



Written by [Joe Wolverton, II, J.D.](#) on June 13, 2017

Trump Budget: States Must Comply With Immigration Laws or Lose \$\$

President Donald Trump's [proposed budget](#) may be violating the Constitution in its provisions requiring states to cooperate with federal immigration detention policies.

Specifically, Section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 would be amended to read as follows:



The Secretary of Homeland Security or the Attorney General may condition a grant or cooperative agreement awarded by the Department of Homeland Security or the Department of Justice to a State or political subdivision of a state, for a purpose related to immigration, national security, law enforcement, or preventing, preparing for, protecting against or responding to acts of terrorism, on a requirement that the recipient of the grant or cooperative agreement agrees that it will

(1) Send to the Department of Homeland Security information requested by the Secretary of Homeland Security, or the Secretary's designee, including information related to the nationality, citizenship, immigration status, removability, scheduled release date and time, home address, work address, or contact information, of any individual in custody or suspected of a violation of law, provided that such information is relevant to the enforcement of the immigration laws as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17))."

Furthermore, an additional suggested amendment would prohibit states, counties, and cities from ignoring federal orders to detain those suspected of having entered the country illegally, with the threat of losing federal grant money should they fail to comply.

Does President Trump 's proposed budget violate the Constitution by requiring states to enforce federal immigration detention policies? A second question: Is the Trump budget violating the Constitution by subsidizing local and state government programs including local and state law enforcement? And a third: So long as the federal government is providing the subsidies, does it make sense that it would establish conditions on the use of that money?

The answers to each of those questions is different. Regarding the latter question first, the key principle that must not be overlooked is that he who pays the piper calls the tune. That is not to say that particular tunes should be called or that states must dance to them. States wanting to exercise their



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sovereignty should refuse the federal subsidies, and that includes states that do not want to enforce the Trump budget federal immigration detention policies. In fact, under the Trump budget, states would still be free not to dance to the federal tune, but the money from Washington would be lost.

But why should some states get the federal money while other states do not, particularly considering that the national government does not produce wealth, and what it “gives” to the states comes out of the pockets of the people of the states to begin with? Of course! And this is exactly why both the states and the people should insist that the federal government play only those tunes that are constitutional. That is, all unconstitutional federal aid should be terminated, regardless of states’ positions on federal immigration policy or other matters. Yet, in the debate about whether federal funding can or should be withheld from states that do not enforce federal immigration policies, ending the unconstitutional federal funding programs, and leaving the money in the pockets of the people of the states to begin with, is almost never mentioned. Yet this is really the crux of the matter.

Regardless of the unconstitutionality of so many federal programs, policies, and pronouncements, the states could render all of it — every act of the general government that violates the Constitution — null, void, and of no legal effect. Every state so acting could restore the sovereign barricades separating their people from suffering the devastation — financial and otherwise — brought on by the tyranny of Washington, D.C.

This seems unlikely, though, as every state in the union accepts billions of dollars in grants and other subsidies from the federal government, voluntarily placing themselves in a subordinate and subservient position to the central authority. As it stands today, even the threat of withholding federal grant money — in this case, that tied to committing state and local resources to enforce federal immigration policies — compels state lawmakers and governors to say “how high?” when the president and Congress say “Jump!”

Theresa Cardinal Brown, writing in *Reason*, provides [a summary](#) of the suggested changes present in the Trump budget for Fiscal Year 2018. “Its recently released budget calls Congress to pass laws that would make detainers mandatory and expand the list of federal funds for which immigration cooperation is legally required,” Brown explains. “But even with the blessing of Congress, the law itself would be subject to constitutional challenge because of the 10th Amendment’s anti-commandeering principle.”

Put simply, anti-commandeering prohibits the federal government from forcing states to participate in any federal program that does not concern “international and interstate matters.” Could federal immigration laws be considered “international and interstate matters”? The national borders should be protected against invasion, as mandated by Article IV, Section 4 of the United States Constitution. Many would say that federal immigration laws fall under the category of protecting “against invasion,” while others say this only applies to protecting from a foreign military invasion.

Regardless of the exigencies that may or may not be motivating the Trump administration’s attempt to commandeer state authority, if the Constitution is to be preserved and if the people’s right to govern themselves is to be upheld, then neither the president nor Congress should be allowed to reduce the states to simple administrative subunits of the federal government, even when the federal government intends to use the usurped authority for an arguably constitutional purpose. States could end all of this and take the pipe from the lips of the federal piper, leaving the state governments and the people that reside there free to follow their own path toward liberty, protection, and prosperity.



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