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10 UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 11 SAN FRANCISCO DIVISION

12	PEOPLE OF THE UNITED STATES	)	Case No. 3:17-cv-00451-JD
13	OF AMERICA AND THE STATE	)	
	OF CALIFORNIA,	)	
14	Plaintiffs,	)	NOTICE OF MOTION AND
		)	MOTION TO DISMISS
15	v.	)	AND MEMORANDUM
		)	IN SUPPORT
16	DONALD TRUMP; UNITED	)	Date: May 11, 2017
17	STATES OF AMERICA	)	Time: 10:00 a.m.
		)	Place: San Francisco U.S. Courthouse
18	Defendants.	)	Judge: Hon. James Donato

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		)	NOTICE OF MOTION AND
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	STATES OF AMERICA	)	Time: 10:00 a.m.
17		)	Place: San Francisco U.S. Courthouse
	Defendants.	)	Judge: Hon. James Donato
18			

19 **NOTICE OF MOTION**

20 PLEASE TAKE NOTICE that on May 11, 2017, at 10:00 a.m. in the United States  
 21 Courthouse at San Francisco, California, Defendants Donald Trump and the United States of  
 22 America, by and through undersigned counsel, will move the Court to dismiss this action.  
 23

24 **MOTION TO DISMISS**

25 Defendants Donald Trump and the United States of America hereby move to dismiss this  
 26 action in its entirety pursuant to Federal Rule of Civil Procedure 12(b)(1), for the reasons more  
 27 fully set forth in the following Memorandum of Points and Authorities.  
 28

**MEMORANDUM OF POINTS AND AUTHORITIES**

**PRELIMINARY STATEMENT**

Purporting to act on behalf of the “People of the United States of America and the State of California,” attorney Andrew W. Shalaby brings this lawsuit to enjoin and “repeal” provisions of an executive order issued by the President. Shalaby’s amended complaint fails to demonstrate that he has standing to bring his claims. Because the Court lacks subject matter jurisdiction over this case, the Court should grant Defendants’ motion to dismiss.

**STATEMENT OF THE ISSUES**

Whether a plaintiff has demonstrated standing for purposes of Article III of the U.S. Constitution, where he alleges no injury to himself and instead seeks to vindicate the interests of unspecified third parties with whom the plaintiff has no relationship.

**BACKGROUND**

On January 27, 2017, the President issued Executive Order 13769, “Protecting the Nation from Foreign Terrorist Entry into the United States.” 82 Fed. Reg. 8,977. The following day, attorney Andrew W. Shalaby filed this lawsuit against the President and the United States. Compl., Dkt. No. 1.<sup>1</sup> Shalaby named as plaintiffs the “People of the United States of America and the State of California.” *Id.*; *see also* Application to Proceed In Forma Pauperis, Dkt. No. 8, at 1 (“No one particular individual is named as a plaintiff in the action.”). Shalaby sought an “injunction and repeal” of the Executive Order because it allegedly failed to “readily identify” certain countries, Compl. ¶ 5; “violate[d] the separation of powers doctrine without statutory exception,” *id.* ¶ 6; damaged the reputation of the United States, *id.*; and infringed on the guarantees of the Establishment Clause of the First Amendment to the U.S. Constitution, *id.* ¶ 7.

The Court *sua sponte* dismissed the complaint on February 1, 2017. Order Dismissing Compl., Dkt. No. 11 (“Order”). The Court concluded that Shalaby failed to adequately assert an Article III injury in fact. *Id.* at 2 (noting that the complaint “does not even allege a specific

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<sup>1</sup> Shalaby failed to deliver a copy of the summons and the complaint, as well as the amended complaint, to the Attorney General of the United States. He has therefore failed to properly serve the United States pursuant to Federal Rule of Civil Procedure 4(i).

1 person who might have sustained an injury in fact”). Instead, Shalaby’s allegations amounted  
2 only to “a generalized grievance . . . common to all members of the public,” and as such were  
3 insufficient to establish standing. *Id.* (citations omitted). The Court further determined that  
4 Shalaby’s reliance on 42 U.S.C. § 1988 did not cure the complaint’s patent standing deficiencies.  
5 *Id.* at 2-3. The Court therefore dismissed the complaint due to lack of subject matter jurisdiction  
6 but allowed Shalaby an opportunity to amend. *Id.* at 3.

7 On March 6, 2017, the President signed Executive Order 13780, “Protecting the Nation  
8 from Foreign Terrorist Entry into the United States” (“New Executive Order”). 82 Fed. Reg.  
9 13,209. The New Executive Order, *inter alia*, suspends for 90 days the entry into the United  
10 States of nationals from Iran, Libya, Somalia, Sudan, Syria, and Yemen, subject to certain  
11 limitations, waivers, and exceptions. *Id.* § 2(c). This suspension of entry applies only to foreign  
12 nationals of these countries who “(i) are outside the United States on the effective date of this  
13 order; (ii) did not have a valid visa at 5:00 p.m., eastern standard time on January 27, 2017; and  
14 (iii) do not have a valid visa on the effective date of this order.” *Id.* § 3(a). The New Executive  
15 Order, which also revokes Executive Order 13769, set an effective date of March 16, 2017. *Id.*  
16 § 14.<sup>2</sup>

17 Shalaby filed an amended complaint on March 10, 2017. First Am. Compl., Dkt. No. 21.  
18 In his amended complaint, Shalaby does not claim that he has been injured by the New  
19 Executive Order. *See id.* Rather, he asserts that he is bringing this lawsuit “on behalf of all  
20 persons in the United States, who are negatively and adversely impacted by the [New Executive  
21 Order],” including unspecified “professionals, educators, persons of varying religious beliefs and  
22 backgrounds, and persons of all ethnicity,” as well as individuals who have purportedly  
23 submitted “Statements of Support” to the Court. *Id.* ¶ 1; *see also* Request for Judicial Notice Of  
24 Represented Individual Interests, Dkt. Nos. 16, 20.

25 \_\_\_\_\_  
26 <sup>2</sup> The U.S. District Court for the District of Hawai’i has enjoined the enforcement or  
27 implementation of Sections 2 and 6 of the New Executive Order. *State of Hawai’i v. Trump*, No.  
28 1:17-cv-00050, 2017 WL 1167383 (D. Haw. March 29, 2017); *see also Int’l Refugee Assistance*  
*Project v. Trump*, No. CV TDC-17-0361, 2017 WL 1018235 (D. Md. Mar. 16, 2017) (enjoining  
enforcement of Section 2(c)).

1 Shalaby seeks injunctive relief against Defendants, alleging that Sections 2(c) and 3(a) of  
2 the New Executive Order violate the Equal Protection Clause of the Fourteenth Amendment to  
3 the U.S. Constitution. First Am. Compl. ¶¶ 4-7. First, with respect to Section 2(c), Shalaby  
4 contends that the New Executive Order “carries over” concrete harm from Executive Order  
5 13769 by improperly “limit[ing] scrutiny to six countries, excluding many other countries from  
6 which terrorists may come into the United States.” *Id.* ¶¶ 5-6. According to Shalaby, this  
7 provision of the New Executive Order has resulted in “actual discrimination,” “national  
8 polarization of the people,” “students . . . shunn[ing] their fellow co-students,” “profound  
9 sadness and depression experienced by the young victim students,” “actual physical injury,” and  
10 “strained relations” between the Executive and Judicial Branches. *Id.* ¶ 6. Shalaby therefore  
11 asks that the Court “remove the specificity of the six designated countries from the scope of the  
12 Executive Order.” *Id.* at 8; *see also id.* ¶ 6.

13 Second, with respect to Section 3(a), Shalaby appears to argue that the inclusion of an  
14 effective date in the New Executive Order violates the Equal Protection Clause. *Id.* ¶ 7. He  
15 claims that the effective date results “in the disparate treatment of persons who may suffer delays  
16 due to administrative backlog or error, or for any other reason, which equally translates to harms  
17 suffered by family members and affiliates in the United States.” *Id.* To remedy this alleged  
18 constitutional violation, Shalaby asks that the Court “remove the provision” that includes the  
19 effective date. *Id.* at 8; *see also id.* ¶ 7.

## 20 DISCUSSION

21 Shalaby attempts to establish standing by bringing his lawsuit “on behalf of all persons in  
22 the United States, who are negatively and adversely impacted by the [New Executive Order].”  
23 First Am. Compl. ¶ 1. This theory of standing is without merit, as he cannot meet the test  
24 required to invoke the so-called “third-party standing” doctrine. Because Shalaby has not  
25 demonstrated standing to bring his claims, the Court is without subject matter jurisdiction and  
26 must dismiss the case.  
27  
28



1 “For Article III standing, a plaintiff must satisfy three ‘irreducible constitutional  
2 minimum’ requirements: (1) he or she suffered an injury in fact that is concrete, particularized,  
3 and actual or imminent; (2) the injury is fairly traceable to the challenged conduct; and (3) the  
4 injury is likely to be redressed by a favorable court decision.” *Wash. Envtl. Council v. Bellon*,  
5 732 F.3d 1131, 1139-40 (9th Cir. 2013) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555,  
6 560-61 (1992)). “Ordinarily, of course, a litigant must assert his own legal rights and interests,  
7 and cannot rest his claim to relief on the legal rights or interests of third parties.” *U.S. Dep’t of*  
8 *Labor v. Triplett*, 494 U.S. 715, 720 (1990) (citation omitted). The Supreme Court has  
9 recognized a limited exception to this general rule, however, “provided three important criteria  
10 are satisfied: The litigant must have suffered an ‘injury in fact,’ thus giving him or her a  
11 ‘sufficiently concrete interest’ in the outcome of the issue in dispute . . . ; the litigant must have a  
12 close relation to the third party . . . ; and there must exist some hindrance to the third party’s  
13 ability to protect his or her own interests.” *Powers v. Ohio*, 499 U.S. 400, 411 (1991) (citations  
14 omitted); *see also Hollingsworth v. Perry*, 133 S. Ct. 2652, 2663 (2013) (emphasizing that  
15 plaintiff must have suffered an injury in fact in order to assert the interests of third parties).

16 Shalaby has failed to establish any of the three elements necessary to invoke the third-  
17 party standing doctrine. Shalaby has not even attempted to allege that he has personally suffered  
18 any injury, let alone a “concrete” and “particularized” harm as required by Article III. *See First*  
19 *Am. Compl.* This omission is itself sufficient to defeat not only Shalaby’s claim for third-party  
20 standing, but any claim for direct-party standing as well. *See Hollingsworth*, 133 S. Ct. at 2663.  
21 Additionally, Shalaby has not alleged that he has a “close relationship” with anyone affected or  
22 even potentially affected by the New Executive Order; in fact, based on the amended complaint,  
23 it appears he has “no relationship at all” to the individuals on whose behalf he purports to bring  
24 this action. *See Kowalski v. Tesmer*, 543 U.S. 125, 131 (2004); *cf. Singleton v. Wulff*, 428 U.S.  
25 106, 115-16 (1976) (providing examples of a sufficiently “close relationship,” such as that  
26 between married persons or between a doctor and patient). And Shalaby has provided no reason  
27 to doubt that U.S. persons directly affected by the New Executive Order can independently and  
28 capably assert their own rights. Indeed, other litigation concerning the New Executive Order

1 confirms that these persons face no “hindrance” in vindicating their own interests. *See, e.g.*,  
2 Second Am. Compl., *State of Hawai’i v. Trump*, No. 1:17-cv-00050, Dkt. No. 64 (D. Haw.  
3 March 8, 2017) (alleging injury to individual plaintiff); *see also Hodak v. City of St. Peters*, 535  
4 F.3d 899, 905 (8th Cir. 2008) (noting agreement among circuits that, “if a third party actually  
5 asserts his own rights, no hindrance exists, and third-party standing is improper”). Accordingly,  
6 Shalaby cannot rely on purported injuries to others in attempting to establish standing.

7 Nor is Shalaby able to salvage his claim of third-party standing by relying on unspecified  
8 “Private Attorney General statutes of the State of California and United States.” First Am.  
9 Compl. ¶ 1. “[E]ven a plaintiff bringing a claim under a statutory right to act as a private  
10 attorney general must have standing under Article III of the United States Constitution.”  
11 *Vrooman v. Armstrong*, No. 3:16-CV-00770, 2016 WL 3563293, at \*2 (D. Or. June 8, 2016),  
12 *report and recommendation adopted*, 2016 WL 3566733 (D. Or. June 29, 2016). This principle  
13 applies regardless of whether the private attorney general statute arises from California state law,  
14 *see Hollingsworth*, 133 S. Ct. at 2667 (“standing in federal court is a question of federal law, not  
15 state law”); *Mortera v. N. Am. Mortg. Co.*, 172 F. Supp. 2d 1240, 1242-44 (N.D. Cal. 2001)  
16 (remanding to state court where plaintiff brought claim under California’s Unfair Competition  
17 Act but did not allege injury to herself), or from federal law, *cf. Vermont Agency of Nat. Res. v.*  
18 *United States ex rel. Stevens*, 529 U.S. 765, 772 (2000) (holding False Claims Act plaintiff may  
19 bring a *qui tam* action on behalf of the United States because plaintiff had a “concrete private  
20 interest in the outcome of the suit” (citation omitted)).<sup>3</sup> As discussed above, Shalaby has failed  
21 to allege that he himself has suffered any injury whatsoever, and so no private attorney general  
22 statute can alter the conclusion that he lacks standing to bring his claims.

23 Because Shalaby has not alleged any injury to himself, and because he cannot otherwise  
24 meet the standard for third-party standing articulated by the Supreme Court in *Powers*, the  
25 Court’s inquiry is at an end. Nonetheless, other deficiencies in Shalaby’s theory of standing  
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27 <sup>3</sup> By refusing to identify the specific private attorney general statutes on which he relies, Shalaby  
28 has also failed to establish authorization to sue. *See, e.g., Brockovich v. Cmty. Med. Ctrs., Inc.*,  
No. CV-F-06-1609, 2007 WL 738691, at \*4 (E.D. Cal. Mar. 7, 2007) (“Without [] express  
Congressional authorization, Plaintiff may not sue on behalf of the government.”).

1 confirm that the Court is without subject matter jurisdiction. First, Shalaby’s allegations of harm  
 2 are not only conclusory, but also describe injuries that are abstract or hypothetical. *See* First Am.  
 3 Compl. ¶ 6 (stating, without factual support, that unspecified persons have suffered “actual  
 4 discrimination” and “actual physical injury”); *id.* (alleging that Section 2(c) of the New  
 5 Executive Order has given rise to “national polarization of the people,” “profound sadness and  
 6 depression,” and “strained relations” between the Executive and Judicial Branches); *id.* ¶ 7  
 7 (speculating about administrative delays that certain individuals “may” experience, as well as the  
 8 secondary effects of those potential delays). As such, these allegations do not meet the  
 9 requirements of Article III. *See, e.g., Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S.  
 10 208, 217 (1974) (“the generalized interest of all citizens in constitutional governance . . . is an  
 11 abstract injury”); *Escobar v. Brewer*, 461 F. App’x 535, 535-36 (9th Cir. 2011) (“mere  
 12 conclusory allegations are not enough to establish the ‘concrete and particularized’ injury  
 13 required for standing under Article III”); *Gest v. Bradbury*, 443 F.3d 1177, 1182 (9th Cir. 2006)  
 14 (“[F]eelings of frustration . . . are not sufficiently concrete to constitute the ‘injury-in-fact’  
 15 required for Article III standing.” (citation omitted)); *Schmier v. U.S. Court of Appeals for Ninth*  
 16 *Circuit*, 279 F.3d 817, 821 (9th Cir. 2002) (“hypothetical, speculative or other ‘possible future’  
 17 injuries do not count in the standings calculus”); *Clay v. Fort Wayne Cmty. Sch.*, 76 F.3d 873,  
 18 877 n.4 (7th Cir. 1996) (“amorphous psychological injuries [are] insufficient to confer  
 19 standing”).<sup>4</sup> Further, having failed to include any allegations “show[ing] a very significant  
 20 possibility of future harm,” Shalaby has not met the burden required to obtain the injunctive  
 21 relief that he seeks. *See Montana Shooting Sports Ass’n v. Holder*, 727 F.3d 975, 979 (9th Cir.  
 22 2013) (citation omitted).

23 Shalaby has likewise failed to carry his burden with respect to the causation and  
 24 redressability elements of standing. The injuries alleged by Shalaby are generally traceable only  
 25 to Executive Order 13769, *see* First Am. Compl. ¶¶ 5-7, or to third parties, *see id.* ¶ 6 (alleging

26 <sup>4</sup> The “Statements of Support” submitted by Shalaby—which request the “full repeal” of  
 27 Executive Order 13769 and do not pertain to the New Executive Order—similarly raise a  
 28 generalized grievance insufficient to confer Article III standing. *See Hollingsworth*, 133 S. Ct. at  
 2663 (federal courts are not “a vehicle for the vindication of [the] value interests” of “concerned  
 bystanders” (citation omitted)).

1 that “bloodshed took place when proponents and opponents of [Executive Order 13769]  
 2 clashed,” and that “students have shunned their fellow co-students”), and accordingly are not  
 3 “fairly traceable to the challenged conduct of” Defendants, *Spokeo, Inc. v. Robins*, 136 S. Ct.  
 4 1540, 1547 (2016); *see also Lujan*, 504 U.S. at 560-61 (no causation where alleged harm is “the  
 5 result of the independent action of some third party not before the court” (quoting *Simon v. E.*  
 6 *Ky. Welfare Rights Org.*, 426 U.S. 26, 41-42 (1976))). And putting aside the question of whether  
 7 the Court has the authority to alter the Executive Order as Shalaby requests, *see First Am.*  
 8 *Compl.* ¶¶ 6-7 (requesting that the Court “remove” Sections 2(c) and 3(a), rather than, for  
 9 example, enjoin their enforcement), Shalaby can only speculate that doing so will remedy the  
 10 amorphous and hypothetical injuries he alleges, such as “national polarization,” “profound  
 11 sadness and depression,” and “strained relations” between branches of government. *See First*  
 12 *Am. Compl.* ¶¶ 6-7; *Bernhardt v. Cty. of Los Angeles*, 279 F.3d 862, 869 (9th Cir. 2002)  
 13 (redressability element requires plaintiff to demonstrate “that it is likely, as opposed to merely  
 14 speculative, that the injury will be redressed by a favorable decision”). Indeed, that some alleged  
 15 harms are traceable to third parties renders them even less likely to be redressed by the requested  
 16 relief. *See Bernhardt*, 279 F.3d at 869 (“A claim may be too speculative if it can be redressed  
 17 only through the unfettered choices made by independent actors not before the court.”).

18 Finally, Shalaby cannot support his standing argument by asserting that 42 U.S.C. § 1988  
 19 is the basis for his lawsuit. *See First Am. Compl.* ¶ 1. As the Court has already explained, that  
 20 statute does not “carve out an exception to the standing requirement under Article III of the  
 21 Constitution.” Order at 3.

22 Because Shalaby has not established standing for purposes of Article III, the Court lacks  
 23 subject matter jurisdiction and must dismiss the case.

## 24 CONCLUSION

25 For the foregoing reasons, Defendants’ motion to dismiss should be granted.

26 DATED: April 3, 2017

27 Respectfully submitted,

28 CHAD A. READLER

Acting Assistant Attorney General

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UNITED STATES DISTRICT COURT  
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SAN FRANCISCO DIVISION

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PEOPLE OF THE UNITED STATES )  
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OF CALIFORNIA, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
DONALD TRUMP; UNITED )  
STATES OF AMERICA )  
 )  
Defendants. )

Case No. 3:17-cv-00451-JD

**PROPOSED ORDER**

This matter comes before the Court on Defendants’ Motion to Dismiss. Upon consideration of Defendants’ motion and of all materials submitted in relation thereto, it is hereby

ORDERED that Defendants’ motion is GRANTED.  
IT IS SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
JAMES DONATO  
United States District Judge