

Q&A With Pro Bono Lawyer Who Helped Block Trump's Sanctuary EO

By Ross Todd

SAN FRANCISCO — U.S. District Judge William Orrick III blocked the Trump administration Tuesday from enforcing its threat to withhold federal funds from sanctuary cities. The nationwide injunction was a win for lawyers for Santa Clara County and their pro bono counsel at Kecker Van Nest & Peters, as well as the San Francisco city attorney's office.

San Francisco filed the first lawsuit Jan. 31 challenging President Donald Trump's executive order targeting about 300 communities that decline to cooperate with federal immigration officials in aiding deportation. Santa Clara County and Kecker followed suit shortly thereafter, upping the ante by asking for the nationwide injunction. Kecker's Cody Harris, who worked on the case alongside partners John Kecker and Daniel Purcell and associates Nicholas Goldberg and Edward



Cody Harris, Kecker, Van Nest & Peters

courtesy photo

Bayley, spoke with The Recorder shortly after Orrick's decision was handed down Tuesday to discuss the firm's work so far and what's ahead in the underlying case.

How did the firm get the call on this lawsuit?

Cody Harris: One of the folks on the county counsel's team reached out to me and asked if we'd get involved.

Is the firm handling it pro bono?

CH: We are.

So why did the firm care enough to get involved in this way?

CH: Obviously it has a huge impact on a lot of people. The County of Santa Clara has 1.9 million residents in it and this executive order was threatening defunding on a vast scale

that would affect everything from health and social services, really you name it. Obviously when people talk about the case they're discussing it in the context of immigration and sanctuary jurisdictions, which is an important issue. But the case is broader than that. It's about executive power. It's about the power of the president and whether the president has to follow the Constitution.

This executive order was really striking. I don't think any of us had seen anything like it. It purported to give the president power that belongs to Congress. It really shattered the barriers between the legislative and the executive branch. It raised significant federalism concerns. It really ran the gamut of unconstitutionality.

Did anything stand out at oral argument?

CH: I think what was most interesting about it was the Department of Justice attorney for the first time at the hearing offered a completely new interpretation of the order that he said was simply a plain text reading of the order. But there was nothing supporting it, it wasn't in their brief and it wasn't even written down. We were listening to it, in many ways, for the first time there in the courtroom. [Laughs.] And

we had to deal with it then and there.

The interpretation that the Department of Justice was ascribing to the order just didn't square with the text of the order, with what the president had said he was trying to do with the order, what the president's press secretary had said about the order, what the attorney general had said, and I think what most people understood this order was supposed to do, which was as the president said to "defund" cities, counties. He said it would prevent them from being able to operate as governments, which is a really huge threat and an unconstitutional threat and an unprecedented threat. What John Kecker asked [at the hearing] was for the court to deal with the order that was in front of him rather than the order that the government was sort of writing on the fly. And that's what the court did.

Was there anything in Judge Orrick's order that jumped off the page at you?

CH: [There was one line] dealing with the government's attempt to really rewrite the order and he said on page 14, "The Government attempts to read out all of Section 9(a)'s unconstitutional directives to render

it an ominous, misleading, and ultimately toothless threat." And then later in that paragraph he says "the Government argues that Section 9(a) is 'valid' and does not raise constitutional issues as long as it does nothing at all." It does jump out at me that the court grappled with this new interpretation, but in a very thorough opinion which tried but couldn't square it with the evidence before the court.

I'd ask you "what's next?" but I guess that depends on what the government decides to do?

CH: That's right. We don't know what the Department of Justice will decide to do. We obviously are extremely pleased with the order and we're gratified that court enjoined section 9(a) and really dealt with all the issues presented. Whatever the Department of Justice decides to do is up to them obviously and we will be standing by to defend the injunction. We think it's the right decision. We're glad it's in place and we intend to keep it there.

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