



Written by [Warren Mass](#) on November 22, 2017

Judge Blocks Trump Executive Order Withholding Funds From Sanctuary Cities

For the second time this year, U.S. District Judge William Orrick for the Northern District of California has issued a ruling blocking an executive order from President Trump to deny some federal grants to so-called sanctuary cities. Orrick issued a permanent injunction on November 20 blocking parts of Trump's January 25 Executive Order 13768.

Orrick had previously blocked the order provisionally in April.

"The Counties have demonstrated that the Executive Order has caused and will cause them constitutional injuries by violating the separation of powers doctrine and depriving them of their Tenth and Fifth Amendment rights," Orrick wrote in his order. The counties he referred to were San Francisco and Santa Clara counties in California.

The parts of that order, "Enhancing Public Safety in the Interior of the United States," that Orrick objected to and blocked back in April fall under Section 9: "Sanctuary Jurisdictions. It is the policy of the executive branch to ensure, to the fullest extent of the law, that a State, or a political subdivision of a State, shall comply with 8 U.S.C. 1373."

8 U.S.C. 1373 states, in part:

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or 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.

The order goes on to state the penalty for noncompliance:

(a) In furtherance of this policy, the Attorney General and the Secretary, in their discretion and to the extent consistent with law, shall ensure that jurisdictions that willfully refuse to comply with 8 U.S.C. 1373 (sanctuary jurisdictions) are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary.

Orrick originally blocked parts of the order provisionally on April 25, in response to a lawsuit brought by the city and county of San Francisco and Santa Clara County, both of which asserted that the order was unconstitutional. In that ruling, Orrick employed a constitutional objection, writing:

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





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threatened merely because a jurisdiction chooses an immigration enforcement strategy of which the President disapproves.

As we observed in [our article about Orrick's original ruling in April](#), while it is true that the Constitution vests spending powers in Congress, Orrick's 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."

We noted that the 10th Amendment has long been cherished by strict constitutionalists in matters involving states' rights. However, 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.

In response to Orrick's ruling in April, the White House posted a statement the same day, 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 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."

CNN reported that it was not immediately clear whether the Trump administration was preparing to appeal the ruling, but the Justice Department said it plans to "vindicate the President's lawful authority to direct the executive branch."

CNN quoted this statement from Justice Department spokesman Devin O'Malley: "The District Court exceeded its authority today when it barred the President from instructing his cabinet members to enforce existing law."

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