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11  
 12 IN THE UNITED STATES DISTRICT COURT  
 13 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 14 SAN FRANCISCO DIVISION

15 COUNTY OF SANTA CLARA,  
 16  
 Plaintiff,  
 17 v.  
 18 DONALD J. TRUMP, *et al.*,  
 19 Defendants.  
 20

No. 3:17-cv-00574-WHO

**DEFENDANTS' OPPOSITION  
 TO PLAINTIFF'S MOTION FOR  
 PRELIMINARY INJUNCTION**

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INTRODUCTION

1  
2           On January 25, 2017, the President signed Executive Order 13,768 for the declared  
3 purpose of “direct[ing] executive departments and agencies . . . to employ all lawful means to  
4 enforce the immigration laws of the United States.” *See* Exec. Order No. 13,768, § 1, 82 Fed.  
5 Reg. 8,799 (Jan. 30, 2017). As explained in the Order, aliens who enter the United States  
6 illegally and those who overstay or otherwise violate the terms of their admission and engage in  
7 criminal conduct present a particularly “significant threat to national security and public safety.”  
8 *Id.* Those threats are heightened when jurisdictions choose to violate federal immigration law to  
9 shield illegal aliens – many of whom have been incarcerated by federal, state, or local authorities  
10 – from federal immigration authorities. *See id.*

11           To address this threat, the Executive Order states that the Executive Branch’s policy is to  
12 ensure that States and their political subdivisions comply with existing federal immigration laws.  
13 For example, Section 9 of the Order establishes a policy of ensuring that state and local  
14 jurisdictions comply with 8 U.S.C. § 1373, which provides that no government entity or official  
15 may prohibit or restrict, among other things, the sending or receiving of information regarding the  
16 citizenship or immigration status of any individual to federal immigration authorities. *Id.* § 9, 82  
17 Fed. Reg. at 8,801. The Order is a presidential directive, directed to the Attorney General, the  
18 Secretary of Homeland Security, and other federal officials. It does not purport to alter the  
19 existing requirements of Section 1373 (or any other federal law), impose new burdens on state or  
20 local jurisdictions, or expand the legal authority of the Secretary or the Attorney General. Rather,  
21 it simply announces the policy of the Executive Branch and directs the Secretary and Attorney  
22 General, in their discretion and consistent with their existing legal authority, to ensure that  
23 jurisdictions that willfully refuse to comply with Section 1373 not be eligible to receive federal  
24 grants, except as deemed necessary for law enforcement purposes. *Id.* The Order also instructs  
25 the Secretary and the Attorney General to take appropriate actions, and directs them to report to  
26 the President on their progress in implementing this and other directives in the Order, first within  
27 90 days and then again within 180 days. *Id.* § 15, 82 Fed. Reg. at 8,802. Executive Order 13,768  
28

1 is not self-executing, however, and the Secretary and Attorney General have not yet taken the  
2 several steps necessary to implement the directives of Section 9.<sup>1</sup>

3 Yet, before such steps or other action have been taken under the Executive Order, the  
4 County of Santa Clara has moved for immediate, emergency injunctive relief to prevent defen-  
5 dants from taking hypothetical future actions against it pursuant to Section 9 of the Order. The  
6 County's lawsuit is premature. The County does not claim the loss of any federal funds or, for  
7 that matter, that any action has been taken against it under the Order; the County does not even  
8 allege that such action has been threatened. Indeed, the Secretary has not designated (or even  
9 indicated an intent to designate) Santa Clara County as a "sanctuary jurisdiction" in accordance  
10 with the process contemplated in Section 9.

11 For these reasons, the County cannot show the likelihood of "immediate" irreparable  
12 harm, an "essential element" of the standard required to obtain emergency injunctive relief. *See*  
13 *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988); *Arcsoft, Inc. v.*  
14 *Cyberlink Corp.*, 153 F. Supp. 3d 1057, 1071 (N.D. Cal. 2015); *see also Painsolvers, Inc. v. State*  
15 *Farm Mut. Auto. Ins. Co.*, 685 F. Supp. 2d 1123, 1139 (D. Haw. 2010). Rather than meet this  
16 standard, the County instead bases its motion on nothing more than speculation concerning the  
17 Order's scope and how the Secretary and Attorney General might interpret and implement it,  
18 along with speculation that the County will be a subject of enforcement and might lose federal  
19 funds. Such speculative assertions fall far short of demonstrating immediate irreparable harm,  
20 which by itself requires that plaintiff's requested emergency relief be denied.

21 In addition, the County also fails to establish a substantial likelihood of success on the  
22 merits of its claims, which are subject to dismissal under the justiciability doctrines of ripeness  
23 and standing. Article III of the Constitution requires that a plaintiff have standing and that its  
24 claims be ripe for judicial consideration. Because a series of steps remain to implement Section

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25  
26 <sup>1</sup> In this regard, the Department of Justice sent a letter to members of Congress, on March  
27 7, 2017, stating that the Department was "in the process of identifying, in its discretion, what  
28 actions, if any, can lawfully be taken in order to encourage state and local jurisdictions to comply  
with federal law." *See* Ltr. from Samuel R. Ramer, Acting Ass't Att'y Gen., Office of Legis.  
Affairs to Sens. Elizabeth Warren and Edward J. Markey (Mar. 7, 2017) (Attachment 1 hereto).



1 9, each of which has had no tangible effect on the plaintiff, the County cannot show the  
2 “concrete,” “palpable” injury needed for standing, *see Whitmore v. Arkansas*, 495 U.S. 149, 155  
3 (1990), and the Executive Order has not been “formalized and its effects felt in a concrete way”  
4 as needed for ripeness. *See Abbott Labs. v. Gardner*, 387 U.S. 136, 148-49 (1967).

5 Notably, the Executive Order does not alter or expand the existing law that governs when  
6 the Federal Government may revoke a federal grant where the grantee violates legal  
7 requirements. Instead, the President – pursuant to his express constitutional authority to ensure  
8 that federal agencies “take Care that the Laws be faithfully executed,” U.S. Const. art. II, § 3 –  
9 has directed agency heads to utilize their existing legal authorities “to the extent consistent with  
10 law,” *see* Exec. Order No. 13,768, § 9, in connection with local violations of Section 1373. In  
11 other words, the Executive Order does nothing more than direct enforcement of preexisting duties  
12 under federal law. The County’s conjecture to the contrary does not satisfy its burden of  
13 justifying the extraordinary relief it seeks, and the Court should accordingly deny plaintiff’s  
14 motion for preliminary injunction.

#### 15 ISSUES PRESENTED

16 1. Whether the plaintiff has established that it will suffer immediate, concrete irreparable  
17 harm in absence of a preliminary injunction.

18 2. Whether the plaintiff has established that it can satisfy the requirements of  
19 justiciability, including standing and ripeness.

20 3. Whether the public interest and the balance of equities militate against the preliminary  
21 injunction sought.

22 4. Whether the plaintiff can seek a nationwide preliminary injunction or only an  
23 injunction limited to the plaintiff itself.

#### 24 BACKGROUND

##### 25 I. Broad Executive Discretion in Enforcement of Immigration Law

26 “The Government of the United States has broad, undoubted power over the subject of  
27 immigration and the status of aliens.” *Arizona v. United States*, 567 U.S. 387, 132 S. Ct. 2492,  
28

1 2497 (2012). Through the Immigration and Nationality Act (“INA”), 8 U.S.C. §§ 1101 *et seq.*,  
2 Congress has granted the Executive Branch significant authority to control the entry, movement,  
3 and other conduct of foreign nationals in the United States.

4 Under the INA, the Department of Homeland Security (“DHS”), the Department of  
5 Justice, and other agencies of the Executive Branch administer and enforce the immigration laws.  
6 Likewise, the INA permits the Executive Branch to exercise considerable executive discretion to  
7 direct enforcement pursuant to federal policy objectives. *See Arizona Dream Act Coal. v.*  
8 *Brewer*, \_\_\_ F.3d \_\_\_, No. 15-15307, 2017 WL 461503, at \*9-10 (9th Cir. Feb. 2, 2017) (“By  
9 necessity, the federal statutory and regulatory scheme, as well as federal case law, vest the  
10 Executive with very broad discretion to determine enforcement priorities.”). Several Presidents  
11 have exercised this discretion by Executive Order. And they have done so in differing ways,  
12 reflecting their individual judgments as to how best to take care that the laws of the United States  
13 be faithfully executed. *See, e.g.*, Exec. Order No. 13,726, 81 Fed. Reg. 23,559 (2016)  
14 (“Suspending Entry Into the United States of Persons Contributing to the Situation in Libya”);  
15 Exec. Order No. 13,608, 77 Fed. Reg. 26,409 (2012) (“Suspending Entry Into the United States of  
16 Foreign Sanctions Evaders With Respect to Iran and Syria”); Exec. Order No. 12,807, 57 Fed.  
17 Reg. 23,133 (1992) (interdiction of undocumented aliens on oceangoing vessels). Following the  
18 President’s lead, the Secretary of Homeland Security has also consistently exercised similar  
19 executive discretion in the enforcement of federal immigration law. *See, e.g.*, Mem. from Jeh  
20 Charles Johnson, Sec’y of Homeland Sec., to Thomas S. Winkowski, Acting Dir., U.S.  
21 Immigration & Customs Enforcement, et al., *Policies for the Apprehension, Detention and*  
22 *Removal of Undocumented Immigrants* (Nov. 20, 2014), [https:// www.dhs.gov/ sites/ default/](https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf)  
23 [files/ publications/ 14\\_1120\\_memo\\_prosecutorial\\_discretion.pdf](https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf) (rescinded Feb. 20, 2017).

24 The INA contains a number of provisions regarding the involvement of state and local  
25 authorities in the enforcement of immigration law. For example, Section 287(g) of the INA  
26 authorizes the Secretary to enter into written agreements with a state or local government under  
27 which officers of such government may “perform a function of an immigration officer in relation  
28

1 to the investigation, apprehension, or detention of aliens in the United States.” 8 U.S.C.  
2 § 1357(g)(1). Likewise, the INA provides for cooperation with DHS in the “identification,  
3 apprehension, detention, or removal of aliens not lawfully present in the United States[.]” even  
4 without a formal cooperation agreement. *Id.* § 1357(g)(10)(B). Another provision, 8 U.S.C.  
5 § 1373, ensures the sharing of immigration information between federal and state actors:

6       Notwithstanding any other provision of Federal, State, or local law, a Federal,  
7       State, or local government entity or official may not prohibit, or in any way  
8       restrict, any government entity or official from sending to, or receiving from,  
9       [federal immigration authorities] information regarding the citizenship or  
10       immigration status, lawful or unlawful, of any individual.

11 *Id.* § 1373(a). Section 1373 also proscribes prohibiting or restricting any government entity from  
12 “maintaining” information regarding the immigration status of any individual. *Id.* § 1373(b).

13       Well before the issuance of Executive Order 13,768, the compliance of state and local  
14 governments with Section 1373 has been of interest to federal agencies because such govern-  
15 ments are recipients of federal grants. For example, the Inspector General of the Department of  
16 Justice issued a memorandum on May 31, 2016, as plaintiff notes (Doc. 1 at 16 n.4, 19 n.6),  
17 describing a concern that several state and local governments receiving federal grants were not  
18 complying with 8 U.S.C. § 1373. *See* Mem. from Michael E. Horowitz, Inspector Gen., to Karol  
19 V. Mason, Assistant Att’y Gen., Office of Justice Programs, *Department of Justice Referral of*  
20 *Allegations of Potential Violations of 8 U.S.C. § 1373 by Grant Recipients* (May 31, 2016),  
21 <https://oig.justice.gov/reports/2016/1607.pdf>. After reviewing a sample of local ordinances  
22 regarding communication with federal immigration officials, the Inspector General observed that  
23 some applications of the ordinances appeared to be inconsistent with Section 1373. *Id.* at 4-8.  
24 Nevertheless, the report noted, “[N]o one at DHS or [Immigration and Customs Enforcement] has  
25 made a formal legal determination whether certain state and local laws or policies violate Section  
26 1373, and we are unaware of any Department of Justice decision in that regard.” *Id.* at 8 n.12.

## 27 II. Executive Order 13,768

28       The President signed Executive Order 13,768, *Enhancing Public Safety in the Interior of*  
*the United States*, on January 25, 2017. 82 Fed. Reg. 8,799 (Jan. 30, 2017). The Order seeks to

1 “[e]nsure the faithful execution of the immigration laws,” including the INA. *See id.* § 2(a), 82  
2 Fed. Reg. at 8,799. It sets forth several policies and priorities regarding enforcement of federal  
3 immigration law within the United States. The Order likewise instructs federal officials,  
4 including the Secretary of Homeland Security, the Attorney General, and the Director of the  
5 Office of Management and Budget (“OMB”), to use “all lawful means” to enforce those laws.  
6 *See id.* §§ 1, 4, 82 Fed. Reg. at 8,799-800.

7 As permitted by the INA, Executive Order 13,768 establishes priorities regarding aliens  
8 who are subject to removal from the United States under the immigration laws. *Id.* § 5, 82 Fed.  
9 Reg. at 8,800. Several provisions of the Order instruct officials to take actions directing future  
10 conduct, including instructions to promulgate certain regulations within one year, to take “all  
11 appropriate action” to hire additional immigration officers, to seek agreements with state and  
12 local officials under Section 287(g) of the INA (referred to above), to develop a program to  
13 ensure adequate prosecution of criminal immigration offenses, and to establish an office to  
14 provide certain services to victims of crimes committed by removable aliens. *Id.* §§ 6, 7, 8, 11,  
15 13, 82 Fed. Reg. at 8,799-802. Throughout, the Order specifies that federal officials are to take  
16 these actions as “permitted by law” or as “consistent with law.” *Id.* §§ 7, 8, 9(a), 10(b), 12, 14,  
17 17, 18(b), 82 Fed. Reg. at 8,799-802.

18 Section 9 of the Executive Order establishes “the policy of the executive branch to ensure,  
19 to the fullest extent of the law, that a State, or a political subdivision of a State, shall comply with  
20 8 U.S.C. 1373.” Section 9(a) directs to federal agencies to achieve that policy:

21 In furtherance of this policy, the Attorney General and the Secretary [of Homeland  
22 Security], in their discretion and to the extent consistent with law, shall ensure that  
23 jurisdictions that willfully refuse to comply with 8 U.S.C. 1373 (sanctuary juris-  
24 dictions) are not eligible to receive Federal grants, except as deemed necessary for  
25 law enforcement purposes by the Attorney General or the Secretary. The Secre-  
26 tary has the authority to designate, in his discretion and to the extent consistent  
27 with law, a jurisdiction as a sanctuary jurisdiction. The Attorney General shall  
28 take appropriate enforcement action against any entity that violates 8 U.S.C. 1373,  
or which has in effect a statute, policy, or practice that prevents or hinders the  
enforcement of Federal law.

1 *Id.* § 9(a), 82 Fed. Reg. at 8,801. Section 9 further directs the Secretary to publicize, each week,  
2 “a comprehensive list of criminal actions committed by aliens and any jurisdiction that ignored or  
3 otherwise failed to honor any detainers with respect to such aliens.” *Id.* § 9(b), 82 Fed. Reg. at  
4 8,801. It also instructs the Director of OMB to “obtain and provide relevant and responsive  
5 information on all Federal grant money that currently is received by any sanctuary jurisdiction.”  
6 *Id.* § 9(c), 82 Fed. Reg. at 8,801.

7 Finally, the Executive Order directs the Secretary of Homeland Security and the Attorney  
8 General to report on their progress in implementing the Order, first “within 90 days of the date of  
9 [the] order and again within 180 days of the date of [the] order.” *Id.* § 15, 82 Fed. Reg. at 8,802.

### 10 III. The County’s Claims for Emergency Relief

11 The County seeks a preliminary injunction against the implementation of Section 9 of the  
12 Executive Order (Doc. 26). The County acknowledges that the Order does not define “sanctuary  
13 jurisdiction” (Doc. 1 ¶ 139). And the County does not claim to have been designated as a  
14 “sanctuary jurisdiction” in accordance with the process contemplated in Section 9. The plaintiff  
15 nevertheless alleges that it has adopted “policies and practices” that “conflict with the President’s  
16 stated policies” (*id.* at 12).

17 Similarly, while acknowledging that the Order does not define “Federal grants” (*id.*  
18 ¶ 139), the County nonetheless speculates that the term “must” be interpreted as applying to “all  
19 federal funds, whatever their source” (Doc. 26 at 4 n.4). Thus, even though Section 9(a) refers  
20 only to “Federal grants” and to the Secretary of Homeland Security and Attorney General, the  
21 County alleges that implementation of this provision would deprive the County of *all* of its  
22 federal funding – grants, reimbursements, and fee-for-service funds (Doc. 1 ¶ 48) – in areas  
23 including social services, health care, and emergency services, such as Medicaid reimbursements  
24 for a local hospital (Doc. 26 at 10). The County does not allege, however, that its federal funding  
25 has been withheld or revoked, or that any federal agency has threatened such action.

ARGUMENT

1  
2 A preliminary injunction is “an extraordinary and drastic remedy” that should not be  
3 granted “unless the movant, *by a clear showing*, carries the burden of persuasion.” *Lopez v.*  
4 *Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (quoting *Mazurek v. Armstrong*, 520 U.S. 968, 972  
5 (1997) (per curiam)). The Supreme Court has clarified the requirements for a preliminary  
6 injunction in *Winter v. Natural Resources Defense Council*, 555 U.S. 7 (2008). Under *Winter*,  
7 “[a] plaintiff seeking a preliminary injunction must establish that he is *likely* to succeed on the  
8 merits, that he is *likely* to suffer irreparable harm in the absence of preliminary relief, that the  
9 balance of equities tips in his favor, *and* that an injunction is in the public interest.” *Id.* at 20  
10 (emphasis added). Critically, this is “a four-part conjunctive test, not . . . a four-factor balancing  
11 test”; thus, *Winter* “reject[ed] the sliding-scale test as to the irreparable-injury prong” previously  
12 used by some courts. *U.S. Bank, N.A. v. SFR Invs. Pool I, LLC*, 124 F. Supp. 3d 1063, 1070 (D.  
13 Nev. 2015); *see Am. Trucking Ass’ns v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009)  
14 (“To the extent that our cases have suggested a lesser standard, they are no longer controlling, or  
15 even viable.”) (footnote omitted). Further, “[t]he party seeking the injunction bears the burden of  
16 proving these elements.” *Campbell v. Feld Entm’t Inc.*, No. 12-CV-4233-LHK, 2013 WL  
17 4510629, at \*4 (N.D. Cal. Aug. 22, 2013).

18 Plaintiff’s motion fails for at least four reasons. First, the Executive Order does not  
19 change existing law, but merely instructs the Attorney General and the Secretary of Homeland  
20 Security to “employ all lawful means to ensure the faithful execution of the immigration laws of  
21 the United States,” including 8 U.S.C. § 1373. *See* Exec. Order No. 13,768, §§ 4, 9, 82 Fed. Reg.  
22 at 8,800, 8,801. Second, the County cannot show the imminent irreparable harm necessary for  
23 emergency relief because the Secretary and the Attorney General must take a series of steps  
24 before Section 9 of Executive Order 13,768 could have any tangible effect on the County. Third,  
25 the purported injury that plaintiff alleges is both monetary and remediable, meaning that there is  
26 an adequate remedy at law. Finally, and relatedly, plaintiff lacks a “likelihood of success” given  
27 the justiciability flaws in its complaint. Among them, the County has failed to establish that (1) it  
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1 has suffered “concrete” injury, as it must under the standing doctrine; (2) it has suffered the kind  
2 of substantial harm that the Supreme Court has identified as necessary to overcome ripeness  
3 concerns in cases asserting pre-enforcement challenges to agency action; and (3) its claims satisfy  
4 the “fitness” element of the ripeness inquiry because unimplemented directives contained in an  
5 Executive Order are not fit for judicial review under binding precedent. Thus, because plaintiff’s  
6 claims are subject to dismissal on several grounds, it necessarily cannot show a “likelihood of  
7 success” on the merits of those claims. For these reasons, the motion for preliminary injunction  
8 must be denied.

9 I. Plaintiff Cannot Show Irreparable Harm

10 A. The Supreme Court Requires a Likelihood of Immediate,  
11 Concrete Irreparable Harm Before an Injunction May Issue

12 As reflected in *Winter*, which focused on irreparable harm, *see* 555 U.S. at 22, satisfying  
13 the requirement of immediate and irreparable harm is “crucial” to securing a preliminary  
14 injunction. *Miller ex rel. NLRB v. California Pac. Med. Ctr.*, 991 F.2d 536, 543 (9th Cir. 1993).  
15 The district court in *Winter* had granted a preliminary injunction, relying on a “sliding scale”  
16 whereby the required degree of harm increases as the likelihood of success decreases,” and vice  
17 versa. *Winter v. Natural Res. Def. Council*, 530 F. Supp. 2d 1110, 1113 n.4 (C.D. Cal. 2008).  
18 Preliminary relief was appropriate, the court held, because plaintiffs had demonstrated “a strong  
19 likelihood of prevailing on the merits . . . and there [was] a possibility of irreparable harm.” *Id.* at  
20 1118. The Ninth Circuit affirmed on the same basis. *Winter v. Natural Res. Def. Council*, 518  
21 F.3d 658, 697 (9th Cir. 2008).

22 The Supreme Court reversed. In doing so, the Court noted that its “frequently reiterated  
23 standard requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is  
24 *likely* in the absence of an injunction.” 555 U.S. at 22. “Issuing a preliminary injunction based  
25 only on a possibility of irreparable harm,” the Supreme Court said, “is inconsistent with our  
26 characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a  
27 clear showing that the plaintiff is entitled to such relief.” *Id.* Thus, a party seeking a preliminary  
28



1 injunction must establish both that “he is *likely* to succeed on the merits [and] that he is *likely* to  
 2 suffer irreparable harm in the absence of preliminary relief” – as well as “that the balance of  
 3 equities tips in his favor, and that an injunction is in the public interest.” *Id.* at 20 (emphasis  
 4 added); *see Arc of Cal. v. Douglas*, 757 F.3d 975, 990 (9th Cir. 2014) (plaintiff “must demon-  
 5 strate that irreparable injury is likely . . . not merely . . . possible”).

6 Further, “[t]he threat of irreparable harm must . . . be ‘immediate.’” *Arcsoft, Inc. v.*  
 7 *Cyberlink Corp.*, 153 F. Supp. 3d 1057, 1071 (N.D. Cal. 2015) (quoting *Caribbean Marine Servs.*  
 8 *Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988)). “A plaintiff must do more than merely allege  
 9 imminent harm sufficient to establish standing; a plaintiff must *demonstrate* immediate threatened  
 10 injury as a prerequisite to preliminary injunctive relief.” *Boardman v. Pac. Seafood Grp.*, 822  
 11 F.3d 1011, 1022 (9th Cir. 2016). That injury, moreover, must be “real and concrete” rather than  
 12 merely “abstract.” *See Los Angeles Mem’l Coliseum Comm’n v. NFL*, 634 F.2d 1197, 1201 (9th  
 13 Cir. 1980); *Native Ecosystems Council v. Krueger*, 40 F. Supp. 3d 1344, 1349 (D. Mont. 2014).

14 Finally, where the plaintiff “has failed to establish a likelihood of irreparable harm,” a  
 15 court need not even consider the other requirements. *Painsolvers, Inc. v. State Farm Mut. Auto.*  
 16 *Ins. Co.*, 685 F. Supp. 2d 1123, 1139 (D. Haw. 2010); *see RasterOps v. Radius, Inc.*, 861 F. Supp.  
 17 1479, 1498 (N.D. Cal. 1994).

18 B. The County Cannot Demonstrate a Likelihood of  
 19 Immediate, Concrete Irreparable Harm Given the  
 20 Absence of Any Action under Section 9

21 Measured against this legal backdrop, the County has not established the threat of  
 22 “immediate” and “concrete” irreparable harm necessary to secure a preliminary injunction. The  
 23 Executive Order subjects the County not to new law, but only to the bounds of existing law.  
 24 Section 9 directs the Secretary and Attorney General to use their existing legal authority to ensure  
 25 that jurisdictions that “willfully refuse to comply with 8 U.S.C. 1373” will not be eligible to  
 26 receive Federal grants “to the extent consistent with law.” By its terms, that provision  
 27 incorporates the body of law that governs federal grants and defines when they can be declined  
 28 for failing to satisfy a condition – here, compliance with Section 1373. By specifying that the



1 authority under Section 9 be exercised “to the extent consistent with law,” the President has  
2 directed the Secretary and the Attorney General to follow the governing legal limitations, such as  
3 the procedural requirements for making or revoking the federal grants. *See, e.g.*, 28 C.F.R. pt. 18  
4 (Office of Justice Programs Hearing and Appeal Procedures); 44 C.F.R. § 206.440 (appeals in  
5 Hazard Mitigation Grant Program). There is no indication that the Order will be implemented  
6 inconsistent with those limitations or with any other applicable laws.

7 Furthermore, Executive Order 13,768 is not self-executing. Rather, it sets forth policies  
8 and priorities, and directs certain federal agencies to take additional discretionary actions going  
9 forward to enforce federal immigration laws more fully. Many of the Order’s provisions thus  
10 merely direct federal agencies to begin internal preparations to fully enforce federal law. For  
11 example, the Order directs the Secretary of Homeland Security to promulgate certain regulations  
12 within a year, and it directs the Secretary and the Attorney General to develop a program to  
13 ensure adequate prosecution of criminal immigration offenses. *See* Exec. Order No. 13,768, §§ 6,  
14 11, 82 Fed. Reg. at 8,800, 8,801. In several other respects, the Order is a presidential directive to  
15 the Secretary and Attorney General guiding their future exercise of discretion in the enforcement  
16 of immigration law. *See Arizona Dream Act Coal.*, \_\_\_ F.3d at \_\_\_, 2017 WL 461503, at \*10  
17 (“By necessity, the federal statutory and regulatory scheme, as well as federal case law, vest the  
18 Executive with very broad discretion to determine enforcement priorities.”).

19 Thus, Section 9 of the Order directs the Secretary to designate a state or local government  
20 as a “sanctuary jurisdiction.” Section 9 likewise directs the Secretary and the Attorney General to  
21 ensure that such jurisdictions are ineligible to receive federal grants, “except as deemed necessary  
22 for law enforcement purposes.” By expressly directing that such future discretionary agency  
23 actions be exercised “consistent with law,” *see* Exec. Order No. 13,768, § 9, the Order  
24 incorporates, among other things, the law regarding grant conditions and procedures.

25 As a result, a series of future actions must occur before Section 9 could have any effect on  
26 a receipt of federal grant funds: Among other things, (1) the Attorney General and the Secretary  
27 of Homeland Security must determine exactly what constitutes “willful refusal to comply with 8  
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1 U.S.C. § 1373”); (2) the Secretary must identify any state or local governments that constitute  
2 “sanctuary jurisdictions” and make formal designations to that effect; (3) the Secretary and the  
3 Attorney General must decide which federal funding sources are “necessary for law enforcement  
4 purposes”; (4) the Secretary and the Attorney General must then determine how to “ensure” that  
5 sanctuary jurisdictions are ineligible to receive the relevant grant funds; and (5) the Secretary and  
6 the Attorney General must determine how to implement those actions “consistent with law.” The  
7 Order thus explicitly contemplates that some time will be required for implementation.<sup>2</sup>

8 The County does not allege that the Federal Government has taken any of these actions.  
9 Nor does the County claim that it has been designated as a “sanctuary jurisdiction” or that it has  
10 been denied any federal funds. The County likewise does not allege that it has been notified that  
11 any funds will be denied. None of those actions has occurred, and those events may never occur.  
12 The County’s conjecture about the “possibility” of future harm alone does not justify preliminary  
13 injunctive relief. *See Winter*, 555 U.S. at 22; *see also Connecticut v. Massachusetts*, 282 U.S.  
14 660, 674 (1931) (An injunction “will not be granted against something merely feared as liable to  
15 occur at some indefinite time in the future.”).

16 The County’s arguments regarding current irreparable harm are unconvincing. First,  
17 plaintiff asserts that it provides certain services whose costs the federal government later  
18 reimburses and that it must choose, therefore, either to provide the services without an assurance  
19 of reimbursement or to discontinue the services (Doc. 26 at 23). But far from irreparable harm,  
20 this is instead a risk that grant recipients always face: If the terms of the grant require compliance  
21

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22 <sup>2</sup> *See, e.g.*, Exec. Order No. 13,768, § 6 (requiring Secretary to promulgate regulations “to  
23 ensure the assessment and collection of all fines and penalties that the Secretary is authorized  
24 under the law to assess and collect from aliens unlawfully present in the United States and from  
25 those who facilitate their presence in the United States”); § 8 (requiring Secretary to enter into  
26 agreements with state and local officials under Section 287(g) of INA); § 11 (requiring Secretary  
27 and Attorney General “to develop and implement a program that ensures that adequate resources  
28 are devoted to the prosecution of criminal immigration offenses”); § 15 (requiring Secretary and  
Attorney General to “report on the progress of the directives contained in this order within 90  
days . . . and again within 180 days.”); *see also* Ltr. from Samuel R. Ramer, Acting Ass’t Att’y  
Gen., Office of Legis. Affairs to Sens. Elizabeth Warren and Edward J. Markey (Mar. 7, 2017)  
(Attachment 1 hereto).

1 with certain federal laws, such as Section 1373, and those terms are not followed, then the  
2 recipient is in violation of the grant conditions, and there is a risk that the Federal Government  
3 may enforce those terms to the detriment of the grantee and its financial planning. If the grant  
4 language does not require compliance with Section 1373, the Executive Order does not purport to  
5 give the Secretary or Attorney General the unilateral authority to alter those terms. This is  
6 underscored by the fact that Executive Order 13,768 does not change the law, but only instructs  
7 the Attorney General and the Secretary of Homeland Security to enforce existing law. Moreover,  
8 the County's claimed harm is economic in nature, and "[i]t is well established that mere economic  
9 injury does not constitute irreparable harm." *Kitazato v. Black Diamond Hosp. Invs., LLC*, 655  
10 F. Supp. 2d 1139, 1147 (D. Haw. 2009); see *Sampson v. Murray*, 415 U.S. 61, 89 (1974) ("Mere  
11 injuries, however substantial, in terms of money, time and energy necessarily expended in the  
12 absence of a[n] [injunction], are not enough. The possibility that adequate compensatory or other  
13 corrective relief will be available at a later date, in the ordinary course of litigation, weighs  
14 heavily against a claim of irreparable harm."); *Ali v. United States*, 932 F. Supp. 1206, 1210  
15 (N.D. Cal. 1996) ("Economic injury alone does not support a finding of irreparable harm."). The  
16 reason, of course, is that there is an adequate remedy at law for the loss of monies.

17 Second, the County asserts that the Executive Order "has created a cloud of financial  
18 uncertainty" over its budgetary decision-making (Doc. 26 at 23-24). Budgetary "uncertainty,"  
19 however, is not the "real and concrete injury" sufficient to justify a preliminary injunction. See  
20 *Los Angeles Mem'l Coliseum Comm'n*, 634 F.2d at 1201. Moreover, governmental budgeting  
21 always suffers from some amount of uncertainty, in relation to both costs (which are based on  
22 services provided) and income (which is based in part on tax revenues). In other words, the  
23 plaintiff cannot accurately claim that an otherwise certain endeavor is now less certain. Legal  
24 restrictions, moreover, always create some risk, whether the likelihood of enforcement is low or  
25 high.

26 Furthermore, even if any hypothetical "uncertainty" regarding the County's future receipt  
27 of federal funds constituted irreparable harm (which it does not), an injunction setting aside the  
28

1 Order would not remedy any such harm. As noted already, the Order does not alter or expand  
2 existing law governing the Federal Government’s discretion to revoke or deny a grant where the  
3 grantee violates legal requirements. Thus, any uncertainty the plaintiff might hypothetically face  
4 would exist regardless of whether the Court were to enjoin the Order itself. Additionally, the  
5 terms and conditions of an existing grant are governed by the grant documents, and any “claw  
6 back [of] previously appropriated funds retroactively” (Doc. 26 at 21) could occur only pursuant  
7 to those terms and conditions.

8 Third, the County asserts that “as a matter of law, the deprivation of constitutional rights  
9 unquestionably constitutes irreparable injury” (Doc. 26 at 22, internal quotation marks omitted).  
10 The County does not, however, allege a “deprivation” of its “constitutional rights.” Instead, the  
11 County points to a claimed violation of the constitutional *structures* that govern relationships  
12 among the branches of the Federal Government and between the federal and state governments,  
13 which is insufficient to establish irreparable injury. “[W]hile a violation of constitutional rights  
14 can constitute *per se* irreparable harm . . . *per se* irreparable harm is caused only by violations of  
15 ‘personal’ constitutional rights . . . to be distinguished from provisions of the Constitution that  
16 serve ‘structural’ purposes, like the Supremacy Clause.” *N.Y. State Rest. Ass’n v. N.Y. City Bd. of*  
17 *Health*, 545 F. Supp. 2d 363, 367 (S.D.N.Y. 2008) (internal quotation marks omitted), *rev’d on*  
18 *other grounds*, 556 F.3d 114 (2d Cir. 2009); *accord Prof’l Towing & Recovery Operators of Ill.*  
19 *v. Box*, No. 08 C 4096, 2008 WL 5211192, at \*13 (N.D. Ill. Dec. 11, 2008) (“[T]he Court  
20 concludes that Plaintiffs are not entitled to a presumption of irreparable harm because the  
21 constitutional rights at stake here are not ‘personal’ in nature.”); *see Am. Trucking Ass’ns v. City*  
22 *of Los Angeles*, 577 F. Supp. 2d 1110, 1127 (C.D. Cal. 2008) (noting that “[i]n the case of  
23 Supremacy Clause violations,” the presumption of irreparable harm “is not necessarily  
24 warranted”), *rev’d on other grounds*, 559 F.3d 1046 (9th Cir. 2009). Not surprisingly, therefore,  
25 the cases on which plaintiff relies address alleged violations of *individual* constitutional rights,  
26 none of which are involved here (Doc. 26 at 22). *See Rodriguez v. Robbins*, 715 F.3d 1127,  
27 1131-32, 1144-45 (9th Cir. 2013) (alleging that detention pending removal from United States,

1 without judicial bond hearing, violated individual due process rights); *Melendres v. Arpaio*, 695  
2 F.3d 990, 994-95, 1002 (9th Cir. 2012) (alleging that local law enforcement officers had engaged  
3 in racial profiling in violation of plaintiffs’ individual Fourth and Fourteenth Amendment rights);  
4 *see also Elrod v. Burns*, 427 U.S. 347, 373 (1976) (holding that “[t]he loss of *First Amendment*  
5 freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury”) (emphasis added).  
6

7 In sum, the plaintiff has not demonstrated, and cannot “demonstrate[,] that irreparable  
8 injury is *likely* in the absence of an injunction.” *Winter*, 555 U.S. at 22.

9 II. The County Cannot Establish a Likelihood of Success on the Merits  
10 Because Its Claims Are Non-Justiciable

11 A party seeking a preliminary injunction must also “establish that [it] is *likely* to succeed  
12 on the merits.” *Winter*, 555 U.S. at 20 (emphasis added). The County cannot establish such a  
13 likelihood in this case because its claims are non-justiciable under principles of ripeness and  
14 standing. *See Pollara v. Radiant Logistics Inc.*, No. CV 12-0344 GAF (SPX), 2012 WL  
15 12887095, at \*5 (C.D. Cal. Sept. 13, 2012) (noting that “standing to bring a claim . . . is a  
16 necessary predicate to demonstrate a likelihood of success on the merits”); *Timbisha Shoshone*  
17 *Tribe v. Salazar*, 697 F. Supp. 2d 1181, 1188 (E.D. Cal. 2010) (“Because [Defendant] raises  
18 serious questions as to the Court’s subject matter jurisdiction over Plaintiffs’ claim, Plaintiffs fail  
19 to establish the likelihood of success on the merits of their claims.”). For the same reasons that  
20 plaintiff cannot establish the “irreparable injury” needed for a preliminary injunction, it also  
21 cannot show a likelihood of success on the merits because its claims are subject to dismissal.  
22 *Winter*, 555 U.S. at 20.

23 Under Article III of the Constitution, the jurisdiction of the federal courts extends only to  
24 “Cases” and “Controversies.” U.S. Const. art. III, § 2, cl. 1. Matters outside this rubric are “non-  
25 justiciable.” *Ore. Bureau of Labor & Indus. ex rel. Richardson v. U.S. W. Commc’ns, Inc.*, 288  
26 F.3d 414, 416 (9th Cir. 2002). Two principles of justiciability are involved here: standing and  
27 ripeness. “While standing is concerned with *who* is a proper party to litigate a particular matter,  
28

1 the doctrines of mootness and ripeness determine *when* that litigation may occur.” *Haw. Cty.*  
2 *Green Party v. Clinton*, 14 F. Supp. 2d 1198, 1201 (D. Haw. 1998). Where a plaintiff lacks  
3 standing or its claims are unripe, the court lacks jurisdiction. *See Nat’l Inst. of Family & Life*  
4 *Advocates v. Harris*, 839 F.3d 823, 832 (9th Cir. 2016).

5 To satisfy the “irreducible constitutional minimum” of standing, a plaintiff must  
6 demonstrate an “injury in fact,” a “fairly traceable” causal connection between the injury and  
7 defendant’s conduct, and redressability. *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83,  
8 102-03 (1998). The injury needed for constitutional standing must be “concrete,” “objective,”  
9 and “palpable,” not merely “abstract” or “subjective.” *See Whitmore v. Arkansas*, 495 U.S. 149,  
10 155 (1990); *Bigelow v. Virginia*, 421 U.S. 809, 816-17 (1975). “[S]tanding ‘is perhaps the most  
11 important of [the jurisdictional] doctrines.’” *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231  
12 (1990).

13 Constitutional justiciability also requires that a dispute be ripe for judicial consideration –  
14 that is, that the challenged action “has been formalized and its effects felt in a concrete way by the  
15 challenging parties.” *Abbott Labs. v. Gardner*, 387 U.S. 136, 148-49 (1967). In other words, “[a]  
16 claim is not ripe for adjudication if it rests upon contingent future events that may not occur as  
17 anticipated, or indeed may not occur at all.” *Texas v. United States*, 523 U.S. 296, 300 (1998)  
18 (internal quotation marks omitted).

19 In assessing ripeness in the context of a “pre-enforcement challenge” to a statutory or  
20 administrative enactment, the courts consider “both the fitness of the issues for judicial decision  
21 and the hardship to the parties of withholding court consideration.” *Abbott Labs.*, 387 U.S. at  
22 149. “A claim is fit for decision if the issues raised are primarily legal, do not require further  
23 factual development, and the challenged action is final.” *Standard Alaska Prod. Co. v. Schaible*,  
24 874 F.2d 624, 627 (9th Cir. 1989). In other words, a court considers whether the court and the  
25 parties would “benefit from deferring review until the agency’s policies have crystallized and the  
26 question arises in some more concrete and final form.” *Eagle-Picher Indus., Inc. v. EPA*, 759  
27 F.2d 905, 915 (D.C. Cir. 1985) (internal quotation marks omitted); *see U.S. W. Commc’ns v. MFS*  
28

1 *Intelenet, Inc.*, 193 F.3d 1112, 1119 (9th Cir. 1999) (finding that claim was not fit for decision  
2 where administrative proceedings had not concluded and court would “benefit” from outcome of  
3 those proceedings). Finally, “[t]o meet the hardship requirement, a litigant must show that  
4 withholding review would result in direct and immediate hardship and would entail more than  
5 possible financial loss.” *Winter v. California Med. Review, Inc.*, 900 F.2d 1322, 1325 (9th Cir.  
6 1989) (internal quotation marks omitted).

7 Applying these standards here, the plaintiff cannot show the “injury in fact” needed for  
8 constitutional standing, *Steel Co.*, 523 U.S. at 102-03, and its claims are not ripe for judicial  
9 review, *Abbott Labs.*, 387 U.S. at 148-49. Given the many steps that must be taken before any  
10 federal funds might be withheld under Section 9 of the Executive Order, the County has not  
11 suffered any “concrete,” “objective,” and “palpable” injury. See *Whitmore*, 495 U.S. at 155;  
12 *Bigelow*, 421 U.S. at 816-17. Although plaintiff alleges that the Order has created a “cloud of  
13 financial uncertainty” (Doc. 26 at 23), any such “cloud” would be “abstract” and “subjective”  
14 rather than “concrete.” See *Whitmore*, 495 U.S. at 155; *Bigelow*, 421 U.S. at 816-17.

15 Further, plaintiff’s claims are not ripe because Section 9 of the Order “has [not] been  
16 formalized and its effects felt in a concrete way.” *Abbott Labs.*, 387 U.S. at 148-49.  
17 Implementation of Section 9 “rests upon [several] contingent future events” – including  
18 clarification of some of its terms – and those terms may ultimately be defined such as to exclude  
19 the County or its grants or otherwise to greatly diminish the Order’s “anticipated” impact. See  
20 *Texas*, 523 U.S. at 300. Because Section 9 has not yet been implemented and the Secretary of  
21 Homeland Security and Attorney General must take several actions before that can occur, this  
22 Court would greatly “benefit from deferring review” until the parameters of its implementation  
23 “have crystallized and the question arises in some more concrete and final form” that is “fit” for  
24 judicial decision. *Eagle-Picher Indus., Inc.*, 759 F.2d at 915; see *U.S. W. Commc’ns*, 193 F.3d at  
25 1119; see also *Abbott Labs.*, 387 U.S. at 149.

26 Finally, the uncertainties surrounding the implementation of Section 9 and the need for  
27 “factual development” greatly outweigh any “hardship” to the County from awaiting those  
28



1 developments. *Standard Alaska Prod. Co.*, 874 F.2d at 627. As noted already, several steps must  
2 be taken before Section 9 can be implemented, including a determination as to the federal grants  
3 covered, how to limit those grants “consistent with law,” and what constitutes a “sanctuary  
4 jurisdiction.” Those determinations will have a bearing on whether Section 9 is eventually  
5 applied to the plaintiff or some federal grants that currently benefit the plaintiff. Thus, any  
6 “hardship” to the County is far from “immediate,” and its protestation of budgetary “uncertainty”  
7 does not constitute actual “financial loss” – which, even where it occurs, does not qualify as  
8 “hardship” under this analysis. *See Winter*, 900 F.2d at 1325.

9 III. The Public Interest and the Balance of Equities Militate  
10 Against the Injunction Sought

11 Lastly, a party seeking a preliminary injunction must “establish . . . that the balance of  
12 equities tips in his favor, and that an injunction is in the public interest.” *Winter*, 555 U.S. at 20.  
13 Where the Federal Government is the defendant, these factors “merge” into one. *Nken v. Holder*,  
14 556 U.S. 418, 435 (2009). The most pertinent and concretely expressed public interest in relation  
15 to this case is contained in 8 U.S.C. § 1373, which expresses the public interest in supporting the  
16 enforcement of federal immigration law. Section 9 of the Order is meant simply to “ensure”  
17 compliance with that statute. *See* Exec. Order No. 13,768, § 9(a), 82 Fed. Reg. at 8,801.  
18 Therefore, the public interest lies in allowing the Executive Branch to pursue the necessary steps  
19 to implement this Order. *See N.D. v. Haw. Dep’t of Educ.*, 600 F.3d 1104, 1113 (9th Cir. 2010)  
20 (noting that “it is obvious that compliance with the law is in the public interest”); *Rubin ex rel.*  
21 *NLRB v. Vista del Sol Health Servs., Inc.*, 80 F. Supp. 3d 1058, 1108 (C.D. Cal. 2015) (stating  
22 that “the public interest favors ensuring compliance with federal law”). Additionally, the public  
23 interest prohibits judicial “advisory opinions,” which the County’s motion would require this  
24 Court to render in relation to an Executive Order that has not yet been implemented. *See Coal.*  
25 *for a Healthy Cal. v. FCC*, 87 F.3d 383, 386 (9th Cir. 1996).



1 IV. No Injunction Should Issue Against the President

2 Even if an injunction were otherwise appropriate, it should not be issued against the  
3 President of the United States, whom the County has chosen to name as a defendant. A request to  
4 enjoin the President “draws the Court into serious separation-of-powers issues. . . . [T]he  
5 Supreme Court has sent a clear message that an injunction should not be issued against the  
6 President for official acts.” *Newdow v. Bush*, 391 F. Supp. 2d 95, 105, 106 (D.D.C. 2005); *see*  
7 *Mississippi v. Johnson*, 71 U.S. 475, 500 (1866); *Swan v. Clinton*, 100 F.3d 973, 978 (D.C. Cir.  
8 1996) (noting that the Supreme Court has issued a “stern admonition” that injunctive relief  
9 against the President personally is an “extraordinary measure not lightly to be undertaken”).

10 V. Any Preliminary Injunction Herein Should Be  
11 Limited to the Plaintiff

12 Even if the Court were to conclude that plaintiff has satisfied the requirements for a  
13 preliminary injunction, the Court should not enter the “nationwide” injunction that the County  
14 seeks (Doc. 26 at i). “[A]n injunction must be narrowly tailored to affect only those persons over  
15 which [the court] has power, and to remedy only the specific harms shown by the plaintiffs, rather  
16 than to enjoin all possible breaches of the law.” *Price v. City of Stockton*, 390 F.3d 1105, 1117  
17 (9th Cir. 2004) (internal quotation marks omitted). Thus, courts routinely deny requests for  
18 nationwide injunctive relief. *See Dep’t of Def. v. Meinhold*, 510 U.S. 939 (1993) (staying  
19 nationwide injunction insofar as it “grants relief to persons other than” named plaintiff); *Skydive*  
20 *Arizona, Inc. v. Quattrocchi*, 673 F.3d 1105, 1116 (9th Cir. 2012) (affirming district court’s  
21 refusal to grant nationwide relief).

22 Here, the preliminary injunction is sought by the County of Santa Clara, which has no  
23 legitimate interest in the Executive Order’s effect on any other jurisdiction. Thus, the Court  
24 should not enter an injunction that is broader than necessary to prevent any irreparable harm to  
25 the plaintiff (although, as discussed above, there is none). Any injunction should not extend to  
26 any other state or local governments. *See, e.g., Monsanto Co. v. Geertson Seed Farms*, 561 U.S.  
27 139, 163 (2010) (narrowing injunction in part because the plaintiffs “do not represent a class, so

1 they could not seek to enjoin such an order on the ground that it might cause harm to other  
2 parties”); *see also Env'tl. Def. Fund v. Marsh*, 651 F.2d 983, 1006 (5th Cir. 1981) (court must take  
3 into account “the larger interests of society that might be adversely affected by an overly broad  
4 injunction”). A nationwide injunction would not only be overbroad; it also would effectively  
5 enable one district judge to prevent the government from defending the constitutionality of the  
6 Executive Order in any other court, and interfere with the development of the law in other  
7 circuits. *See United States v. AMC Entm't, Inc.*, 549 F.3d 760, 773 (9th Cir. 2008).

8 Furthermore, a nationwide injunction would be especially inappropriate here because  
9 Section 9 of the Order would impact different jurisdictions differently, once steps are taken to  
10 implement it “consistent with law.” The way in which the Order might eventually apply to any  
11 individual jurisdiction will depend on that jurisdiction’s policies and practices and the specific  
12 federal grant terms and procedures that are at issue with respect to the grants received or applied  
13 for by the jurisdiction. No nationwide, universal injunction could possibly account for that  
14 diversity.

#### 15 CONCLUSION

16 Accordingly, plaintiff’s motion for preliminary injunction should be denied.

17 Dated: March 9, 2017

18 Respectfully submitted,

19 CHAD A. READLER  
20 Acting Assistant Attorney General

21 BRIAN STRETCH  
22 United States Attorney

23 JOHN R. TYLER  
24 Assistant Director

25 /s/ W. Scott Simpson

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W. SCOTT SIMPSON (Va. Bar #27487)  
27 Senior Trial Counsel

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Budget

*County of Santa Clara v. Donald J. Trump, et al.*,  
No. 3:17-cv-00574-WHO (N.D. Cal.)

Defendants' Opposition to Plaintiff's Motion  
for Preliminary Injunction

Attachment 1

Letter from Samuel R. Ramer, Acting Assistant Attorney  
General, Office of Legislative Affairs to Senators  
Elizabeth Warren and Edward J. Markey (Mar. 7, 2017)



U.S. Department of Justice

Office of Legislative Affairs

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Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 07 2017

The Honorable Elizabeth Warren  
United States Senate  
Washington, DC 20510

The Honorable Edward J. Markey  
United States Senate  
Washington, DC 20510

Dear Senators Warren and Markey:

This responds to your letter to the Attorney General dated February 27, 2017, regarding the President's January 25, 2017, Executive Order, "Enhancing Public Safety in the Interior of the United States."

The Executive Order directs that the Attorney General and the Secretary of Homeland Security, in their discretion and to the extent consistent with law, take appropriate action to ensure that jurisdictions that willfully refuse to comply with 8 U.S.C. 1373 ("sanctuary jurisdictions") are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary. The Secretary of Homeland Security has the authority to designate, in his discretion and to the extent consistent with law, a jurisdiction as a "sanctuary jurisdiction."

As directed by the Order, the Department of Justice is in the process of identifying, in its discretion, what actions, if any, can lawfully be taken in order to encourage state and local jurisdictions to comply with federal law. We appreciate knowing your views on this matter.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink that reads "Samuel R. Ramer".

Samuel R. Ramer  
Acting Assistant Attorney General