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MAY 01 2006

By \_\_\_\_\_  
 D.M. [unclear]  
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8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
 9 **COUNTY OF LOS ANGELES**

11 HAROLD P. STURGEON,  
 12 Plaintiff,

13 v.

15 WILLIAM J. BRATTON, in his official  
 capacity as Chief of Police of the Los  
 16 Angeles Police Department, and JOHN  
 MACK, in his official capacity as President  
 17 of the Board of Police Commissioners, and  
 SHELLEY FREEMAN, in her official  
 18 capacity as a member of the Board of Police  
 Commissioners, and ALAN J. SKOBIN, in  
 19 his official capacity as a member of the Board  
 of Police Commissioners, and ANDREA  
 20 ORDIN, in her capacity as a member of the  
 Board of Police Commissioners, and  
 21 ANTHONY PACHECO, in his official  
 capacity as a member of the Board of Police  
 22 Commissioners,

23 Defendants.

Case No.

BC351646

24 } **COMPLAINT FOR DECLARATORY AND**  
 } **INJUNCTIVE RELIEF; DEMAND FOR**  
 } **JURY TRIAL**

Assigned to:

26 **INTRODUCTION**

27 1. Plaintiff, a taxpayer and resident of the City of Los Angeles, seeks to enjoin Defendants  
 28 from expending any additional taxpayer funds or taxpayer-financed resources to enforce, maintain, or

1 otherwise carry out the provisions of the Los Angeles Police Department's Special Order 40, also known  
2 as the City of Los Angeles' sanctuary policy. Plaintiff also seeks a declaratory judgment that Special  
3 Order 40 and the policies, procedures, and practices arising thereunder, as implemented by the Los  
4 Angeles Police Department, contravene federal law, including but not limited to the Supremacy Clause  
5 of the U.S. Constitution and 8 U.S.C. § 1373, as well as various provisions of California law, and,  
6 therefore, are unlawful and void.

### 7 JURISDICTION AND VENUE

8 2. Jurisdiction in this case is found under California Code of Civil Procedure § 526(a),  
9 which provides as follows:

10 An action to obtain a judgment, restraining and preventing any illegal expenditure of,  
11 waste of, or injury to, the estate, funds, or other property of a county, town, city or city  
12 and county of the state, may be maintained against any officer thereof, or any agent, or  
13 other person, acting in its behalf, either by a citizen resident therein, or by a corporation,  
14 who is assessed for and is liable to pay, or, within one year before the commencement of  
15 the action, has paid, a tax therein.

16 3. In *Blair v. Pitchess*, 5 Cal.3d 258, 267-68, 96 Cal. Rptr. 42, 48-49 (1971), the Supreme  
17 Court of California stated that "[t]he primary purpose of this statute [Section 526a], originally enacted in  
18 1909, is to 'enable a large body of the citizenry to challenge governmental action which would otherwise  
19 go unchallenged in the courts because of the standing requirement' [citations omitted]."

20 4. In *Blair*, 5 Cal.3d at 268, 96 Cal. Rptr. at 49, the Supreme Court of California also  
21 declared that "the mere expending [of] the time of the paid police officers of the city of Los Angeles in  
22 performing illegal and unauthorized acts constitute[s] an unlawful use of funds which could be enjoined  
23 under section 526a." The Court also declared that "it is immaterial that the amount of the illegal  
24 expenditures is small or that the illegal procedures actually permit a savings of tax funds." *Id.*

### 25 PARTIES

26 5. Plaintiff Harold P. Sturgeon is a resident and taxpayer of the City of Los Angeles.  
27 Plaintiff has paid taxes to the City of Los Angeles in the one-year period prior to commencement of this  
28 action.

6. Defendant William J. Bratton is the Chief of Police of the Los Angeles Police  
Department ("LAPD"). Under the Charter of the City of Los Angeles, the Chief of Police manages the

1 daily operations of the LAPD and implements the policies, policy directions, and goals of the Board of  
2 Police Commissioners. Chief of Police Bratton is being sued in his official capacity.

3 7. Defendant John Mack is the President of the Board of Police Commissioners. The Board  
4 of Police Commissioners is the head of the LAPD and sets overall policy. Commissioner Mack is being  
5 sued in his official capacity.

6 8. Defendant Alan J. Sobkin is the Vice President of the Board of Police Commissioners.  
7 Commissioner Sobkin is being sued in his official capacity.

8 9. Defendant Shelley E. Freeman is member of the Board of Police Commissioners.  
9 Commissioner Freeman is being sued in her official capacity.

10 10. Defendant Andrea Ordin is a member of the Board of Police Commissioners.  
11 Commissioner Ordin is being sued in her official capacity.

12 11. Defendant Anthony Pacheco is a member of the Board of Police Commissioners.  
13 Commissioner Pacheco is being sued in his official capacity.

#### 14 NOTICE TO GOVERNMENT

15 12. In March 2006, Plaintiff provided a draft of this pleading to each of the defendants  
16 named herein and requested that they immediately terminate the expenditure of any additional taxpayer  
17 funds or taxpayer-financed resources to enforce, maintain, or otherwise carry out the provisions of the  
18 Los Angeles Police Department's Special Order 40. The defendants named herein have refused or failed  
19 to terminate such expenditures, and, on information and belief, will not do so in the future, no matter  
20 how long Plaintiff might wait. As a result of the failure and refusal of the foregoing public officials to  
21 take appropriate action, this taxpayer lawsuit is the only viable means to stop the unlawful expenditure  
22 and waste of county funds.

#### 23 STATEMENT OF FACTS

24 13. According to the *New York Times*, in late 2004 Carlos Barrera, an illegal immigrant, went  
25 on a rampage in Hollywood:

26 In the span of two hours, [police] said, [Barrera] mugged three people, burglarized two  
27 apartments and pushed his way into an apartment, where he tried to rape a woman in front  
28 of her 5-year old daughter. Mr. Barrera, a Mexican, had been deported four years ago for  
robbery, drugs and burglary. He had made his way back into the United States, and,

1 although he had been stopped twice for traffic violations, the police were prohibited from  
2 reporting him to immigration authorities.

3 See Charlie LeDuff, "Police Say Immigrant Policy Is Hindrance," *New York Times*, April 7, 2005 at 16.

4 14. Prior to 1979, if the officers who stopped Barrera for traffic violations before he went on  
5 his crime spree had suspected that Barrera was an undocumented alien, they would have been *required*  
6 to (1) determine his immigration status and (2) notify federal immigration officials if they discovered he  
7 was in the United States illegally. This is because, prior to 1979, the LAPD *required* officers who came  
8 into contact with persons suspected of being in the United States illegally to determine the person's  
9 immigration status and notify the U.S. Immigration and Naturalization Service ("INS") (now known as  
10 U.S. Immigration Customs and Enforcement or "ICE") if the person was discovered to be an  
11 undocumented alien. These steps were *required* even if the person was not the subject of a police  
12 investigation or criminal charge.

13 15. On or about March 20, 1979, however, the Board of Police Commissioners adopted a  
14 new policy concerning undocumented aliens. This policy declared, in pertinent part, "[I]t is the policy of  
15 the LAPD that undocumented alien status in itself is not a matter for police action."

16 16. On or about November 27, 1979, Los Angeles Chief of Police Daryl F. Gates issued  
17 Special Order 40 to incorporate the Board of Police Commissioners' new policy into the Manual of the  
18 Los Angeles Police Department ("LAPD Manual"). As articulated by Chief of Police Gates, Special  
19 Order 40 states, in pertinent part:

20 Officers shall not initiate police action with the objective of discovering the alien status of  
21 a person. Officers shall not arrest nor book persons for violation of Title 8, Section 1323  
22 of the United States Immigration Code (Illegal Entry).

23 17. Special Order 40 has since been codified, published, and republished in successive  
24 versions of the LAPD Manual at Volume 1, Section 390 and Volume 4, Section 264.50, and has  
25 remained in effect at all times relevant to this action. Specifically, the LAPD Manual states:  
26 "Undocumented alien status in itself is not a matter for police action." LAPD Manual, Vol. 1, § 390.  
27 The LAPD Manual also states: "Officers shall not initiate police action where the objective is to  
28 discover the alien status of a person. Officers shall neither arrest nor book persons for violation of Title  
8, Section 1325 of the United States Immigration Code (Illegal Entry)." LAPD Manual, Vol. 4, § 264.50

1 18. On information and belief, since 1979, the LAPD has expended taxpayer funds and  
2 taxpayer-financed resources to enforce, maintain, and otherwise carry out the provisions of Special  
3 Order 40.

4 19. On or about June 17, 1982, Chief of Police Gates issued Memorandum No. 5 to reenforce  
5 Special Order 40 and to remind all LAPD personnel that police action may not be initiated solely to  
6 determine the alien status of an individual.

7 20. In 2000, the Board of Police Commissioners asked the Rampart Independent Review  
8 Panel (the "Rampart Panel") to review the LAPD's compliance with Special Order 40 and to make  
9 recommendations regarding the LAPD's policies and procedures with respect to undocumented aliens  
10 and the LAPD's relationship with the INS.

11 21. On or about February 1, 2001, the Rampart Panel issued "A Report to the Los Angeles  
12 Board of Police Commissioners Concerning Special Order 40 (the "Report")." The Rampart Panel  
13 found that the LAPD's policies, procedures, and practices implementing Special Order 40 are not fully  
14 set forth in the LAPD Manual and, in practice, are more restrictive than as set forth in the manual. The  
15 Report stated, in pertinent part, as follows:

16 As articulated by LAPD officials to members of the Panel, the Department's policies and  
17 procedures resulting from Special Order 40 are more restrictive than as written in the  
18 Department's Manual. The policies and procedures articulated by the Department  
19 preclude officers from asking a person about his or her alien status and from notifying the  
20 INS about a person's undocumented status unless the person has been arrested.  
Moreover, in practice, LAPD officers do not routinely notify INS about the immigration  
status of individuals who have been arrested.

21 \* \* \*

22 Interviews with Chief of Police Bernard C. Parks and other LAPD officers indicated that,  
23 in practice, the Department's procedures vary from the procedures originally set forth in  
24 Special Order 40 and go beyond the limited provisions of Special Order 40 that remain in  
25 the Manual. Indeed, as articulated, the procedures are more restrictive than as written.  
26 First, LAPD officers are not supposed to ask individuals suspected of criminal offenses,  
crime victims, or witnesses, about their immigration status. Second in practice, LAPD  
officers do not notify the INS of the arrest of an illegal alien. Only after a person has  
been arrested, arraigned, and held in the county jail pending prosecution will his or her  
alien status be investigated by the INS, and that is in cooperation with the Los Angeles  
County Sheriff, not the LAPD . . .

27 In practice, under Special Order 40 no officer should ever have cause to refer a person to  
28 INS [now ICE] except as part of a task force, where an INS [now ICE] warrant has been  
issued for illegal re-entry, or in the rare instance in which LAPD officers arrest an  
individual engaged in alien smuggling. LAPD officers are not supposed to refer an

1 undocumented person to INS if the person is merely a victim or witness to a crime or  
2 comes into contact with the Department during a family disturbance, during the  
enforcement of minor traffic offenses, or when seeking medical treatment.

3 \* \* \*

4 Nothing in the LAPD Manual, however, provides any guidance as to what contacts with  
5 INS [now ICE] are appropriate under Special Order 40.

6 *See Report at 2, 5-6.*

7 22. The Rampart Panel also found that virtually all California state police departments and  
8 sheriff's departments have policies and procedures similar to Special Order 40, but the LAPD's policies  
9 and procedures are more restrictive than other policies and procedures reviewed by the Rampart Panel in  
10 limiting officers' dealings with undocumented aliens. *See Report at 8, n. 15.*

11 23. On information and belief, LAPD officers are instructed in a general fashion on all LAPD  
12 policies, procedures, and practices, including the policies, procedures, and practices arising under  
13 Special Order 40 as implemented by the LAPD, and are required to exhibit knowledge and  
14 understanding of all such policies, procedures, and practices. On information and belief, LAPD officers  
15 also are required to maintain and enforce all LAPD policies, procedures, and practices, including the  
16 policies, procedures and practices arising under Special Order 40 as implemented by the LAPD.

17 24. In 2005, Police Chief Bratton sought to "clarify" the LAPD's policies, procedures and  
18 practices under Special Order 40, but also promised community groups that no changes would be made  
19 to those policies, procedures, and practices. Police Chief Bratton promised that the LAPD will increase  
20 officer training about the "nuances" of Special Order 40. *See Josh Kleinbaum, "Bratton Allays Latino's  
21 Fears; No Racial-Ethnic Profiling, Chief Promises," Daily News of Los Angeles, April 26, 2004.*

22 25. As stated in a May 20, 2005 news release issued by the LAPD Media Relation Section, on  
23 or about that date the LAPD began the first of several working group meetings at the Downtown  
24 Metropolitan Dispatch Center to discuss Special Order 40.

25 26. As recently as January 24, 2006, Assistant Police Chief George Gascon appeared before  
26 the Board of Police Commissions and discussed the LAPD's on-going "clarification" process regarding  
27 Special Order 40. Assistant Police Chief Gascon reportedly told the Commissioners that the LAPD does  
28 not plan to change Special Order 40. *See Dan Laidman, "Order Allows Felony Arrests; LAPD Can Nab*

1 Deportees Who Re-Enter U.S.," *Daily News of Los Angeles*, January 25, 2006; see also "Special Order  
2 40.1? LAPD Dances Around Controversial Policy," *Daily News of Los Angeles*, January 26, 2006.

3 27. Clearly, the LAPD continues to expend taxpayer funds and taxpayer-financed resources to  
4 enforce and maintain Special Order 40 and the policies, procedures and practices arising thereunder as  
5 implemented by the LAPD, and intends to continue to do so in the future.

6 28. The Supremacy Clause of the U.S. Constitution declares:

7 This Constitution, and the laws of the United States which shall be made in pursuance  
8 thereof; and all treaties made, or which shall be made, under the authority of the United  
9 States, shall be the supreme law of the land; and the judges in every state shall be bound  
thereby; any thing in the Constitution or laws of any state to the contrary notwithstanding.

10 See U.S. Const., art. VI, cl. 2. Similarly, Article III, section 1 of the California Constitution provides  
11 that "The State of California is an inseparable part of the United States of America, and the United  
12 States Constitution is the supreme law of the land."

13 29. The U.S. Supreme Court has declared that "the power to regulate immigration is  
14 unquestionably exclusively a federal power." *De Canas v. Bica*, 424 U.S. 351, 355 (1976).

15 30. The U.S. Supreme Court has also declared, because the federal government bears the  
16 exclusive responsibility for immigration matters, the states "can neither add to nor take from the  
17 conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the  
18 United States or the several states." *Takahashi v. Fish and Game Comm 'n*, 334 U.S. 410, 419 (1982).

19 31. The U.S. Supreme Court has further declared that state laws are a nullity when they  
20 "stand as an obstacle to the accomplishment and execution of the full purposes and objectives of  
21 Congress." *Fidelity Federal Savings & Loan Association v. De la Cuesta*, 458 U.S. 141, 151 (1982).

22 32. In 1992, California Attorney General Daniel E. Lundgren issued a legal opinion regarding  
23 whether a city ordinance substantially similar to Special Order 40 violated the Supremacy Clause of the  
24 U.S. Constitution. Attorney General Lundgren framed the issue as follows:

25 Specifically, the ordinance prohibits city officials and employees from using, in their  
26 official capacities, any city resources to cooperate with INS investigation, detention, or  
27 arrest procedures relating to alleged violations of civil provisions of federal immigration  
28 laws or to gather or disseminate information regarding the immigration status of  
individuals in the city. We are advised that the stated purpose of the ordinance is to  
encourage persons who are illegally present in this country to report criminal activities  
which they observe to local law enforcement officers.

1 See 75 Ops.Cal.Atty.Gen 270, 270-72 (1992) .

2 33. Attorney General Lundgren determined that the ordinance violated the Supremacy  
3 Clause:

4 . . . the ordinance with which we are concerned creates a conflict with a federal program.  
5 It prohibits city cooperation with the INS in the administration of the civil provisions of  
6 the [Immigration and Nationality Act [8 U.S.C. § 1101, *et seq.*, the "Act"]]. Such  
7 administration is predicated upon the ability of the INS to detect the presence of those  
8 who are not lawfully residing in this country. Congress surely did not intend that state  
9 and local governments would undermine the deterrent effect of the criminal or civil  
10 penalties contained in the Act. By giving the impression that illegal aliens may obtain  
11 refuge from such penalties in a particular locale, the ordinance creates localized  
12 immigration policy and dissipates enforcement of the federal laws.

13 That Congress has placed a great importance on the immigration detection effort is  
14 evidenced by the criminal penalties which have been established for those who assist  
15 illegal aliens in escaping detection. *This discernable congressional policy is substantially*  
16 *frustrated by city ordinances impeding the right and the duty of city officials and law*  
17 *enforcement personnel to report, in the course of their official duties, possible violations*  
18 *of the Act to the proper federal authorities.* As one of the principal collection points for  
19 legally obtainable, nonconfidential information about persons who may be unlawfully  
20 present in this country, local law enforcement agencies constitute an important  
21 component of the overall effort to effectuate the civil provisions of the Act. By  
22 peremptorily removing such a significant component from law enforcement activities, the  
23 city's ordinance stands as an obstacle to the accomplishment and execution of the full  
24 purposes and objectives of Congress.

25 We conclude that due to the supremacy clause of the United States Constitution, a city  
26 may not prohibit its officers and employees from cooperating in their official capacities  
27 with INS investigations, detention, or arrest procedures relating to alleged violations of  
28 the civil provisions of the federal immigration laws.

18 See 75 Ops.Cal.Atty.Gen at 275-77 (internal citations and quotations omitted) (emphasis added).

19 34. In addition, on November 8, 1994, voters of the State of California approved Proposition  
20 187, which contained a provision subsequently codified at Cal. Pen. Code § 834b that states:

21 (a) Every law enforcement agency in California shall fully cooperate with the United  
22 States Immigration and Naturalization Service regarding any person who is arrested if he  
23 or she is suspected of being present in the United States in violation of federal  
24 immigration laws.

25 (b) With respect to any such person who is arrested, and suspected of being present in  
26 the United States in violation of federal immigration laws, every law enforcement agency  
27 shall do the following: (1) Attempt to verify the legal status of such person as a citizen of  
28 the United States, an alien lawfully admitted as a permanent resident, an alien lawfully  
admitted for a temporary period of time or as an alien who is present in the United States  
in violation of immigration laws. The verification process may include, but shall not be  
limited to, questioning the person regarding his or her date and place of birth, and entry  
into the United States, and demanding documentation to indicate his or her legal status.  
(2) Notify the person of his or her apparent status as an alien who is present in the United  
States in violation of federal immigration laws and inform him or her that, apart from any



1 criminal justice proceedings, he or she must either obtain legal status or leave the United  
2 States. (3) Notify the Attorney General of California and the United States Immigration  
3 and Naturalization Service of the apparent illegal status and provide any additional  
4 information that may be requested by any other public entity.

5 (c) Any legislative, administrative, or other action by a city, county, or other legally  
6 authorized local governmental entity with jurisdictional boundaries, or by a law  
7 enforcement agency, to prevent or limit the cooperation required by subdivision (a) is  
8 expressly prohibited.

9 35. In response, on information and belief, to sanctuary policies, procedures, and practices  
10 such as those resulting from Special Order 40, in 1996 the U.S. Congress enacted 8 U.S.C. § 1373,  
11 which prohibits local police departments from restricting in any way a police officer's ability to inform  
12 federal immigration officials about a person's immigration status. This federal statute states, in pertinent  
13 part:

14 Notwithstanding any other provision of Federal, State or local law, a Federal, State, or  
15 local government entity or official may not prohibit, or *in any way restrict*, any  
16 government entity or official from sending to, or receiving from, the Immigration and  
17 Naturalization Service information regarding the citizenship or immigration status, lawful  
18 or unlawful, of any individual.

19 *See* 8 U.S.C. § 1373(a) (emphasis added). To be given its full scope and meaning, this broad mandate  
20 must proscribe not only policies, procedures, and practices that prevent police officers from informing  
21 federal immigration officials about a person's immigration status, but also must proscribe policies,  
22 procedures, and practices that prevent police officers from acquiring information about a person's  
23 immigration status.

24 36. Special Order 40, as codified, published, and republished in successive versions of the  
25 LAPD Manual, and the policies, procedures, and practices arising thereunder as implemented by the  
26 LAPD, contravene federal law, including but not limited to the Supremacy Clause of the U.S.  
27 Constitution and 8 U.S.C. § 1373(a), as well as various provisions of California law. Special Order 40  
28 and the policies, procedures and practices arising thereunder as implemented by the LAPD, also stand as  
an obstacle to the accomplishment and execution of the full purposes and objectives of federal law  
governing illegal immigration and the detection and apprehension of undocumented aliens. Therefore,  
Special Order 40 and the policies, procedures, and practices arising thereunder as implemented by the  
LAPD, are unlawful and void, and the LAPD must be prohibited from expending any further taxpayer  
funds or taxpayer-financed resources to enforce, maintain, or otherwise carry out in any manner the

1 provisions of Special Order 40 or the policies, procedures, and practices arising thereunder as  
2 implemented by the LAPD.

3 **FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF**

4 37. Plaintiff incorporates paragraphs 1 to 36, and each of them as if they were set forth in full.

5 38. An actual controversy has arisen between Plaintiff and Defendants. Plaintiff contends  
6 that Special Order 40 and the policies, procedures, and practices arising thereunder as implemented by  
7 the LAPD, contravene and stand as an obstacle to the accomplishment and execution of the full purposes  
8 and objectives of federal law, including but not limited to the Supremacy Clause of the U.S. Constitution  
9 and 8 U.S.C. § 1373(a), and further contravenes various provisions of California law, and therefore is  
10 unlawful and void. Defendants contend that Special Order 40 and the policies, procedures, and practices  
11 arising thereunder as implemented by the LAPD, do not contravene or stand as an obstacle to the  
12 accomplishment and execution of the full purposes and objectives of federal or California law and are  
13 not unlawful and void.

14 39. Plaintiff seeks a judicial determination and declaration that Special Order 40 and the  
15 policies, procedures, and practices arising thereunder as implemented by the LAPD, are unlawful and  
16 void.

17 **SECOND CAUSE OF ACTION FOR INJUNCTIVE RELIEF**

18 40. Plaintiff incorporates paragraphs 1 to 39, and each of them as if they were set  
19 forth in full.

20 41. Plaintiff seeks injunctive relief prohibiting Defendants from expending taxpayer funds or  
21 taxpayer-financed resources, including their own time or the time of other LAPD officers, employees, or  
22 officials, to enforce, maintain, or otherwise carry out Special Order 40 and the policies, procedures, and  
23 practices arising thereunder as implemented by the LAPD.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays as follows:

**FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF**

1. A declaration that Special Order 40 and the policies, procedures, and practices arising thereunder as implemented by the LAPD, are unlawful and void;

**SECOND CAUSE OF ACTION FOR INJUNCTIVE RELIEF**

2. The Court issue permanent injunctive relief prohibiting Defendants from expending taxpayer funds or taxpayer-financed resources, including their own time or the time of other LAPD officers, employees, or officials, to enforce, maintain, or otherwise carry out Special Order 40 and the policies, procedures, and practices arising thereunder as implemented by the LAPD;

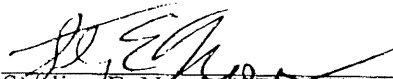
3. Costs of suit herein;

4. Reasonable attorney's fees under the Private Attorney General Statute, Code of Civil Procedure § 1021.5, the Common Fund Doctrine, and the Substantial Benefit Doctrine; and

5. Such other relief as the Court deems just and proper.

DATED: April 28, 2006

By:

  
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