

**OFFICE OF THE COUNTY COUNSEL
COUNTY OF SANTA CLARA**

James R. Williams
COUNTY COUNSEL

County Government Center
70 West Hedding Street
East Wing, 9th Floor
San Jose, California 95110-1770



Greta S. Hansen
CHIEF ASSISTANT COUNTY COUNSEL

Winifred Botha
Danny Y. Chou
Robert M. Coelho
Steve Mitra

ASSISTANT COUNTY COUNSEL

Updated on February 23, 2017

**FAQs ON COUNTY OF SANTA CLARA LAWSUIT CHALLENGING
EXECUTIVE ORDER ON “SANCTUARY JURISDICTIONS”**

On February 3, 2017, the County filed a federal lawsuit against President Donald Trump and members of his administration challenging his January 25, 2017 Executive Order through which he intends to deny all federal funding to any state or local government that he deems fails to comply with his aggressive immigration enforcement plan. The lawsuit challenges the President’s authority to unilaterally impose conditions on federal funds—a power the Constitution places exclusively in the hands of Congress—as well as the blanket denial of *all* federal funds, the vast majority of which have no connection to immigration or law enforcement.

On February 23, 2017, the County moved for a preliminary injunction to prevent the Trump Administration from enforcing the Executive Order.

Q: Which Executive Order does the lawsuit challenge?

A: The lawsuit challenges Executive Order 13768, issued on January 25, 2017, entitled “Enhancing Public Safety in the Interior of the United States.” This Executive Order targets so-called “sanctuary jurisdictions,” and is distinct from an executive order issued two days later regarding travel restrictions for refugees, visa-holders, and other individuals entering the United States from certain Muslim-majority countries.

Q: What does the Executive Order do?

A: The Executive Order declares that it is the policy of the Trump Administration to ensure that “sanctuary jurisdictions” are stripped of *all* federal funds. The Executive Order does not define what entities are “sanctuary jurisdictions.” Instead, it seeks to grant executive branch officials unlimited discretion to deny federal funds to states, cities, counties, and other local governments they deem to be “sanctuary jurisdictions,” and to also take unspecified enforcement actions against them.

Q: Why is the County bringing a lawsuit now?

A: The County is suing to prevent the Trump Administration from stripping the County of all federal funding, and to enable the County to continue to provide uninterrupted healthcare, public safety and other critical services to its residents. The Executive Order violates the United States

FAQs On County of Santa Clara Lawsuit Challenging Executive Order on “Sanctuary Jurisdictions”

Constitution, directly harms the County’s rights as a political subdivision of the State of California, and threatens the loss of nearly \$1.7 billion in federal and federally dependent funds that are used to provide essential services. Because the vast majority of the County’s federal funding is provided on a reimbursement basis, the County is required to spend its own money first and make fiscal decisions far in advance of receiving federal dollars. President Trump has threatened to withhold federal funds from jurisdictions that do not agree to comply with this illegal Order. Under the Constitution, the President does not have the authority to take away federal funding as a weapon to coerce state and local governments to undertake federal responsibilities. For these reasons, the County Board of Supervisors voted unanimously to bring a lawsuit to protect the County and its residents from this unconstitutional Executive Order.

Q: Who are the parties in the lawsuit?

A: The County is the Plaintiff in the lawsuit. The Defendants are President Trump and his senior officials, including the Secretary of Homeland Security, the Attorney General, and the Director of the Office of Management and Budget (OMB). The lawsuit is being litigated by the Office of the County Counsel in partnership with the law firm of Kecker, Van Nest & Peters LLP, which is representing the County pro bono (free of charge).

Q: What is at stake in the lawsuit?

A: Cutting all federal funds currently provided to the County would not only adversely affect all County residents who rely on County medical services, including trauma care, emergency medical services, law enforcement services, but would also have a devastating impact on infants, children, families, and seniors in need of health care, nutritious food, and housing support. The purpose of the lawsuit is to stop the Trump Administration’s unconstitutional effort to coerce the County to act as an enforcer of the Trump Administration’s federal immigration policy priorities or be stripped of all federal funds.

Q: What federal funds does the County receive?

A: The County receives about \$1.7 billion in federal and federally contingent funds each year. These federal funds support a diverse array of essential services and programs for all County residents, including: Santa Clara Valley Medical Center, the only safety net hospital in Santa Clara County; administration of key federal entitlement programs such as Medicaid, Temporary Assistance for Needy Families, and the Supplemental Nutrition Assistance Program; foster care, adoption assistance, and guardianship placements; basic food and nutrition needs for infants, children, families and seniors; housing and community development; highway planning and construction; and security, intelligence, and counter-terrorism efforts.

Q: What are the causes of action in the lawsuit?

A: The lawsuit asserts four causes of action: a violation of the Separation of Powers; two violations of Due Process under the Fifth Amendment; and a violation of the Tenth Amendment.

FAQs On County of Santa Clara Lawsuit Challenging Executive Order on “Sanctuary Jurisdictions”

Q: What remedy is the County seeking in the lawsuit?

A: The County is seeking two forms of relief: (1) a declaration by a federal court that the Executive Order on “Sanctuary Jurisdictions” is unconstitutional; and (2) an injunction prohibiting the Trump Administration from stripping the County of federal funds.

Q: What is a “sanctuary jurisdiction” under the law?

A: There is no clear definition of “sanctuary jurisdiction” in the Executive Order or in any federal statute. In common parlance, “sanctuary jurisdictions” are broadly defined as jurisdictions that do not use local taxpayer funded resources to perform the federal government’s function of enforcing federal immigration laws and deportation efforts. Importantly, the term “sanctuary” is a misnomer, however, because no local government can prevent the federal government from using its own resources to enforce federal immigration laws. The County has never sought to do so.

Q: Is Santa Clara County a “sanctuary jurisdiction”?

A: The Executive Order does not clearly define what it means by “sanctuary jurisdiction.” And the County certainly does not and cannot prevent federal agents from operating within its borders to enforce federal immigration laws. The U.S. Immigration & Customs Enforcement (ICE) sometimes requests local governments, like the County, to hold immigrants in County jail after their scheduled release dates (ICE detainer requests). The County has a policy of only honoring such requests for individuals with certain serious or violent criminal convictions, and only if ICE will enter into a prior written agreement agreeing to reimburse the County for the costs it incurs in holding immigrants beyond their usual release dates. Currently, the County’s jails operate at or near capacity. ICE has refused to enter into a reimbursement agreement with the County.

Q: Why doesn’t the County just comply with ICE civil detainer requests and other requests for assistance in apprehending immigrants?

A: Law enforcement agencies in the County believe that participating in federal immigration enforcement makes it much more difficult for them to fulfill their role in protecting the safety of our community. Local law enforcement agencies rely on the trust and respect of the community—including immigrant community members—who provide critical information needed to investigate and solve crimes. That trust and cooperation is seriously compromised when local law enforcement are perceived as federal immigration enforcers. This makes it much more difficult for local law enforcement to do their jobs and undermines public safety.

In addition, several courts around the nation have held that compliance with ICE detainer requests violates the Fourth Amendment of the U.S. Constitution, and may also violate other constitutional provisions. Thus, even if the County complied with ICE detainer requests in an attempt to avoid the Executive Order’s provision to strip “sanctuary jurisdictions” of federal funds, the County would expose the taxpayers of Santa Clara County to substantial financial liability.

FAQs On County of Santa Clara Lawsuit Challenging Executive Order on “Sanctuary Jurisdictions”

Q: What is a preliminary injunction?

A: preliminary injunction is a court order, issued in the early stages of a lawsuit, that prevents certain actions from being taken until the court can decide the case. A preliminary injunction is usually granted when the requesting party is likely to succeed at trial and is also likely to be irreparably harmed if the motion is not granted. In effect, a preliminary injunction preserves the status quo until the court has sufficient time to reach a final decision.

Q: Why is the County seeking a preliminary injunction?

A: The County is seeking a preliminary injunction against the Trump Administration because the Executive Order is unconstitutional and is already causing harm to the County and its residents.

The Executive Order threatens to withdraw all federal funding to the County—including reimbursement for services currently being delivered. This threat forces the County to make an impossible choice: (1) continuing to incur hundreds of millions of dollars in service costs that may never be reimbursed by the federal government; (2) slashing these critical health, safety, and welfare services on which all County residents depend; or (3) submitting to the Executive Order’s unconstitutional directives to participate in federal immigration enforcement. The County seeks a preliminary injunction that would block the Trump Administration from stripping the County of federal funds, including those funds that the County is entitled to under existing agreements, until there is sufficient time for a trial on the merits.