AMERICAN CONSTITUTIONALISM

VOLUME I: STRUCTURES OF GOVERNMENT

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Supplementary Material

Chapter 12: The Contemporary Era – Powers of the National Government/Taxing and Spending Power

**City of Los Angeles v. Barr, No. 18-55599 (9th Cir. 2019)**

*Shortly after his inauguration as president, Donald Trump issued an executive order aimed at curbing “sanctuary cities,” cities that have an announced policy of non-cooperation with federal immigration enforcement. The executive order directed the attorney general and Secretary of Homeland Security to deny federal grants to political jurisdictions that did not share information with federal immigration officials.*

*The Violent Crime Control and Law Enforcement Act of 1994 created a competitive grant program to be administered by the Department of Justice that awards funds to state and local applicants for crime prevention. In 2017, the city of Los Angeles was turned down for such a grant. The DOJ devised a complex scoring system for awarding grants, which is periodically adjusted to reflect governmental priorities. In 2017, the DOJ awarded points for applicants in the federal priority area of illegal immigration control and also for applicants who agreed to aid the Department of Homeland Security in its illegal immigration control efforts. Los Angeles did not receive points in either of those particular areas on its application, though there were other unsuccessful applicants who did check those boxes.*

*The city filed suit in federal district court seeking to enjoin the DOJ from using those two scoring criteria in awarding grants. The trial court held that the inclusion of those elements violated the constitutional separation of powers. The administration appealed to a federal circuit court, which reversed the trial court in a 2-1 decision.*

Judge [IKUTA](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0183411701&originatingDoc=I215b0bc634f411e9bc5c825c4b9add2e&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)&analyticGuid=I215b0bc634f411e9bc5c825c4b9add2e).

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[T]he applicable Spending Clause principles do not readily apply to an allocation of grant funds through a competitive grant process, such as the program in this case.**6** As a threshold matter, DOJ does not propose to withdraw significant federal funds from a state or local jurisdiction unless they comply with specified federal requirements. Nor does DOJ propose to reinterpret the terms of a grant retroactively to impose costly new responsibilities on a recipient. Nor does DOJ propose to reinterpret the terms of a grant retroactively to impose costly new responsibilities on a recipient. Nor does DOJ offer a financial inducement for an applicant to cooperate on illegal immigration issues that is so coercive that it is tantamount to compulsion. Rather, an applicant is free to choose one of many focus areas, and numerous applicants obtained funding without selecting illegal immigration or signing the Certification. Nor did DOJ impose surprise or ambiguous conditions on recipients of the funds. *National Federation of Independent Businesses v. Sebelius* (2012); *South Dakota v. Dole* (1987); *Pennhurst State Sch. & Hosp. v. Halderman* (1981).

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Finally, cooperation relating to enforcement of federal immigration law is in pursuit of the general welfare, and meets the low bar of being germane to the federal interest in providing the funding to “address crime and disorder problems, and otherwise . . . enhance public safety.” . . .

Because DOJ’s scoring factors encourage, but do not coerce, an applicant to cooperate on immigration matters, we also reject Los Angeles’s claims that DOJ’s use of the factors infringes on state autonomy in a manner that raises Tenth Amendment concerns. . . . [C]ontrary to Los Angeles’s argument, DOJ’s decision to give points to applicants that submit the Certification and agree to give DHS personnel access to the applicant’s correctional or detention facilities to meet with alien detainees, or to give DHS notice before an alien detainee is released, does not override state laws and therefore does not give rise to any Tenth Amendment concern.

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When Congress has “explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation.” *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc*. (1984). “Such legislative regulations are given controlling weight unless they are arbitrary, capricious or manifestly contrary to the statute.” . . .

. . . . Because Congress authorized DOJ to fill gaps through its promulgation of the Application Guidelines and implementation of the grant program, we give DOJ’s inclusion of an illegal immigration focus area and use of the Certification controlling weight unless they are manifestly inconsistent with the statute or lack any reasonable basis, “even if the agency’s reading differs from what the court believes is the best statutory interpretation.”

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DOJ’s determination “that illegal immigration enforcement is a public safety issue and that this issue can be addressed most effectively through the principles of community policing that [DOJ] promotes—including through partnerships and problem-solving techniques,” is entirely consistent with the broad scope of the Act. . . .

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The dissent argues that DOJ’s interpretation and implementation of the Act may reflect the administration’s policy goals, and these goals may change from time to time. We agree that an administration’s policy goals may influence the selection of factors warranting additional consideration for awarding competitive grants. But Congress contemplated such a result when it enacted a statute that left substantial gaps for the implementing agency to fill. Where Congress affords an agency such discretion, we ask only whether the agency’s interpretation was reasonable. Whether an interpretation serves an administration’s policy goals has no bearing on that inquiry. *Dept. of Commerce v. New York* (2019).

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*Reversed*.

Judge WARDLAW, dissenting.

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Nothing in the congressional record nor the Act itself remotely mentions immigration or immigration enforcement as a goal. And nothing in the Act discusses “federal partnerships” for civil immigration enforcement. In the quarter-century of the Act’s existence, Congress has not once denoted civil immigration enforcement as a proper purpose for COPS grants.

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Aside from abstract allusions to public safety, DOJ has never articulated how the federal immigration preferences relate to community-oriented policing. This is no doubt because enforcement of federal immigration policy is entirely unrelated to community-oriented policing, as amici current and former prosecutors and law enforcement leaderspoint out. And this is why DOJ’s imposition of the illegal immigration focus area and Cooperation Certification was enjoined by the district court: by imposing conditions that are unrelated—indeed, antithetical—to the goals of community-oriented policing, DOJ exceeded its delegated powers to administer the COPS grant program.

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The illegal immigration focus area impermissibly extends preferences to partnerships between local police and federal immigration authorities, contravening the Act’s identified purpose of “law enforcement officers interacting directly with members of the community.” . . .

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All policing is ultimately designed with public safety in mind. But, all policing is not community-oriented policing, which fosters partnership between the police and their communities, not the partnerships between police and federal immigration enforcement that the federal immigration preferences require. Because such a focus is directly at odds with, and arguably undermines the very purpose of, the Act and the COPS grant program, the Attorney General exceeded his authority by adding them as preferences for grant awards.

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