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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **COUNTY OF SAN FRANCISCO**

18 CYNTHIA CERLETTI,

19 Plaintiff,

20 v.

21 VICKI HENNESSY, in her Official Capacity
22 as Sheriff of the City and County of San
23 Francisco.

24 Defendant.

Case No.: CGC-16-556164

**FIRST AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

25 **INTRODUCTION**

26 1. Plaintiff CYNTHIA CERLETTI, a taxpayer and resident of the City and County of
27 San Francisco, California (“CCSF”) seeks to enjoin Defendant VICKI HENNESSY, in her
28 official capacity as Sheriff of CCSF, from expending taxpayer funds and taxpayer-financed
resources illegally by substantially restricting, if not prohibiting, San Francisco Sheriff’s
Department (“SFSD”) personnel from sharing information with federal immigration officials
about the citizenship, immigration status, and time and date of release of criminal aliens in
SFSD’s custody. Plaintiff contends that Defendant’s restrictions are unlawful because they are
preempted by federal law.

1 **JURISDICTION AND VENUE**

2 2. Jurisdiction in this case is founded on California’s common law taxpayer standing
3 doctrine and Code of Civil Procedure section 526a, which grants California taxpayers the right to
4 sue government officials to prevent unlawful expenditures of taxpayer funds and taxpayer-
5 financed resources. The mere expending of a paid, public official’s time performing illegal or
6 unauthorized acts constitutes an unlawful use of funds that may be enjoined, and it is immaterial
7 that the amount of the expenditure is small or that enjoining the illegal expenditure will permit a
8 savings of tax funds. *Blair v. Pitchess*, 5 Cal.3d 258, 268 (1971).

9 3. Venue in this Court is appropriate under Section 393 of the Code of Civil
10 Procedure as Defendant is an official of CCSF and the taxpayer funds and taxpayer-financed
11 resources at issue are being expended in CCSF. *Regents of the University of California v. Karst*,
12 3 Cal.3d 529, 542 (1970) (“[F]or the purpose of venue, the action arises in the county where the
13 agency spends the tax money that causes the alleged injury.”).

14 **PARTIES**

15 4. Plaintiff CYNTHIA CERLETTI is a citizen and taxpayer, and has paid property
16 and other local taxes to CCSF during the one-year period prior to the commencement of this
17 action.

18 5. Defendant VICKI HENNESSY is the Sheriff of CCSF, a public officer and the
19 head of SFSD. Defendant is charged by law with keeping CCSF’s jail and receiving all prisoners
20 committed to jail by competent authorities. S.F. Cal. Charter § 6.105. Defendant is being sued in
21 her official capacity.

22 **STATEMENT OF FACTS**

23 **I.**

24 6. “The Government of the United States has broad, undoubted power over the
25 subject of immigration and the status of aliens.” *Arizona v. United States*, 567 U.S. 387, 394
26 (2012). “This authority rests, in part, on the National Government’s constitutional power to
27 ‘establish an uniform Rule of Naturalization,’ Art. I, § 8, cl. 4, and its inherent power as a
28 sovereign to control and conduct relations with foreign nations.” *Arizona* 567 U.S. at 394-95.

1 “Federal governance of immigration and alien status is extensive and complex.” *Id.* at 395.

2 7. “Congress has specified which aliens may be removed from the United States and
3 the procedures for doing so” through the enactment of the Immigration and Naturalization Act, 8
4 U.S.C. § 1101 *et seq.* (“INA”). *Arizona*, 567 U.S. at 396. “A principal feature of the removal
5 system is the broad discretion exercised by immigration officials.” *Id.*

6 8. State and local governments enjoy no power with respect to the classification of
7 aliens. *Plyler v. Doe*, 457 U.S. 202, 225 (1982). That power is committed to the political
8 branches of the federal government. *Id.*

9 9. Immigration and Customs Enforcement (“ICE”) is an agency within the U.S.
10 Department of Homeland Security (“DHS”) charged with enforcing the INA. ICE “conducts
11 criminal investigations involving the enforcement of immigration-related statutes.” *Arizona*, 567
12 U.S. at 397 (internal citations and quotations omitted). “ICE officers are responsible for the
13 identification, apprehension, and removal of illegal aliens from the United States.” *Id.*

14 10. To aid in the enforcement of the INA, Congress has long sought to encourage full
15 and open communication between state and local entities and federal immigration officials.
16 Congress also has sought to remove obstacles to such communication.

17 11. In August 1996, the U.S. Congress amended the INA to include a provision
18 prohibiting all restrictions on State or local government entities sending or receiving information
19 to or from federal immigration officials regarding an alien’s immigration status. 8 U.S.C. § 1644.

20 12. In September 1996, Congress amended the INA again to further clarify that no
21 Federal, State, or local government entity can be prohibited or in any way restricted from sending
22 information to or receiving information from federal immigration officials regarding an
23 individual’s citizenship or immigration status. 8 U.S.C. § 1373(a). The amendment also
24 expressly prohibits all restrictions on Federal, State, or local government entities sending,
25 requesting, receiving, or exchanging information to, from, or with federal immigration officials
26 regarding an individual’s immigration status. *Id.* at 1373(b).

27 13. In 2012, the U.S. Supreme Court found that “[c]onsultation between federal and
28 state officials is an important feature of the immigration system.” *Arizona*, 567 U.S. at 411. The

1 Court also noted that Congress “has encouraged the sharing of information about possible
2 immigration violations.” *Id.* at 412 (*quoting* 8 U.S.C. § 1357(g)(10)(A)). According to the Court,
3 examples of such cooperation include “allow[ing] federal immigration officials to gain access to
4 detainees held in state facilities” and state officials “responding to requests for information about
5 when an alien will be released from their custody.” *Id.* at 410 (internal citations omitted).

6 II.

7 14. Congress also has mandated that the Attorney General take certain categories of
8 criminal aliens into custody upon their release by federal, state, or local law enforcement
9 agencies. 8 U.S.C. § 1226(c). These categories include, *inter alia*, aliens convicted of aggravated
10 felonies, two or more crimes of moral turpitude or a single crime of moral turpitude for which the
11 alien has been sentenced to at least one (1) year in jail, controlled substance and certain firearm
12 offenses, and terrorist activities. *Id.* Congress requires the Attorney General to take any such
13 alien into custody “when the alien is released without regard to whether the alien is released on
14 parole, supervised release, or probation, and without regard to whether the alien may be arrested
15 or imprisoned again for the same offense.”

16 15. The federal government also has prioritized these same categories of criminal
17 aliens, as well as other categories, for removal. Exec. Order No. 13768, § 5, 82 Fed. Reg. 8799,
18 8800 (Jan. 25, 2017).

19 16. At all relevant times until April 2017, DHS categorized certain criminal aliens as
20 “suspected priority aliens” and designated them as immigration enforcement priorities. When
21 ICE learned of a “suspected priority alien” in a state or local law enforcement agency’s custody, it
22 issued a DHS Form I-247N “Request for Voluntary Notification of Release of Suspected Priority
23 Alien” to the law enforcement agency. The notice identified the name, date of birth, suspected
24 citizenship, and sex of the subject. It informed the law enforcement agency that ICE suspected
25 the subject was a removable alien and “an immigration enforcement priority” and identified, from
26 a list of options (*e.g.*, conviction of an aggravated felony or “significant misdemeanor”), why the
27 subject was an enforcement priority. The law enforcement agency was asked to “provide notice
28 as early as practicable (at least 48 hours, if possible, before the subject is released from your

1 custody.” The reason for the request was “to allow DHS an opportunity to determine whether
2 there is probable cause to conclude that he or she is a removable alien.”

3 17. In April 2017, ICE began using a “consolidated” form, DHS Form I-247A entitled
4 “Immigration Detainer – Notice of Action,” to request information about the release of a criminal
5 alien and provide notice of ICE’s intent to assume custody of the alien. Like the earlier form, a
6 DHS Form I-247A gives the name, date of birth, suspected citizenship, and sex of the subject.
7 Unlike the earlier form, however, the new form informs the law enforcement agency that “DHS
8 has determined that probable cause exists that the subject is a removable alien” and identifies,
9 from a list of options, the basis for the probable cause determination. The form also provides
10 contact information for providing the notification.

11 III.

12 18. CCSF has declared itself a “City and County of Refuge” and, to this end, has
13 adopted what it calls a “Sanctuary City” law. In a section entitled “Immigration Status,” CCSF’s
14 Sanctuary City law generally prohibits, with limited exceptions, the use of City funds or resources
15 to gather or disseminate information about an individual’s “release status” or “any other such
16 personal information.” S.F. Cal. Admin. Code ch. 12H.2(a) and (c).

17 19. CCSF’s Sanctuary City law defines “personal information” broadly to include
18 “any confidential, identifying information about an individual.” S.F. Cal. Admin. Code ch. 12I.2.
19 On information and belief, “identifying information about an individual” includes information
20 about the individual’s citizenship and immigration status.

21 20. A separate section of CCSF’s Sanctuary City law, entitled “Restrictions on Law
22 Enforcement Officials,” prohibits responding to a “federal immigration officer’s notification
23 request,” which is defined to include formal and informal requests for notification of “an
24 individual’s release from local custody.” S.F. Cal. Admin. Code ch. 12I.2 and 12I.3

25 21. The only exception to this prohibition is a notification request regarding an
26 individual who has been convicted of a “Violent Felony” in the past seven years, a “Serious
27 Felony” in the past five years, or three separate, particular, serious or violent felonies in the past
28 five years, provided further that a magistrate has also determined there is currently probable cause

1 to believe the alien is guilty of a particular, serious or violent felony and has ordered the alien to
2 answer for the offense. S.F. Cal. Admin. Code ch. 12I.3(d). Even if the individual meets both
3 criteria, before responding to a notification request, law enforcement officials also are required to
4 consider whether any “mitigating factors” warrant denial of the request. *Id.*

5 IV.

6 22. Since taking office, Defendant has substantially restricted, if not prohibited, SFSD
7 personnel’s communications with ICE about inmates’ citizenship and immigration status and the
8 time and date of criminal aliens’ release from SFSD’s custody. On information and belief, these
9 restrictions reflect Defendant’s independent judgment about how aliens should be classified when
10 they commit crimes, whether and when criminal aliens should or should not be removed from the
11 United States, and, more generally, the conditions that should be granted or imposed on aliens in
12 the United States. They also reflect, on information and belief, her judgment about how CCSF’s
13 Sanctuary City law should be read and implemented.

14 23. Before Defendant took office, her predecessor had issued a directive to “All SFSD
15 Personnel” expressly prohibiting them from providing information to ICE representatives about
16 the “citizenship/immigration status of any inmate” or “release dates or times” of inmates, among
17 other information.

18 24. After Defendant took office, she issued a directive on April 11, 2016, Reference
19 No. 2016-051, entitled “Immigration and Custom Enforcement Procedure (ICE) Contact and
20 Communication,” purportedly revoking her predecessor’s directive and putting in place her own.

21 25. On information and belief, Defendant’s April 11, 2016 directive keeps in place her
22 predecessor’s prohibition on SFSD personnel providing information to ICE about inmates’
23 citizenship or immigration status. Under the headers “**AUTHORIZED**” and “**NOT**
24 **AUTHORIZED**,” Defendant’s directive lists categories of information SFSD personnel are and
25 are not authorized to provide ICE. While Defendant’s predecessor’s directive had expressly
26 stated that SFSD personnel “shall not provide” information to ICE representatives about the
27 “citizenship/immigration status of any inmate,” Defendant’s April 11, 2016 directive does not
28 identify “citizenship/immigration status” as information SFSD personnel are authorized to

1 provide. Citizenship and immigration status are not listed under either header. In addition, the
2 directive states, “Any questions or requests received from ICE representatives, especially those
3 not covered here, shall be referred to Sheriff’s Legal Counsel.” At a minimum, Defendant’s
4 directive prohibits SFSD personnel from providing information about inmates’ citizenship or
5 immigration status to ICE directly, but must instead refer any ICE requests for such information
6 to Defendant’s counsel.

7 26. Like her predecessor’s directive, Defendant’s April 11, 2016 directive expressly
8 prohibits SFSD personnel from providing inmates’ “release dates and times” to ICE. Under the
9 “**NOT AUTHORIZED**” header, the directive states that “Sheriff’s staff members **are not**
10 authorized to provide . . . Release dates and times” to ICE representatives and advises SFSD
11 personnel that

12 Per Administrative Code 12H.2.1 we are currently in the process of working on
13 guidelines that will initiate a review process for each person for whom we receive
14 a request for notification of release. We have been reviewing all requests for
15 notification of release received to date for this purpose . . . All ICE requests for
16 Voluntary Notification (DHS Form I-247D or I-247N) will continue to be
17 forwarded to Administration without action.

18 27. On information and belief, Defendant subsequently developed her own
19 classifications of criminal aliens, different from the classifications of criminal aliens set forth in
20 the INA and Executive Order 13768, to apply in determining whether SFSD will provide inmates’
21 release dates and times to ICE. On further information and belief, Defendant’s classifications of
22 criminal aliens are similar, but not identical, to the classifications set forth in CCSF’s Sanctuary
23 City law. On information and belief, these determinations have been centralized within SFSD to
24 ensure Defendant’s control over them. On further information and belief, these determinations
25 require an analysis of whether an alien subject to an ICE notification request meets a specific
26 criminal history threshold and whether any “mitigating factors” warrant denial of the request.

27 28. Pursuant to CCSF Administrative Code Chapter 12I.5, Defendant is required to
28 report, on a semi-annual basis, all communications received from federal immigration officials
and all communication SFSD made to federal immigration officials, including but not limited to
release notification requests and responses. S.F. Cal. Admin. Code ch. 12I.5.

1 and Defendant. Plaintiff contends that she has paid property and other local taxes to CCSF during
2 the one-year period prior to the commencement of this action and that Defendant is expending
3 taxpayer funds and taxpayer-financed resources illegally by substantially restricting, if not
4 prohibiting, SFSD personnel from sharing information about inmates' citizenship or immigration
5 status with ICE. Plaintiff further contends that these restrictions are illegal because they are
6 expressly preempted by 8 U.S.C. §§ 1373 and 1644 and the INA. On information and belief,
7 Defendant contends she is not expending taxpayer funds and taxpayer-financed resources
8 illegally.

9 34. Plaintiff has been irreparably harmed and will continue to be irreparably harmed
10 by Defendant's illegal expenditure of taxpayer funds and taxpayer-financed resources. On
11 information and belief, these illegal expenditures will continue unless and until enjoined.

12 35. A judicial declaration pursuant to California Code of Civil Procedure § 1060 is
13 necessary and appropriate so that the parties may ascertain their respective legal rights and duties
14 with respect to Defendant's illegal expenditure of taxpayer funds and taxpayer-financed
15 resources.

16 36. Plaintiff also has no adequate remedy at law.

17 **SECOND CAUSE OF ACTION**

18 **(Taxpayer Claim – Release Information)**

19 **(Express Preemption)**

20 37. Plaintiff incorporates paragraphs 1 to 36 by reference as if fully set forth herein
21 and further alleges as follows:

22 38. An actual and justiciable controversy has arisen and now exists between Plaintiff
23 and Defendant. Plaintiff contends that she has paid property and other local taxes to CCSF during
24 the one-year period prior to the commencement of this action and that Defendant is expending
25 taxpayer funds and taxpayer-financed resources illegally by substantially restricting, if not
26 prohibiting, SFSD personnel from sharing information with ICE about the release dates and times
27 of suspected priority aliens. Plaintiff further contends that these restrictions are illegal because
28 they are expressly preempted by 8 U.S.C. §§ 1373 and 1644. On information and belief,

1 Defendant contends she is not expending Plaintiff's taxpayer funds and taxpayer-financed
2 resources illegally.

3 39. Plaintiff has been irreparably harmed and will continue to be irreparably harmed
4 by Defendant's illegal expenditure of taxpayer funds and taxpayer-financed resources. On
5 information and belief, these illegal expenditures will continue unless and until enjoined.

6 40. A judicial declaration pursuant to California Code of Civil Procedure § 1060 is
7 necessary and appropriate so that the parties may ascertain their respective legal rights and duties
8 with respect to Defendant's illegal expenditure of taxpayer funds and taxpayer-financed
9 resources.

10 41. Plaintiff also has no adequate remedy at law.

11 **THIRD CAUSE OF ACTION**
12 **(Taxpayer Claim – Release Information)**
13 **(Implied Preemption)**

14 42. Plaintiff incorporates paragraphs 1 to 41 by reference as if fully set forth herein
15 and further alleges as follows:

16 43. An actual and justiciable controversy has arisen and now exists between Plaintiff
17 and Defendant. Plaintiff contends that she has paid property and other local taxes to CCSF during
18 the one-year period prior to the commencement of this action and that Defendant is expending
19 taxpayer funds and taxpayer-financed resources illegally by substantially restricting, if not
20 prohibiting, SFSD personnel from sharing information with ICE about the release dates and times
21 of suspected priority aliens. Plaintiff further contends that these restrictions are illegal because
22 they are impliedly preempted by the INA as they stand as an obstacle to a clear purpose and
23 objective of Congress and constitute an impermissible state or local classification of aliens and/or
24 regulation of immigration. On information and belief, Defendant contends she is not expending
25 Plaintiff's taxpayer funds and taxpayer-financed resources illegally.

26 44. Plaintiff has been irreparably harmed and will continue to be irreparably harmed
27 by Defendant's illegal expenditure of taxpayer funds and taxpayer-financed resources. On
28 information and belief, these illegal expenditures will continue unless and until enjoined.

