



Judge Blocks “Sanctuary Cities” Defunding Order; Trump May Take Case to Supreme Court

On April 25, U.S. District Judge William Orrick III of the U.S. District Court for the Northern District of California blocked the Trump administration’s Executive Order 13768 — to withhold funding from sanctuary cities that limit cooperation with U.S. Immigration and Customs Enforcement authorities.



Orrick wrote in his ruling:

The Constitution vests the spending powers in Congress, not the President, so the Order cannot constitutionally place new conditions on federal funds. Further, the Tenth Amendment requires that conditions on federal funds be unambiguous and timely made; that they bear some relation to the funds at issue; and that the total financial incentive not be coercive.

Federal funding that bears no meaningful relationship to immigration enforcement cannot be threatened merely because a jurisdiction chooses an immigration enforcement strategy of which the President disapproves.

While it is true that Constitution vests spending powers in Congress, Orrick’s above reliance on the 10th Amendment to justify his ruling is novel, at best. The amendment reads: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

The 10th Amendment has long been cherished by strict constitutionalists in matters involving states’ rights. Orrick’s statement that the amendment “requires that conditions on federal funds be unambiguous and timely made” appears to be a product of his own imagination — not the 10th Amendment. Furthermore, the Trump executive order does not authorize any spending, but merely restricts how federal funds may be used.

It would make more sense to claim that the 10th Amendment does not authorize federal grants to local jurisdictions at all — rather than to assert that it prohibits the federal government from denying those grants.

Executive Order 13768, entitled “Enhancing Public Safety in the Interior of the United States,” which Trump signed on January 25, 2017, 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” by the U.S. attorney general or secretary of homeland security.

The White House was quick to respond to Orrick’s ruling, posting a statement the same day it was issued, which read in part:

Today, the rule of law suffered another blow, as an unelected judge unilaterally rewrote immigration policy for our Nation. Federal law explicitly states that “a Federal, State or Local government entity or official may not prohibit, or in any way restrict, any government entity or



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official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.” 8 U.S.C. 1373(a). That means, according to Congress, a city that prohibits its officials from providing information to federal immigration authorities — a sanctuary city — is violating the law.

The statement went on to observe: “Once again, a single district judge — this time in San Francisco — has ignored Federal immigration law to set a new immigration policy for the entire country.” The statement strongly suggested that the Trump administration would challenge the judge’s ruling in the federal court system, taking it to the Supreme Court, if necessary:

This case is yet one more example of egregious overreach by a single, unelected district judge. Today’s ruling undermines faith in our legal system and raises serious questions about circuit shopping. But we are confident we will ultimately prevail in the Supreme Court, just as we will prevail in our lawful efforts to impose immigration restrictions necessary to keep terrorists out of the United States.

In the meantime, we will pursue all legal remedies to the sanctuary city threat that imperils our citizens, and continue our efforts to ramp up enforcement to remove the criminal and gang element from our country.

The above reference to the administration prevailing in its “efforts to impose immigration restrictions necessary to keep terrorists out of the United States” refers to its challenges to two other federal judges — the first in Hawaii and the second in Maryland — who issued rulings blocking all or substantial provisions of President Trump’s March 6 executive order that banned foreign nationals from six countries identified as being state sponsors of terrorism or havens for terrorists.

Only hours before that executive order was to take effect, Judge Derrick Watson of Federal District Court in Honolulu granted a temporary restraining order enjoining the Trump administration from enforcing or implementing two key sections of the order across the nation.

Within hours of Watson’s ruling, U.S. District Judge Theodore D. Chuang in Maryland, though declining to block the executive order in its entirety, issued a nationwide injunction that enjoined the Trump administration from enforcing “the travel ban for citizens of the six Designated Countries in Section 2(c) of the Second Executive Order.”

Section 2(c) reads in part: “I hereby proclaim ... that the unrestricted entry into the United States of nationals of Iran, Libya, Somalia, Sudan, Syria, and Yemen would be detrimental to the interests of the United States. I therefore direct that the entry into the United States of nationals of those six countries be suspended for 90 days from the effective date of this order.”

Both judges asserted that the executive order amounted to religious discrimination against Muslims.

Trump wasted little time before speaking out against Watson’s ruling. Speaking two hours later, on March 15, at Nashville’s Municipal Auditorium, he declared that the court was motivated by “political reasons.”

“We are going to fight this terrible rule,” Trump told those gathered in Nashville. “We are going to take our case as far as it needs to go, including all the way up to the Supreme Court. We are going to win. We are going to keep our citizens safe and regardless, we are going to keep our citizens safe, believe me.”



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