

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, EX REL.  
XAVIER BECERRA, IN HIS OFFICIAL  
CAPACITY AS ATTORNEY GENERAL  
OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

JEFFERSON BEAUREGARD SESSIONS,  
et al.,

Defendants.

Case No. [17-cv-04701-WHO](#)

**ORDER DENYING MOTION TO  
DISMISS**

Re: Dkt. No. 77

Defendants have moved to dismiss the State of California’s Amended Complaint seeking declaratory relief and asserting claims of the violation of constitutional separation of powers, congressional spending authority and the Administrative Procedures Act. The matter was fully briefed and argued on February 28, 2018. For the reasons described in the Order Denying Amended Motion for Preliminary Injunction (“the Order”) filed today at pages 11 - 18, the State has Article III standing: it has a well-founded fear of prosecution and has demonstrated injury-in-fact. Its claims are ripe.


While the Order does not grant preliminary injunctive relief at this time, each of the State’s claims is legally sufficient to state a claim upon which relief could be granted. The weighty and novel constitutional issues posed in this litigation deserve a complete record before they are adjudicated. The Order only glancingly dealt with the Notice and Access conditions that have been enjoined on a nationwide basis in *City of Chicago v. Sessions*, but for the reasons set forth in that case and in *City of Philadelphia v. Sessions*, the State’s related claims state a plausible basis for relief. See *City of Philadelphia v. Sessions*, No. 17–3894, — F.Supp.3d —, 2017 WL 5489476, at \*48-49 (E.D. Pa. Nov. 15, 2017) (finding that the Notice and Access conditions are

1 not statutorily authorized and the imposition of the conditions implicate constitutional concerns);  
2 *City of Chicago v. Sessions*, 264 F.Supp.3d 933, 943 (N.D. Ill. 2017) (holding that the Notice and  
3 Access conditions exceed statutory authority of Executive Branch and imposition of the conditions  
4 violated the separation of powers doctrine). Defendants' motion is DENIED.

5 The parties are directed to meet and confer and agree to the extent possible on a schedule  
6 for discovery and cross-motions for summary judgment. A Joint Case Management Statement  
7 shall be filed on March 20, 2018 setting forth either an agreed schedule or competing ones. A  
8 Case Management Conference will be held on March 27, 2018 at 2 p.m. in the event the parties  
9 have been unable to agree or that one of the parties wishes to be heard on any other issue in the  
10 litigation.

11 **IT IS SO ORDERED.**

12 Dated: March 5, 2018

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15 William H. Orrick  
16 United States District Judge  
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Northern District of California