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16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**

18 **CITY OF RICHMOND, a municipal**
19 **corporation,**

20 Plaintiff,

21 vs.

22 **DONALD J. TRUMP, President of the**
United States,
 23 **JOHN F. KELLY, Secretary of the**
United States Department of Homeland
Security,
 24 **JEFFERSON B. SESSIONS, Attorney**
General of the United States, and the
 25 **UNITED STATES OF AMERICA,**

26 Defendants.

Case No. 3:17-cv-01535-WHO

27 **CITY OF RICHMOND’S**
28 **OPPOSITION TO DEFENDANTS’**
MOTION TO DISMISS

Date: July 12, 2017
 Time: 2:00 p.m.
 Judge: Honorable William H. Orrick
 Dept.: Courtroom 2

Complaint Filed: March 21, 2017
 Trial Date: April 23, 2018

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I. INTRODUCTION

This case involves plaintiff, City of Richmond’s (“Richmond”), constitutional challenge to an Executive Order issued by defendant, Donald J. Trump, shortly after he took office that threatens to take away all of the funding Richmond receives from the federal government.

Ignoring the allegations of Richmond’s complaint and this Court’s order granting a preliminary injunction in the related City and County of San Francisco’s and County of Santa Clara’s cases, *Cnty. of Santa Clara v. Trump*, No. 17cv574-WHO, 2017 U.S. Dist. LEXIS 62871 (N.D. Cal. Apr. 25, 2017),¹ hereinafter referred to as the Preliminary Injunction Order, Defendants seek to dismiss all claims asserted by Richmond. Their motion must fail because Executive Order 13768 (“Executive Order”) is unconstitutional on its face. It violates the Tenth Amendment, the Separation of Powers, the Spending Clause, the Fourth Amendment, and the Due Process Clause of the Constitution.

Apparently recognizing the constitutional infirmities of the Executive Order, defendant Jefferson B. Sessions, the Attorney General, issued a memorandum on May 22, 2017 (the “Attorney General Memorandum”), Dkt. 26-1, which Defendants now claim fixes any constitutional infirmities and requires that the Court dismiss Richmond’s complaint. However, this Court properly rejected such a narrow interpretation when it issued the Preliminary Injunction Order:

With regards to the merits of the Government’s construction, the Order is not readily susceptible to the Government’s narrow interpretation. Indeed, “[t]o read [the Order] as the Government desires requires rewriting, not just reinterpretation.”

Cnty. of Santa Clara v. Trump, 2017 U.S. Dist. LEXIS 62871, at *33-34 quoting *United States v. Stevens*, 559 U.S. 460, 481, 130 S. Ct. 1577, 176 L. Ed. 2d 435 (2010).

¹ Richmond brought its own motion for preliminary injunction, which this Court denied as moot since it had already granted a motion for preliminary injunction that provided relief nationwide. Order Denying Motion for Preliminary Injunction as Moot, Dkt. 25, filed May 22, 2017.

1 The fact that the Attorney General issued a written memorandum should not
2 change the Court's conclusion. This Court, not the Attorney General, interprets the law.
3 U.S. CONST. art. III; *see also Marbury v. Madison*, 5 U.S. 137, 177 (1803). The Court can
4 consider the Attorney General's interpretation, but when the interpretation contradicts the
5 plain language of the Executive Order, as it does here, the Court can and should give no
6 weight to the Attorney General's interpretation. *Thomas Jefferson Univ. v. Shalala*, 512
7 U.S. 504, 512, 114 S. Ct. 2381, 129 L. Ed. 2d 405 (1994); *Oregon v. Ashcroft*, 368 F.3d
8 1118, 1129 (9th Cir. 2004).

9 **II. ISSUES PRESENTED**

10 1. Should this Court give no weight to the Attorney General Memorandum
11 when it contradicts the plain language and express purpose of the Executive Order?

12 2. Does Richmond have standing and are its claims ripe?

13 3. Does Richmond state a viable claim that the Executive Order violates the
14 Tenth Amendment when it alleges facts demonstrating that the Executive Order is
15 coercive and compels Richmond to change its policy and enforce a federal regulatory
16 program?

17 4. Does Richmond state a viable claim that the Executive Order violates the
18 Separation of Powers and the Spending Clause when it alleges facts that show that the
19 President did not have the authority to issue the Executive Order and that the Executive
20 Order impermissibly threatens to take away all of Richmond's federal funds?

21 5. Does Richmond state a viable claim that the Executive Order violates the
22 Fourth Amendment by requiring Richmond to detain people, pursuant to civil detainer
23 requests, who would otherwise be released?

24 6. Does Richmond state a viable claim that the Executive Order is
25 unconstitutionally vague for failing to: (a) define key terms; and (b) explain what
26 jurisdictions must do to comply with the Executive Order?

27 7. Does Richmond state a claim for declaratory relief regarding its compliance
28 with 8 U.S.C. § 1373?

III. ALLEGATIONS IN THE COMPLAINT

A. **Richmond Has a Policy of Community Policing to Increase Public Safety**

In 1990 in response to immigrants’ concerns and to increase public safety, Richmond enacted Ordinance No. 29-90 with the purpose to “foster an atmosphere of trust and cooperation between the Richmond Police Department and all persons, regardless of immigration status, residing in the City of Richmond; ...” Complaint ¶ 24 (hereinafter all references to ¶ and Ex. are to the Complaint); *see also* ¶ 25, Ex. 2. On February 6, 2007, Richmond enacted Resolution 11-07, which reaffirmed its commitment that Richmond “welcomes and values all of its residents and supports them to live and work free from discrimination, hostility, abuse, violation, exploitation and fear of local, state and federal law enforcement; ...” ¶ 26, Ex. 3. These actions by Richmond are based upon the policy decision that community policing is proven and effective in maintaining community safety. ¶¶ 2, 28, 44, 46, 48.

B. **The Executive Order Explicitly States that the Federal Government Will Take Away All Federal Funds from Sanctuary Jurisdictions that Willfully Refuse to Comply with 8 U.S.C. 1373**

“On January 25, 2017, defendant President Donald J. Trump issued **Executive Order**, No. 13768 entitled ‘**Enhancing Public Safety in the Interior of the United States**,’ 82 Fed. Reg. 8799 (Jan. 25, 2017) (“Executive Order”), which, in violation of the Constitution, seeks to force local police departments, such as the Richmond Police Department, to enforce federal immigration law.” ¶ 1 (emphasis in original).

The complaint quotes various portions of the Executive Order and attaches it to the Complaint. *See e.g.*, ¶¶ 3, 49-54; Ex. 1. For example, the Complaint alleges:

The Executive Order is in direct violation of the U.S. Constitution because it allows the Attorney General and Secretary of Homeland Security, based upon their discretion, to withhold federal funds from public entities that are jurisdictions who “willfully refuse” to comply with 8 U.S.C. 1373, a statute which seeks to regulate state and local jurisdictions’ response to

1 immigration requests, and for the Attorney General to take enforcement
2 actions against any jurisdiction that violates federal law.

3 ¶ 3.

4 The broad language of the Executive Order is confirmed by the broad statements of
5 the President and Attorney General. “Based upon the public statements of Defendants,
6 they intend to broadly define jurisdictions that do not comply with federal immigration
7 laws and to punish those jurisdictions with the withdrawal of all federal funds.” ¶ 62.
8 Since President Trump’s inauguration, he and his office have reaffirmed his campaign
9 statements about the breadth of the Executive Order including posting statements on the
10 official White House website. ¶¶ 62-65. On a television show, on February 5, 2017,
11 President Trump referenced sanctuary cities and the “‘tremendous amount of money’ the
12 federal government gives to California.” ¶ 65.

13 Based upon Defendants’ statements, Richmond’s enactment of Ordinance No. 29-
14 90 and Resolution 11-07, Richmond being referred to as a sanctuary city, and Richmond’s
15 large Latino population, it appears that there is a substantial probability that Defendants
16 will seek to enforce the Executive Order against Richmond. ¶ 67.

17 **C. Richmond Has Been Injured by the Executive Order**

18 The Executive Order directly affects Richmond now by attempting to coerce it to
19 change its policies regarding cooperation with immigration enforcement. ¶¶ 3, 78, 92, 93.

20 The Executive Order has already caused injury to Richmond. ¶¶ 79-85, 87.
21 Specifically, Richmond receives over \$46 million annually from federal and state funds,
22 which provides critical services, such as grants for street improvements, community
23 oriented policing, low income public housing, housing choice voucher programs, and
24 home repairs to its residents. ¶¶ 82, 83. Many of the state funds are pass-through funds.
25 ¶ 82. The Executive Order has created fear and confusion regarding the actions that
26 Attorney General Sessions and Secretary of Homeland Security Kelly will take. ¶ 79.
27 Richmond has been forced to expend resources as a result of the Executive Order and the
28 positive effects of its policies on the relationship between law enforcement and the

1 immigrant community have started to dissipate as a result of the Executive Order. ¶ 81.
2 Richmond is in the midst of its budgeting process and the Executive Order is causing
3 uncertainty to Richmond's budget because of the prospect of losing all federal funds,
4 which would have an immediate and devastating effect on Richmond and its residents.
5 ¶¶ 81, 84-85.

6 **IV. STANDARD OF REVIEW**

7 Defendants bring their motion based on both Fed. R. Civ. P. 12(b)(1) and 12(b)(6).

8 The standard for review for a Rule 12(b)(6) motion to dismiss is well known to this
9 Court. The motion tests the legal sufficiency of a complaint and dismissal is appropriate
10 only where the complaint lacks a cognizable legal theory or sufficient facts to support a
11 cognizable legal theory. The complaint must plead sufficient facts to show that a claim is
12 plausible on its face, *i.e.*, the court can draw the reasonable inference that the defendant is
13 liable for the misconduct alleged. The court must accept factual allegations in the
14 complaint as true and construe the pleadings in the light most favorable to the nonmoving
15 party, but conclusory allegations of law and unwarranted inferences are insufficient to
16 avoid dismissal and speculative allegations may be considered implausible. *Batuhan v.*
17 *Assurity Fin. Servs.*, No. 15-cv-04526-WHO, 2016 U.S. Dist. LEXIS 34911, at *5-7 (N.D.
18 Cal. Mar. 16, 2016).

19 For a motion to dismiss under Rule 12(b)(1), which is a challenge to the court's
20 subject matter jurisdiction, the party invoking the federal court's jurisdiction bears the
21 burden of establishing that the court has subject matter jurisdiction to grant the requested
22 relief. Where as in this case, the jurisdictional challenge is confined to the allegations of
23 the complaint, the court assumes that the allegations in the complaint are true and draws
24 all reasonable inferences in favor of the party opposing dismissal. *Walker v. Ford Motor*
25 *Co.*, No. 3:16-cv-06297-WHO, 2017 U.S. Dist. LEXIS 35757, at *6-7 (N.D. Cal. Mar. 13,
26 2017).

27 As set forth more fully below, Richmond's Complaint satisfies the requirements of
28 both Rule 12(b)(1) and (b)(6). As alleged in the Complaint, this Court has subject matter

1 jurisdiction because Richmond has standing to sue as a result of its well-founded
 2 imminent fear of enforcement and the Defendants’ coercion to force Richmond to change
 3 its policies. Richmond does not need to wait until funds are withheld to bring suit.
 4 Further, the Complaint demonstrates that the Executive Order is unconstitutional because
 5 it violates the Tenth Amendment, the Separation of Powers, the Spending Clause, the
 6 Fourth Amendment, and the Due Process clause. Similar claims have already been
 7 assessed under the more exacting preliminary injunction standard and this Court held that
 8 the claims will likely succeed on their merits. *United States v. Arizona*, No. CV 10-1413-
 9 PHX-SRB, 2010 U.S. Dist. LEXIS 146654, *16 (D. Ariz. Dec. 10, 2010) (“On account of
 10 the more exacting standard required to demonstrate a likelihood of success on the merits,
 11 the Court will not reexamine in this Order the claims with regard to which the Court
 12 previously found that Plaintiff had demonstrated a likelihood of success.”). Nothing in the
 13 Attorney General Opinion changes this conclusion because the Executive Order is not
 14 readily susceptible to the Memorandum’s narrow interpretation and to read the Executive
 15 Order as Defendants desire requires rewriting, not just reinterpretation. See *Cnty. of Santa*
 16 *Clara v. Trump*, 2017 U.S. Dist. LEXIS 62871, at *33-34. Lastly, Richmond states a
 17 claim for declaratory relief based upon its controversy over whether it complies with 8
 18 U.S.C. § 1373.

19 **V. LEGAL ARGUMENT**

20 **A. The President’s Discretion to Enforce Immigration Law Must Be** 21 **Consistent with His Constitutional Authority and Statutory Authority**

22 The President is not a king or dictator with unlimited power. Instead, he is part of a
 23 democracy created by our founders to have three separate but equal branches of
 24 government. The President’s discretion in immigration matters is circumscribed by the
 25 Constitution and statutes. As the Ninth Circuit recently held in ruling on the President’s
 26 travel ban: “The Immigration and Nationality Act (‘INA’) gives the President broad
 27 powers to control the entry of aliens, and to take actions to protect the American public.
 28 But immigration, even for the President, is not a one-person show. The President’s

1 authority is subject to certain statutory and constitutional restraints.” *Hawaii v. Trump*,
 2 No. 17-15589, 2017 U.S. App. LEXIS 10356, at *14-15 (9th Cir. May 15, 2017).

3 As demonstrated below, the Executive Order exceeds any President’s authority and
 4 Richmond has properly alleged its constitutional infirmities.

5 **B. The Attorney General Memorandum Providing His Interpretation of**
 6 **the Executive Order Does Not Cure the Facial Unconstitutionality of the**
 7 **Order Because His Interpretation Is Inconsistent with Its Plain**
 8 **Meaning**

9 **1. The Court Should Give No Weight to the Attorney General’s**
 10 **Memorandum Because It Contradicts the Plain Meaning of the**
 11 **Executive Order**

12 Having failed to convince this Court to adopt the interpretation of the Executive
 13 Order that Defendants’ attorneys proffered at the hearing on the preliminary injunction
 14 motion, the Attorney General on May 22, 2017 issued a two page memorandum setting
 15 out his determination of the scope of the Executive Order. Doc. 26-1 filed June 8, 2017.

16 This Court should give no weight to the Attorney General Memorandum. The
 17 judicial branch has a constitutional duty to exercise its own independent judgment when
 18 determining the law. U.S. CONST. art. III; *see also Marbury v. Madison*, 5 U.S. at 177 (“It
 19 is emphatically the province and duty of the judicial department to say what the law is.”);
 20 *Minn. v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 193-94 (1999) (resolving
 21 dispute over the correct interpretation of an Executive Order).

22 The Attorney General Memorandum is not persuasive and conflicts with the plain
 23 language and express purpose of the Executive Order. It is not the job of the courts to
 24 adopt an interpretation of a statute precluded by its plain language. *Cnty. of Santa Clara*
 25 *v. Trump*, 2017 U.S. Dist. LEXIS 62871, at *33 (quoting *Foti v. City of Menlo Park*, 146
 26 F.3d 629, 639 (9th Cir. 1998)); *see also Thomas Jefferson Univ. v. Shalala*, 512 U.S. at
 27 512 (courts do not defer to Attorney General’s interpretation if “an alternative reading is
 28 compelled by the regulation’s plain language or by other indications of the Secretary’s
 intent at the time of the regulation’s promulgation.”); *Oregon v. Ashcroft*, 368 F.3d at
 1129 (“Given the plain language of the CSA [Controlled Substances Act] and its

1 legislative record, we are under no obligation to defer to the Attorney General’s
2 interpretation of his role under the statute and its implementing regulations” (citations
3 omitted).

4 This Court has already rejected a narrow reading of the Executive Order. The
5 Attorney General, whose interpretation is consistent with the interpretation advanced by
6 Defendants in opposing the preliminary injunction motion, “attempts to read out all of
7 Section 9(a)’s unconstitutional directives to render it an ominous, misleading, and
8 ultimately toothless threat.” *Cnty of Santa Clara v. Trump*, 2017 U.S. Dist. LEXIS 62871,
9 at *35.

10 The Attorney General Memorandum provides that section 9(a) “will be applied
11 solely to federal grants administered by the Department of Justice or the Department of
12 Homeland Security, and not to other sources of federal funding.” Dkt. 26-1, Memo at 1.
13 Additionally, the memo states that the Order “does not call for the imposition of grant
14 conditions that would violate any applicable constitutional or statutory limitation.” Dkt.
15 26-1, Memo at 1-2. Put simply, “this interpretation is in conflict with the Order’s express
16 language and is plainly not what the Order says.” *Cnty of Santa Clara v. Trump*, 2017
17 U.S. Dist. LEXIS 62871, at *35. As the Court held, in light of its plain text, Defendants’
18 interpretation of the Executive Order is “implausible,” “[n]othing in Section 9(a) limits the
19 ‘Federal grants’ affected to those only given through the Departments of Justice and
20 Homeland Security.” *Id.* at *36; *see also United States v. Stevens*, 559 U.S. at 481 (courts
21 do not adopt interpretations that “require[] rewriting, not just reinterpretation.”).

22 Furthermore, this narrow interpretation is inconsistent with the intent behind the
23 Order at the time it was issued, another reason the interpretation should be rejected. ¶¶
24 62-65; *Thomas Jefferson Univ. v. Shalala*, 512 U.S. at 512; *Bassidji v. Goe*, 413 F.3d 928,
25 934 (9th Cir. 2005) (“the text must be construed consistently with the Order’s object and
26 policy”). By limiting the Order to enforcing only existing grant conditions, the Attorney
27 General’s interpretation narrows the Order to such an extent that it fails to serve any
28 purpose over and beyond what other laws already provided. As this Court previously

1 found, “a construction so narrow that it renders a legal action legally meaningless cannot
2 possibly be consistent with the Order’s broad intent.” *Cnty of Santa Clara v. Trump*, 2017
3 U.S. Dist. LEXIS 62871, at *35-36.

4 Defendants appear to argue that since the executive branch must follow the
5 Attorney General Memorandum, the Executive Order is constitutional. However, this
6 argument must fail because the Attorney General Memorandum is an unreasonable
7 interpretation, contradicted by the plain language of the Executive Order. As this Court
8 stated in the Preliminary Injunction Order: “Adopting the Government’s proposed reading
9 would transform an Order that purports to create real legal obligations into a mere policy
10 statement and would work to mislead individuals who are not able to conclude, by reading
11 Section 9(a) itself, that it is fully self-cancelling and carries no legal weight.” *Cnty. of*
12 *Santa Clara v. Trump*, 2017 U.S. Dist. LEXIS 62871, at *38. The fact that the Attorney
13 General put his interpretation in a written form does not change the conclusion reached by
14 this Court based upon the interpretation advanced by agents of the Attorney General in
15 court pleadings and statements in court.

16 Because the plain language of the Executive Order cannot be reconciled with the
17 interpretation advanced by the Attorney General, the interpretation should be given no
18 weight by this Court.

19 **2. The Attorney General’s Memorandum is Not Legally** 20 **Binding**

21 Defendants’ argument does not compel a different conclusion. Defendants do not
22 and cannot argue that this Court must defer to the Attorney General’s interpretation.
23 Instead, they simply contend that “[b]y longstanding tradition and practice, the Attorney
24 General’s legal opinions are treated as authoritative by the heads of executive agencies.”
25 Def. Mem. at 7:18-22 (citing *Tenaska Wash. Partners, L.P. v. United States*, 34 Fed. Cl.
26 434, 439 (1995) and “Recent Developments Federal Agency Focus: The Department of
27 Justice: Executive Branch Legal Interpretation: A Perspective from the Office of Legal
28 Counsel, 52 *Admin. L. Rev.* 1303, 1319-20). There is no dispute that the “Attorney

1 General has a statutory duty to advise executive department heads on ‘questions of law’”
2 and “furnish legal opinions to executive agencies.” Def. Mem. at 7:13-15 (citing 28
3 U.S.C. § 512 and 28 C.F.R. § 0.5(c)). The Secretary of Homeland Security principally
4 administers the immigration laws and the Attorney General does provide interpretations of
5 law. Def. Mem. at 7:15-18 (citing 8 U.S.C. § 1103(c)(1)).² However, the force of the
6 Attorney General’s opinions is not as strong as Defendants contend. This Court is not the
7 head of an executive agency, but rather part of an independent branch of the federal
8 government, the judicial branch. As the court in *Tenaska* explained, the Court need not
9 accept the reasoning of the Attorney General’s Memorandum: “Of course, the fact that the
10 Department of Justice asserts a legal theory does not bind the court to accept the reasoning
11 as legally correct; in fact, the court should view any change in position with care.”
12 *Tenaska Wash. Partners, L.P. v. United States*, 34 Fed. Cl. at 440. The law review article,
13 cited by Defendants, confirms that the Attorney General’s opinion is only the executive
14 branch’s interpretation of the law, and whether Attorney General’s opinions have any
15 binding effect is an unsettled issue within the executive branch. *52 Admin. L. Rev.* at
16 1318, 1321.

17 The Attorney General Memorandum does not rewrite the order to make it
18 constitutional. Rather it is a mere promise by the Attorney General not to enforce the
19 Executive Order as it is written. However, an unconstitutional law is not cured by an
20 agency choosing to voluntarily forego, for the time being, the unconstitutional powers
21 granted to it. *Whitman v. Am. Trucking Associations*, 531 U.S. 457, 472-473 (2001); *see*
22 *also Knox v. Service Employees Intern Union*, 567 U.S. 298, 307 (2012). Courts should
23 “not uphold an unconstitutional statute merely because the Government promised to use it
24 responsibly.” *United States v. Stevens*, 559 U.S. at 480; *see also Cnty. of Santa Clara v.*
25 *Trump*, 2017 U.S. Dist. LEXIS 62871, at *71 (“The Counties challenge the Executive
26
27

28 ² Richmond believes that Defendants meant to cite to 8 U.S.C. § 1103(a)(1).

1 Order as written; a decision to enforce it sparingly cannot impact whether it is
2 unconstitutional on its face.”).

3 These principles are especially true here. The Attorney General can change this
4 interpretation at any time. The memo is only directed to the Department of Justice and its
5 failure to address other departments or discuss how they will address detainer requests
6 suggests that it is an informal implementation memo and it is unclear that it is binding on
7 any other agency. Strengthening this conclusion is the fact that the memo offers no legal
8 analysis or opinion, but instead only summarizes the pertinent terms of the Executive
9 Order and directs the Department of Justice on how to implement it. Moreover, it was not
10 issued by the Office of Legal Counsel (“OLC”), the office with the delegated
11 responsibility to issue such opinions. 28 C.F.R. §§ .25, .5(c); 28 U.S.C. § 512. Finally,
12 the Court can consider the Attorney General Memorandum a convenient legal strategy
13 rather than its permanent interpretation of the Executive order. *See Christopher v.*
14 *SmithKline Beecham Corp.*, 567 U.S. 142, 155 (2012) (agency deference does not apply
15 “when it appears that the interpretation is nothing more than a ‘convenient litigating
16 position’”) (citation omitted); *Vietnam Veterans of Am. v. CIA*, 811 F.3d 1068, 1078 (9th
17 Cir. 2016) (same). Accordingly, this Court should give no weight to the Attorney
18 General’s memorandum.

19 **C. Richmond Has Standing and Its Claims Are Ripe**

20 **1. Richmond Has Standing**

21 In the Preliminary Injunction Order, this Court rejected Defendants’ claim that San
22 Francisco and Santa Clara lacked standing and their claims were not ripe. *Cnty. of Santa*
23 *Clara v. Trump*, 2017 U.S. Dist. LEXIS 62871, at *43, 72. Similarly, Richmond’s
24 complaint sufficiently alleges standing and ripeness. *See e.g.* ¶¶ 79-85.

25 First, this Court has already found that the Executive Order “carries the force of
26 law.” *Santa Clara v. Trump*, 2017 U.S. Dist. LEXIS 62871, at * 38; *see also Legal Aid*
27 *Soc. of Alameda Cnty. v. Brennan*, 608 F.2d 1319, 1329 (9th Cir. 1979). The Executive
28 Order contains no language suggesting it was intended to be merely an internal directive.

1 *Hawaii v. Trump*, 2017 U.S. App. LEXIS 103562017, at *86 (distinguishing unlawful
 2 provisions of executive order that “burden individuals outside the executive branch” and
 3 those that only pertain to “internal government operations and procedures”).³ Defendants
 4 unpersuasively argue that the Executive Order serves only as an internal directive that
 5 does not impose any affirmative obligations on state or local jurisdictions. Def. Mem. at
 6 11:16-12:25. Yet, as this Court stated: “The Federal Government may neither issue
 7 directives requiring the States to address particular problems, nor command the States’
 8 officers, or those of their political subdivisions, to administer or enforce a federal
 9 regulatory program. That is true whether Congress directly commands a State to regulate
 10 or indirectly coerces a State to adopt a federal regulatory system as its own.” *Cnty. of*
 11 *Santa Clara v. Trump*, 2017 U.S. Dist. LEXIS 62871, at *80-81 (citations and internal
 12 quotations omitted). “While the President is entitled to highlight his policy priorities, an
 13 Executive Order carries the force of law. Adopting the Government’s proposed reading
 14 would transform an Order that purports to create real legal obligations into a mere policy
 15 statement and would work to mislead individuals who are not able to conclude, by reading
 16 Section 9(a) itself, that it is fully self-cancelling and carries no legal weight.” *Id.*, 2017
 17 U.S. Dist. LEXIS 62871, at *38.

18 Second, the Executive Order directly affects Richmond by attempting to compel it
 19 to change its policies regarding cooperation with immigration enforcement, specifically its
 20 policies to increase public safety and make all residents feel welcome in Richmond as set
 21 forth in official City Council enactments. ¶¶ 2, 3, 24-28, 36, 78, 92, 93, Ex. 2, 3. This
 22 coercion constitutes an injury sufficient to satisfy the Article III case or controversy
 23 requirement. *Cnty. of Santa Clara v. Trump*, 2017 U.S. Dist. LEXIS 62871, at *59
 24

25 ³ Defendants’ cases do not say otherwise. *Chen v. Schiltgen*, No. C-94-4094 MHP, 1995
 26 U.S. Dist. LEXIS 7352, *13 (N.D. Cal. May 19, 1995) (no private right of action to
 27 enforce an executive order, not challenge its constitutionality as Richmond does here);
 28 *Legal Aid Society of Alameda County v. Brennan*, 608 F.2d at 1319 (holding executive
 order “ha[d] the force of law” and was subject to judicial review); *United States v.*
Pickard, 100 F. Supp. 3d 981 (E.D. Cal. 2015) (construing a policy memorandum issued
 by the Deputy Attorney General, not an executive order).

1 (“Because they argue that the Executive Order seeks to undermine this judgment by
2 attempting to compel them to change their policies and enforce the Federal government’s
3 immigration laws in violation of the Tenth Amendment, their claims implicate a
4 constitutional interest.”); *see also Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel.,*
5 *Barez*, 458 U.S. 592, 601 (1982) (states have a sovereign interest in “the power to create
6 and enforce a legal code”).

7 Moreover, the Supreme Court has made clear that “where threatened action by
8 government is concerned, we do not require a plaintiff to expose himself to liability before
9 bringing suit to challenge the basis for the threat—for example, the constitutionality of a
10 law threatened to be enforced.” *MedImmune, Inc. v. Genentech*, 549 U.S. 118, 128-29
11 (2007). “[A]n individual facing enforcement action may establish standing by
12 demonstrating a well-founded fear of enforcement and a threatened injury that is
13 ‘sufficiently real and imminent.’ One may also establish standing by demonstrating that a
14 well-founded fear of enforcement action is itself causing present injury.” *Cnty. of Santa*
15 *Clara v. Trump*, 2017 U.S. Dist. LEXIS 62871, at *43 (citing *O’Shea v. Littleton*, 414
16 U.S. 488, 496 (1974)); *Virginia v. American Booksellers Ass’n, Inc.*, 484 U.S. 383, 393
17 (1988); *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 385 (1926)).

18 Here, Richmond alleges that it has a well-founded fear of enforcement under the
19 Executive Order based on policy decisions it has made because: Richmond has a
20 constitutional interest in making this policy decision (¶¶ 62-65); under Richmond’s
21 reasonable interpretation of the Executive Order, Defendants intend to enforce it against
22 the city (¶ 86); the Executive Order threatens to withhold needed federal funds from
23 Richmond (¶¶ 79-83); and Richmond is suffering injury in the form of significant budget
24 uncertainty (¶¶ 84-85). Further, the Department of Justice has identified California as a
25 jurisdiction that does not fully comply with federal immigration enforcement policies.
26 ¶ 31; *see also* ¶ 30 (discussing Cal. Govt. Code §§ 7282 and 7282.5 regarding the
27 information California law enforcement officials can provide to federal immigration
28 officials). The Executive Order directly affects Richmond by attempting to coerce it to

1 change its policies regarding cooperation with immigration enforcement. ¶¶ 3, 78, 92, 93,
 2 Ex. 2, 3. These allegations are sufficient to allege standing. *Cnty. of Santa Clara v.*
 3 *Trump*, 2017 U.S. Dist. LEXIS 62871, at *67-68; *Organized Village of Kake v. U.S. Dep’t*
 4 *of Agric.*, 795 F.3d 956, 965 (9th Cir. 2015).

5 2. Richmond’s Claims Are Ripe

6 Richmond’s claim is also ripe. “The constitutional component of ripeness overlaps
 7 with the ‘injury in fact’ analysis for Article III standing.” *Wolfson v. Brammer*, 616 F.3d
 8 1045, 1058 (9th Cir. 2010). With respect to prudential ripeness, the Supreme Court has
 9 questioned the “continuing vitality of the prudential ripeness doctrine” in light of courts’
 10 “virtually unflagging” obligation to “decide cases within [their] jurisdiction.” *Susan B.*
 11 *Anthony List v. Driehaus*, 134 S. Ct. 2334, 2347 (2014). In any event, this Court has
 12 already held that such challenges to the constitutionality of the Executive Order “as
 13 written” are prudentially ripe and that “a decision to enforce it sparingly cannot impact
 14 whether it is unconstitutional on its face. [Such] claims do not require further factual
 15 development, are legal in nature, and are brought against a final Executive Order. They are
 16 fit for review.” *Cnty. of Santa Clara v. Trump*, 2017 U.S. Dist. LEXIS 62871, at *71.

17 The Complaint sufficiently shows that the Executive Order has caused and will
 18 cause Richmond constitutional injuries by violating the separation of powers doctrine and
 19 depriving it of its Tenth and Fifth Amendment rights (¶¶ 86, 107-113), but also because
 20 the Executive Order has caused substantial budget uncertainty and coercion by threatening
 21 to deprive it of millions of dollars in federal money that support core services (¶¶ 3, 78,
 22 84-85, 92, 93). These allegations are sufficient to show ripeness. *Cnty. of Santa Clara v.*
 23 *Trump*, 2017 U.S. Dist. LEXIS 62871, at *90-92; *Shell Offshore, Inc. v. Greenpeace, Inc.*,
 24 709 F.3d 1281, 1286–87 (9th Cir. 2013) (likelihood of success on the merits and
 25 irreparable harm “necessarily establish[ed] . . . standing to seek injunctive relief.”).

26 D. Richmond Alleges a Viable Claim under the Tenth Amendment

27 Richmond’s first claim for relief is for injunctive and declaratory relief based upon
 28 the violation of the Tenth Amendment. ¶¶ 88-95. The Tenth Amendment preserves

1 state and local government sovereignty and limits the federal government’s ability to
2 control local governments’ actions. Under the Tenth Amendment, “Congress may not
3 simply commandeer the legislative process of the States by directly compelling them to
4 enact and enforce a federal regulatory program.” *New York v. United States*, 505 U.S.
5 144, 161, 112 S. Ct. 2408 (1992) (internal quotation omitted). Defendants do not, and
6 cannot, dispute that the Tenth Amendment applies to Richmond. *Printz v. United States*,
7 521 U.S. 898, 931, n. 15, 117 S. Ct. 2365, 138 L. Ed. 2d 914 (1997); *City of Santa Cruz*
8 *v. Gonzales*, No. C 03-01802 JF, 2007 U.S. Dist. LEXIS 66414 (N.D. Cal. Aug. 30,
9 2007).

10 As the Complaint explains, the Executive Order violates the Tenth Amendment
11 because: it requires that Richmond “detain individuals who may be subject to removal at
12 the request of federal officials even if those individuals would otherwise be subject to
13 release from custody” (¶ 91); Richmond must “avoid preventing or hindering the federal
14 government in the enforcement of Federal law” (¶ 92); the Executive Order
15 “impermissibly seeks to interfere with Richmond’s policy decisions in enacting
16 Ordinance No. 29-90 and Resolution No. 11-07, which further legitimate local concerns
17 and interests” (¶ 93); and the Executive Order interferes with Richmond’s ability to
18 budget (¶ 94). These allegations are sufficient to allege a violation of the Tenth
19 Amendment because the Executive Order interferes with Richmond’s right to make its
20 own policies. See *Cnty. of Santa Clara v. Trump*, 2017 U.S. Dist. LEXIS 62871, at *80-
21 84.

22 **E. Richmond Alleges a Viable Claim under the Separation of Powers and**
23 **Spending Clause**

24 Richmond’s second claim for relief is for injunctive and declaratory relief based on
25 the separation of powers and the Spending Clause. ¶¶ 96-101. The gravamen of the claim
26 is that the “President does not have the authority to issue the Executive Order because the
27 Executive Order is not authorized by the Constitution or Congress.” ¶ 100. Nothing in
28 the Attorney General Memorandum identifies any constitutional or congressional

1 authority that provided President Trump with the authority to issue the Executive Order.
2 Accordingly, the Attorney General Memorandum fails to demonstrate that Richmond does
3 not allege a claim under separation of powers.

4 **1. Richmond States a Viable Claim under the Separation of**
5 **Powers**

6 Richmond alleges a claim for violation of the separation of powers. “Article I of
7 the Constitution grants Congress the federal spending powers. *See* U.S. Const. art. I, § 8,
8 cl. 1. “After a bill becomes law, the President is required to ‘take care that the law be
9 faithfully executed.’ *See* U.S. Const. art. II, § 3, cl. 5. Where Congress has failed to give
10 the President discretion in allocating funds, the President has no constitutional authority to
11 withhold such funds and violates his obligation to faithfully execute the laws duly enacted
12 by Congress if he does so. *See [Clinton v.] City of N.Y.*, 524 U.S. [417,] at 439, [118 S.
13 Ct. 2091 (1998)]; U.S. Const. art. I, § 8, cl. 1.” *Cnty. of Santa Clara v. Trump*, 2017 U.S.
14 Dist. LEXIS 62871, at *74 (bracketed material added).

15 The Executive Order, as explained by this Court, violates the separation of powers:

16 The Executive Order runs afoul of these basic and fundamental constitutional
17 structures. The Order’s stated purpose is to “ensure that jurisdictions that fail to
18 comply with applicable Federal law do not receive Federal funds, except as
19 mandated by law.” EO §2. To effectuate this purpose, the Order directs that “the
20 Attorney General and the Secretary, in their discretion and to the extent consistent
21 with law, shall ensure that jurisdictions that willfully refuse to comply with 8
22 U.S.C. 1373 (sanctuary jurisdictions) are not eligible to receive Federal grants,
23 except as deemed necessary for law enforcement purposes by the Attorney General
24 or the Secretary.” EO §9(a). Section 9 purports to give the Attorney General and
25 the Secretary the power to place a new condition on federal funds (compliance with
26 Section 1373) not provided for by Congress. But the President does not have the
27 power to place conditions on federal funds and so cannot delegate this power.

28 Section 9 is particularly problematic as Congress has repeatedly, and frequently,
declined to broadly condition federal funds or grants on compliance with Section
1373 or other federal immigration laws as the Executive Order purports to do. *See*,
e.g., Ending Sanctuary Cities Act of 2016, H.R. 6252, 114th Cong. (2016); Stop
Dangerous Sanctuary Cities Act, S. 3100, 114th Cong. (2016); Stop Dangerous
Sanctuary Cities Act, H.R. 5654, 114th Cong. (2016); Stop Sanctuary Policies and
Protect Americans Act, S. 2146, 114th Cong. (2016). This puts the President’s

1 power “at its lowest ebb.” *Youngstown [Sheet & Tube Co. v. Sawyer]*, 343 U.S.
2 [579], 637 [(1952)]. The Order’s attempt to place new conditions on federal funds
3 is an improper attempt to wield Congress’s exclusive spending power and is a
violation of the Constitution’s separation of powers principles.

4 *Cnty. of Santa Clara v. Trump*, 2017 U.S. Dist. LEXIS 62871, at *75-76 (bracketed
5 material added).

6 Richmond sufficiently alleges the violation of the separation of powers in the
7 Complaint. Paragraphs 68 and 69 explain that the President does not have the authority to
8 issue the Executive Order because it was not authorized by any act of Congress or the
9 Constitution. Paragraphs 96 through 101 allege the violation of the separation of powers
10 violation and seek relief. While Defendants argue, Def. Mem. at 15:18-19, that “Congress
11 has frequently authorized agencies administering certain grant programs to impose
12 discretionary conditions on the receipt of funds,” they only identify three programs, *id.* at
13 15:23-27, and the Executive Order by its express terms applies to “all federal funds.” ¶¶
14 3, 4, 6, 62, 72-73, 84, 86, Ex. 1, § 2. Further, Defendants introduce no evidence that any
15 of these three grants have imposed these conditions on the grantee. Further, Defendants
16 do not show that the Executive Order does not apply to Richmond. And even if they did,
17 this motion is a motion to dismiss, where Richmond’s allegations are accepted as true and
18 factual disputes (if any there were) are not resolved here.

19 **2. Richmond States a Viable Claim under the Spending** 20 **Clause**

21 Richmond also sufficiently alleges a violation of the Spending Clause. “While
22 Congress has significant authority to encourage policy through its spending power, the
23 Supreme Court has articulated a number of limitations to the conditions Congress can
24 place on federal funds. The Executive Order violates at least three of these restrictions: (1)
25 conditions must be unambiguous and cannot be imposed after funds have already been
26 accepted; (2) there must be a nexus between the federal funds at issue and the federal
27 program’s purpose; and (3) the financial inducement cannot be coercive.” *Cnty. of Santa*
28 *Clara v. Trump*, 2017 U.S. Dist. LEXIS 62871, at *76-77.

1 Richmond alleges that: Congress did not impose unambiguous conditions (§§ 110-
2 112); there is no nexus between all federal funds and the purpose of the Executive Order
3 (§ 72); and the financial inducement is coercive (§ 85). Accordingly, Richmond has stated
4 a claim under the Spending Clause.

5 **F. Richmond States a Viable Claim under the Fourth Amendment**

6 In its Third Claim, Richmond sufficiently alleges a claim under the Fourth
7 Amendment. §§ 102-106.

8 “Several courts have held that it is a violation of the Fourth Amendment for local
9 jurisdictions to hold suspected or actual removable aliens subject to civil detainer requests
10 because civil detainer requests are often not supported by an individualized determination
11 of probable cause that a crime has been committed.” *Cnty. of Santa Clara v. Trump*, 2017
12 U.S. Dist. LEXIS 62871, at *20-21 (citing *Morales v. Chadbourne*, 793 F.3d 208, 215-
13 217 (1st Cir. 2015); *Miranda-Olivares v. Clackamas Cnty.*, No. 3:12-cv-02317-ST, 2014
14 U.S. Dist. LEXIS 50340, 2014 WL 1414305, at *9-11 (D. Or. Apr. 11, 2014)); *see also*
15 *Orellana v. Nobles Cnty.*, No. 15-3852 ADM/SER, 2017 U.S. Dist. LEXIS 2438, at *23-
16 24 (D. Minn. Jan. 6, 2017); *Mendia v. Garcia*, 165 F. Supp. 3d 861, 887 (N.D. Cal. 2016).
17 Congress’ spending power “may not be used to induce the States to engage in activities
18 that would themselves be unconstitutional.” *S.D. v. Dole*, 483 U.S. 203, 210, 107 S. Ct.
19 2793 (1987).

20 The Complaint alleges facts to support its claim that the Executive Order violates
21 the Fourth Amendment: “The Executive Order requires Richmond to keep people in
22 custody who would otherwise be released. Richmond and its law enforcement officials
23 will not have probable cause to keep these people in custody. [§] Therefore, Richmond
24 may be liable under the Fourth Amendment for honoring an ICE civil detention request.
25 Further, the federal government has made clear that Richmond will bear all responsibility
26 for the additional detention costs and potential liability.” §§ 104-105 (citations omitted).
27 These facts support a claim for violation of the Fourth Amendment.

28

1 Even if the Court considers the Attorney General Memorandum, which it should
2 not do, the Memorandum does not change this analysis. Nothing in the Attorney General
3 Memorandum contradicts Richmond's allegations, which must be accepted as true on a
4 motion to dismiss, that the "Executive Order requires Richmond to keep people in custody
5 who would otherwise be released" and thus subjects them to liability under the Fourth
6 Amendment. ¶¶ 104, 105. Accordingly, Richmond has pled a claim for violation of the
7 Fourth Amendment.

8 **G. Richmond States a Viable Claim of Unconstitutional Vagueness under**
9 **the Due Process Clause**

10 Richmond's Fourth Claim for Relief seeks an injunction and declaratory relief
11 based on violations of the due process clause because of vagueness. ¶¶ 107-113. "A law
12 is unconstitutionally vague and void under the Fifth Amendment if it fails to make clear
13 what conduct it prohibits and if it fails to lay out clear standards for enforcement." See
14 *Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972).
15 To satisfy due process we insist that laws (1) 'give the person of ordinary intelligence a
16 reasonable opportunity to know what is prohibited, so that he may act accordingly' and (2)
17 'provide explicit standards for those who apply them.' *Id.*" *Cnty. of Santa Clara v.*
18 *Trump*, 2017 U.S. Dist. LEXIS 62871, at *84.

19 Richmond sufficiently alleges this claim. Specifically, the Complaint alleges:

20 110. The Executive Order is unconstitutionally vague and, therefore,
21 unconstitutional. It fails to define key terms, such as "sanctuary jurisdiction" and
22 the term is not defined in any federal law or regulation. Although Richmond and
23 numerous other jurisdictions have been referred to as "sanctuary cities," there is no
24 common definition of a sanctuary city and there are differences between the
25 ordinances and policies of the different jurisdictions referred to as "sanctuary
26 cities." The fact that a public entity has been referred to as a sanctuary city or that
27 it has enacted legislation about immigration policies does not mean that it is a
28 "sanctuary jurisdiction" under the Executive Order. No jurisdiction can determine
by the language of the Executive Order if it is a "sanctuary jurisdiction" subject to
the Executive Order.

1 111. The Executive Order is also unconstitutionally vague and, therefore,
 2 unconstitutional, because it does not define what actions or inactions constitute
 3 “willful refusal to comply with 8 U.S.C. § 1373.” The Executive Order gives
 4 unfettered discretion to the Attorney General and Secretary of Homeland Security
 5 without providing any rules or guidance on how that discretion should be exercised.
 6 The Executive Order is, therefore unconstitutionally vague. *United States v.*
 7 *Williams*, 553 U.S. [285] at 304 [(2008)]; *Grayned v. City of Rockford*, 408 U.S. at
 8 108. The Executive Order is impermissibly vague because it allows resolution on
 9 an ad hoc and subjective basis, with the attendant dangers of arbitrary and
 10 discriminatory application. See *Grayned v. City of Rockford*, 408 U.S. at 109.

11 112. An additional reason that the Executive Order is unconstitutionally vague is
 12 that it does not define what is meant by the phrase: “Ensure that jurisdictions that
 13 fail to comply with applicable Federal law do not receive Federal funds, except as
 14 mandated by law.” Richmond does not know, with respect to the Executive Order,
 15 what “applicable Federal law means.” There is no way for Richmond to know
 16 whether the “applicable Federal law” is only 8 U.S.C. § 1373, all immigration laws
 17 or all federal laws.

18 ¶¶110-112 (bracketed material added); see also ¶¶ 4, 5, 86.

19 This Court has properly held that the Executive Order is likely to be found void for
 20 vagueness for these reasons. *Cnty. of Santa Clara v. Trump*, 2017 U.S. Dist. LEXIS
 21 62871, at *84-87. Accordingly, Richmond has pled a claim for violation of the due
 22 process clause because of vagueness.

23 The Attorney General’s Memorandum does not cure the facial vagueness of the
 24 Executive Order. As discussed above, Defendants cannot cure a facially unconstitutional
 25 law by adopting an unreasonable narrowing interpretation. *Valle del Sol Inc. v. Whiting*,
 26 732 F.3d 1006, 1021-22 (9th Cir. 2013) (rejecting the argument that a defendant can cure
 27 a facially unconstitutional law by adopting an unreasonable narrowing interpretation).
 28 Further, as a factual matter, the Attorney General Memorandum does not cure the
 Executive Order’s vagueness. This memo does not clarify what it means to “willfully
 refuse to comply” with Section 1373; thus “[i]n the face of conflicting guidance, and no
 clear standard from the Government, jurisdictions do not know how to avoid the Order’s
 defunding penalty.” *Cnty. of Santa Clara v. Trump*, 2017 U.S. Dist. LEXIS 62871, at
 *84-85. It also fails to clarify the effect of the declined civil detainer requests referenced

1 in Section 9(b), how the Department of Homeland Security will apply the funding
2 restriction, or how the Department of Justice will apply the Executive Order’s
3 enforcement provision in Section 9(a). Thus, even considering the Attorney General
4 Memorandum, the Executive Order remains unconstitutionally vague. *United States v.*
5 *Williams*, 553 U.S. 285, 304, 128 S. Ct. 1830 (2008).

6 **H. Richmond States a Viable Claim for Declaratory Relief regarding Its**
7 **Compliance with 8 U.S.C. § 1373**

8 Richmond states a viable claim for declaratory relief regarding its compliance with
9 8 U.S.C. § 1373 despite Defendants’ argument, Def. Mem. 22:13-23:2, that this Court
10 does not have jurisdiction and Richmond does not have the right to declaratory relief. ¶¶
11 67, 114-117. Defendants are incorrect because Richmond alleges that it believes that it
12 complies with the statute, but Defendants contend otherwise thus establishing an actual
13 controversy. ¶¶ 115-116. Since the Executive Order conditions federal funding on
14 compliance with 8 U.S.C. § 1373, Richmond faces the loss of federal funding if it is
15 found to willfully refuse to comply with the statute. ¶ 3.

16 Thus, Richmond identifies a right under which it is entitled to relief. “Under the
17 Declaratory Judgment Act, any court of the United States may declare the rights and other
18 legal relations of any interested party seeking such declaration, whether or not further
19 relief is or could be sought. Any such declaration shall have the force and effect of a final
20 judgment or decree and shall be reviewable as such.” *United States v. Washington*, 759
21 F.2d 1353, 1363 (9th Cir. 1985) (citing 28 U.S.C. § 2201). “The Supreme Court has
22 explained, ‘[b]asically, the question in each case is whether the facts alleged, under all the
23 circumstances, show that there is a substantial controversy, between parties having
24 adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a
25 declaratory judgment.’” *Northfield Ins. Co. v. Civic Ctr. Hotel, LLC*, No. 3:16-cv-06056-
26 WHO, 2017 U.S. Dist. LEXIS 33328, at *13-14 (N.D. Cal. Mar. 8, 2017) (quoting
27 *Maryland Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270, 273, 61 S. Ct. 510, 85 L. Ed.
28 826 (1941)). Richmond alleges that it faces the loss of all federal funds if Defendants

1 conclude that it willfully fails to comply with 28 U.S.C. § 1373. Richmond has standing,
 2 its claims are ripe, and thus it meets the requirement for declaratory relief. *Khan v. K2*
 3 *Pure Sols., LP*, No. 12-cv-05526-WHO, 2013 U.S. Dist. LEXIS 126347, at *10 (N.D. Cal.
 4 Sep. 3, 2013). As previously demonstrated, Richmond has standing because it has
 5 demonstrated that Defendants may take away federal funds from Richmond and it has
 6 suffered injury. ¶¶ 4-6, 79-85, 87, 92, 112. Therefore, it properly seeks a declaration that
 7 it complies with 8 U.S.C. § 1373.

8 Defendants also contend that this claim fails because there is no live, concrete
 9 controversy regarding whether Richmond complies with section 1373. Mem. at 23:3-14.
 10 Tellingly, Defendants could easily make this claim unnecessary by stating that they do not
 11 contend that Richmond fails to comply with 8 U.S.C. § 1373. However, they make no
 12 such statement. As Richmond demonstrates, based upon its policies as set out in an
 13 ordinance and regulation, the plain language of the Executive Order, and Defendants'
 14 statements, Richmond is reasonable in its understand that Defendants believe that it
 15 willfully violates 8 U.S.C. § 1373. Accordingly, Richmond has stated a claim for
 16 declaratory relief regarding whether it complies with 8 U.S.C. § 1373.

17 **VI. CONCLUSION**

18 For the reasons set forth above, Richmond respectfully requests that the Court deny
 19 Defendants' motion to dismiss in its entirety, or in the alternative if the motion is granted,
 20 provide Richmond an opportunity to amend the complaint.

21 Respectfully submitted,

22 Dated: June 22, 2017

COTCHETT, PITRE & McCARTHY, LLP

23 By: /s/ Nancy L. Fineman
 24 **NANCY L. FINEMAN**
 25 *Attorneys for Plaintiff*

26 Dated: June 22, 2017

CITY OF RICHMOND

27 By: /s/ Bruce Reed Goodmiller
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ATTESTATION OF FILING

I, Nancy L. Fineman, hereby attest, pursuant to Northern District of California, Local Rule 5-1(i)(3) that concurrence to the filing of this document has been obtained from each signatory hereto.

/s/ Nancy L. Fineman

NANCY L. FINEMAN
Attorney for Plaintiff