S.79
Senate Committee on Judiciary
Tues. Feb. 14, 2017

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Rebecca Wasserman
Office of Legislative Council
February 14, 2017

Summary of Immigration-Related Executive Orders

Border Security and Immigration Enforcement Improvements ("Border Security EO") dated January 25, 2017

Construction of a Border Wall: Directs the Department of Homeland Security ("DHS") to fund and construct a border wall on the southern border of the United States (U.S.) and develop a long-term funding mechanism for this project.

Expand Detention Policy and Capacity: expands DHS' detention policies by, among other things, constructing new detention facilities, assigning asylum officers and immigration judges to detention facilities to conduct interviews and removal proceedings, ending the practice of "catch and release," detaining all individuals crossing the southern border, and detaining all aliens apprehended for violations of immigration law.

Expand Expedited Removal: directs DHS to expand use of "expedited removal" (no longer restricted to border regions or unlawful entrants in the U.S. for less than 14 days).

Federal-State Agreements: directs DHS to expand and enter into 287(g) agreements with state and local governments, and permits DHS to structure 287(g) agreements in a manner specific to each jurisdiction.

Removal Proceedings: directs DHS to ensure that individuals arriving by land from Mexico or Canada are returned to their home country pending a formal removal proceeding.

Limits Humanitarian Protection: requires DHS to limit two statutory mechanisms in place for immigrants: (1) "parole" (DHS discretion to stay in U.S or be released from detention for urgent humanitarian grounds or significant public benefit) and (2) "credible fear" determinations for asylum seekers.

Criminal Prosecution of Unlawful Entry: directs the Attorney General to prioritize the prosecution of any offense with a nexus to the southern border.

Enhancing Public Safety in the Interior of the United States ("Interior Enforcement EO") dated January 25, 2017

New Enforcement Priorities: asserts new priorities for enforcing removal of noncitizens.

Civil Fines and Penalties: directs DHS to issue guidance and promulgate regulations to collect penalties it is authorized to collect from unlawfully present noncitizens and "those who facilitate their presence" in the United States.

Additional Immigration and Customs Enforcement (ICE) Resources: directs DHS to hire an additional 10,000 ICE officers to conduct enforcement and removal operations.

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Federal-State Agreements: directs DHS to expand and enter into 287(g) agreements with state and local governments, and permits DHS to structure 287(g) agreements in a manner specific to each jurisdiction.

Sanctuary Jurisdictions: authorizes DHS to designate jurisdictions as "sanctuary jurisdictions," and directs DHS to ensure that any jurisdiction that limits cooperation under 8 U.S.C. § 1373 is not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes.

Increase Immigration Prosecutions: increases funding for criminal prosecutions of foreign nationals crossing the border without inspections.

Reinstate Secure Communities Program: reinstates the Secure Communities Program, which required local law enforcement to share with DHS information about individuals in its custody and authorized DHS to issue detainers to local jails and correctional facilities for the purpose of holding an individual beyond the scheduled release date until ICE takes custody of the individual.

"Recalcitrant" Countries: directs the Secretary of State to ensure that diplomatic efforts and negotiations with other countries include a requirement that foreign states accept the return of their nationals.

Protecting the Nation From Foreign Terrorist Entry Into the United States ("Travel EO") January 27, 2017

Suspension of U.S. Refugee Admissions Program (USRAP): suspends the USRAP for 120 days (with certain exceptions allowed on a case-by-case basis), reduces the number of refugees to be admitted to the U.S. in the coming fiscal year from 110,000 to 50,000, and directs DHS to determine the extent to which state and local jurisdictions can have an increased role in determining the placement or resettlement of refugees in their jurisdiction.

Syrian Refugees: suspends the processing and admission of Syrian refugees until the President determines that sufficient changes have been made to USRAP to ensure admittance of Syrian refugees is consistent with national interest.

Immigration from Countries of Particular Concern: suspends immigrant and nonimmigrant entries for nationals of Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen for at least 90 days.

Suspension of the Visa Waiver Program: suspends the Visa Interview Waiver Program, requiring all nonimmigrant visa applicants to attend an interview if it is required by statute.

Screening Standards and Procedures: directs federal agencies to develop screening standards and procedures for all immigration benefits to identify fraud and detect whether a person intends to do harm.

Biometric Entry-Exit: directs agencies to expedite the completion and implementation of a biometric entry-exit system for all travelers to the United States.

Exec. Order No. 13768, 82 FR 8799, 2017 WL 388889(Pres.)
Executive Order 13768

Enhancing Public Safety in the Interior of the United States

January 25, 2017

***8799** By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq.), and in order to ensure the public safety of the American people in communities across the United States as well as to ensure that our Nation's immigration laws are faithfully executed, I hereby declare the policy of the executive branch to be, and order, as follows:

Section 1. Purpose. Interior enforcement of our Nation's immigration laws is critically important to the national security and public safety of the United States. Many aliens who illegally enter the United States and those who overstay or otherwise violate the terms of their visas present a significant threat to national security and public safety. This is particularly so for aliens who engage in criminal conduct in the United States.

Sanctuary jurisdictions across the United States willfully violate Federal law in an attempt to shield aliens from removal from the United States. These jurisdictions have caused immeasurable harm to the American people and to the very fabric of our Republic.

Tens of thousands of removable aliens have been released into communities across the country, solely because their home countries refuse to accept their repatriation. Many of these aliens are criminals who have served time in our Federal, State, and local jails. The presence of such individuals in the United States, and the practices of foreign nations that refuse the repatriation of their nationals, are contrary to the national interest.

Although Federal immigration law provides a framework for Federal-State partnerships in enforcing our immigration laws to ensure the removal of aliens who have no right to be in the United States, the Federal Government has failed to discharge this basic sovereign responsibility. We cannot faithfully execute the immigration laws of the United States if we exempt classes or categories of removable aliens from potential enforcement. The purpose of this order is to direct executive departments and agencies (agencies) to employ all lawful means to enforce the immigration laws of the United States.

Sec. 2. Policy. It is the policy of the executive branch to:
(a) Ensure the faithful execution of the immigration laws of the United States, including the INA, against all removable aliens, consistent with Article II, Section 3 of the United States Constitution and section 3331 of title 5, United States Code;

(b) Make use of all available systems and resources to ensure the efficient and faithful execution of the immigration laws of the United States;

(c) Ensure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law;

(d) Ensure that aliens ordered removed from the United States are promptly removed; and

(e) Support victims, and the families of victims, of crimes committed by removable aliens.

Sec. 3. Definitions. The terms of this order, where applicable, shall have the meaning provided by section 1101 of title 8, United States Code. ***8800**

Sec. 4. Enforcement of the Immigration Laws in the Interior of the United States. In furtherance of the policy described in section 2 of this order, I hereby direct agencies to employ all lawful means to ensure the faithful execution of the immigration

laws of the United States against all removable aliens.

Sec. 5. Enforcement Priorities. In executing faithfully the immigration laws of the United States, the Secretary of Homeland Security (Secretary) shall prioritize for removal those aliens described by the Congress in sections 212(a)(2), (a)(3), and (a)(6)(C), 235, and 237(a)(2) and (4) of the INA (8 U.S.C. 1182(a)(2), (a)(3), and (a)(6)(C), 1225, and 1227(a)(2) and (4)), as well as removable aliens who:
(a) Have been convicted of any criminal offense;

(b) Have been charged with any criminal offense, where such charge has not been resolved;

(c) Have committed acts that constitute a chargeable criminal offense;

(d) Have engaged in fraud or willful misrepresentation in connection with any official matter or application before a governmental agency;

(e) Have abused any program related to receipt of public benefits;

(f) Are subject to a final order of removal, but who have not complied with their legal obligation to depart the United States; or

(g) In the judgment of an immigration officer, otherwise pose a risk to public safety or national security.

Sec. 6. Civil Fines and Penalties. As soon as practicable, and by no later than one year after the date of this order, the Secretary shall issue guidance and promulgate regulations, where required by law, to ensure the assessment and collection of all fines and penalties that the Secretary is authorized under the law to assess and collect from aliens unlawfully present in the United States and from those who facilitate their presence in the United States.

Sec. 7. Additional Enforcement and Removal Officers. The Secretary, through the Director of U.S. Immigration and Customs Enforcement, shall, to the extent permitted by law and subject to the availability of appropriations, take all appropriate action to hire 10,000 additional immigration officers, who shall complete relevant training and be authorized to perform the law enforcement functions described in section 287 of the INA (8 U.S.C. 1357).

Sec. 8. Federal-State Agreements. It is the policy of the executive branch to empower State and local law enforcement agencies across the country to perform the functions of an immigration officer in the interior of the United States to the maximum extent permitted by law.
(a) In furtherance of this policy, the Secretary shall immediately take appropriate action to engage with the Governors of the States, as well as local officials, for the purpose of preparing to enter into agreements under section 287(g) of the INA (8 U.S.C. 1357(g)).

(b) To the extent permitted by law and with the consent of State or local officials, as appropriate, the Secretary shall take appropriate action, through agreements under section 287(g) of the INA, or otherwise, to authorize State and local law enforcement officials, as the Secretary determines are qualified and appropriate, to perform the functions of immigration officers in relation to the investigation, apprehension, or detention of aliens in the United States under the direction and the supervision of the Secretary. Such authorization shall be in addition to, rather than in place of, Federal performance of these duties.

(c) To the extent permitted by law, the Secretary may structure each agreement under section 287(g) of the INA in a manner that provides the most effective model for enforcing Federal immigration laws for that jurisdiction. ***8801**

Sec. 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.
(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. The Secretary has the authority to designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction. The Attorney General shall take appropriate enforcement action against any entity that violates 8 U.S.C. 1373, or which has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law.

(b) To better inform the public regarding the public safety threats associated with sanctuary jurisdictions, the Secretary shall utilize the Declined Detainer Outcome Report or its equivalent and, on a weekly basis, make public a comprehensive list of criminal actions committed by aliens and any jurisdiction that ignored or otherwise failed to honor any detainers with respect to such aliens.

(c) The Director of the Office of Management and Budget is directed to obtain and provide relevant and responsive information on all Federal grant money that currently is received by any sanctuary jurisdiction.

Sec. 10. Review of Previous Immigration Actions and Policies. (a) The Secretary shall immediately take all appropriate action to terminate the Priority Enforcement Program (PEP) described in the memorandum issued by the Secretary on November 20, 2014, and to reinstitute the immigration program known as "Secure Communities" referenced in that memorandum.
(b) The Secretary shall review agency regulations, policies, and procedures for consistency with this order and, if required, publish for notice and comment proposed regulations rescinding or revising any regulations inconsistent with this order and shall consider whether to withdraw or modify any inconsistent policies and procedures, as appropriate and consistent with the law.

(c) To protect our communities and better facilitate the identification, detention, and removal of criminal aliens within constitutional and statutory parameters, the Secretary shall consolidate and revise any applicable forms to more effectively communicate with recipient law enforcement agencies.

Sec. 11. Department of Justice Prosecutions of Immigration Violators. The Attorney General and the Secretary shall work together to develop and implement a program that ensures that adequate resources are devoted to the prosecution of criminal immigration offenses in the United States, and to develop cooperative strategies to reduce violent crime and the reach of transnational criminal organizations into the United States.

Sec. 12. Recalcitrant Countries. The Secretary of Homeland Security and the Secretary of State shall cooperate to effectively implement the sanctions provided by section 243(d) of the INA (8 U.S.C. 1253(d)), as appropriate. The Secretary of State shall, to the maximum extent permitted by law, ensure that diplomatic efforts and negotiations with foreign states include as a condition precedent the acceptance by those foreign states of their nationals who are subject to removal from the United States.

Sec. 13. Office for Victims of Crimes Committed by Removable Aliens. The Secretary shall direct the Director of U.S. Immigration and Customs Enforcement to take all appropriate and lawful action to establish within U.S. Immigration and Customs Enforcement an office to provide proactive, timely, adequate, and professional services to victims of crimes committed by removable aliens and the family members of such victims. This office shall provide quarterly reports studying the effects of the victimization by criminal aliens present in the United States. ***8802**

Sec. 14. Privacy Act. Agencies shall, to the extent consistent with applicable law, ensure that their privacy policies exclude persons who are not United States citizens or lawful permanent residents from the protections of the Privacy Act regarding personally identifiable information.

Sec. 15. Reporting. Except as otherwise provided in this order, the Secretary and the Attorney General shall each submit to the President a report on the progress of the directives contained in this order within 90 days of the date of this order and again within 180 days of the date of this order.

Sec. 16. Transparency. To promote the transparency and situational awareness of criminal aliens in the United States, the Secretary and the Attorney General are hereby directed to collect relevant data and provide quarterly reports on the following:
(a) the immigration status of all aliens incarcerated under the supervision of the Federal Bureau of Prisons;

(b) the immigration status of all aliens incarcerated as Federal pretrial detainees under the supervision of the United States Marshals Service; and

(c) the immigration status of all convicted aliens incarcerated in State prisons and local detention centers throughout the United States.

Sec. 17. Personnel Actions. The Office of Personnel Management shall take appropriate and lawful action to facilitate hiring personnel to implement this order.

Sec. 18. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.
(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations. ***8803**

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,January 25, 2017.

Exec. Order No. 1376882 FR 87992017 WL 388889(Pres.)

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2017 WL 359824 (White House)

The White House

Office of Communications

EXECUTIVE ORDER: BORDER SECURITY AND IMMIGRATION ENFORCEMENT IMPROVEMENTS

January 25, 2017

*1 The White House

Office of the Press Secretary

For Immediate Release

EXECUTIVE ORDER

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BORDER SECURITY AND IMMIGRATION ENFORCEMENT IMPROVEMENTS

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) (INA), the Secure Fence Act of 2006 (Public Law 109 367) (Secure Fence Act), and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104 208 Div. C) (IIRIRA), and in order to ensure the safety and territorial integrity of the United States as well as to ensure that the Nation's immigration laws are faithfully executed, I hereby order as follows:

Section 1. Purpose. Border security is critically important to the national security of the United States. Aliens who illegally enter the United States without inspection or admission present a significant threat to national security and public safety. Such aliens have not been identified or inspected by Federal immigration officers to determine their admissibility to the United States. The recent surge of illegal immigration at the southern border with Mexico has placed a significant strain on Federal resources and overwhelmed agencies charged with border security and immigration enforcement, as well as the local communities into which many of the aliens are placed.

Transnational criminal organizations operate sophisticated drug- and human-trafficking networks and smuggling operations on both sides of the southern border, contributing to a significant increase in violent crime and United States deaths from dangerous drugs. Among those who illegally enter are those who seek to harm Americans through acts of terror or criminal conduct. Continued illegal immigration presents a clear and present danger to the interests of the United States.

Federal immigration law both imposes the responsibility and provides the means for the Federal Government, in cooperation with border States, to secure the Nation's southern border. Although Federal immigration law provides a robust framework for Federal-State partnership in enforcing our immigration laws and the Congress has authorized and provided appropriations to secure our borders the Federal Government has failed to discharge this basic sovereign responsibility. The purpose of this order is to direct executive departments and agencies (agencies) to deploy all lawful means to secure the Nation's southern border, to prevent further illegal immigration into the United States, and to repatriate illegal aliens swiftly, consistently, and humanely.

Sec. 2. Policy. It is the policy of the executive branch to:

(a) secure the southern border of the United States through the immediate construction of a physical wall on the southern border, monitored and supported by adequate personnel so as to prevent illegal immigration, drug and human trafficking, and acts of terrorism;

*2 (b) detain individuals apprehended on suspicion of violating Federal or State law, including Federal immigration law, pending further proceedings regarding those violations;

(c) expedite determinations of apprehended individuals' claims of eligibility to remain in the United States;

(d) remove promptly those individuals whose legal claims to remain in the United States have been lawfully rejected, after any appropriate civil or criminal sanctions have been imposed; and

(e) cooperate fully with States and local law enforcement in enacting Federal-State partnerships to enforce Federal immigration priorities, as well as State monitoring and detention programs that are consistent with Federal law and do not undermine Federal immigration priorities.

Sec. 3. Definitions. (a) "Asylum officer" has the meaning given the term in section 235(b)(1)(E) of the INA (8 U.S.C. 1225(b)(1)).

(b) "Southern border" shall mean the contiguous land border between the United States and Mexico, including all points of entry.

(c) "Border States" shall mean the States of the United States immediately adjacent to the contiguous land border between the United States and Mexico.

(d) Except as otherwise noted, "the Secretary" shall refer to the Secretary of Homeland Security.

(e) "Wall" shall mean a contiguous, physical wall or other similarly secure, contiguous, and impassable physical barrier.

(f) "Executive department" shall have the meaning given in section 101 of title 5, United States Code.

(g) "Regulations" shall mean any and all Federal rules, regulations, and directives lawfully promulgated by agencies.

(h) "Operational control" shall mean the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.

Sec. 4. Physical Security of the Southern Border of the United States. The Secretary shall immediately take the following steps to obtain complete operational control, as determined by the Secretary, of the southern border:

(a) In accordance with existing law, including the Secure Fence Act and IIRIRA, take all appropriate steps to immediately plan, design, and construct a physical wall along the southern border, using appropriate materials and technology to most effectively achieve complete operational control of the southern border;

(b) Identify and, to the extent permitted by law, allocate all sources of Federal funds for the planning, designing, and constructing of a physical wall along the southern border;

(c) Project and develop long-term funding requirements for the wall, including preparing Congressional budget requests for the current and upcoming fiscal years; and

(d) Produce a comprehensive study of the security of the southern border, to be completed within 180 days of this order, that shall include the current state of southern border security, all geophysical and topographical aspects of the southern border, the availability of Federal and State resources necessary to achieve complete operational control of the southern border, and a strategy to obtain and maintain complete operational control of the southern border.

*3 Sec. 5. Detention Facilities. (a) The Secretary shall take all appropriate action and allocate all legally available resources to immediately construct, operate, control, or establish contracts to construct, operate, or control facilities to detain aliens at or near the land border with Mexico.

(b) The Secretary shall take all appropriate action and allocate all legally available resources to immediately assign asylum officers to immigration detention facilities for the purpose of accepting asylum referrals and conducting credible fear determinations pursuant to section 235(b)(1) of the INA (8 U.S.C. 1225(b)(1)) and applicable regulations and reasonable fear determinations pursuant to applicable regulations.

(c) The Attorney General shall take all appropriate action and allocate all legally available resources to immediately assign immigration judges to immigration detention facilities operated or controlled by the Secretary, or operated or controlled pursuant to contract by the Secretary, for the purpose of conducting proceedings authorized under title 8, chapter 12, subchapter II, United States Code.

Sec. 6. Detention for Illegal Entry. The Secretary shall immediately take all appropriate actions to ensure the detention of aliens apprehended for violations of immigration law pending the outcome of their removal proceedings or their removal from the country to the extent permitted by law. The Secretary shall issue new policy guidance to all Department of Homeland Security personnel regarding the appropriate and consistent use of lawful detention authority under the INA, including the termination of the practice commonly known as "catch and release," whereby aliens are routinely released in the United States shortly after their apprehension for violations of immigration law.

Sec. 7. Return to Territory. The Secretary shall take appropriate action, consistent with the requirements of section 1232 of title 8, United States Code, to ensure that aliens described in section 235(b)(2)(C) of the INA (8 U.S.C. 1225(b)(2)(C)) are returned to the territory from which they came pending a formal removal proceeding.

Sec. 8. Additional Border Patrol Agents. Subject to available appropriations, the Secretary, through the Commissioner of U.S. Customs and Border Protection, shall take all appropriate action to hire 5,000 additional Border Patrol agents, and all appropriate action to ensure that such agents enter on duty and are assigned to duty stations as soon as is practicable.

Sec. 9. Foreign Aid Reporting Requirements. The head of each executive department and agency shall identify and quantify all sources of direct and indirect Federal aid or assistance to the Government of Mexico on an annual basis over the past five years, including all bilateral and multilateral development aid, economic assistance, humanitarian aid, and military aid. Within 30 days of the date of this order, the head of each executive department and agency shall submit this information to the Secretary of State. Within 60 days of the date of this order, the Secretary shall submit to the President a consolidated report reflecting the levels of such aid and assistance that has been provided annually, over each of the past five years.

*4 Sec. 10. Federal-State Agreements. It is the policy of the executive branch to empower State and local law enforcement agencies across the country to perform the functions of an immigration officer in the interior of the United States to the maximum extent permitted by law.

(a) In furtherance of this policy, the Secretary shall immediately take appropriate action to engage with the Governors of the States, as well as local officials, for the purpose of preparing to enter into agreements under section 287(g) of the INA (8 U.S.C. 1357(g)).

(b) To the extent permitted by law, and with the consent of State or local officials, as appropriate, the Secretary shall take appropriate action, through agreements under section 287(g) of the INA, or otherwise, to authorize State and local law enforcement officials, as the Secretary determines are qualified and appropriate, to perform the functions of immigration officers in relation to the investigation, apprehension, or detention of aliens in the United States under the direction and the supervision of the Secretary. Such authorization shall be in addition to, rather than in place of, Federal performance of these duties.

(c) To the extent permitted by law, the Secretary may structure each agreement under section 287(g) of the INA in the manner that provides the most effective model for enforcing Federal immigration laws and obtaining operational control over the border for that jurisdiction.

Sec. 11. Parole, Asylum, and Removal. It is the policy of the executive branch to end the abuse of parole and asylum provisions currently used to prevent the lawful removal of removable aliens.

(a) The Secretary shall immediately take all appropriate action to ensure that the parole and asylum provisions of Federal immigration law are not illegally exploited to prevent the removal of otherwise removable aliens.

(b) The Secretary shall take all appropriate action, including by promulgating any appropriate regulations, to ensure that asylum referrals and credible fear determinations pursuant to section 235(b)(1) of the INA (8 U.S.C. 1125(b)(1)) and 8 CFR 208.30, and reasonable fear determinations pursuant to 8 CFR 208.31, are conducted in a manner consistent with the plain language of those provisions.

(c) Pursuant to section 235(b)(1)(A)(iii)(I) of the INA, the Secretary shall take appropriate action to apply, in his sole and unreviewable discretion, the provisions of section 235(b)(1)(A)(i) and (ii) of the INA to the aliens designated under section 235(b)(1)(A)(iii)(II).

(d) The Secretary shall take appropriate action to ensure that parole authority under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) is exercised only on a case-by-case basis in accordance with the plain language of the statute, and in all circumstances only when an individual demonstrates urgent humanitarian reasons or a significant public benefit derived from such parole.

***5** (e) The Secretary shall take appropriate action to require that all Department of Homeland Security personnel are properly trained on the proper application of section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (8 U.S.C. 1232) and section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)(2)), to ensure that unaccompanied alien children are properly processed, receive appropriate care and placement while in the custody of the Department of Homeland Security, and, when appropriate, are safely repatriated in accordance with law.

Sec. 12. Authorization to Enter Federal Lands. The Secretary, in conjunction with the Secretary of the Interior and any other heads of agencies as necessary, shall take all appropriate action to:

(a) permit all officers and employees of the United States, as well as all State and local officers as authorized by the Secretary, to have access to all Federal lands as necessary and appropriate to implement this order; and

(b) enable those officers and employees of the United States, as well as all State and local officers as authorized by the Secretary, to perform such actions on Federal lands as the Secretary deems necessary and appropriate to implement this order.

Sec. 13. Priority Enforcement. The Attorney General shall take all appropriate steps to establish prosecution guidelines and allocate appropriate resources to ensure that Federal prosecutors accord a high priority to prosecutions of offenses having a nexus to the southern border.

Sec. 14. Government Transparency. The Secretary shall, on a monthly basis and in a publicly available way, report statistical data on aliens apprehended at or near the southern border using a uniform method of reporting by all Department of Homeland Security components, in a format that is easily understandable by the public.

Sec. 15. Reporting. Except as otherwise provided in this order, the Secretary, within 90 days of the date of this order, and the Attorney General, within 180 days, shall each submit to the President a report on the progress of the directives contained in this order.

Sec. 16. Hiring. The Office of Personnel Management shall take appropriate action as may be necessary to facilitate hiring personnel to implement this order.

Sec. 17. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

*6 DONALD J. TRUMP

THE WHITE HOUSE,

January 25, 2017.

2017 WL 359824 (White House)

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Exec. Order No. 13769, 82 FR 8977, 2017 WL 412752(Pres.)
Executive Order 13769

Protecting the Nation From Foreign Terrorist Entry Into the United States

January 27, 2017

***8977** By the authority vested in me as President by the Constitution and laws of the United States of America, including the Immigration and Nationality Act (INA), 8 U.S.C. 1101 et seq., and section 301 of title 3, United States Code, and to protect the American people from terrorist attacks by foreign nationals admitted to the United States, it is hereby ordered as follows:

Section 1. Purpose. The visa-issuance process plays a crucial role in detecting individuals with terrorist ties and stopping them from entering the United States. Perhaps in no instance was that more apparent than the terrorist attacks of September 11, 2001, when State Department policy prevented consular officers from properly scrutinizing the visa applications of several of the 19 foreign nationals who went on to murder nearly 3,000 Americans. And while the visa-issuance process was reviewed and amended after the September 11 attacks to better detect would-be terrorists from receiving visas, these measures did not stop attacks by foreign nationals who were admitted to the United States.

Numerous foreign-born individuals have been convicted or implicated in terrorism-related crimes since September 11, 2001, including foreign nationals who entered the United States after receiving visitor, student, or employment visas, or who entered through the United States refugee resettlement program. Deteriorating conditions in certain countries due to war, strife, disaster, and civil unrest increase the likelihood that terrorists will use any means possible to enter the United States. The United States must be vigilant during the visa-issuance process to ensure that those approved for admission do not intend to harm Americans and that they have no ties to terrorism.

In order to protect Americans, the United States must ensure that those admitted to this country do not bear hostile attitudes toward it and its founding principles. The United States cannot, and should not, admit those who do not support the Constitution, or those who would place violent ideologies over American law. In addition, the United States should not admit those who engage in acts of bigotry or hatred (including "honor" killings, other forms of violence against women, or the persecution of those who practice religions different from their own) or those who would oppress Americans of any race, gender, or sexual orientation.

Sec. 2. Policy. It is the policy of the United States to protect its citizens from foreign nationals who intend to commit terrorist attacks in the United States; and to prevent the admission of foreign nationals who intend to exploit United States immigration laws for malevolent purposes.

Sec. 3. Suspension of Issuance of Visas and Other Immigration Benefits to Nationals of Countries of Particular Concern. (a) The Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, shall immediately conduct a review to determine the information needed from any country to adjudicate any visa, admission, or other benefit under the INA (adjudications) in order to determine that the individual seeking the benefit is who the individual claims to be and is not a security or public-safety threat.
(b) The Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, shall submit to the President y8978a report on the results of the review described in subsection (a) of this section, including the Secretary of Homeland Security's determination of the information needed for adjudications and a list of countries that do not provide adequate information, within 30 days of the date of this order. The Secretary of Homeland Security shall provide a copy of the report to the Secretary of State and the Director of National Intelligence.

(c) To temporarily reduce investigative burdens on relevant agencies during the review period described in subsection (a) of this section, to ensure the proper review and maximum utilization of available resources for the screening of foreign nationals, and to ensure that adequate standards are established to prevent infiltration by foreign terrorists or criminals, pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim that the immigrant and nonimmigrant entry into the United States of aliens from countries referred to in section 217(a)(12) of the INA, 8 U.S.C. 1187(a)(12), would be

detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants and nonimmigrants, of such persons for 90 days from the date of this order (excluding those foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, C-2 visas for travel to the United Nations, and G-1, G-2, G-3, and G-4 visas).

(d) Immediately upon receipt of the report described in subsection (b) of this section regarding the information needed for adjudications, the Secretary of State shall request all foreign governments that do not supply such information to start providing such information regarding their nationals within 60 days of notification.

(e) After the 60-day period described in subsection (d) of this section expires, the Secretary of Homeland Security, in consultation with the Secretary of State, shall submit to the President a list of countries recommended for inclusion on a Presidential proclamation that would prohibit the entry of foreign nationals (excluding those foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, C-2 visas for travel to the United Nations, and G-1, G-2, G-3, and G-4 visas) from countries that do not provide the information requested pursuant to subsection (d) of this section until compliance occurs.

(f) At any point after submitting the list described in subsection (e) of this section, the Secretary of State or the Secretary of Homeland Security may submit to the President the names of any additional countries recommended for similar treatment.

(g) Notwithstanding a suspension pursuant to subsection (c) of this section or pursuant to a Presidential proclamation described in subsection (e) of this section, the Secretaries of State and Homeland Security may, on a case-by-case basis, and when in the national interest, issue visas or other immigration benefits to nationals of countries for which visas and benefits are otherwise blocked.

(h) The Secretaries of State and Homeland Security shall submit to the President a joint report on the progress in implementing this order within 30 days of the date of this order, a second report within 60 days of the date of this order, a third report within 90 days of the date of this order, and a fourth report within 120 days of the date of this order.

Sec. 4. Implementing Uniform Screening Standards for All Immigration Programs. (a) The Secretary of State, the Secretary of Homeland Security, the Director of National Intelligence, and the Director of the Federal Bureau of Investigation shall implement a program, as part of the adjudication process for immigration benefits, to identify individuals seeking to enter the United States on a fraudulent basis with the intent to cause harm, or who are at risk of causing harm subsequent to their admission. This program will include the development of a uniform screening standard and procedure, such as in-person interviews; a database of identity documents proffered by applicants to ensure that duplicate documents are not ***8979** used by multiple applicants; amended application forms that include questions aimed at identifying fraudulent answers and malicious intent; a mechanism to ensure that the applicant is who the applicant claims to be; a process to evaluate the applicant's likelihood of becoming a positively contributing member of society and the applicant's ability to make contributions to the national interest; and a mechanism to assess whether or not the applicant has the intent to commit criminal or terrorist acts after entering the United States.

(b) The Secretary of Homeland Security, in conjunction with the Secretary of State, the Director of National Intelligence, and the Director of the Federal Bureau of Investigation, shall submit to the President an initial report on the progress of this directive within 60 days of the date of this order, a second report within 100 days of the date of this order, and a third report within 200 days of the date of this order.

Sec. 5. Realignment of the U.S. Refugee Admissions Program for Fiscal Year 2017. (a) The Secretary of State shall suspend the U.S. Refugee Admissions Program (USRAP) for 120 days. During the 120-day period, the Secretary of State, in conjunction with the Secretary of Homeland Security and in consultation with the Director of National Intelligence, shall review the USRAP application and adjudication process to determine what additional procedures should be taken to ensure that those approved for refugee admission do not pose a threat to the security and welfare of the United States, and shall implement such additional procedures. Refugee applicants who are already in the USRAP process may be admitted upon the initiation and completion of these revised procedures. Upon the date that is 120 days after the date of this order, the Secretary

of State shall resume USRAP admissions only for nationals of countries for which the Secretary of State, the Secretary of Homeland Security, and the Director of National Intelligence have jointly determined that such additional procedures are adequate to ensure the security and welfare of the United States.
(b) Upon the resumption of USRAP admissions, the Secretary of State, in consultation with the Secretary of Homeland Security, is further directed to make changes, to the extent permitted by law, to prioritize refugee claims made by individuals on the basis of religious-based persecution, provided that the religion of the individual is a minority religion in the individual's country of nationality. Where necessary and appropriate, the Secretaries of State and Homeland Security shall recommend legislation to the President that would assist with such prioritization.

(c) Pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim that the entry of nationals of Syria as refugees is detrimental to the interests of the United States and thus suspend any such entry until such time as I have determined that sufficient changes have been made to the USRAP to ensure that admission of Syrian refugees is consistent with the national interest.

(d) Pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim that the entry of more than 50,000 refugees in fiscal year 2017 would be detrimental to the interests of the United States, and thus suspend any such entry until such time as I determine that additional admissions would be in the national interest.

(e) Notwithstanding the temporary suspension imposed pursuant to subsection (a) of this section, the Secretaries of State and Homeland Security may jointly determine to admit individuals to the United States as refugees on a case-by-case basis, in their discretion, but only so long as they determine that the admission of such individuals as refugees is in the national interest_including when the person is a religious minority in his country of nationality facing religious persecution, when admitting the person would enable the United States to conform its conduct to a preexisting international agreement, or when the person is already in transit and denying admission would cause undue hardship_and it would not pose a risk to the security or welfare of the United States.

The President *8980
(f) The Secretary of State shall submit to the President an initial report on the progress of the directive in subsection (b) of this section regarding prioritization of claims made by individuals on the basis of religious-based persecution within 100 days of the date of this order and shall submit a second report within 200 days of the date of this order.

(g) It is the policy of the executive branch that, to the extent permitted by law and as practicable, State and local jurisdictions be granted a role in the process of determining the placement or settlement in their jurisdictions of aliens eligible to be admitted to the United States as refugees. To that end, the Secretary of Homeland Security shall examine existing law to determine the extent to which, consistent with applicable law, State and local jurisdictions may have greater involvement in the process of determining the placement or resettlement of refugees in their jurisdictions, and shall devise a proposal to lawfully promote such involvement.

Sec. 6. Rescission of Exercise of Authority Relating to the Terrorism Grounds of Inadmissibility. The Secretaries of State and Homeland Security shall, in consultation with the Attorney General, consider rescinding the exercises of authority in section 212 of the INA, 8 U.S.C. 1182, relating to the terrorism grounds of inadmissibility, as well as any related implementing memoranda.

Sec. 7. Expedited Completion of the Biometric Entry-Exit Tracking System. (a) The Secretary of Homeland Security shall expedite the completion and implementation of a biometric entry-exit tracking system for all travelers to the United States, as recommended by the National Commission on Terrorist Attacks Upon the United States.

(b) The Secretary of Homeland Security shall submit to the President periodic reports on the progress of the directive contained in subsection (a) of this section. The initial report shall be submitted within 100 days of the date of this order, a second report shall be submitted within 200 days of the date of this order, and a third report shall be submitted within 365 days of the date of this order. Further, the Secretary shall submit a report every 180 days thereafter until the system is fully deployed and operational.

Sec. 8. Visa Interview Security. (a) The Secretary of State shall immediately suspend the Visa Interview Waiver Program and ensure compliance with section 222 of the INA, 8 U.S.C. 1202, which requires that all individuals seeking a nonimmigrant visa undergo an in-person interview, subject to specific statutory exceptions.

(b) To the extent permitted by law and subject to the availability of appropriations, the Secretary of State shall immediately expand the Consular Fellows Program, including by substantially increasing the number of Fellows, lengthening or making permanent the period of service, and making language training at the Foreign Service Institute available to Fellows for assignment to posts outside of their area of core linguistic ability, to ensure that non-immigrant visa-interview wait times are not unduly affected.

Sec. 9. Visa Validity Reciprocity. The Secretary of State shall review all nonimmigrant visa reciprocity agreements to ensure that they are, with respect to each visa classification, truly reciprocal insofar as practicable with respect to validity period and fees, as required by sections 221(c) and 281 of the INA, 8 U.S.C. 1201(c) and 1351, and other treatment. If a country does not treat United States nationals seeking nonimmigrant visas in a reciprocal manner, the Secretary of State shall adjust the visa validity period, fee schedule, or other treatment to match the treatment of United States nationals by the foreign country, to the extent practicable.

Sec. 10. Transparency and Data Collection. (a) To be more transparent with the American people, and to more effectively implement policies and practices that serve the national interest, the Secretary of Homeland Security, in consultation with the Attorney General, shall, consistent with applicable law and national security, collect and make publicly available within 180 days, and every 180 days thereafter: ***8981**

(i) information regarding the number of foreign nationals in the United States who have been charged with terrorism-related offenses while in the United States; convicted of terrorism-related offenses while in the United States; or removed from the United States based on terrorism-related activity, affiliation, or material support to a terrorism-related organization, or any other national security reasons since the date of this order or the last reporting period, whichever is later;

(ii) information regarding the number of foreign nationals in the United States who have been radicalized after entry into the United States and engaged in terrorism-related acts, or who have provided material support to terrorism-related organizations in countries that pose a threat to the United States, since the date of this order or the last reporting period, whichever is later; and

(iii) information regarding the number and types of acts of gender-based violence against women, including honor killings, in the United States by foreign nationals, since the date of this order or the last reporting period, whichever is later; and

(iv) any other information relevant to public safety and security as determined by the Secretary of Homeland Security and the Attorney General, including information on the immigration status of foreign nationals charged with major offenses.

(b) The Secretary of State shall, within one year of the date of this order, provide a report on the estimated long-term costs of the USRAP at the Federal, State, and local levels.

Sec. 11. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations. ***8982**

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,January 27, 2017.

Exec. Order No. 1376982 FR 89772017 WL 412752(Pres.)

End of Document

United States Code Annotated
Title 8. Aliens and Nationality (Refs & Annos)
Chapter 12. Immigration and Nationality (Refs & Annos)
Subchapter II. Immigration
Part IX. Miscellaneous

8 U.S.C.A. § 1373

§ 1373. Communication between Government agencies and the Immigration and Naturalization Service

Effective: September 30, 1996
Currentness

(a) In general

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.

(b) Additional authority of government entities

Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

(1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.

(2) Maintaining such information.

(3) Exchanging such information with any other Federal, State, or local government entity.

(c) Obligation to respond to inquiries

The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.

CREDIT(S)

(Pub.L. 104-208, Div. C, Title VI, § 642, Sept. 30, 1996, 110 Stat. 3009-707.)

Notes of Decisions (10)

8 U.S.C.A. § 1373, 8 USCA § 1373
Current through P.L. 114-254. Also includes P.L. 114-256 to 114-280, 114-282 to 114-288, 114-290 to 114-314, 114-316, 114-318 to 114-321, 114-325, and 114-326. Title 26 current through 114-329.

End of Document

United States Code Annotated
Title 8. Aliens and Nationality (Refs & Annos)
Chapter 14. Restricting Welfare and Public Benefits for Aliens
Subchapter IV. General Provisions

8 U.S.C.A. § 1644

§ 1644. Communication between State and local government agencies and Immigration and Naturalization Service

Effective: August 22, 1996
Currentness

Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States.

CREDIT(S)

(Pub.L. 104-193, Title IV, § 434, Aug. 22, 1996, 110 Stat. 2275.)

Notes of Decisions (3)

8 U.S.C.A. § 1644, 8 USCA § 1644
Current through P.L. 114-254. Also includes P.L. 114-256 to 114-280, 114-282 to 114-288, 114-290 to 114-314, 114-316, 114-318 to 114-321, 114-324 to 114-326. Title 26 current through 114-329.

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179 F.3d 29
United States Court of Appeals,
Second Circuit.

The CITY OF NEW YORK and Rudolph Giuliani, as Mayor of the City of New York, Plaintiffs–Appellants,

v.

The UNITED STATES of America and Janet Reno, as Attorney General of the United States, Defendants–Appellees.

Docket No. 97–6182
|
Argued June 11, 1998.
|
Decided May 27, 1999.

City of New York brought action for declaratory and injunctive relief against United States, challenging constitutionality of two federal statutes that preempted City executive order prohibiting City officials from voluntarily providing federal authorities with information about immigration status of aliens unless certain conditions were met. The United States District Court for the Southern District of New York, John G. Koeltl, Judge, 971 F.Supp. 789, granted United States' motion for judgment on the pleadings. City appealed. The Court of Appeals, Winter, Chief Judge, held that: (1) statutes did not violate Tenth Amendment, and (2) statutes did not violate guarantee clause.

Affirmed.

West Headnotes (14)

[1] **Federal Courts**
Judgment on the pleadings

District court's grant of motion for judgment on the pleadings is reviewed de novo. Fed.Rules Civ.Proc.Rule 12(c), 28 U.S.C.A.

Cases that cite this headnote

[2] **Constitutional Law**
Facial invalidity

Facial challenge to a legislative act is the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the act would be valid.

3 Cases that cite this headnote

[3] **Constitutional Law**
Overbreadth in General

Because overbreadth doctrine is not recognized outside the limited context of the First Amendment, a showing that a statute might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid. U.S.C.A. Const.Amend. 1.

1 Cases that cite this headnote

[4] **States**
Surrender of state sovereignty and coercion of state

Tenth Amendment limits the power of Congress to regulate by directly compelling states to enact and enforce a federal regulatory program. U.S.C.A. Const.Amend. 10.

Cases that cite this headnote

[5] **States**
Surrender of state sovereignty and coercion of state

However plenary Congress's power to legislate in a particular area may be, the Tenth Amendment prohibits Congress from commanding states to administer a federal regulatory program in that area; moreover, Congress cannot circumvent that prohibition by conscripting state's officers directly. U.S.C.A. Const.Amend. 10.

1 Cases that cite this headnote

[6] **Aliens, Immigration, and Citizenship**

Power to deny admission or remove in general

Aliens, Immigration, and Citizenship

Power to naturalize

Federal government has broad constitutional powers in determining what aliens shall be admitted to the United States, the period they may remain, regulation of their conduct before naturalization, and the terms and conditions of their naturalization.

1 Cases that cite this headnote

[7] **Municipal Corporations**

Political Status and Relations

States

Powers of United States and Infringement on State Powers

Tenth Amendment was not violated by federal statutes that preempted Executive Order prohibiting officials of City of New York from voluntarily providing federal authorities with information about immigration status of aliens unless certain conditions were met; Congress did not compel state and local governments to enact or administer any federal regulatory program, Congress did not affirmatively conscript states or localities into federal government's service, statutes prohibited states from compelling passive resistance to particular federal programs, and City failed to demonstrate impermissible intrusion on state and local power to control information obtained in course of official business or to regulate duties of state and local government employees. U.S.C.A. Const.Amend. 10; Personal Responsibility and Work Opportunity Reconciliation Act of 1996, § 434, 8 U.S.C.A. § 1644; Omnibus Consolidated Appropriations Act, 1997, § 642, 8 U.S.C.A. § 1373.

10 Cases that cite this headnote

[8] **States**

Surrender of state sovereignty and coercion of state

Even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the states to require or prohibit those acts.

Cases that cite this headnote

[9] **States**

Surrender of state sovereignty and coercion of state

Congress may not directly compel states or localities to enact or to administer policies or programs adopted by the federal government.

Cases that cite this headnote

[10] **States**

Powers of United States and Infringement on State Powers

Congress may not directly shift to the states enforcement and administrative responsibilities allocated to the federal government by the Constitution.

Cases that cite this headnote

[11] **States**

Surrender of state sovereignty and coercion of state

While Congress may condition federal funding on state compliance with a federal regulatory scheme or preempt state powers in particular areas, it may not directly force states to assume enforcement or administrative responsibilities constitutionally vested in the federal government; this prohibition stands even if state officials consent to such federal directives.

1 Cases that cite this headnote

[12] **States**

Conflicting or conforming laws or regulations

Supremacy clause bars states from taking actions that frustrate federal laws and

regulatory schemes. U.S.C.A. Const. Art. 6, cl. 2.

Cases that cite this headnote

[13] **States**

Cooperation between state and United States

States do not retain under the Tenth Amendment an untrammeled right to forbid all voluntary cooperation by state or local officials with particular federal programs. U.S.C.A. Const.Amend. 10.

Cases that cite this headnote

[14] **Municipal Corporations**

Political Status and Relations

States

Guaranty by United States of republican form of government

Guarantee clause was not violated by federal statutes that preempted Executive Order prohibiting officials of City of New York from voluntarily providing federal authorities with information about immigration status of aliens unless certain conditions were met; statutes did not alter City's government. U.S.C.A. Const. Art. 4, § 4; Personal Responsibility and Work Opportunity Reconciliation Act of 1996, § 434, 8 U.S.C.A. § 1644; Omnibus Consolidated Appropriations Act, 1997, § 642, 8 U.S.C.A. § 1373.

1 Cases that cite this headnote

Attorneys and Law Firms

*30 Deborah R. Douglas, Assistant Corporation Counsel for the City of New York (Jeffrey D. Friedlander, Acting Corporation Counsel, and Kristin M. Helmers, Assistant Corporation Counsel, of counsel), *31 New York, New York, for Plaintiffs–Appellants.

Martin J. Siegel, Assistant United States Attorney for the Southern District of New York (Mary Jo White, United States Attorney, and Sara L. Shudofsky, Assistant United States Attorney, of counsel), New York, New York, for Defendants–Appellees.

Helaine Barnett, The Legal Aid Society (Scott A. Rosenberg, Hwan–Hui Helen Lee, of counsel), New York, New York, for Amicus Curiae The Legal Aid Society in support of Plaintiffs–Appellants.

B e f o r e: WINTER, Chief Judge, WALKER, and JACOBS, Circuit Judges.

Opinion

WINTER, Chief Judge:

The City of New York prohibits its employees from voluntarily providing federal immigration authorities with information concerning the immigration status of any alien. In 1996, Congress passed Section 434 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("Welfare Reform Act"), Pub.L. No. 104–193, 110 Stat. 2105 (1996), and Section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("Immigration Reform Act"), Pub.L. No. 104–208, 110 Stat. 3009 (1996). These Sections prohibit state and local governments from limiting their employees in the voluntary provision of information about the immigration status of aliens to the Immigration and Naturalization Service ("INS"). The City and Mayor Rudolph Giuliani (collectively, "the City") appeal from Judge Koeltl's dismissal of their action challenging the facial constitutionality of those enactments. We hold that both Sections survive the City's facial challenge and therefore affirm.

BACKGROUND

In August 1989, Edward Koch, then New York City's mayor, issued Executive Order No. 124. The Order prohibits any City officer or employee from transmitting information regarding the immigration status of any individual to federal immigration authorities unless: (i) such employee's agency is required by law to disclose such information, (ii) an alien explicitly authorizes a City agency to verify his or her immigration status, or (iii) an alien is suspected by a City agency of engaging in criminal behavior.[1] However, even if a *32 City agency's line workers suspect an alien of criminal activity, the Executive

Order prohibits them from transmitting information regarding such alien directly to the federal authorities. Instead, it requires each agency to designate certain officers or employees to receive reports on suspected criminal activity from line workers and to determine on a case by case basis what action, if any, to take on such reports. Mayor Koch's successors, David Dinkins and Rudolph Giuliani, have reissued the Executive Order.

On August 22, 1996, the President signed the Welfare Reform Act into law. Section 434, entitled "Communication between State and Local Government Agencies and the Immigration and Naturalization Service," provides that no state or local government entity may be restricted from exchanging information with the INS regarding the immigration status, lawful or unlawful, of individuals in the United States.[2] The Conference Report accompanying the bill explained: "The conferees intend to give State and local officials the authority to communicate with the INS regarding the presence, whereabouts, or activities of illegal aliens.... The conferees believe that immigration law enforcement is as high a priority as other aspects of Federal law enforcement, and that illegal aliens do not have the right to remain in the United States undetected and unapprehended." H.R. Conf. Rep. No. 104–725, at 383 (1996), *reprinted in* 1996 U.S.C.C.A.N. 2183, 2649, 2771.

On September 30, 1996, the Immigration Reform Act was signed into law. Section 642, entitled "Communication between Government Agencies and the Immigration and the Naturalization Service," expands Section 434 by prohibiting any government entity or official from restricting any other government entity or official from exchanging information with the INS about the immigration or citizenship status of any individual. It further provides that no governmental agency—federal, state, or local—may be prohibited from: (i) exchanging such information with the INS; (ii) maintaining such information; or (iii) exchanging such information with any other federal, state, or local government entity.[3] The Report of the Senate Judiciary Committee accompanying the Senate Bill explained that the "acquisition, maintenance, and exchange of immigration-related information by State and local agencies is consistent with, and potentially of considerable *33 assistance to, the Federal regulation of immigration and the achieving of the purposes and objectives of the Immigration and Nationality Act." S.Rep. No. 104–249, at 19–20 (1996).

Eleven days after the Immigration Reform Act was signed by the President, the City commenced this action against the United States (the "Government") for declaratory and injunctive relief, claiming that Sections 434 and 642 do not invalidate the City's Executive Order because they are facially unconstitutional. Specifically, the City contended that Sections 434 and 642, which are directed at state and local government entities (or officials) and not private parties, violate the Tenth Amendment because they directly forbid state and local government entities from controlling the use of information regarding the immigration status of individuals obtained in the course of their official business. The City maintained further that such interference with a state's control over its own workforce—*i.e.,* over its power to determine the duties of its employees with regard to confidential information that the employees acquire in their official capacity—lies outside Congress's plenary power over immigration. Finally, the City argued that Sections 434 and 642 violate the Guarantee Clause of Article IV of the Constitution.

After both parties moved for judgment on the pleadings under Fed.R.Civ.P. 12(c), the district court granted the Government's motion and dismissed the City's claims, holding that Sections 434 and 642 violate neither the Tenth Amendment nor the Guarantee Clause. This appeal followed.

DISCUSSION

[1] We review *de novo* a district court's dismissal of a complaint under Fed.R.Civ.P. 12(c). *See Sheppard v. Beerman,* 94 F.3d 823, 827 (2d Cir.1996).

[2] **[3]** The City's burden in this case is substantial. As the Supreme Court has noted, "[a] facial challenge to a legislative Act is ... the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno,* 481 U.S. 739, 745, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987). Because the Supreme Court has not recognized an "overbreadth" doctrine outside the limited context of the First Amendment, a showing that a statute "might operate unconstitutionally under some conceivable set of circumstances is insufficient

to render it wholly invalid." *General Elec. Co. v. New York State Dep't of Labor,* 936 F.2d 1448, 1456 (2d Cir.1991); *accord United States v. Sage,* 92 F.3d 101, 106 (2d Cir.1996).

A. *The Tenth Amendment Claim*

[4] **[5]** The Tenth Amendment provides that "[t]he 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." U.S. Const. amend. X. In *New York v. United States,* 505 U.S. 144, 157, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992), the Supreme Court viewed the Tenth Amendment as "confirm[ing] that the power of the Federal Government is subject to limits that may, in a given instance, reserve power to the States." For example, the Tenth Amendment limits the power of Congress to regulate by " 'directly compelling [states] to enact and enforce a federal regulatory program.' " *Id.* at 161, 112 S.Ct. 2408 (quoting *Hodel v. Virginia Surface Mining and Reclamation Ass'n,* 452 U.S. 264, 288, 101 S.Ct. 2352, 69 L.Ed.2d 1 (1981)). State governments, the Court explained, are not federal regulatory agencies. *See id.* at 163, 178, 112 S.Ct. 2408. Thus, however plenary Congress's power to legislate in a particular area may be, the Tenth Amendment prohibits Congress from commanding states to administer a federal regulatory program in that area. Moreover, "Congress cannot circumvent that prohibition by conscripting the State's ***34** officers directly." *Printz v. United States,* 521 U.S. 898, 117 S.Ct. 2365, 2384, 138 L.Ed.2d 914 (1997).

[6] **[7]** The City does not dispute that Congress has plenary power to legislate on the subject of aliens. As the Supreme Court explained in *Takahashi v. Fish and Game Commission*:

> The Federal Government has broad constitutional powers in determining what aliens shall be admitted to the United States, the period they may remain, regulation of their conduct before naturalization, and the terms and conditions of their naturalization.

334 U.S. 410, 419, 68 S.Ct. 1138, 92 L.Ed. 1478 (1948); *see also Hines v. Davidowitz,* 312 U.S. 52, 66, 61 S.Ct. 399, 85 L.Ed. 581 (1941) ("the regulation of aliens is so intimately blended and intertwined with responsibilities of the national government" that federal policy in this area always takes precedence over state policy). Rather, the City asserts that the Tenth Amendment prohibits Congress from exercising its power to regulate aliens in a way that forbids states and localities from enacting laws that essentially restrict state and local officials from cooperating in the federal regulation of aliens, even on a voluntary basis.

The City's Tenth Amendment claim rests on two basic arguments. The first is that the scope of state sovereignty under the Amendment includes the power to choose not to participate in federal regulatory programs and that such power in turn includes the authority to forbid state or local agencies, officials, and employees from aiding such a program even on a voluntary basis. The second argument is that the federal government may not use its powers to legislate in certain areas to disrupt the actual operation of state and local government by, for example, regulating the use of state and local resources—here officially-acquired information—and/or the duties or responsibilities of state and local employees.

The City's scope-of-state-sovereignty argument relies principally upon language in *Printz,* 117 S.Ct. at 2384, and *New York,* 505 U.S. at 168, 112 S.Ct. 2408, that suggests that states may not be denied a bona fide choice as to whether or not to participate in a federal regulatory program. In the City's view, such a choice includes the power to forbid even voluntary cooperation by state and local officials and workers in such a federal program. We do not read these cases so broadly.

[8] **[9]** **[10]** **[11]** Unlike Sections 434 and 642, the federal programs in *Printz* and *New York* conscripted states (or their officers) to enact or administer federal regulatory programs. *See Printz,* 117 S.Ct. at 2376 (distinguishing federal directives to states that "require only the provision of information to the Federal Government" from those that "force[ ][the] participation of the States' executive in the actual administration of a federal program," even though both kinds of directive leave states with no "choice" but to comply). The central teaching of these cases is that "even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts." *New York,* 505 U.S. at 166, 112 S.Ct. 2408. Congress may not, therefore, directly compel states or localities

to enact or to administer policies or programs adopted by the federal government. It may not directly shift to the states enforcement and administrative responsibilities allocated to the federal government by the Constitution. Such a reallocation would not only diminish the political accountability of both state and federal officers, *see New York,* 505 U.S. at 168, 112 S.Ct. 2408; *Printz,* 117 S.Ct. at 2382, but it would also "compromise the structural framework of dual sovereignty," *Printz,* 117 S.Ct. at 2383, and separation of powers, *see id.* at 2378 ("[T]he power of the President would be subject to reduction, if Congress could act as effectively without the President as with him, by simply requiring ***35** state officers to execute its laws."). Thus, while Congress may condition federal funding on state compliance with a federal regulatory scheme or preempt state powers in particular areas, *see New York,* 505 U.S. at 166–68, 112 S.Ct. 2408, it may not directly force states to assume enforcement or administrative responsibilities constitutionally vested in the federal government.[4]

In the case of Sections 434 and 642, Congress has not compelled state and local governments to enact or administer any federal regulatory program. Nor has it affirmatively conscripted states, localities, or their employees into the federal government's service. These Sections do not directly compel states or localities to require or prohibit anything. Rather, they prohibit state and local governmental entities or officials only from directly restricting the voluntary exchange of immigration information with the INS. *See Printz,* 117 S.Ct. at 2376.

The City's sovereignty argument asks us to turn the Tenth Amendment's shield against the federal government's using state and local governments to enact and administer federal programs into a sword allowing states and localities to engage in passive resistance that frustrates federal programs. If Congress may not forbid states from outlawing even voluntary cooperation with federal programs by state and local officials, states will at times have the power to frustrate effectuation of some programs. Absent any cooperation at all from local officials, some federal programs may fail or fall short of their goals unless federal officials resort to legal processes in every routine or trivial matter, often a practical impossibility. For example, resistance to *Brown v. Board of Education,* 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), was often in the nature of a refusal by local government to cooperate until under a court order to do so.

[12] A system of dual sovereignties cannot work without informed, extensive, and cooperative interaction of a voluntary nature between sovereign systems for the mutual benefit of each system. The operation of dual sovereigns thus involves mutual dependencies as well as differing political and policy goals. Without the Constitution, each sovereign could, to a degree, hold the other hostage by selectively withholding voluntary cooperation as to a particular program(s). The potential for deadlock thus inheres in dual sovereignties, but the Constitution has resolved that problem in the Supremacy Clause, which bars states from taking actions that frustrate federal laws and regulatory schemes. *See Barnett Bank v. Nelson,* 517 U.S. 25, 31, 116 S.Ct. 1103, 134 L.Ed.2d 237 (1996) (citing *Hines v. Davidowitz,* 312 U.S. 52, 67, 61 S.Ct. 399, 85 L.Ed. 581 (1941)).

[13] We therefore hold that states do not retain under the Tenth Amendment an untrammeled right to forbid all voluntary cooperation by state or local officials with particular federal programs. Given that the City's challenge to Sections 434 and 642 is facial and that the Executive Order is on its face a mandatory non-cooperation directive relating solely to a particular federal program, we need not locate with precision the line between invalid federal measures that seek to impress state and local governments into the administration of federal programs and valid federal measures that prohibit states from compelling passive resistance to particular federal programs. It suffices to say that, at least in the context of the City's facial challenge, Sections 434 and 642 are of the latter variety.

***36** We turn now to the argument that Sections 434 and 642 offend the Tenth Amendment because they interfere with the operations of state and local government by regulating: (i) the use of confidential information that state and local governments acquire in the course of official business and that therefore belongs to the particular governmental entity and (ii) the scope and nature of the duties of employees of state and local governments regarding such information.

In support of its position regarding interference with the use of officially acquired information, the City argues that *Printz* invalidated certain provisions of the Brady Handgun Violence Prevention Act on the ground that "[t]he Brady Act does not merely require [chief

law enforcement officers] to report information in their private possession ... [but also] requires them to provide *information that belongs to the State and is available to them only in their official capacity.*" *Printz,* 117 S.Ct. at 2383 n. 17 (emphasis added). Thus, the City argues, although Sections 434 and 642 do not require any state or local official to provide the INS with information that belongs to state and local government, these provisions nevertheless eviscerate its control over such information.

With regard to its argument concerning its power to direct its workforce, the City argues that inherent in our dual-sovereignty system is the power of state and local governments to determine the duties and responsibilities of their employees. In particular, it relies on *Gregory v. Ashcroft*, which stated:

> [t]hrough the structure of its government, and the character of those who exercise government authority, a State defines itself as a sovereign. "It is obviously essential to the independence of the States, and to their peace and tranquility, that their power to prescribe the qualifications of their own officers ... should be exclusive, and free from external interference, except so far as plainly provided by the Constitution of the United States."

501 U.S. 452, 460, 111 S.Ct. 2395, 115 L.Ed.2d 410 (1991) (quoting *Taylor v. Beckham,* 178 U.S. 548, 570–71, 20 S.Ct. 890, 44 L.Ed. 1187 (1900)). Moreover, "[w]hatever the outer limits of state sovereignty may be, it surely encompasses the right to set the duties of office for state-created officials and to regulate the internal affairs of governmental bodies." *Koog v. United States,* 79 F.3d 452, 460 (5th Cir.1996).

The City's concerns are not insubstantial. The obtaining of pertinent information, which is essential to the performance of a wide variety of state and local governmental functions, may in some cases be difficult or impossible if some expectation of confidentiality is not preserved. Preserving confidentiality may in turn require that state and local governments regulate the use of such information by their employees. Finally, it is undeniable that Sections 434 and 642 do interfere with the City's control over confidential information obtained in the course of municipal business and over its employees' use of such information.

Nevertheless, the City has chosen to litigate this issue in a way that fails to demonstrate an impermissible intrusion on state and local power to control information obtained in the course of official business or to regulate the duties and responsibilities of state and local governmental employees. On the present record, the only state and local policy proffered by the City as disrupted by Sections 434 and 642 is the Executive Order described above. The City's facial challenge thus rests entirely on the interference of Sections 434 and 642 with that Executive Order and that Order alone.

The Executive Order is not a general policy that limits the disclosure of confidential information to only specific persons or agencies or prohibits such dissemination generally. Rather, it applies only to information *37 about immigration status and bars City employees from voluntarily providing such information only to federal immigration officials. On its face, it singles out a particular federal policy for non-cooperation while allowing City employees to share freely the information in question with the rest of the world. It imposes a policy of no-voluntary-cooperation that does not protect confidential information generally but does operate to reduce the effectiveness of a federal policy. For example, the City argues that the Executive Order is essential to the provision of municipal services and to the reporting of crimes because these governmental functions often require the obtaining of information from aliens who will be reluctant to give it absent assurances of confidentiality. But again, the Executive Order does not on its face prevent the sharing of information with anyone outside the INS.

At oral argument, the panel invited the City to inform us whether the information covered by the Executive Order might in fact be subject to other confidentiality provisions that would prevent its dissemination generally. If so, the Executive Order might be viewed more as an explanatory measure designed to reassure aliens that information they might impart was truly confidential, even from the INS. In that context, the Executive Order might seem more integral to the operation of City government, and Sections 434 and 642 might seem more intrusive. We invited the City to inform us by letter of other such confidentiality policies. However, the City's response provided us only with a list of policies that might or might not protect information about immigration status. Noting that "[e]xisting confidentiality statutes and regulations are numerous and ... pervasive throughout State and City

government," Appellants' Post–Argument Letter Brief at 1, the City's letter left it to us to determine the answer to our inquiry. We decline the task and limit our inquiry solely to the facial effect of Sections 434 and 642 on the Executive Order.

Given the circumscribed nature of our inquiry, we uphold Sections 434 and 642. Essentially, the foregoing discussion relating to the power of states to command passive resistance to federal programs governs the analysis here. The effect of those Sections here is to nullify an Order that singles out and forbids voluntary cooperation with federal immigration officials. Whether these Sections would survive a constitutional challenge in the context of generalized confidentiality policies that are necessary to the performance of legitimate municipal functions and that include federal immigration status is not before us and we offer no opinion on that question.

B. *The Republican Form of Government Claim*

[14] The City also contends that Sections 434 and 642 violate the Constitution's Guarantee Clause, which provides: "The United States shall guarantee to every State in this Union a Republican Form of Government." *U.S. Const. art. IV, § 4.* The City argues that by denying it the opportunity to enact and enforce its Executive Order, Sections 434 and 642 impermissibly interfere with the City's republican form of government.

Even assuming the justiciability of this claim, *cf. New York,* 505 U.S. at 183–86, 112 S.Ct. 2408, for the reasons stated above, we find on this record that Section 434's and 642's interference with the city's Executive Order is entirely permissible and in no way alters the form of New York City's government.

We therefore affirm.

All Citations

179 F.3d 29

Footnotes

1 Executive Order 124 provides in pertinent part:

> Section 2. Confidentiality of Information Respecting Aliens.
>
> a. No City officer or employee shall transmit information respecting any alien to federal immigration authorities unless
>
> (1) such officer's or employee's agency is required by law to disclose information respecting such alien, or
>
> (2) such agency has been authorized, in writing signed by such alien, to verify such alien's immigration status, or
>
> (3) such alien is suspected by such agency of engaging in criminal activity, including an attempt to obtain public assistance benefits through the use of fraudulent documents.
>
> b. Each agency shall designate one or more officers or employees who shall be responsible for receiving reports from such agency's line workers on aliens suspected of criminal activity and for determining, on a case by case basis, what action, if any, to take on such reports. No such determination shall be made by any line worker, nor shall any line worker transmit information respecting any alien directly to federal immigration authorities.
>
> c. Enforcement agencies, including the Police Department and the Department of Correction, shall continue to cooperate with federal authorities in investigating and apprehending aliens suspected of criminal activity. However, such agencies shall not transmit to federal authorities information respecting any alien who is the victim of a crime.
>
> Section 3. Availability of City Services to Aliens.
>
> Any service provided by a City agency shall be made available to all aliens who are otherwise eligible for such service unless such agency is required by law to deny eligibility for such service to aliens. Every City agency shall encourage aliens to make use of those services provided by such agency for which aliens are not denied eligibility by law.

2 Section 434 provides:

> Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States.

3 Section 642 of the Immigration Reform Act provides:

> (a) IN GENERAL.—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.

(b) ADDITIONAL AUTHORITY OF GOVERNMENT ENTITIES.—Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

(1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.

(2) Maintaining such information.

(3) Exchanging such information with any other Federal, State, or local government entity.

(c) OBLIGATION TO RESPOND TO INQUIRIES.—The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.

4 This prohibition stands even if state officials "consent" to such federal directives. *See New York,* 505 U.S. at 182, 112 S.Ct. 2408 ("Where Congress exceeds its authority relative to the States, ... the departure from the constitutional plan cannot be ratified by the 'consent' of state officials.... State officials thus cannot consent to the enlargement of the powers of Congress beyond those enumerated in the Constitution."). Again, "consent" and "choice" are not, by themselves, significant for purposes of Tenth Amendment analysis.

End of Document

VERMONT **GENERAL ASSEMBLY**

The Vermont Statutes Online

Title 20 : Internal Security And Public Safety

Chapter 151 : Vermont Criminal Justice Training Council

(Cite as: 20 V.S.A. § 2366)

§ 2366. Law enforcement agencies; fair and impartial policing policy; race data collection

(a) On or before January 1, 2016, the Criminal Justice Training Council, in consultation with stakeholders, including the Vermont League of Cities and Towns, the Vermont Human Rights Commission, and Migrant Justice, shall create a model fair and impartial policing policy. On or before July 1, 2016, every State, local, county, and municipal law enforcement agency and every constable who exercises law enforcement authority pursuant to 24 V.S.A. § 1936a and who is trained in compliance with section 2358 of this title shall adopt a fair and impartial policing policy that includes, at a minimum, the elements of the Criminal Justice Training Council model policy.

(b) If a law enforcement agency or constable that is required to adopt a policy pursuant to subsection (a) of this section fails to do so on or before July 1, 2016, that agency or constable shall be deemed to have adopted, and shall follow and enforce, the model policy issued by the Criminal Justice Training Council.

(c) On or before September 15, 2014, and annually thereafter as part of their annual training report to the Council, every State, county, and municipal law enforcement agency and every constable who exercises law enforcement authority pursuant to 24 V.S.A. § 1936a and who is trained in compliance with section 2358 of this title shall report to the Council whether the agency or officer has adopted a fair and impartial policing policy in accordance with subsections (a) and (b) of this section. The Criminal Justice Training Council shall determine, as part of the Council's annual certification of training requirements, whether current officers have received training on fair and impartial policing as required by 20 V.S.A. § 2358(e).

(d) On or before October 15, 2014, and annually thereafter on April 1, the Criminal Justice Training Council shall report to the House and Senate Committees on Judiciary which departments and officers have adopted a fair and impartial policing policy, and whether officers have received training on fair and impartial policing.

(e)(1) On or before September 1, 2014, every State, county, and municipal law enforcement agency shall collect roadside stop data consisting of the following:

(A) the age, gender, and race of the driver;

(B) the reason for the stop;

(C) the type of search conducted, if any;

(D) the evidence located, if any; and

(E) the outcome of the stop, including whether:

(i) a written warning was issued;

(ii) a citation for a civil violation was issued;

(iii) a citation or arrest for a misdemeanor or a felony occurred; or

(iv) no subsequent action was taken.

(2) Law enforcement agencies shall work with the Criminal Justice Training Council and a vendor chosen by the Council with the goals of collecting uniform data, adopting uniform storage methods and periods, and ensuring that data can be analyzed. Roadside stop data, as well as reports and analysis of roadside stop data, shall be public.

(3) On or before September 1, 2016 and annually thereafter, law enforcement agencies shall provide the data collected under this subsection to the vendor chosen by the Criminal Justice Training Council under subdivision (2) of this subsection or, in the event the vendor is unable to continue receiving data under this section, to the Council. Law enforcement agencies shall provide the data collected under this subsection in an electronic format specified by the receiving entity.

(4) The data provided pursuant to subdivision (3) of this subsection shall be posted electronically in a manner that is analyzable and accessible to the public on the receiving agency's website. (Added 2011, No. 134 (Adj. Sess.), § 2; amended 2013, No. 193 (Adj. Sess.), § 3, eff. June 17, 2014; 2015, No. 147 (Adj. Sess.), § 26, eff. May 31, 2016.)