

Congress of the United States

Washington, DC 20515

August 24, 2017

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
Washington, DC 20530

Dear Attorney General Sessions:

We are alarmed that the Department of Justice is placing new and onerous conditions on local law enforcement's access to critical violence prevention funding under the Edward Byrne Memorial Justice Assistance Grant (Byrne-JAG) program. We write to seek an explanation of these new Byrne-JAG conditions and to request answers to important questions regarding their inclusion in the FY 2017 Byrne-JAG Local Solicitation form that was published on August 3.

These conditions are an unwarranted, coercive effort to leverage communities' longstanding reliance on Byrne-JAG funds in furtherance of the Trump Administration's mass-deportation agenda. By forcing local law enforcement to choose between redirecting resources from policing efforts to immigration enforcement or else sacrificing violence prevention funds that the Justice Department itself has described as "critical" and "necessary," these new Byrne-JAG conditions will undermine the ability of local law enforcement agencies to combat gun violence in communities like Chicago and Baltimore.

During your confirmation hearing, you stated under oath that you are "committed" to "addressing the violent crime problem facing Chicago."ⁱ The importance of the Byrne-JAG program to violence prevention efforts cannot be overstated; indeed, the Justice Department's website describes the program as "the leading source of federal justice funding to state and local jurisdictions" and says that Byrne-JAG "provides states, tribes, and local governments with critical funding necessary to support a range of program areas including law enforcement" (emphasis added).ⁱⁱ Additionally, you stated during your confirmation hearing that the Byrne-JAG program is "important for improving public safety" and that you "will seek to best use the resources available to the Department of Justice to address violent and other crimes in Chicago and elsewhere throughout the country, and to partner with state and local law enforcement agencies to help them address these issues."ⁱⁱⁱ And on June 30, you stated that "[t]he most critical factor to our success is the strength, training, and morale of the Chicago Police Department"^{iv} – all of which are fostered through the Chicago Police Department's longstanding participation in the Byrne-JAG program.

Given your commitments and President Trump's repeated statements about the unacceptably high levels of shootings and homicides in communities like Chicago, Baltimore City, and elsewhere, it is inexplicable that the Justice Department under your leadership would jeopardize access to this critical funding. Yet the Justice Department's recently published FY2017 Byrne-JAG Local Solicitation form contains new provisions that would do just that. This solicitation form would condition Byrne-JAG grant awards upon the Department's subjective view of a local jurisdiction's "compliance" with "two new express conditions" that deal with assisting the federal Department of Homeland Security in its enforcement of federal civil immigration laws.^v These new conditions seek to pull local law enforcement agencies away from policing duties and commandeer their time and resources in the service of federal immigration authorities. Local police forces across the country have determined that their community policing and violence prevention efforts would be impeded by this, but the Justice Department appears determined to override these local judgments and impose a one-size-fits-all approach on every local agency that has come to rely on critical Byrne-JAG funding.

Notably, the Justice Department concedes that compliance with these new conditions will impose additional costs on local jurisdictions, stating in the solicitation form that the Department will allow jurisdictions to cover such costs by using their Byrne-JAG grant money.^{vi} The Department has neither itemized these costs, nor explained its authority for redirecting Byrne-JAG funds away from their authorized purposes and toward this new use.

Further, by redirecting crime prevention funds toward immigration enforcement, these new conditions fail to recognize that studies have shown that immigrants in our country are less likely to commit serious crimes than native-born individuals, and that there is no evidence that undocumented immigrants are responsible for any significant proportion of homicides or shootings in Chicago.^{vii} As Chicago Police Superintendent Eddie Johnson said in a recent statement, "I have been a police officer for more than 30 years and the federal government's plans will hamper community policing and undermine the work our men and women have done to reduce shootings by 16% so far this year. I have said it before and I will say it again, undocumented immigrants are not driving violence in Chicago and that's why I want our officers focused on community policing and not trying to be the immigration police." And Baltimore Police Commissioner Kevin Davis has stated, "Public safety depends on all communities, regardless of immigration status, having trust in law enforcement. Without this trust, immigrants may be less likely to communicate with the police, report crimes, or seek assistance upon becoming a victim."^{viii}

It is incumbent on Congress to conduct oversight over the Justice Department's administration of the Byrne-JAG program and the precipitous changes that the Department is making to the program. The Department's new express conditions on the Byrne-JAG program raise important questions that demand prompt answers, particularly in light of the September 5 deadline for applications under the solicitation form. Accordingly, please answer the following questions by September 1, 2017.

1. Please provide the statutory authority for the Justice Department's inclusion of the "two new express conditions" described on p. 30 of the solicitation form.
2. Please provide an itemization of the estimated "reasonable costs" that a Byrne-JAG recipient could expect to incur as a result of its obligation to "honor any duly authorized requests from DHS that is encompassed by these conditions," as described on p. 30 of the solicitation form; and please provide the statutory authority that enables the Justice Department to designate such "reasonable costs" as "allowable costs" under a Byrne-JAG award.
3. Please provide the statutory authority for the Justice Department's statement on p. 30 of the solicitation form that "[c]ompliance with the requirements of the two foregoing new award conditions will be an authorized and priority purpose of the award."
4. Please explain how the Department intends to evaluate "compliance" with the two new express conditions described on p. 30 of the solicitation form.
5. Can the Justice Department guarantee that a local jurisdiction's actions taken to secure "compliance" with the two new express conditions described on p. 30 will not run afoul of the Fourth Amendment to the United States Constitution and that imposition of these conditions does not violate the Tenth Amendment?
6. According to reports, the Justice Department has also conditioned local jurisdictions' eligibility for the Department's Public Safety Partnership (PSP) upon the Department's assessment of compliance with certain immigration policies.^{ix} For example, the Baltimore City Police Department received a letter on August 2nd which suggested that while Baltimore City met the requirements to receive funding via PSP, the City's compliance with federal immigration policies could compromise their funding. These reports indicate that the Department's plans to place new immigration conditions on law enforcement grant funding are not limited to the Byrne-JAG program, and indicate a heightened degree of coerciveness to the Department's actions. Please list each Department of Justice grant, program, or initiative for which the Department has conditioned, or plans to condition, local jurisdictions' participation upon an assessment of compliance with the two new express conditions described on p. 30 of the Byrne-JAG solicitation form.
7. Does the Department of Justice believe that Byrne-JAG funding has helped local law enforcement agencies increase public safety, including by preventing and reducing shootings and homicides in their jurisdictions?
8. On March 6, Chuck Wexler, the executive director of the Police Executive Research Forum, wrote an op-ed in which he said that "police chiefs warn that if their agencies are required to enforce federal immigration laws, it will hurt their ability to investigate and solve serious crimes in their communities. If people are afraid to have contact with the local police, they will not report crime, serve as witnesses, or tell police what is going on in their neighborhoods. Without information from the community, investigating crime becomes difficult and crime levels rise."^x How do the Justice Department's two new express conditions avoid creating this dynamic that Mr. Wexler highlighted?

9. Is the Justice Department able to provide any credible evidence that demonstrates how redirecting local law enforcement resources to enforce civil immigration laws will bring about a significant reduction in shootings and homicides in the City of Chicago? If so, please detail any such evidence.

Thank you for your attention on this important matter. We look forward to your prompt response.

Sincerely,



RICHARD J. DURBIN
United States Senator



TAMMY DUCKWORTH
United States Senator



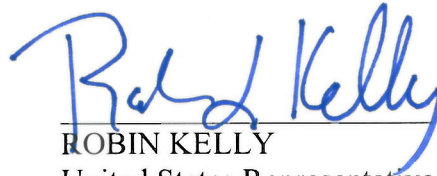
LUIS V. GUTIÉRREZ
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MIKE QUIGLEY
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JAN SCHAKOWSKY
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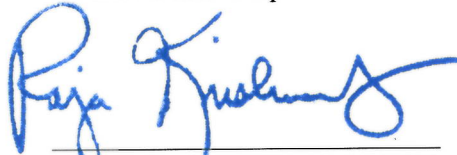
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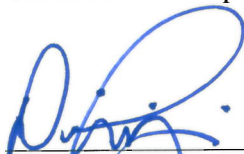
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BRADLEY S. SCHNEIDER
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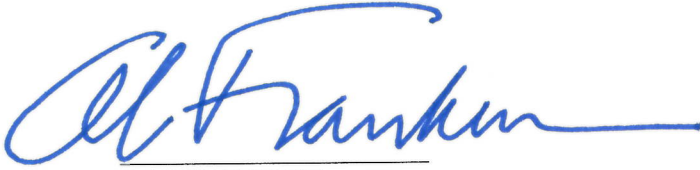
DANIEL LIPINSKI
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PATRICK LEAHY
United States Senator



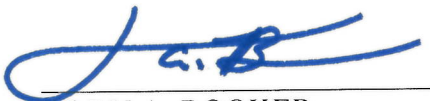
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United States Senator



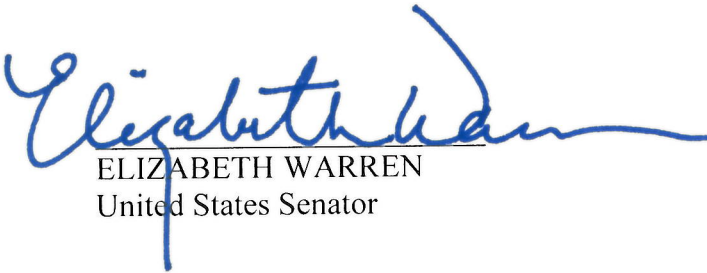
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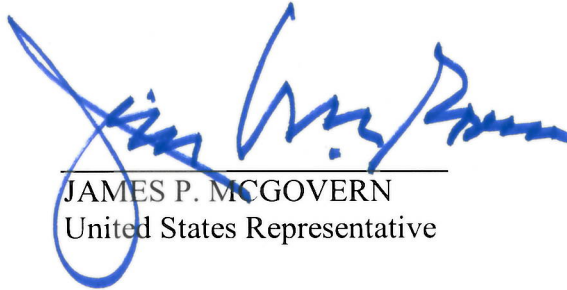
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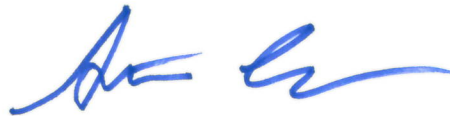
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JAMES P. MCGOVERN
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DINA TITUS
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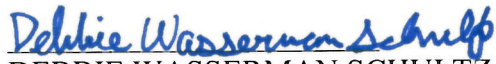
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ELEANOR HOLMES NORTON
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DEBBIE WASSERMAN SCHULTZ
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J. LUIS CORREA
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PRAMILA JAYAPAL
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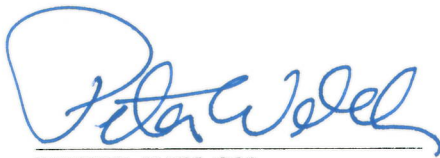
RUBEN GALLEGO
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ALCEE L. HASTINGS
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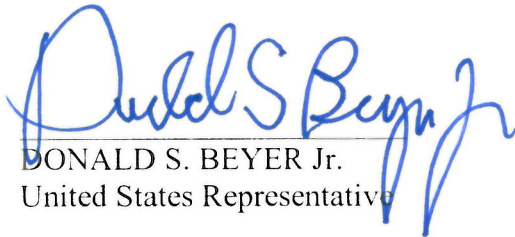
MARK De SAULNIER
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PETER WELCH
United States Representative



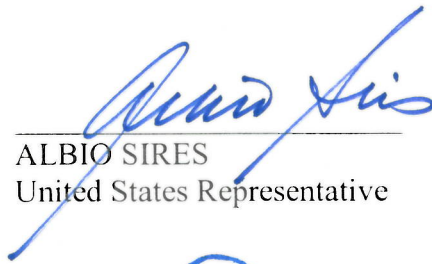
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ADAM SMITH
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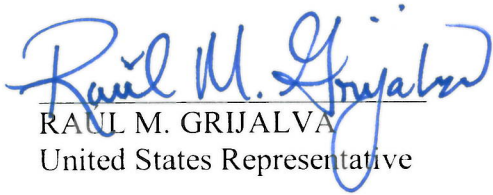
MARK TAKANO
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GRACE MENG
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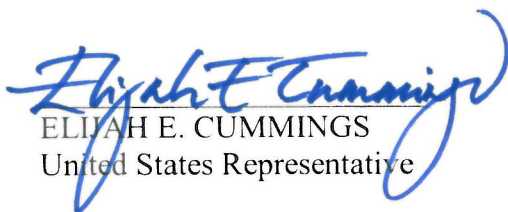
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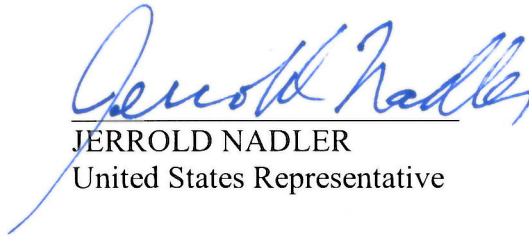
ELIJAH E. CUMMINGS
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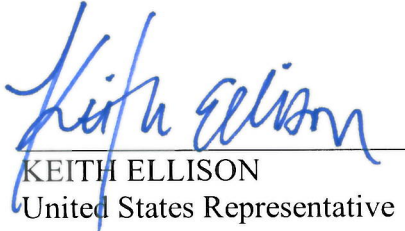
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KEITH ELLISON
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THEODORE E. DEUTCH
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NYDIA M. VELÁZQUEZ
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WILLIAM R. KEATING
United States Representative

ⁱ Sessions Confirmation Hearing Responses to Questions from Senator Durbin, Response 1.a, available at <https://www.judiciary.senate.gov/imo/media/doc/Sessions%20Responses%20to%20Durbin%20QFRs.pdf>.

ⁱⁱ <https://www.bja.gov/jag/index.html>, accessed on August 4, 2017 (emphasis added).

ⁱⁱⁱ Sessions Confirmation Hearing Responses to Questions from Senator Durbin at Response 1.b.

^{iv} <https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-we-cannot-accept-these-levels-violence-chicago>.

^v <https://www.bja.gov/Funding/JAGLocal17.pdf> at p. 30.

^{vi} Id.

^{vii} See, e.g., Rafael Bernal, “Reports find that immigrants commit less crime than US-born citizens,” *The Hill*, March 19, 2017, available at <http://thehill.com/latino/324607-reports-find-that-immigrants-commit-less-crime-than-us-born-citizens>.

^{viii} Kevin Rector, “Davis to DOJ: Making crime assistance contingent on local immigration policy ‘perplexing,’ ‘concerning,’” *The Baltimore Sun*, August 15, 2017, available at: <http://www.baltimoresun.com/news/maryland/crime/bs-md-ci-bpd-justice-letter-20170815-story.html>.

^{ix} Associated Press, “Cities baffled as Jeff Sessions targets them on immigration,” August 3, 2017, available at <http://www.mcclatchydc.com/news/politics-government/national-politics/article165146222.html>.

^x Chuck Wexler, “Police chiefs across the country support sanctuary cities because they keep crime down,” *Los Angeles Times*, March 6, 2017, available at <http://www.latimes.com/opinion/op-ed/la-oe-wexler-sanctuary-cities-immigration-crime-20170306-story.html>.