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**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

CITY OF SEATTLE,

Plaintiff,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

No. 17-cv-00497RAJ

**DEFENDANTS' MOTION TO DISMISS**

NOTE ON MOTION CALENDAR:  
June 30, 2017

**DEFENDANTS' MOTION TO DISMISS**

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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). Section 9(a) of the Order, which is the subject of this litigation,  
6 establishes a policy of ensuring that state and local jurisdictions comply with 8 U.S.C. § 1373.  
7 *Id.* § 9. Section 1373 provides, *inter alia*, that no government entity or official may prohibit or  
8 restrict the sending or receiving of information regarding the citizenship or immigration status of  
9 any individual to federal immigration authorities. 8 U.S.C. § 1373.  
10

11 The Executive Order is a presidential directive, directed to the Attorney General, the  
12 Secretary of Homeland Security (the “Secretary”), and other federal officials. Pursuant to the  
13 plain language of Section 9(a) of the Order, and as conclusively established through subsequent  
14 guidance issued by the Attorney General, the Order does not purport to alter the existing  
15 requirements of Section 1373 (or any other federal law), impose new or retroactive burdens on  
16 state or local jurisdictions, or expand the legal authority of the Secretary or the Attorney General.  
17 *See generally* Mem. from Att’y Gen. to Dep’t of Justice Grant-Making Components,  
18 *Implementation of Executive Order 13768* (May 22, 2017) (“AG Memorandum”) (attached hereto  
19 as Exhibit 1). Rather, the Executive Order announces the policy of the Executive Branch and  
20 directs the Secretary and Attorney General, in their discretion and consistent with their existing  
21 legal authority, to ensure that jurisdictions that willfully refuse to comply with Section 1373 not  
22 be eligible to receive federal grants, except as deemed necessary for law enforcement purposes.  
23 *Id.*; *see also* Exec. Order No. 13,768, § 9(a).  
24  
25

26 Section 9(a) of the Executive Order is not self-executing, and defendants have taken no  
27 action against the City of Seattle (the “City”) under that section. Nevertheless, the City filed the  
28

1 instant lawsuit seeking declaratory and injunctive relief to prevent defendants from taking  
2 hypothetical future actions pursuant to that authority. The City’s lawsuit is premature. The City  
3 concedes that it has not been the subject of *any* adverse action, the Secretary has not designated  
4 the City as a “sanctuary jurisdiction” in accordance with the process contemplated in Section 9(a),  
5 and the City affirmatively states that it complies with the requirements of Section 1373.  
6

7       The City cannot show any injury due to the mere existence of the Executive Order, much  
8 less establish the “concrete” and “palpable” injury needed to meet the constitutional requirement  
9 of standing. *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990). Moreover, because defendants  
10 have taken no action against the City under the Executive Order, “its effects [have not been] felt  
11 in a concrete way,” rendering the City’s pre-enforcement challenge subject to dismissal under the  
12 ripeness doctrine. *See Abbott Labs. v. Gardner*, 387 U.S. 136, 148-49 (1967), *abrogated on other*  
13 *grounds, Califano v. Sanders*, 430 U.S. 99, 97 (1977). The City’s Complaint is based on  
14 speculation concerning the Order’s scope, assumptions about the manner in which the Secretary  
15 and Attorney General might interpret and implement the Order’s provisions, and conjecture  
16 concerning the possibility that the City might one day be designated a “sanctuary jurisdiction”  
17 pursuant to the Order and might lose all of its federal grant funding as a result. Such speculative  
18 assertions fall short of demonstrating concrete injury. Indeed, the AG Memorandum clarifies that  
19 many of the assumptions underlying the City’s claims – such as the City’s contention that the  
20 Executive Order seeks to terminate *all* federal funding to sanctuary jurisdictions – are simply  
21 inaccurate. *Compare* Compl. ¶ 78 (ECF No. 1), *with* AG Mem. at 1-2. The Supreme Court has  
22 made clear that the ripeness doctrine exists to prevent courts from issuing decisions based on  
23 hypothetical circumstances – like those alleged in the Complaint – that might not occur as  
24 anticipated or might not occur at all.  
25  
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1           Additionally, the City has failed to state claims on which relief can be granted for general  
2           declaratory relief or under the Tenth Amendment or the Spending Clause of the Constitution.  
3           The City’s request for a declaration regarding its compliance with Section 1373 fails because the  
4           City identifies no cause of action authorizing such relief, and because the relief it seeks would  
5           require the Court to render an advisory opinion, which is forbidden under Article III. Its facial  
6           Tenth Amendment challenge fails because (1) that claim is based on an interpretation of the  
7           Executive Order that the Attorney General has rejected; (2) a facial constitutional claim cannot be  
8           sustained against an Executive Order that merely implements executive policy and does not carry  
9           the force of law; and (3) in any event, the City’s cannot establish that “no set of circumstances  
10          exists under which [the challenged provisions] would be valid.” *United States v. Salerno*, 481  
11          U.S. 739, 745 (1987). Similarly, its Spending Clause challenge fails because the City’s  
12          allegations that Section 9(a) is unconstitutionally coercive, and that it unilaterally imposes  
13          ambiguous grant conditions that are unrelated to the underlying grant funding, all rely on a  
14          misinterpretation of that section.  
15

16           The Executive Order does not alter or expand the existing law that governs when the  
17          Federal Government may impose or enforce conditions on federal grant programming. Instead,  
18          the President – pursuant to his express constitutional authority to ensure that federal agencies  
19          “take Care that the Laws be faithfully executed,” U.S. Const. art. II, § 3 – has directed agency  
20          heads to utilize their existing legal authorities “to the extent consistent with law,” *see* Exec. Order  
21          No. 13,768, § 9, in connection with local violations of Section 1373. In other words, the  
22          Executive Order does nothing more than set policy priorities and direct certain Executive Branch  
23          officials to implement those priorities through the enforcement of preexisting legal authority. The  
24          City’s conjecture to the contrary does not satisfy its burden of establishing the justiciability or  
25          26          27

1 viability of its claims; accordingly, the Court should dismiss the Complaint pursuant to Rules  
2 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

### 3 LEGAL OVERVIEW

#### 4 I. The Executive Enjoys Broad Discretion in Enforcement of Immigration Law.

5 “The Government of the United States has broad, undoubted power over the subject of  
6 immigration and the status of aliens.” *Arizona v. United States*, 567 U.S. 387, 132 S. Ct. 2492,  
7 2497 (2012). Through the Immigration and Nationality Act (“INA”), 8 U.S.C. §§ 1101 *et seq.*,  
8 Congress granted the Executive Branch significant authority to control the entry, movement, and  
9 other conduct of foreign nationals in the United States. Under the INA, the Department of  
10 Homeland Security (“DHS”), the Department of Justice (“DOJ”), and other agencies of the  
11 Executive Branch administer and enforce the immigration laws. The INA permits the Executive  
12 Branch to exercise considerable executive discretion to direct enforcement pursuant to federal  
13 policy objectives. *See Arizona Dream Act Coal. v. Brewer*, \_\_\_ F.3d \_\_\_, No. 15-15307, 2017  
14 WL 461503, at \*9-10 (9th Cir. Feb. 2, 2017) (“By necessity, the federal statutory and regulatory  
15 scheme, as well as federal case law, vest the Executive with very broad discretion to determine  
16 enforcement priorities.”). Several Presidents have exercised this discretion by Executive Order,  
17 and they have done so in differing ways, reflecting their judgments as to how best to take care  
18 that the laws of the United States be faithfully executed. *See, e.g.*, Exec. Order No. 13,726, 81  
19 Fed. Reg. 23,559 (2016) (“Suspending Entry Into the United States of Persons Contributing to the  
20 Situation in Libya”); Exec. Order No. 13,608, 77 Fed. Reg. 26,409 (2012) (“Suspending Entry  
21 Into the United States of Foreign Sanctions Evaders With Respect to Iran and Syria”).

22 The INA contains a number of provisions regarding the involvement of state and local  
23 authorities in the enforcement of immigration law. One of those provisions, 8 U.S.C. § 1373,  
24 ensures the sharing of information between federal and state actors:

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UNITED STATES DEPARTMENT OF JUSTICE  
CIVIL DIVISION, FEDERAL PROGRAMS BRANCH  
P.O. Box. 883, Ben Franklin Station  
Washington, DC 20044; (202) 514-3330

1 Notwithstanding any other provision of Federal, State, or local law, a Federal,  
2 State, or local government entity or official may not prohibit, or in any way  
3 restrict, any government entity or official from sending to, or receiving from,  
4 [federal immigration authorities] information regarding the citizenship or  
5 immigration status, lawful or unlawful, of any individual.

6 *Id.* § 1373(a). Section 1373 also proscribes restricting any government entity from “maintaining”  
7 information regarding the immigration status of any individual. 8 U.S.C. § 1373(b).

8 Well before the issuance of Executive Order 13,768, the compliance of state and local  
9 governments with Section 1373 has been of interest to federal agencies because such  
10 governments are recipients of federal grants. For example, the DOJ Inspector General issued a  
11 memorandum on May 31, 2016, as the City notes (Compl. ¶¶ 65-66), describing a concern that  
12 several state and local governments receiving federal grants were not complying with 8 U.S.C. §  
13 1373. *See* Mem. from Michael E. Horowitz, Inspector Gen., to Karol V. Mason, Assistant Att’y  
14 Gen., Office of Justice Programs, *Department of Justice Referral of Allegations of Potential*  
15 *Violations of 8 U.S.C. § 1373 by Grant Recipients* (May 31, 2016), available at  
16 <https://oig.justice.gov/reports/2016/1607.pdf>. Although the Inspector General observed that some  
17 applications of certain local ordinances might be inconsistent with Section 1373, *id.* at 4-8, the  
18 report nevertheless noted that “no one at DHS . . . has made a formal legal determination whether  
19 certain state and local laws or policies violate Section 1373, and we are unaware of any  
20 Department of Justice decision in that regard.” *Id.* at 8 n.12.

## 21 II. Executive Order 13,768

22 Executive Order 13,768 seeks to “[e]nsure the faithful execution of the immigration  
23 laws,” including the INA. Exec. Order 13,768 § 2(a). The Order sets forth several policies and  
24 priorities regarding enforcement of federal immigration law, and it represents a dramatic  
25 departure from the prior administration’s policy of non-enforcement of certain immigration  
26 programs. *See, e.g., id.* § 10(a) (directing the Secretary to reinstitute immediately the  
27

1 immigration program known as “Secure Communities”).

2 As permitted by the INA, Executive Order 13,768 establishes priorities regarding aliens  
3 who are subject to removal from the United States under the immigration laws. *Id.* § 5. Several  
4 provisions of the Order instruct officials to take actions directing future conduct, including  
5 instructions to promulgate certain regulations within one year, to take “all appropriate action” to  
6 hire additional immigration officers, to seek agreements with state and local officials under  
7 Section 287(g) of the INA (referred to above), to develop a program to ensure adequate  
8 prosecution of criminal immigration offenses, and to establish an office to provide certain  
9 services to victims of crimes committed by removable aliens. *Id.* §§ 6, 7, 8, 11, 13. Throughout,  
10 the Order specifies that federal officials are to take these actions as “permitted by law” or as  
11 “consistent with law.” *Id.* §§ 7, 8, 9(a), 10(b), 12, 14, 17, 18(b). In this respect, the Order is  
12 analogous to orders issued by past administrations that have set forth specific priorities and  
13 directed federal agencies to implement those priorities, “to the extent permitted by law.” *See,*  
14 *e.g., Bldg. & Constr. Trades Dep’t, AFL-CIO v. Allbaugh*, 295 F.3d 28, 32-33 (D.C. Cir. 2002)  
15 (holding that the President may instruct his subordinates to follow certain guidance “to the extent  
16 permitted by law,” which means that “if an executive agency ... may lawfully implement the  
17 Executive Order, then it must do so; if the agency is prohibited, by statute or other law, from  
18 implementing the Executive Order, then . . . the agency [must] follow the law”); *see also* Exec.  
19 Order 13,536, 76 Fed. Reg. 3,821-3,823 (Jan. 18, 2011) (reaffirming as a policy priority certain  
20 principles of contemporary regulatory review and directing agencies “to the extent permitted by  
21 law” to take steps to promote those principles).

22 Section 9 of the Executive Order provides that “[i]t is the policy of the executive branch to  
23 ensure, to the fullest extent of the law, that a State, or a political subdivision of a State, shall  
24 comply with 8 U.S.C. 1373.” Section 9(a) directs federal agencies to achieve that policy:

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UNITED STATES DEPARTMENT OF JUSTICE  
CIVIL DIVISION, FEDERAL PROGRAMS BRANCH  
P.O. Box. 883, Ben Franklin Station  
Washington, DC 20044; (202) 514-3330

1 In furtherance of this policy, the Attorney General and the Secretary [of Homeland  
 2 Security], in their discretion and to the extent consistent with law, shall ensure that  
 3 jurisdictions that willfully refuse to comply with 8 U.S.C. 1373 (sanctuary  
 4 jurisdictions) are not eligible to receive Federal grants, except as deemed  
 5 necessary for law enforcement purposes by the Attorney General or the Secretary.  
 6 The Secretary has the authority to designate, in his discretion and to the extent  
 7 consistent with law, a jurisdiction as a sanctuary jurisdiction. The Attorney  
 8 General shall take appropriate enforcement action against any entity that violates 8  
 9 U.S.C. 1373, or which has in effect a statute, policy, or practice that prevents or  
 10 hinders the enforcement of Federal law.

11 *Id.* § 9(a).

12 III. The AG Memorandum

13 On May 22, 2017, the Attorney General issued a memorandum that sets forth in a formal,  
 14 conclusive manner the administration’s interpretation of the scope of the grant-eligibility  
 15 provision of Section 9(a). *See* AG Mem. at 1-2.<sup>1</sup> By longstanding tradition and practice, the  
 16 Attorney General’s legal opinions are treated as authoritative by the heads of executive agencies.  
 17 *See, e.g., Tenaska Washington Partners II, L.P. v. United States*, 34 Fed. Cl. 434, 439 (1995);  
 18 Randolph D. Moss, *Executive Branch Legal Interpretation: A Perspective from the Office of*  
 19 *Legal Counsel*, 52 Admin. L. Rev. 1303, 1319-20 (2000). The Attorney General has a statutory  
 20 duty to advise executive department heads on “questions of law,” 28 U.S.C. § 512, and to furnish  
 21 formal legal opinions to executive agencies, 28 C.F.R. § 0.5(c). And although the Secretary

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22 <sup>1</sup> The AG Memorandum issued shortly after a Court in the United States District Court for the Northern  
 23 District of California entered a nationwide injunction prohibiting DOJ and DHS “from enforcing Section  
 24 9(a) of the Executive Order against jurisdictions they deem as sanctuary jurisdictions.” *Cty. of Santa*  
 25 *Clara v. Trump*, No. 17-CV-00485-WHO, 2017 WL 1459081, at \*29 (N.D. Cal. Apr. 25, 2017). Despite  
 26 enjoining enforcement of Section 9(a), that Court nevertheless held that DOJ and DHS may “use lawful  
 27 means to enforce existing conditions of federal grants or 8 U.S.C. 1373[.]” *Id.* The government does not  
 28 understand the injunction entered in *County of Santa Clara* as precluding the government’s ability to  
 utilize legal authority independent of the Executive Order to advance the government’s law enforcement  
 priorities. Moreover, in light of the clarifications provided in the AG Memorandum, the government has  
 sought reconsideration of the injunction entered in that case. *See* Defs.’ Mot for Recons., *Cty. of Santa*  
*Clara v. Trump*, No. 17-CV-00485-WHO, (N.D. Cal. May 23, 2017), ECF No. 113.

1 principally administers the immigration laws, the INA provides that “the determination and ruling  
2 by the Attorney General with respect to all questions of law shall be controlling.” 8 U.S.C.  
3 § 1103(c)(1). The AG Memorandum thus conclusively establishes the scope of Section 9(a) and  
4 sets clear and consistent guidance for the applicable components of DOJ as to the parameters of  
5 the grant-eligibility provision.  
6

7 Consistent with Section 9(a)’s plain text, which is directed only to the Attorney General  
8 and the Secretary, the AG Memorandum specifies that the grant-eligibility provision of Section  
9 9(a) applies “solely to federal grants administered by [DOJ] or [DHS], and not to other sources of  
10 federal funding.” AG Mem. at 1. The Memorandum specifies that the Executive Order does not  
11 “purport to expand the existing statutory or constitutional authority of the Attorney General and  
12 the Secretary . . . in any respect,” but rather instructs those officials to take certain action, “to the  
13 extent consistent with the law.” *Id.* at 1-2. The AG Memorandum acknowledges that, “apart  
14 from the Executive Order, [DOJ] and [DHS], in certain circumstances, may lawfully exercise  
15 discretion over grants they administer[,]” and that Section 9(a) merely “directs the Attorney  
16 General and the Secretary . . . to exercise, as appropriate, their lawful discretion to ensure that  
17 jurisdictions that willfully refuse to comply with section 1373 are not eligible to receive” federal  
18 grants administered by DOJ or DHS. AG Mem. at 2. Thus, the Attorney General has directed  
19 that, where authorized, DOJ “will require jurisdictions applying for certain [DOJ] grants to certify  
20 their compliance with 8 U.S.C. § 1373 as a condition for receiving an award[,]” and that  
21 jurisdictions that fail to meet that condition “will be ineligible to receive such awards.” *Id.* The  
22 AG Memorandum also makes clear that, with respect to Section 1373 compliance conditions,  
23 DOJ or DHS may impose such conditions only pursuant to the exercise of “existing statutory or  
24 constitutional authority,” and only where “grantees will receive notice of their obligation to  
25 comply with section 1373.” *Id.* In short, Section 9(a) directs DOJ and DHS to exercise their  
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1 existing authority in a lawful manner to encourage jurisdictions receiving DOJ or DHS  
2 administered grants to comply with 8 U.S.C. § 1373.

### 3 PROCEDURAL BACKGROUND

4 The City filed the Complaint in this matter on March 29, 2017, seeking declaratory relief  
5 regarding the City's compliance with Section 1373 and the constitutionality of the Executive  
6 Order. *See generally* Compl., Prayer for Relief ¶¶ 1-5. The City does not allege that it has been  
7 designated as a "sanctuary jurisdiction" under Section 9(a) of the Order, nor does it allege that  
8 any federal funding has been withheld or revoked pursuant to the Order. Rather, relying on a  
9 newspaper article, the City alleges that "'Seattle will almost certainly be on [the Attorney  
10 General's list' for punitive action[.]" *Id.* ¶ 101 (quoting Casey Jaywork, *Trump Orders Funding*  
11 *Cuts to Sanctuary Cities, Promising a Showdown with Seattle*, Seattle Weekly (Jan. 25, 2017)).  
12 The City further alleges that, following this hypothetical future determination, defendants might  
13 decide to withhold an indeterminate amount of federal funding from the City, or take other,  
14 unspecified action against it. *Id.* ¶¶ 4-5. The City also contends that it "complies with Section  
15 1373 and all other legal requirements," *id.* ¶ 5, and it seeks a declaration from this Court  
16 confirming its compliance with that provision and thus confirming that it is not a "sanctuary  
17 jurisdiction." *Id.*, Prayer for Relief ¶¶ 1-2.

### 18 LEGAL STANDARD

19 Defendants seek dismissal of the Complaint pursuant to Rule 12(b)(1) the Federal Rules  
20 of Civil Procedure on the grounds that the Court lacks subject-matter jurisdiction to entertain the  
21 complaint. The jurisdiction of a federal court is limited to "cases" and "controversies." U.S.  
22 Const., Art. III, § 2. "Jurisdiction is power to declare the law, and when it ceases to exist, the  
23 only function remaining to the court is that of announcing the fact and dismissing the cause."  
24

25 *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998). The party asserting federal court

1 jurisdiction has the burden of demonstrating its existence. *See Lujan v. Defenders of Wildlife*,  
2 504 U.S. 555, 561 (1992). Courts should “presume that [they] lack jurisdiction unless the  
3 contrary appears affirmatively from the record.” *Renne v. Geary*, 501 U.S. 312, 316 (1991).

4 Defendants also seek dismissal of the Complaint pursuant to Rule 12(b)(6) for failure to  
5 state a claim on which relief can be granted. In evaluating a Rule 12(b)(6) argument, the Court  
6 accepts the material allegations in the Complaint as true and construes reasonable inferences in  
7 the complainant’s favor. *See Love v. United States*, 915 F.2d 1242, 1245 (9th Cir. 1989). To  
8 survive a Rule 12(b)(6) motion, the factual allegations in a Complaint must “state a claim to relief  
9 that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Fowler Packing Co.,*  
10 *Inc. v. Lanier*, 844 F.3d 809, 814 (9th Cir. 2016). “A claim has facial plausibility when the  
11 plaintiff pleads factual content that allows the court to draw the reasonable inference that the  
12 defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678.

## 13 ARGUMENT

### 14 I. The Court Lacks Jurisdiction to Consider the City’s Claims.

15 Executive Order 13,768 is not self-executing, and no adverse action has been taken  
16 against the City under the Order. Nor has the government interpreted or implemented Section  
17 9(a) of the Order in the manner that the City predicts in its Complaint; indeed, the guidance  
18 contained in the AG Memorandum undermines many of the presumptions on which the City’s  
19 claims rely. Accordingly, because no action has been taken against the City, and because the  
20 City’s claims largely “rest[] upon contingent future events that may not occur as anticipated, or  
21 indeed may not occur at all,” those claims are not ripe for adjudication. *Texas v. United States*,  
22 523 U.S. 296, 300 (1998); *Bova v. City of Medford*, 564 F.3d 1093, 1096 (9th Cir. 2009).

23 Similarly, because defendants have not taken any adverse action against the City, it cannot meet  
24 its burden of establishing a “concrete,” “objective,” and “palpable,” injury necessary to satisfy the  
25



1 constitutional requirement of standing. *Whitmore*, 495 U.S. at 155. Thus, the City’s claims are  
2 non-justiciable under both the ripeness doctrine and the standing doctrine, and the Court lacks  
3 jurisdiction to entertain those claims.

4 **A. The City’s Claims Are Not Ripe for Judicial Review.**

5 Article III of the United States Constitution requires that a dispute must be ripe for judicial  
6 consideration — that is, a controversy must have “matured sufficiently to warrant judicial  
7 intervention.” *Warth v. Seldin*, 422 U.S. 490, 499 n.10 (1975). “A claim is not ripe for  
8 adjudication [under the Constitution] if it rests upon contingent future events that may not occur  
9 as anticipated, or indeed may not occur at all.” *Texas*, 523 U.S. at 300; *see also Abbott Labs.*, 387  
10 U.S. at 148 (“[I]njunctive and declaratory judgment remedies are discretionary, and courts  
11 traditionally have been reluctant to apply them to administrative determinations unless these arise  
12 in the context of a controversy ‘ripe’ for judicial resolution.”). The ripeness doctrine, like other  
13 justiciability doctrines, “is drawn both from Article III limitations on judicial power and from  
14 prudential reasons for refusing to exercise jurisdiction.” *Reno v. Catholic Soc. Servs., Inc.*, 509  
15 U.S. 43, 58 n.18 (1993). The doctrine “prevent[s] the courts, through avoidance of premature  
16 adjudication, from entangling themselves in abstract disagreements over administrative policies,  
17 and . . . protect[s] the agencies from judicial interference until an administrative decision has been  
18 formalized and its effects felt in a concrete way by the challenging parties.” *Abbott Labs.*, 387  
19 U.S. at 148-49.

20 In assessing constitutional ripeness in the context of a pre-enforcement challenge to a  
21 statutory or administrative enactment, the Ninth Circuit “require[s] plaintiffs to allege a genuine  
22 threat of imminent prosecution.” *See Oklevueha Native Am. Church of Hawaii, Inc. v. Holder*,  
23 676 F.3d 829, 835 (9th Cir. 2012) (citing *Thomas v. Anchorage Equal Rights Comm’n*, 220 F.3d  
24 1134, 1139 (9th Cir. 2000)). In assessing whether a plaintiff has satisfied that requirement, courts

1 consider “(1) whether the plaintiffs have articulated a ‘concrete plan’ to violate the law in  
2 question; (2) whether the government has communicated a specific warning or threat to initiate  
3 proceedings; and (3) the history of past prosecution or enforcement under the statute.” *Id.*

4 In addition to that jurisdictional analysis, a case may be unripe for prudential reasons. To  
5 evaluate the “prudential component of ripeness,” a court considers “the fitness of the issues for  
6 judicial decision and the hardship to the parties of withholding court consideration.” *Wolfson v.*  
7 *Brammer*, 616 F.3d 1045, 1060 (9th Cir. 2010); *see also Abbott Labs.*, 387 U.S. at 149. “A claim  
8 is fit for decision if the issues raised are primarily legal, do not require further factual  
9 development, and the challenged action is final.” *Standard Alaska Prod. Co. v. Schaible*, 874  
10 F.2d 624, 627 (9th Cir. 1989). “To meet the hardship requirement, a litigant must show that  
11 withholding review would result in direct and immediate hardship and would entail more than  
12 possible financial loss.” *Winter v. Cal. Med. Review, Inc.*, 900 F.2d 1322, 1325 (9th Cir. 1989).

13  
14  
15 1. The City Has Not Alleged a Genuine Threat of Imminent Prosecution.

16 The City has not alleged a “genuine threat of imminent prosecution” under Section 9(a) of  
17 the Executive Order, *Thomas*, 220 F.3d at 1139, nor could it, as the Executive Order does not  
18 confer on any Executive Branch official any new authority. *See* AG Mem. at 2. As mentioned  
19 above, the Order serves to set certain policy priorities of the administration and to direct  
20 implementation of those priorities in a manner “consistent with the law.” Exec. Order 13,768 § 9.  
21 Thus, to the extent the officials identified in Section 9(a) can “enforce” that provision against the  
22 City at all, they are only capable of doing so by exercising authority that exists apart from the  
23 Order itself. *See* AG Mem. at 2. Moreover, the City has not “articulated a concrete plan to  
24 violate” the Executive Order. *Oklevueha Native Am. Church of Hawaii, Inc.*, 676 F.3d at 835.

25 To the contrary, the City contends that it complies with Section 1373. *See* Compl. ¶ 5. The City  
26 also cannot meet the second prong of the “genuine threat” test because it does not allege that the  
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1 Attorney General or the Secretary has “communicated a specific warning or threat to initiate  
2 proceedings” against the City under the Executive Order. *Oklevueha Native Am. Church of*  
3 *Hawaii, Inc.*, 676 F.3d at 835. Finally, the City points to no “history of past prosecution or  
4 enforcement” of the Order under similar circumstances, and thus fails to meet the third prong of  
5 the test. *Id.* Accordingly, the City has not alleged any facts that would establish a “genuine threat  
6 of imminent prosecution,” the Court should decline to consider its pre-enforcement challenge.  
7 *Thomas*, 220 F.3d at 1139.

9 2. The City’s Claims Are Not Fit for Judicial Review.

10 The City’s claims are also subject to dismissal under the prudential component of the  
11 ripeness inquiry because those claims are based on several “contingent events that may not occur  
12 as anticipated.” *Texas*, 523 U.S. at 300. Specifically, the City does not allege to have been  
13 penalized in any manner pursuant to Section 9(a) of the Executive Order, nor does it allege that it  
14 has been denied any federal funding pursuant to that provision. The string of hypothetical events  
15 on which the allegations in the Complaint rest provides evidence that the City’s claims are not fit  
16 for review. To entertain such claims, the Court would be required to engage in layers of  
17 speculation, including assuming that: (1) the administration will interpret Section 9(a) of the  
18 Executive Order in an unconstitutional manner; (2) the administration will make a factual  
19 determination that the City is subject to designation as a “sanctuary jurisdiction” pursuant to that  
20 section; and (3) the Secretary or the Attorney General or both will rely on those findings to take  
21 some form of adverse action against the City. Those events may not transpire as the City  
22 anticipates, or may not transpire at all. Indeed, the Attorney General has already issued guidance  
23 concerning that the challenged provision of the Executive Order that contradicts the City’s  
24 position. *Compare* AG Mem. at 1-2 (providing that Section 9(a) of the Order applies solely to  
25 federal grants administered by DOJ or DHS), *with* Compl. ¶ 133 (alleging that the Executive  
26 Defs.’ Mot. to Dismiss - 13

1 Order “purports to deny ‘sanctuary jurisdictions’ *all* federal grants”) (emphasis in original).  
2 Thus, delaying judicial review until there has been some concrete application of the Executive  
3 Order would allow an opportunity for factual development of the City’s claims and would avoid  
4 judicial speculation. *See Nat’l Park Hosp. Ass’n v. Dep’t of Interior*, 538 U.S. 803, 812 (2003)  
5 (finding that, even where “the question presented . . . is a purely legal one[.]” the issue may not be  
6 fit for review if the court “believe[s] that further factual development would significantly advance  
7 [its] ability to deal with the legal issues presented”).

9 3. The City Fails to Establish Harm Sufficient to Justify Delay of Judicial  
10 Review.

11 The City also fails to allege harm sufficient to justify pre-enforcement review. To satisfy  
12 the hardship prong of the ripeness inquiry in the pre-enforcement review context, a plaintiff must  
13 demonstrate that “irremediable adverse consequences” will result from postponing review. *Toilet*  
14 *Goods Ass’n, Inc. v. Gardner*, 387 U.S. 158, 164 (1967). “[M]ere financial expense . . . is not a  
15 justification for pre-enforcement judicial review.” *Abbott Labs.*, 387 U.S. at 153.

16 Here, the primary harm the City alleges is the potential loss of federal grant funding. That  
17 harm is monetary in nature and thus not “a sufficient interest to sustain a judicial challenge” in the  
18 pre-enforcement context. *Abbott Labs.*, 387 U.S. at 153; *Sampson v. Murray*, 415 U.S. 61, 90  
19 (1974) (finding that “[m]ere injuries, however substantial, in terms of money, time and energy  
20 necessarily expended . . . are not enough” to justify injunctive relief). Additionally, to allege its  
21 injury, the City again relies on a series of contingent future events. Those contingencies include  
22 the assumptions (1) that Section 9(a) applies to *all* federal grant funding, including funding for  
23 “infrastructure,” “capital projects,” and “residential programs,” *see, e.g.*, Compl. ¶ 45; (2) that the  
24 Secretary will designate the City as a “sanctuary jurisdiction” at some future point (despite the  
25 City’s simultaneous insistence that it complies with Section 1373), *see id.* ¶ 5; and (3) that “if the  
26 City’s simultaneous insistence that it complies with Section 1373), *see id.* ¶ 5; and (3) that “if the  
27 City’s simultaneous insistence that it complies with Section 1373), *see id.* ¶ 5; and (3) that “if the

1 city is designated” the Secretary or the Attorney General might take some form of adverse action  
2 as a result of the designation, *see id.* ¶ 106 (emphasis added). Such allegations of harm are too  
3 speculative to justify pre-enforcement review. *See, e.g., Portland Police Ass’n v. City of*  
4 *Portland, By & Through Bureau of Police*, 658 F.2d 1272, 1274 (9th Cir. 1981) (finding  
5 allegations of harm too speculative where “it was necessary to assume a series of contingencies”).  
6 Moreover, as mentioned above, many of the City’s assumptions, such as the assumption that the  
7 Executive Order jeopardizes *all* of the City’s federal grant funding, are demonstrably inaccurate.  
8 *See* AG Mem. at 1. Accordingly, because the City cannot show that it faces immediate and  
9 irremediable adverse consequences from delaying review until the Order has been applied, the  
10 Court should dismiss the City’s claims under the ripeness doctrine.

11  
12 **B. The City Lacks Standing Because It Has Failed to Demonstrate That It Has**  
13 **Suffered Concrete and Immediate Injury In Fact.**

14 Related to the ripeness requirement is the constitutional requirement of standing. *See*  
15 *Bova*, 564 F.3d at 1096 (“[I]f the contingent events do not occur, the plaintiff likely will not have  
16 suffered an injury that is concrete and particularized enough to establish the first element of  
17 standing . . . [i]n this way, ripeness and standing are intertwined.”). To satisfy the “irreducible  
18 constitutional minimum” of standing, a plaintiff must demonstrate an “injury in fact,” a “fairly  
19 traceable” causal connection between the injury and defendant’s conduct, and redressability.  
20 *Steel Co.*, 523 U.S. at 102-03. The injury needed for constitutional standing must be “concrete,”  
21 “objective,” and “palpable,” not merely “abstract” or “subjective.” *See Whitmore*, 495 U.S. at  
22 155. The injury also must be “certainly impending” rather than “speculative.” *Id.* at 158.

23  
24 Applying these standards here, the City’s alleged injuries are too speculative to meet the  
25 constitutional standing requirement. Neither the Secretary nor the Attorney General has taken  
26 any action against the City pursuant to Section 9 of the Executive Order. Thus, the City cannot  
27

1 assert any actual “concrete,” “objective,” and “palpable” injury. *Id.* at 155. Rather, the City  
2 alleges that it suffers from “irresolvable uncertainty surrounding whether federal funds that  
3 currently benefit all Seattle residents will be cut off *if* the city is deemed a ‘sanctuary  
4 jurisdiction.’” *See* Compl. ¶ 106 (emphasis added). Not only does this allegation of harm rest on  
5 conjecture, as detailed above, but as the AG Memorandum makes clear, Section 9(a) of the  
6 Executive Order does not expand the authority of the Attorney General or the Secretary. Rather,  
7 it directs those officials, consistent with the law, to exercise existing authority to ensure  
8 compliance with 8 U.S.C. § 1373. *See* AG Mem. at 1-2. Statements by officials regarding an  
9 intention “to enforce those laws which they are charged to administer do not create the necessary  
10 injury in fact” under the standing inquiry. *Lopez v. Candaele*, 630 F.3d 775, 787 (9th Cir. 2010)  
11 (citing *Rincon Band of Mission Indians v. San Diego Cnty.*, 495 F.2d 1, 4 (9th Cir.1974)  
12 (concluding that a sheriff’s statement that “all of the laws of San Diego, State, Federal and  
13 County, will be enforced within our jurisdiction” was insufficient to create a justiciable case)).  
14 Accordingly, because the City’s claimed injury is insufficient to meet the standing requirement,  
15 the Court lacks jurisdiction to review the City’s claims.  
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18 II. The City Fails to State a Claim for Declaratory Relief Regarding Its Compliance with  
19 Section 1373.

20 Beyond the lack of justiciability of all of the City’s claims, the City also fails to state a  
21 claim for declaratory relief regarding its compliance with the provisions of Section 1373. *See*  
22 Compl. ¶¶ 125-129. That claim is subject to dismissal because the City cannot identify a cause of  
23 action that would allow it to pursue such relief, and because the requested relief would amount to  
24 an advisory opinion. *See Alexander v. Sandoval*, 532 U.S. 275, 286-87 (2001) (absent statutory  
25 intent to create a cause of action, one “does not exist and courts might not create one, no matter  
26 how desirable that may be as a policy matter”); *Golden v. Zwickler*, 394 U.S. 103, 108 (1969)

1 (“[T]he federal courts . . . do not render advisory opinions. . . . This is as true of declaratory  
2 judgments as any other field.”).

3 The general jurisdictional statutes that the City cites, 28 U.S.C. §§ 1331 and 1346, *see*  
4 Compl. ¶ 14, do not create independent causes of action, and whether a court has subject-matter  
5 jurisdiction is a distinct question from whether a plaintiff has a cause of action. *See, e.g., Texas*  
6 *Indus. v. Radcliff Materials, Inc.*, 451 U.S. 630, 640 (1981) (“vesting of jurisdiction in the federal  
7 courts” does not create a cause of action). Similarly, the Declaratory Judgment Act (“DJA”), 28  
8 U.S.C. §§ 2201-2202, which the City cites as a jurisdictional statute, *see* Compl. ¶ 14, creates a  
9 certain *remedy* that may be available to litigants. That statute does not create a cause of action.  
10 *See Stock W., Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th  
11 Cir. 1989) (The DJA “only creates a remedy and is not an independent basis for jurisdiction”);  
12 *Graham v. U.S. Bank, Nat’l Assn.*, No. 3:15-cv-0990-AC, 2015 WL 10322087, at \*13 (D. Or.  
13 Dec. 2, 2015) (“The [DJA] . . . does not create a cause of action; instead, it creates a remedy for  
14 existing causes of action.”). Because the City cannot identify a cause of action to support its  
15 request for relief, that claim must be dismissed.  
16

17  
18 Moreover, “regardless of whether the relief sought is monetary, injunctive or declaratory .  
19 . . for a case to be more than a request for an advisory opinion, there must be an actual dispute  
20 between adverse litigants and a substantial likelihood that a favorable federal court decision will  
21 have some effect.” *Westlands Water Dist. Distribution Dist. v. Nat. Res. Def. Council, Inc.*, 276  
22 F. Supp. 2d 1046, 1050 (E.D. Cal. 2003). Here, defendants have not declared the City to be a  
23 “sanctuary jurisdiction” or as being in violation of Section 1373. The City’s claim to the  
24 contrary, *see* Compl. ¶ 127, is an unsupported conclusory statement that is “not entitled to the  
25 assumption of truth.” *Iqbal*, 556 U.S. at 662. The City’s request for declaratory relief, therefore,  
26 concerns a hypothetical legal dispute. Thus, rather than adjudicating a concrete and established  
27

1 legal controversy, rendering a declaratory judgment regarding the City’s compliance with Section  
2 1373 would constitute an advisory opinion, which is “constitutionally forbidden.” *United States*  
3 *v. Guzman-Padilla*, 573 F.3d 865, 879 (9th Cir. 2009).

4  
5 III. The City Fails to State a Viable Tenth Amendment Claim.

6 The City also fails to state a claim that the Executive Order on its face violates the Tenth  
7 Amendment. The City premises its Tenth Amendment challenge on a misinterpretation of the  
8 Executive Order; the Order does not directly impose any requirements on state or local  
9 jurisdictions, as the City presumes, and thus it does not “command the States’ officers” in an  
10 unconstitutional manner. *See* Compl. ¶ 131. Moreover, a Tenth Amendment challenge to an  
11 Executive Order is not appropriate where, as here, the Order merely announces and directs the  
12 implementation of executive policy. Finally, even if a Tenth Amendment challenge to the  
13 Executive Order could be sustained, the City has failed to state such a claim here because the City  
14 does not “establish that no set of circumstances exists under which the [Order] would be valid.”  
15 *Salerno*, 481 U.S. at 745.

17 The City’s Tenth Amendment claim rests on a misreading of the Executive Order. The  
18 City presumes that “the Executive Order imposes affirmative duties on state and local officials  
19 beyond those prescribed in Section 1373,” and that it “penalizes Seattle for failing to perform  
20 those duties[.]” Compl. ¶ 131. The plain language of the Executive Order and the guidance  
21 contained in the AG Memorandum disprove the City’s presumption. The Executive Order does  
22 not impose conditions on federal grants, nor does it impose any requirements on state or local  
23 jurisdictions. Rather, the Order “establish[es] immigration enforcement as a priority for this  
24 Administration,” *see* AG Mem. at 1, in an effort to “ensure that our Nation’s immigration laws  
25 are faithfully executed.” Exec. Order 13,768 at 1. The Order directs the appropriate executive  
26 officials to prioritize, to the fullest extent of the law, means for achieving that priority. Those



1 means may include, for example, more aggressive enforcement of existing grant conditions, or, as  
2 the AG Memorandum suggests, tailoring future grant awards in a manner that promotes the  
3 administration's law enforcement priorities. *See* AG Mem. at 2.

4 At no point, however, does the Order purport to impose directly affirmative obligations on  
5 state or local jurisdictions. Rather, the Attorney General and the Secretary are to enforce the  
6 Order's directives "to the extent permitted by law." Exec. Order 13,768, § 9(a). Consistent with  
7 that directive, the Executive Order "does not call for the imposition of grant conditions that would  
8 violate any applicable constitutional or statutory limitation . . . [n]or does the Executive Order  
9 purport to expand the existing statutory or constitutional authority of the Attorney General and  
10 the Secretary . . . in any respect." AG Mem. at 1-2. Rather, in the event the Secretary or  
11 Attorney General determine to impose obligations on a grant program pursuant to the directives  
12 contained the Order, such as a condition certification of compliance with 8 U.S.C. § 1373, that  
13 obligation may be imposed only where existing legal authority allows, and only where grantees  
14 are given "notice of their obligation[s]." *Id.* at 2. Thus, because the Executive Order does not  
15 directly impose any affirmative duties on state or local jurisdictions, the Court should reject the  
16 City's contention that the Order violates the Tenth Amendment's anti-commandeering principle.

17 The Court should reject the City's Tenth Amendment challenge for the independent  
18 reason that such a challenge cannot be sustained against an Executive Order that directs internal  
19 Executive Branch policy. Courts in this Circuit have distinguished between Executive Orders  
20 that are intended to be an internal directive that "implement policy as a product of executive  
21 authority," and those that are promulgated to effectuate an authority explicitly vested in the  
22 President through an act of Congress. *See Chen v. Schiltgen*, No. C-94-4094 MHP, 1995 WL  
23 317023, at \*5 (N.D. Cal. May 19, 1995), *aff'd sub nom. Chen v. I.N.S.*, 95 F.3d 801 (9th Cir.  
24 1996); *Legal Aid Soc'y of Alameda County v. Brennan*, 608 F.2d 1319, 1330 n.14 (9th Cir.1979).

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1           The former type of Executive Order does not carry an independent force of law; rather it  
2 serves as an internal Executive Branch directive. Executive Order 13,768 falls into that category.  
3 As the Attorney General made clear, the challenged provisions of the Order are directives to the  
4 Attorney General and the Secretary regarding their exercise of *existing* statutory and  
5 constitutional authority. AG Mem. at 1-2. Because the Order is an internal Executive Branch  
6 policy directive, the City cannot sustain a claim that the Order commandeers City employees in  
7 violation of the Tenth Amendment. *Cf. United States v. Pickard*, 100 F. Supp. 3d 981, 1011  
8 (E.D. Cal. 2015) (rejecting a Tenth Amendment challenge to a statement of agency policy on the  
9 grounds that a policy statement “is a very different creature from a statute” in that it does not bind  
10 states in the manner that a statute would).

11  
12           Finally, even assuming *arguendo* that the Executive Order is sufficiently comparable to a  
13 federal statute to sustain a facial constitutional challenge, the City’s challenge should be  
14 dismissed because the City fails to allege that “no set of circumstances exists under which the  
15 [Order] would be valid.” *Salerno*, 481 U.S. at 745. Facial challenges to federal statutes are  
16 disfavored because they “often rest on speculation[;]” “they raise the risk of premature  
17 interpretation of statutes on the basis of factually barebones records[;]” they “run contrary to the  
18 fundamental principle of judicial restraint that courts should neither anticipate a question of  
19 constitutional law in advance of the necessity of deciding it nor formulate a rule of constitutional  
20 law broader than is required by the precise facts to which it is to be applied[;]” and they “threaten  
21 to short circuit the democratic process by preventing laws embodying the will of the people from  
22 being implemented in a manner consistent with the Constitution.” *Wash. State Grange v. Wash.*  
23 *State Republican Party*, 552 U.S. 442, 450-51 (2008). Thus, the mere possibility that Executive  
24 Order *could be* interpreted in an unconstitutional manner is insufficient to state a facial challenge.  
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1 See *Salerno*, 481 U.S. at 745 (“The fact that the . . . Act might operate unconstitutionally under  
2 some conceivable set of circumstances is insufficient to render it wholly invalid”).

3 Here, the City’s Complaint fails to establish that Section 9(a) of the Executive Order  
4 would be invalid under all circumstances. The challenged provision of the Order seeks to ensure,  
5 to the extent consistent with the law, that jurisdictions that willfully refuse to comply with 8  
6 U.S.C. § 1373, are not eligible to receive grants administered by DOJ or DHS. See Exec. Order  
7 at § 9; AG Mem. at 2. Thus, where applicants for or recipients of certain DOJ or DHS grants are  
8 required (pursuant to authority that exists independent of the Executive Order) to certify their  
9 compliance with Section 1373 as a condition for receiving an award, their failure to do so will  
10 render them “ineligible to receive such awards.” AG Mem. at 2. Conditioning the receipt of  
11 federal funds on whether a state or local jurisdiction complies with a federal statute or takes some  
12 other action does not violate the Tenth Amendment, so long as the “State could . . . adopt the  
13 simple expedient of not yielding to what she urges is federal coercion.” See *S. Dakota v. Dole*,  
14 483 U.S. 203, 210 (1987) (A “perceived Tenth Amendment limitation on congressional regulation  
15 of state affairs d[oes] not concomitantly limit the range of conditions legitimately placed on  
16 federal grants.”). Thus, if a state or local jurisdiction were disinclined to certify compliance with  
17 Section 1373 (or disinclined to comply with any other grant provision), that jurisdiction could  
18 simply decline to participate in the grant program. The Tenth Amendment, however, does not  
19 give States and their subdivisions the right to be free of any federal grant conditions that might be  
20 constitutionally impermissible if mandatorily imposed by Congress. *Id.* Accordingly, because  
21 the City fails to establish that “no set of circumstances exists under which [the Executive Order]  
22 would be valid,” their facial challenge to the Order must fail. *Salerno*, 481 U.S. at 745.  
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1 **IV. The City Fails to State a Viable Claim that the Order Exceeds the Spending Power.**

2 The City also fails to state a claim that the directives contained in Section 9(a) violate the  
3 requirement under the Spending Clause of the Constitution that conditions on spending be non-  
4 coercive, related to the federal interest in the particular program, and unambiguous. Compl. ¶¶  
5 132-35; *Dole*, 483 U.S. at 206. Those claims rest on misinterpretation of Section 9(a); the AG  
6 Memorandum directly undermines the principle bases of those claims.  
7

8 The Spending Clause provides Congress the power to “lay and collect Taxes, Duties,  
9 Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare  
10 of the United States.” U.S. Const. art. I, § 8, cl. 1. “Congress may attach conditions on the  
11 receipt of federal funds, and has repeatedly employed the power to further broad policy objectives  
12 by conditioning receipt of federal moneys upon compliance by the recipient with federal statutory  
13 and administrative directives.” *Dole*, 483 U.S. at 206. The spending power is subject to certain  
14 limitations, including that conditions on the receipt of federal funds must be stated  
15 “unambiguously” so that recipients can “exercise their choice knowingly, cognizant of the  
16 consequences of their participation,” that “conditions on federal grants might be illegitimate if  
17 they are unrelated to the federal interest in particular national projects or programs,” and that “the  
18 financial inducement offered by Congress” must not “be so coercive as to pass the point at which  
19 pressure turns into compulsion.” *Id.* at 207-08, 211.  
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22 As a threshold matter, the City’s Spending Clause claims fail for the simple reason that  
23 the Executive Order does not impose conditions on federal grant programming. *See* AG Mem. at  
24 1-2. Rather, as explained above, Section 9(a) directs Executive Branch officials to exercise  
25 *existing* power in a certain manner, which may include “impos[ing] additional conditions on  
26 grantees” in the future, consistent with “applicable constitutional or statutory limitations.” *Id.* at  
27

1 1-2. Thus, because the Order does not impose conditions on federal spending, the Supreme  
2 Court's Spending Clause jurisprudence is inapplicable.

3 The City's claim that Section 9(a) imposes unconstitutionally coercive grant conditions  
4 fails not only because that Section does impose conditions at all, but also because the directives  
5 contained in that Section "will be applied solely" to DOJ and DHS administered grants, *see* AG  
6 Mem. at 1, not to "all federal grants," as the City alleges. Compl. ¶ 133. Because Section 9(a)  
7 applies only to a limited universe of federal grants, and, with respect to DOJ, only to grant  
8 programs that "expressly contain[]" certification requirements, AG Mem. at 2, the City cannot  
9 establish that Section 9(a) imposes conditions so severe as to coerce compliance. *See Nat'l Fed'n*  
10 *of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2664 (2012) ("[C]ourts should not conclude that [an  
11 enactment] is unconstitutional on [coercion] ground unless the coercive nature of an offer is  
12 unmistakably clear" such as where States are subjected to the risk of losing "over 10 percent of a  
13 State's overall budget" if they declined to adopt certain conditions).

14 The City's claim under the so-called "nexus" requirement similarly fails. That  
15 requirement is only a "possible ground" for invalidating an enactment and does not impose an  
16 "exacting standard." *Mayweathers v. Newland*, 314 F.3d 1062, 1067 (9th Cir. 2002). The AG  
17 Memorandum makes clear that Section 9(a)'s directives apply only to "certain" grants  
18 administered by DOJ (the primary federal law enforcement agency) or DHS (the federal agency  
19 responsible for the admission and removal of non-citizens), and not, as the City suggests, to "all  
20 federal funds," including those unrelated to Section 9(a)'s directives. Compl. ¶ 133. The City  
21 fails to identify any instance in which the defendants have imposed a condition pursuant to  
22 Section 9(a) that is unrelated to the underlying grant program. Accordingly, the City has not  
23 stated a claim under the nexus requirement.

1 Finally, the City's claim that Section 9(a) violates the requirement that federal grant  
2 conditions be stated "unambiguously" fails for the same reason: the City identifies no instance in  
3 which defendants imposed an allegedly ambiguous condition on a federal grant program. Further,  
4 the AG Memorandum clarifies that grant applicants or recipients will "receive notice" of any  
5 obligations imposed pursuant to the Executive Order's directives. Thus, because the City does  
6 not identify any allegedly ambiguous condition, it cannot sustain its Spending Clause claim.  
7

8 **CONCLUSION**

9 For the foregoing reasons, defendants respectfully request the Court dismiss the  
10 Complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.  
11

12 Date: June 5, 2017

Respectfully submitted,

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14 Acting Assistant Attorney General

15 JOHN R. TYLER  
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17 /s/ Stephen J. Buckingham  
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1 CERTIFICATE OF SERVICE

2 I hereby certify that on June 5, 2017, I caused the foregoing Motion to Dismiss to be filed  
3 electronically and that this document is available for viewing and downloading from the CM/ECF  
4 system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF  
5 system.  
6

7 /s/ Stephen J. Buckingham  
8 Stephen J. Buckingham

9 DECLARATION OF COMPLIANCE WITH MEET AND CONFER REQUIREMENT

10 Pursuant to the Court's Standing Order for Civil Cases (Dkt. No. 22), undersigned counsel  
11 hereby declares that, on June 2, 2017, the parties engaged in good faith discussions concerning  
12 the substance of the foregoing Motion to Dismiss and potential efforts to resolve the issues raised  
13 in the Motion. That discussion included the specific bases for the legal arguments contained in  
14 the Motion.  
15

16 /s/ Stephen J. Buckingham  
17 Stephen J. Buckingham  
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