

EXHIBIT F

1 LEON J. PAGE, COUNTY COUNSEL
JOHN (JACK) W. GOLDEN, Senior Assistant (SBN 092658)
2 STEVEN C. MILLER, Senior Deputy (SBN 112951)
PATRICK K. BRUSO, Deputy (SBN 272109)
3 BENJAMIN L. BERNARD, Deputy (SBN 314698)
OFFICE OF THE COUNTY COUNSEL
4 333 West Santa Ana Boulevard, Suite 407
Post Office Box 1379
5 Santa Ana, California 92702-1379
Telephone: (714) 834-3300
6 Facsimile: (714) 834-2359

7 *Attorneys for Proposed Intervenor*
COUNTY OF ORANGE and SANDRA HUTCHENS,
8 Sheriff-Coroner for the County of Orange

9
10 **UNITED STATES DISTRICT COURT**
11 **EASTERN DISTRICT OF CALIFORNIA**

12 UNITED STATES OF AMERICA,
13 Plaintiff,

14 v.

15 STATE OF CALIFORNIA; EDMUND
GERALD BROWN JR., *Governor of*
16 *California, in his Official Capacity*; and
XAVIER BECERRA, *Attorney General of*
17 *California, in his Official Capacity*,
18 Defendants.

Case No.: 2:18-cv-00490-JAM-KJN

**DECLARATION OF SANDRA
HUTCHENS IN SUPPORT OF REPLY
BY THE UNITED STATES OF
AMERICA IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION**

1 I, SANDRA HUTCHENS, hereby declare

2 1. I am the duly-elected Sheriff-Coroner of the County of Orange. I have
3 personal knowledge of the facts set forth in this Declaration unless the facts are stated on
4 information and belief, in which case I believe them to be true. If called to testify under
5 oath as to the facts in this Declaration, I could and would do so competently.

6 2. As the Sheriff-Coroner for the County of Orange I have constitutional and
7 statutory authority and am tasked with the general supervision, administration, and
8 management of the Orange County Sheriff-Coroner Department ("OCSD") including the
9 jails run by the OCSD. I am tasked with enforcing the laws of the State of California. I
10 took an oath to uphold the laws and constitutions of the United States of America and the
11 State of California.

12 3. I was first appointed to the position of Orange County Sheriff-Coroner by
13 the Orange County Board of Supervisors in 2008. In the 2010 primary election, I was
14 elected by the voters to a full four-year term. I was again elected by the voters in 2014
15 for another four-year term, which I am now serving.

16 4. As the Sheriff I am familiar with the requirements of the California Values
17 Act ("the CVA") as well as the Trust Act, which was amended by the CVA. The
18 California State Sheriffs' Association opposed the CVA because there was a common
19 belief that the CVA would create a danger to public safety in our communities.
20 Personally, I was also troubled by the fact that the CVA, in some instances, requires me
21 to choose between complying with state law or complying with federal law. As a state
22 constitutional officer it is my duty to uphold both the U.S. and California Constitutions. I
23 view the CVA as restricting my ability to share information and cooperate with ICE in
24 regards to inmates in the OC Jail, which creates public safety issues for the citizen of
25 Orange County who I have taken an oath to protect and serve. Herein I discuss some of
26 the public safety concerns created by the CVA, with which my Department is complying.

27 5. One of my biggest fears, which I know multiple Sheriffs through the state
28 share because we have discussed it, is that an inmate with an ICE detainer that I am

1 required under the CVA to release to the streets and not communicate with ICE about
2 will commit a terrible crime. I think it is a question of when, not if, this will happen.
3 When it does happen, the citizens of Orange County will look to me, as their elected
4 Sheriff to explain why I would release the individual when my Department had
5 knowledge that the person had an ICE detainer. I doubt they will take much solace in the
6 fact that state law required me to release the individual.

7 6. OCSD maintains data regarding inmates with ICE detainers. Those inmates'
8 cases are screened in compliance with the Trust Act to determine whether an inmate with
9 an ICE detainer qualifies to be held for ICE detention. Since January 1, 2018, when the
10 CVA became effective, through and including April 30, 2018, OCSD has had 601
11 inmates with ICE detainers who were screened by OCSD staff. Of those, 341 inmates
12 were released without notification to ICE that the person was in OCSD custody and the
13 CVA prohibits OCSD from sharing information with ICE. Prior to the CVA OCSD had
14 the option to share information about all inmates who had ICE detainers with ICE. It
15 should be noted that in 2016 OCSD ceased providing information to ICE regarding
16 inmates who did not qualify for referral to ICE under AB 4. This was done because at
17 that time, ICE was not interested in inmates with detainers unless they also met the
18 requirements of AB 4. But now, because of the CVA, OCSD is prohibited from referring
19 non-AB 4 compliant inmates with detainers to ICE.

20 7. Public safety is also impacted based on the types of crimes the inmates with
21 ICE detainers, but released without notice to ICE, are charged with committing. OCSD
22 does not presently maintain data in regards to the type of charges pending against inmates
23 who are subject to ICE detainers but released to the street as a result of SB 54. However,
24 in preparation of this declaration my staff, who are responsible for screening for AB 4
25 compliant release, reviewed a random sampling of the charges pending against 89 of the
26 341 inmates with ICE detainers who were released to the street since January 1, 2018.
27 Forty-two of the 89 records reviewed (47%) were charged with what I would consider to
28 be violent crimes or serious crimes that present a public safety concern, including, but not

1 limited to: willful infliction of corporal injury, possession of methamphetamine for sale,
2 possession of firearms and a controlled substance, assault with a deadly weapon, lewd
3 and lascivious acts on a minor, possession of a loaded firearm, statutory rape, willful
4 harm or injury to a child, intimidation of witnesses and victims, and threat to commit
5 crime that will result in death or great bodily injury. These are criminally charged
6 individuals, with ICE detainers, walking the streets of Orange County with impunity
7 because OCSD is prohibited from communicating to ICE that we have one of their
8 detainers in our custody and/or when they will be released.

9 8. Also at my direction, staff reviewed the 341 inmates with ICE detainers who
10 were released to the street as required by AB 4, to determine whether they have
11 recidivated. Based on this review, we determined that of the 341 inmates with ICE
12 detainers released from January 1, 2018 through April 30, 2018, over 13% (45 out of
13 341) have been rearrested at least once in Orange County (only local arrest record
14 information was reviewed for this purpose). A handful of the 341 released inmates have
15 been rearrested more than once in the short four months between January and April. Like
16 their original crimes, the crimes for which these individuals have been rearrested present
17 a threat to public safety. The crimes for which these 45 individuals have been rearrested
18 include, but are not limited to: attempted murder (2 rearrests); assault with a deadly
19 weapon (4 rearrests); spousal battery (5 rearrests); driving under the influence (5
20 rearrests); child abduction and sex crimes on a child (1 rearrest); and possession of drugs
21 or paraphernalia (15 rearrests). Why the State of California wants these individuals
22 walking the street instead of released to ICE where they may not be able to offend again
23 is beyond me. Notably, many of the crimes for which these individuals are rearrested are
24 crimes on the family – the very people the state claims to be protecting with the CVA.

25 9. Additionally, as a result of the CVA's prohibition on sharing information,
26 OCSD has on two occasions, of which I have been made aware, been forced to decline to
27 provide ICE investigators personal identifying information, i.e., photos and addresses of
28 two different former OCSD inmates being investigated by ICE. OCSD can and does

1 provide such information to all other law enforcement agencies in the country, whether at
2 the local or federal level, whether in California or from another state when the agency is
3 conducting an investigation into that person. Yet, the CVA prohibits OCSD from
4 providing information to ICE regarding individuals under investigation by ICE. The two
5 individuals about whom OCSD was prohibited from sharing information with ICE are
6 repeat criminal offenders.

7 10. Based on my personal review of the local arrest records, I state that one of
8 the inmates has been arrested six times in Orange County for crimes of violence
9 including corporal injury to spouse, domestic violence and criminal threat with intent to
10 cause death or great bodily injury. I personally reviewed the court docket in regards to
11 four cases that resulted from the above referenced arrests from 2006-2016. In each case
12 the inmate pled guilty: twice to misdemeanor corporal injury to a spouse; once to
13 misdemeanor criminal threats (in which case the inmate was also charged with child
14 abuse and endangerment, though those charges were dismissed as part of the plea deal);
15 and once to violation of a domestic relations protective order. In the two most recent
16 cases that were charged in 2016, the inmate was initially sentenced to some jail time and
17 three years of informal probation but violated the terms of probation resulting in
18 probation being revoked, a bench warrant being issued and the inmate ultimately being
19 sentenced to serve additional time in the Orange County Jail as well as placed on formal
20 probation for three years; this individual remains on probation. The inmate entered the
21 guilty plea on the misdemeanor criminal threats case in 2016. It is my understanding that
22 pursuant to California Government Code section 7282.5(a)(1)(C), this inmate could have
23 and would have been released to ICE if there had been an active detainer at the time the
24 inmate was incarcerated at OCSD. But now that the inmate has been released from
25 custody, and is on Probation, Government Code section 7284.6 (added by the CVA)
26 prohibits OCSD from sharing any personal information with ICE that would allow ICE to
27 pursue this repeat offender for immigration issues. In my opinion it is absurd that
28 because of the CVA, this individual who has repeatedly been convicted of violent crimes,

1 is now shielded by California law against federal immigration authorities because OCSD
2 cannot cooperate with ICE by providing identifying information that might enable ICE to
3 locate the individual. Instead he is back on the streets of Orange County able to offend
4 again.

5 11. Based on my personal review of the local arrest records of the second inmate
6 about whom we were prohibited from providing information to ICE because of the CVA,
7 I state that the inmate was arrested and booked in Orange County jail seven times from
8 2001 through 2017. All of the inmate's charges related to controlled substances. Based
9 upon my personal review of the Court docket, I state that the above referenced seven
10 arrests led to at least three criminal cases against the inmate from 2005 through 2017, in
11 which the inmate pled guilty to misdemeanor possession once and guilty to felony
12 possession in two different cases. The felony possession cases occurred in the last 15
13 years. Thus, just like the inmate described in the previous paragraph, it is my
14 understanding that pursuant to California Government Code section 7282.5(a)(1)(M), this
15 inmate could have and would have been released to ICE if there had been an active
16 detainer at the time the inmate was incarcerated at OCSD. But now that the inmate has
17 been released from custody, the CVA prohibits OCSD from sharing any personal
18 information with ICE that would allow ICE to pursue this repeat offender for
19 immigration issues. With the epidemic of drug addiction that exists in this Country, this
20 State, and this County, it is inconceivable that because of the luck of timing this
21 individual was released to the streets and OCSD is now prohibited by Government Code
22 section 7284.6(a)(1)(D) from cooperating with ICE to possibly enable ICE to enforce
23 federal immigration laws against the individual. This person who has been convicted of
24 violating California laws at least three times, is now shielded by California law against
25 federal immigration authorities and back on the streets of Orange County able to offend
26 again.

27 12. The author of the CVA asserted that his bill was necessary to prevent local
28 law enforcement from participating in immigration enforcement and that it better protects

1 victims of crimes who may be undocumented immigrants because in the absence of the
2 CVA, the author asserted, such victims and witnesses were less likely to report crimes to
3 local authorities for fear that they would be referred to immigration authorities. If such
4 fears exist in immigrant communities it is not because of the actions or policies of the
5 OCSD, it is, in my opinion, because of the myth perpetuated by the proponents of the
6 CVA.

7 13. For as long as I have been Sheriff, OCSD policy is to **not** actively enforce
8 federal immigration laws in the communities. OCSD's mission is to enforce criminal
9 violations of state and local law, equally, without bias, and without regard to immigration
10 status. OCSD does not ask the immigration status of suspects, witnesses, or those who
11 call to report crimes. **Only after** a person is booked into the jails, might such an inquiry
12 be made. OCSD engages in community outreach, often through the Mexican Consulate
13 in Santa Ana, in immigrant communities to stress this issue. Although OCSD has
14 historically cooperated with federal immigration authorities in regards to those
15 individuals who have booked into the Orange County jails, the ability to cooperate has
16 been significantly stifled by the CVA.

17 14. Indeed, if a victim or witness in a crime is not legally present in the United
18 States, and if they cooperate with authorities in a criminal investigation/prosecution, they
19 may qualify for a U-Visa, a special type of Visa that allows such individuals legally
20 issued and expedited Visa. OCSD has staff who review and process certifications for
21 victims and witnesses who apply for U-Visa. According to statistics that OCSD
22 maintains on U-Visas, in 2016, OCSD received 90 requests for certifications, and 71
23 were certified, and in 2017, OCSD received 78 requests of which 61 were certified.
24 OCSD's willingness to support applications for U-Visas should encourage the reporting
25 of crimes in our immigrant communities, not the opposite. I would posit that OCSD's
26 inability to share information with ICE in regards to **all** inmates with detainers creates
27 greater reticence in immigrant communities to reporting crimes, especially domestic
28

1 violence type crimes, because there is a higher likelihood that those individuals will get
2 released from jail to the streets instead, of ICE custody.

3 15. I also believe that the CVA creates a greater risk of harm to our immigrant
4 communities because if OCSD does not release inmates with detainers to ICE, the
5 detainers still exist – ICE will likely execute warrants against those individuals, and while
6 they are in the community of the subject of the detainer, ICE may sweep up other
7 immigrants in their net, as we all have seen in media coverage. Similarly, it is much safer
8 to release the individual from County Jail directly into the hands of ICE, than releasing
9 that individual to the community where ICE would have to stake out locations or execute
10 search/arrest warrants in the community. In my 40.5 years of experience in law
11 enforcement, I know that serving search/arrest warrants in communities has inherent risks
12 for both non-involved community members and members of law enforcement. In my
13 opinion, SB 54 has placed more risk in our communities and has put law enforcement
14 officers at unnecessary risk.

15 16. Another way that I recently learned Orange County and its citizens have
16 been harmed by the CVA, is that federal authorities may be less likely to release a person
17 in their custody to OCSD pursuant to a felony warrant for fear that OCSD will not be
18 able to cooperate with federal authorities once any criminal matter is completed. In my
19 40.5 years in law enforcement, cooperation among all levels of law enforcement has been
20 essential to ensuring that criminals are brought to justice. One of the most important
21 lessons learned after the 9/11 terrorist attacks was the necessity of open communication
22 and cooperation between federal, state and local law enforcement authorities on shared
23 public safety threats. Now, because of the CVA, California law enforcement are
24 prohibited from such cooperation and communication with a singular federal law
25 enforcement agency because the California legislature has determined that their policy
26 choices about immigrants are superior to the policy choices on immigration reflected in
27 the laws of the United States.

28 //

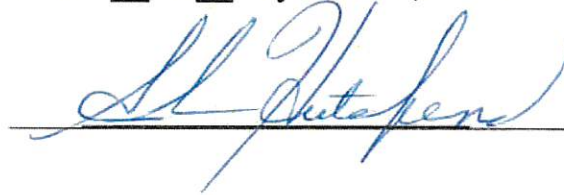
1 17. It appears that the CVA has also created a situation, which was entirely
2 foreseeable, where federal authorities are less likely to cooperate with local law
3 enforcement in California. I recently learned that U.S. Border Patrol had custody of a
4 person subject to a felony warrant from Orange County. Border Patrol decided not to
5 release the felony warrant subject to OCSD for fear that, because of the CVA, OCSD
6 would not be allowed to advise Border Patrol or ICE when the state criminal case was
7 completed and release the subject back to federal authorities. If this becomes a regular
8 issue, Orange County citizens may be deprived of seeing justice served.

9 18. The CVA also prohibits OCSD from continuing to participate in the 287(g)
10 program, which OCSD had been a part of longer than I have been Sheriff. The 287(g)
11 program is a federally authorized program (8 U.S.C. § 1357(g)) relating to immigration,
12 under which jail deputies, who were trained by ICE, reviewed inmates for civil
13 immigration violations and placed detainers on those inmates on those inmates who
14 qualified under California law to be transferred to ICE once the inmates were eligible for
15 release from Sheriff's custody. At the time the CVA was signed by the governor, I was
16 the only Sheriff in the state that continued in this cooperative effort with ICE authorities
17 because the program had allowed detainers to be placed on some serious offenders and
18 subsequently released to ICE instead of to the streets. The following are a few examples
19 from 2016 and 2017 of some of the offenders OCSD was able to prevent from returning
20 to the streets of Orange County because of the 287(g) program: two individuals charged
21 with attempted murder; a person arrested on child molest charges, who had since been
22 convicted and is serving a state sentence; a person arrested for robbery and assault with a
23 deadly weapon; one person arrested for kidnapping and battery; a person arrested for
24 domestic violence; and a person arrested for narcotics sales. None of these individuals
25 had immigration detainers at the time of their arrest and one of them had been previously
26 deported. In the absence of the 287(g) program, the inmates would not have been
27 identified as qualifying for a detainer. These are serious offenders, who, because of the
28 287(g) program, OCSD was able to place detainers on which will enable ICE to enforce

1 the immigration laws of this country once the offenders' state criminal case is concluded.
2 Getting and keeping this type of offender, who present a danger to public safety, off the
3 streets is precisely why OCSD continued to participate in the 287(g) program until the
4 CVA compelled OCSD to stop. Now, similarly situated offenders will be released to the
5 street.

6 I declare, under penalty of perjury under 28 U.S.C. § 1746, that the foregoing is
7 true and correct to the best of my knowledge, information and belief.
8

9 Executed in Santa Ana, California on this __5th__ day of June, 2018.
10

11 
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28