Sessions* (N.D. Cal. 2018) 284 F.Supp.3d 1015, 1024.

⁶ Gov. Code, § 7284.6, subd. (a)(1)(A).

⁷ Gov. Code, § 7284.6, subd. (a)(1)(C).

⁸ Gov. Code, § 7284.6, subd. (a)(1)(D).

⁹ *State ex rel. Becerra v. Sessions, supra*, 284 F.Supp.3d at p. 1024.

Hearings to date have conceded the lack of precedence governing the tenth amendment issues in these cases.¹⁰ In a preliminary injunction hearing, a Federal Court explained that “[n]o cited authority holds that the scope of state sovereignty includes the power to forbid state or local employees from voluntarily complying with a federal program.”¹¹ If a Court concludes that Section 1373 does not create an affirmative duty on the State to assist in the enforcement of immigration laws, it is unlikely it will conclude that SB 54 violates Section 1373.

Other Jurisdictions

Los Alamitos introduced an ordinance at its March 18, 2018, City Council meeting to codify its intent to comply with federal law instead of SB 54. The Ordinance was adopted on April 16, 2018. Notably, the American Civil Liberties Union has vowed to initiate lawsuits against jurisdictions adopting ordinances like Los Alamitos.¹² The ordinance states:

The City of Los Alamitos, a Charter City, does hereby exempt the City of Los Alamitos from the California Values Act, Government Code Title 1, Division 7, Chapter 17.25 and instead will comply with the appropriate federal laws and the Constitution of the United States.

As a charter city, Los Alamitos may deviate from state law in certain instances. In contract, general law cities like Sonoma are bound to the provisions of the Government Code unless explicitly stated otherwise. However, SB 54 is intended to apply broadly to all California jurisdictions and likely preempts any local effort seeking exemption from its provisions. Moreover, SB 54 appears to be carefully drafted to prohibit assistance with immigration enforcement in all instances where it is not explicitly required under federal law. As a result, it is not yet clear what the Los Alamitos ordinance will practically accomplish.

On April 2, 2018, the Huntington Beach City Council voted to sue California over SB 54. The City Council of Huntington Beach also directed its City Attorney to “to work with the county or other municipalities that wish to join [the] efforts.”¹³ The cities of Beaumont, Newport Beach, Fountain Valley, and Westminster have all adopted similar declarations in support of the Federal government. On March 27, 2018, the Orange County Board of Supervisors voted to join the Federal Government’s lawsuit alleging SB 54 is unconstitutional. San Diego County followed suit on April 17, 2018.

Attorney General Enforcement Authority

The Act provides enforcement authority to the California Attorney General. Providing voluntary consent to immigration authorities to enter nonpublic areas may be punished by a fine of Two Thousand Dollars (\$2,000) to Five Thousand Dollars (\$5,000), unless a judicial warrant is provided.¹⁴ Subsequent violations are punishable by a fine of up to Ten Thousand Dollars (\$10,000). Enforcement is limited to civil actions only, and no criminal enforcement is authorized. The same enforcement remedies apply to any public or private employer allowing

¹⁰ *State ex rel. Becerra v. Sessions*, *supra*, 284 F.Supp.3d at p. 1035.

¹¹ *Ibid.*

¹² See “Los Alamitos Votes to exempt itself from California sanctuary state law,” by Brandi Hitt and ABC7.com; available at: <<http://abc7.com/politics/los-alamitos-votes-to-exempt-itself-from-sanctuary-state-law/3352978/>>

¹³ See <<https://www.ocregister.com/2018/04/03/huntington-beach-council-votes-to-sue-state-over-sanctuary-city-law/>> (As of April 4, 2018).

¹⁴ Gov. Code, § 7285.1.

immigration enforcement agents to access, review, or obtain employee records without a subpoena or judicial order.¹⁵

At this point in time, it is not clear if the Attorney General will initiate any enforcement action against a city like Los Alamitos, who is boldly defying SB 54. However, if California ultimately wins in court and SB 54 remains valid, the Attorney General will likely initiate enforcement actions swiftly and impose harsh fines. Alternatively, if the Federal Government is successful in its lawsuits, SB 54 will be declared unconstitutional. However, failing to comply with the federal law is only subject to reduced funding, which has been largely declared unconstitutional.¹⁶

OPTIONS:

1. Direct staff to prepare and present a resolution at the next City Council meeting requiring local law enforcement to provide assistance to Federal immigration authorities when otherwise provided discretion to cooperate under SB 54.
2. Direct staff to prepare a resolution declaring support for the Federal Government and Huntington Beach in the above discussed legal actions. The resolution may authorize the City of Huntington Beach and the Federal Government to use the City’s name in their filings.
3. Direct staff to prepare an ordinance to be presented at the next City Council meeting stating that the City will comply with federal immigration law when SB 54 and federal immigration law conflict. The consequences, if any, of openly defying state law are unclear at this time.
4. Direct the City Attorney’s office to file an amicus brief with regard to the preemption issues currently progressing through the judicial system, like the Orange County Board of Supervisors. Staff does not recommend this option, as other jurisdictions are capable of exploring all legal arguments.
5. Provide no direction to staff at this time. Waiting for the current legal battles to settle will provide significant clarity as to the risks involved with taking any affirmative action.

FISCAL IMPACT:

None and this time.

ENVIRONMENTAL:

This item is informational only.

¹⁵ Gov. Code, § 7285.2.

¹⁶ See, *County of Santa Clara v. Trump*, *supra*, 250 F.Supp.3d 497.