

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<p>THE CITY OF PHILADELPHIA</p> <p style="text-align:center">v.</p> <p>JEFFERSON BEAUREGARD SESSIONS III, ATTORNEY GENERAL OF THE UNITED STATES</p>	<p>CIVIL ACTION</p> <p>NO. 17-3894</p>
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**NOTICE TO COUNSEL OF THE COURT’S INTENT TO TAKE
JUDICIAL NOTICE UNDER FED. R. EVID. 201 OF PUBLIC STATEMENTS
BY PRESIDENT TRUMP AND ATTORNEY GENERAL SESSIONS**

THIS NOTICE will advise counsel and the parties that the Court intends, as part of the trial record of this case, for the trial beginning April 30, 2018, to take judicial notice of certain public statements that have been made by President Trump and Attorney General Sessions which may be relevant to the issues of this case.

The facts set forth below qualify, subject to any objections or authoritative law to the contrary, cited by counsel, as being admissible under Fed. R. Evid. 201.¹ Rule 201 permits the Court to take notice of an adjudicative fact “that is not subject to reasonable dispute because it can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” F.R.E. 201(b)(2). Courts may take judicial notice of Executive Orders and of actions taken pursuant to Executive Orders. See, N.L.R.B. v. E.C. Atkins & Co., 331 U.S. 398, 406 n. 2 (1947). Courts also may take judicial notice of public statements made by the President and other Executive officials. See, American Civil Liberties Union v. National Sec. Agency, 493 F.3d 644, 648 n. 1 (6th Cir. 2007).

Under Rule 201, both parties are entitled to be heard, upon timely request, “on the

¹ Statements by the President and the Attorney General are also clearly admissible as an opposing party’s statement under Fed. R. Evid. 801(d)(2).

propriety of taking judicial notice and the nature of the fact to be noticed.” F.R.E. 201(e). Counsel are advised, assuming the Court does take judicial notice of the following, that the Court will then invite counsel to introduce evidence, either supporting or disputing the relevance and probative value of these statements, at trial or in post-trial briefings.

The following are the proposed public statements at issue:

1. The President on January 25, 2017 issued an Executive Order directing the Attorney General and the Department of Homeland Security (DHS) Secretary, in their discretion and to the extent consistent with law, to ensure that sanctuary jurisdictions are not eligible to receive Federal grants except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary. Exec. Order No. 13,768, 82 Fed. Reg. 8799 at §9(a) (Jan. 25, 2017).

2. On March 30, 2018, Anna Flagg reported for the New York Times that President Trump stated the week prior: “Every day, sanctuary cities release illegal immigrants, drug dealers, traffickers, gang members back into our communities...They’re safe havens for just some terrible people.”

Source: <https://www.nytimes.com/interactive/2018/03/30/upshot/crime-immigration-myth.html>.

3. On January 24, 2018, the Wall Street Journal reported on the Justice Department’s issuance of letters to so-called “sanctuary cities” indicating that compliance with federal immigration efforts would be imposed as a condition on their receipt of Byrne JAG funding:

Attorney General Jeff Sessions has blamed “sanctuary city” policies for crime and gang violence, saying Wednesday, “we have seen too many examples of the threat to public safety represented by jurisdictions that actively thwart the federal government's immigration enforcement_enough is enough.”

Source:

<https://www.wsj.com/articles/AP546bcf7eae3d4e40a66f8840e7e4cfdc?mod=searchresults&page=1&pos=11>

4. On December 6, 2017, at a cabinet meeting, Mr. Trump made the following comment in response to a question from a reporter about whether there would be a federal government shutdown:

It could happen. The Democrats are really looking at something that is very dangerous for our country. They are looking at shutting down. They want to have illegal immigrants; in many cases, people that we don't want in our country. They want to have illegal immigrants pouring into our country, bringing with them crime, tremendous amounts of crime. We don't want to have that. We want to have a great, beautiful crime-free country. And we want people coming into our country, but we want them to come on our basis. And that's why we're being so careful with our process and our screening.

...

So the Democrats maybe will want to shut down the country because they want people flowing into our country. And I want people coming into our country, but I want to vet those people, and I want to vet them very carefully. Because we don't want to have radical Islamic terrorism in this country, and we don't want to have crime in this country.

The full transcript from Mr. Trump's remarks at the cabinet meeting is available here:

<https://www.whitehouse.gov/briefings-statements/remarks-president-trump-cabinet-meeting-5/>.

5. On January 4, 2018, the New York Times reported that Mr. Trump said the following regarding his demand for a border wall as part of a deal on DACA:

"We need a physical border wall," he said. "We're going to have a wall — remember that — we're going to have a wall to keep out deadly drug dealers, dangerous traffickers and violent criminal cartels. Mexico is having a tremendous problem with crime, and we

want to keep it out of our country.”

Source:

<https://www.nytimes.com/2018/01/04/us/politics/senate-trump-immigration-daca-deal.html>

6. On February 17, 2018, the New York Times Editorial Board published an opinion piece which included the following excerpt, describing a January speech by Attorney General Sessions made on January 26, 2018, which asserted that undocumented immigrants commit more crimes than American citizens:

In a speech last month, Mr. Sessions said undocumented immigrants are far more likely than American citizens to commit crimes, a claim he found in a paper by John Lott, the disreputable economist best known for misusing statistics to suit his own ideological ends. In this case, it appears Mr. Lott misread his own data, which came from Arizona and in fact showed the opposite of what he claimed: Undocumented immigrants commit fewer crimes than citizens, as the vast majority of research on the topic has found.

Source:

<https://www.nytimes.com/2018/02/17/opinion/sunday/donald-trump-and-the-undoing-of-justice-reform.html>.

In that speech Mr. Sessions stated as follows:

I’m sure you’ve heard that immigrants are less likely to commit a crime than average. But one study that just came out looked at the prison population in Arizona and found that illegal aliens are more than twice as likely to be convicted of crimes as Arizonans. They’re more likely to be convicted of sexual assault, robbery, and driving under the influence. They’re more than twice as likely to be convicted of murder. Tens of thousands of crimes have been committed in this country that would never have happened if our immigration laws were enforced and respected like they ought to be.

The full text of Mr. Sessions January 26, 2018 speech can be accessed here:

<https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-national-security>

-and-immigration-priorities.

7. In a press release issued on August 7, 2017, Attorney General Sessions addressed the “sanctuary” policies of the city of Chicago:

They have demonstrated an open hostility to enforcing laws designed to protect law enforcement—Federal, state, and local—and reduce crime, and instead have adopted an official policy of protecting criminal aliens who prey on their own residents. This is astounding given the unprecedented violent crime surge in Chicago, with the number of murders in 2016 surpassing both New York and Los Angeles combined.

The full text of the press release can be accessed here:

[https://www.justice.gov/opa/pr/statement-attorney-general-sessions-city-chicago-s-lawsuit-against-us-department-justice.](https://www.justice.gov/opa/pr/statement-attorney-general-sessions-city-chicago-s-lawsuit-against-us-department-justice)

II. Several Appellate and District Courts Have Relied Upon Statements by President Trump and/or Attorney General Sessions as Probative Evidence Relevant to the Issues in this Case

Statements by the President of the United States, as head of the Executive Branch of government and the Attorney General of the United States, as the Chief Law Enforcement Officer, are probative as to the intention and motivation for certain policies which are at issue in this case.

In the decision of the Seventh Circuit Court of Appeals in City of Chicago v. Sessions, No. 17-2991 (April 19, 2018), --F.3d--, 2018 WL 1868327, the court relied upon Executive Order 13768, dated January 25, 2017, as cited above, noting that it was challenged in court and preliminarily joined by the District Court of the Northern District of California, see County of Santa Clara v. Trump, 250 F. Supp. 3d 497 and County of Santa Clara v. Trump, 275 F. Supp. 3d 1196. The Seventh Circuit also noted that shortly after the opinions of the Northern District of

California, Congress failed to pass similar restrictions which led to, on July 25, 2017, the Attorney General issuing the conditions for the recipients of the Byrne JAG funds that are challenged in this case.

The Fourth Circuit directly quoted Mr. Trump and Mr. Sessions on the rationale for an Executive Order temporarily suspending entry by nationals from six countries into the United States:

In an interview with CNN on March 9, 2016, Trump professed, “I think Islam hates us,” and “[W]e can't allow people coming into the country who have this hatred,” Katrina Pierson, a Trump spokeswoman, told CNN that “[w]e've allowed this propaganda to spread all through the country that [Islam] is a religion of peace.” In a March 22, 2016 interview with Fox Business television, Trump reiterated his call for a ban on Muslim immigration, claiming that this proposed ban had received “tremendous support” and stating, “we're having problems with the Muslims, and we're having problems with Muslims coming into the country.” “You need surveillance,” Trump explained, and “you have to deal with the mosques whether you like it or not.”

International Refugee Assistance Project v. Trump, 857 F.3d 554, 576 (4th Cir. 2017) (internal citations omitted) (vacated and remanded by the Supreme Court with instructions to dismiss as moot, because the Executive Order at issue expired and therefore the appeal did not present a “live case or controversy.”) The Fourth Circuit also relied on public statements made by the President as evidence in reviewing a motion for preliminary injunction in the context of a challenge to a Presidential Proclamation indefinitely barring nationals from eight countries from entering the United States.

Plaintiffs here do not just plausibly allege with particularity that the Proclamation’s purpose is driven by anti-Muslim bias, they offer undisputed evidence of such bias: the words of the President. This evidence includes President Trump’s [] comments and tweets...his repeated proposals to ban Muslims from entering the United States;

his subsequent explanation...the issuance of [Executive Orders] addressed only to majority-Muslim nations; and finally the issuance of the Proclamation, which not only closely tracks [the Executive Orders], but which President Trump and his advisors described as having the same goal as [the Orders].

International Refugee Assistance Project v. Trump, 883 F.3d 233, 264-270 (4th Cir. 2018).

Similarly, the Ninth Circuit took judicial notice of Mr. Trump's public statements contained in tweets from his Twitter account and considered them as evidence in evaluating a motion for preliminary injunction in the context of an Executive Order suspending entry of national from six countries. Hawaii v. Trump, 859 F.3d 741, 773 n. 14 (9th Cir. 2017) (vacated and remanded by the Supreme Court with instructions to dismiss as moot, because the Executive Order at issue expired and therefore the appeal did not present a "live case or controversy.")

District Courts have taken the same approach. In an opinion reviewing a challenge by the County of Santa Clara and the City and County of San Francisco to Mr. Trump's Executive Order withholding federal funds from sanctuary cities, Judge Orrick of the Northern District of California quoted Mr. Trump and Mr. Sessions directly with regard to their views on a connection between undocumented immigrants and crime:

In a February 5, 2017 interview, President Trump specifically threatened to defund California, stating: "I'm very much opposed to sanctuary cities. They breed crime. There's a lot of problems. If we have to we'll defund, we give tremendous amounts of money to California ... California in many ways is out of control."

...

The President and the Attorney General have also repeatedly held up San Francisco specifically as an example of how sanctuary policies threaten public safety. In his statements to the press on March 27, 2017, Attorney General Sessions referenced the tragic death of Kate Steinle and noted that her killer "admitted the only reason he came to San Francisco was because it was a sanctuary

city.” In an op-ed recently published in the San Francisco Chronicle, the Attorney General wrote that “Kathryn Steinle might be alive today if she had not lived in a ‘sanctuary city’ ” and implored “San Francisco and other cities to re-evaluate these policies.” These statements indicate not only the belief that San Francisco is a “sanctuary jurisdiction” but that its policies are particularly dangerous and in need of change. They also reveal a choice by the Government to hold up San Francisco as an exemplar of a sanctuary jurisdiction.

County of Santa Clara v. Trump, 250 F. Supp. 3d 497, 523-4 (N.D. Cal. April 25, 2017) (internal citations omitted). Judge Orrick took judicial notice of public statements made by Mr. Trump and Mr. Sessions and considered them as evidence both in his decision issuing a preliminary injunction against Section 9(a) of Executive Order 13768, and later in his opinion issuing a permanent injunction. County of Santa Clara, 250 F. Supp. 3d at 520 n. 4, 522 n. 6; County of Santa Clara, 275 F. Supp. 3d at 1208 n. 4, 1209 n. 7. Judge Jones of the Western District of Washington likewise considered the public statements of Mr. Trump and Mr. Sessions as evidence in evaluating a Motion to Dismiss a Complaint filed by the City of Seattle against the federal government over the threatened loss of funding as a result of Seattle’s “sanctuary” policies. City of Seattle v. Trump, 2017 WL 4700144, at *2-3,*5-6 (W.D. Wash. October 18, 2017).

In conclusion, there is substantial precedent for this Court taking judicial notice as set forth above.

BY THE COURT:

Dated: April 24, 2018

/s/ Michael M. Baylson
MICHAEL M. BAYLSON, U.S.D.J.