

WEDNESDAY, APRIL 26, 2017

SF federal judge blocks Trump order

'Sanctuary cities' get reprieve from US grant cancellations

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SAN FRANCISCO — A federal judge issued a nationwide preliminary injunction Tuesday blocking an executive order by President Donald J. Trump that seeks to take federal funding away from so-called sanctuary jurisdictions.

U.S. District Judge William H. Orrick wrote in his decision that while government lawyers argued the executive order was narrow in scope and only targeted three smaller federal grants, the order, “by its plain language, attempts to reach all federal grants.”

He added that “...the Order cannot constitutionally place new conditions on federal funds.” The judge reasoned that the U.S. Constitution vests spending powers in Congress and not the president.

Orrick added that lawyers for San Francisco and Santa Clara counties demonstrated standing and that the order was currently causing harm by creating budget uncertainty by threatening the loss of significant federal funding and “violating the separation of powers doctrine and depriving them of their Tenth and Fifth Amendment rights.”

Lucas Guttentag a Stanford Law School professor and expert on immigration law, said Orrick’s decision — along with rulings by other federal judges against Trump’s travel ban — is putting major limitations on the president’s authority.

“I think we’re seeing a very significant role

by the judiciary to put limits on the claims of executive power by this president,” Guttentag said in a phone interview.

Santa Clara County Counsel James Williams previously argued in court that the county spends millions of dollars a day with the expectation of federal reimbursement.

“Today, Judge Orrick emphatically rejected President Trump’s attempt on every single legal ground that we raised. This was a complete and sweeping victory,” said Williams in a press conference after the ruling.

Issued in January, the executive order states that jurisdictions that willfully refuse to comply with federal law about sharing a person’s immigration or citizenship status with the federal government are not eligible to receive federal grants.

Orrick noted in his decision, however, that “[t]his injunction does not impact the Government’s ability to use lawful means to enforce existing conditions of federal grants.” The judge added that the order also does not restrict the government from defining what the order means by “sanctuary jurisdiction.”

In an emailed statement, a U.S. Department of Justice spokesperson cited that section of Orrick’s opinion, writing: “The Court upheld the ‘Government’s ability to use lawful means to enforce existing conditions of federal grants or 8 U.S.C. 1373.’

“The Department of Justice ... will follow the law with respect to regulation of sanctuary jurisdictions,” the Department of Justice spokesperson added.

The statement added that the court did not enjoin the Department of Justice’s authority to “...enforce the requirements of federal law applicable to communities that violate federal

immigration law or federal grant conditions.”

There was no indication about whether the Trump administration would appeal Orrick’s ruling as of press time.

Orrick issued the order after hearing arguments from lawyers representing the federal government and San Francisco and Santa Clara counties earlier this month. *City and County of San Francisco v. Donald J. Trump et al.*, 17-CV00485 (N.D. Cal., filed Jan. 31, 2017); *County of Santa Clara v. Donald J. Trump et al.*, 17-CV00574 (N.D. Cal., filed Feb. 3, 2017).

“What the government says the order means makes it both toothless and completely unnecessary,” said John W. Kecker, a partner at San Francisco-based Kecker, Van Nest & Peters LLP who argued pro bono for Santa Clara County.

Kecker said that government lawyers essentially tried to rewrite the order in open court.

“I can’t tell the difference between incompetence and intentionality with respect to some of the things that have been going on,” Kecker said. “In this particular case, it is clear the attorney general was using the vagueness of the order and the fact that nobody really understood what it meant to try to browbeat cities and counties into [doing] what he wanted them to do.”

“The court found the Trump administration’s arguments were not legally plausible, and the court sided with us on every substantive issue,” wrote San Francisco City Attorney Dennis Herrera, whose office argued against the order in court, in a press release.

California Attorney General Xavier Becerra issued a press release in support of Orrick’s ruling.