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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO, COUNTY OF SANTA CLARA, CITY OF PORTLAND, MARTIN LUTHER KING, JR. COUNTY, CITY OF NEW HAVEN, CITY OF OAKLAND, CITY OF EMERYVILLE, CITY OF SAN JOSÉ, CITY OF SAN DIEGO, CITY OF SACRAMENTO, CITY OF SANTA CRUZ, COUNTY OF MONTEREY, CITY OF SEATTLE, CITY OF MINNEAPOLIS, CITY OF ST. PAUL, CITY OF SANTA FE,

Plaintiffs,

vs.

DONALD J. TRUMP, President of the United States, UNITED STATES OF AMERICA, PAMELA BONDI, Attorney General of the United States, EMIL BOVE, Acting Deputy Attorney General, UNITED STATES DEPARTMENT OF JUSTICE, KRISTI NOEM, Secretary of United States Department of Homeland Security, UNITED STATES DEPARTMENT OF HOMELAND SECURITY, DOES 1-100,

Defendants.

Case No. 3:25-cv-1350-WHO

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Hearing Date: April 23, 2025
Time: 2:00 p.m.
Judge: Honorable William H. Orrick
Place: Courtroom 2

Date Filed: February 7, 2025
Trial Date: Not set

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INTRODUCTION

In response to Plaintiffs' motion, DOJ told the media that "[t]he Department of Justice has made it crystal clear" that so-called "sanctuary" jurisdictions "will be . . . stripped of federal funding." Supp. Nguyen Decl. Ex. 3.[1] Just days before Plaintiffs filed their motion, the Attorney General went on national TV and made clear that the Trump administration is targeting "sanctuary" jurisdictions and will "pull their federal funding until they comply" with Defendants' sweeping and improper assertion of federal control over local affairs.[2] Yet DOJ represents to this Court that Defendants are merely conducting "an internal evaluation of funds," ECF No. 93 ("Def. Br.") at 7, and the threat that Plaintiffs will lose funding as a result of Executive Order 14,159 ("EO 14,159"), Executive Order 14,218 ("EO 14,218"), and the Bondi Directive is remote and speculative. The Court should not countenance this double-speak. Defendants cannot avoid Plaintiffs' clearly justiciable and meritorious claims by downplaying the Executive Orders and Directive in this forum even as they confirm their plain meaning elsewhere. Just as this Court and the Ninth Circuit found with respect to the first Trump administration's efforts to defund "sanctuary" jurisdictions by executive fiat, Plaintiffs here (1) have a well-founded fear that the Executive Orders and Directive will deprive them of critical federal funding; (2) are likely to succeed in establishing that the Orders and Directive unconstitutionally and illegally threaten federal funding; and (3) are being immediately and irreparably harmed by the budgetary disarray that Defendants' unlawful directives have wrought. Plaintiffs' requested preliminary injunction is therefore in the public interest.

ARGUMENT

I. Plaintiffs' Claims Are Justiciable

Defendants first argue that Plaintiffs' claims are too speculative to satisfy the requirements of standing and ripeness. Def. Br. at 8–12. Where, as here, Defendants dispute whether Plaintiffs' injury is "real and concrete rather than speculative and hypothetical," the ripeness and standing inquiries

[1] Citations to the Supp. Nguyen Decl. refer to the Supplemental Declaration of Bill Nguyen filed concurrently with Plaintiffs' reply brief.

[2] Interview between Attorney General Pam Bondi and Maria Bartiromo, at 3:30–4:30, "AG Pam Bondi says 'America will be transparent again' on politics, justice," Fox Business (Mar. 14, 2025), https://www.foxbusiness.com/video/6370020686112.

"merge[] almost completely." *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1139 (9th Cir. 2000) (citation and quotation marks omitted). Defendants' justiciability arguments fail because they rest on an implausible reinterpretation of the Executive Orders and Bondi Directive and ignore black-letter pre-enforcement standing doctrine. Indeed, this Court and the Ninth Circuit previously found that challenges to Executive Order 13,768 (the first Trump administration's efforts to defund "sanctuary" jurisdictions) were justiciable in a virtually identical posture and rejected many of the same arguments that Defendants raise here. Defendants' arguments fare no better this time around.

A. Plaintiffs' Claims Are Justiciable Notwithstanding Defendants' Implausible Interpretation of the Executive Orders and Bondi Directive

Defendants claim that the Executive Orders and Bondi Directive merely "call for an evaluation of possible, lawful, federal funding limitations." Def. Br. at 9; *see also id.* at 12 ("[T]hese executive directives provide guidance for the agencies to begin their evaluation of federal funding decisions to certain localities, and then assess how they may implement any applicable funding changes."). As an initial matter, Defendants' narrow construction of the Executive Orders and Bondi Directive does not defeat standing. *See City & Cnty. of S.F. v. Trump*, 897 F.3d 1225, 1236 (9th Cir. 2018) (citing *Virginia v. Am. Booksellers Ass'n*, 484 U.S. 383, 393 (1988)); *Cnty. of Santa Clara v. Trump*, 250 F. Supp. 3d 497, 515 (N.D. Cal. 2017). For the same reasons, Defendants' dismissal of Plaintiffs' injuries as purportedly contingent on future agency interpretation and implementation fails because the fact that Defendants "'may' choose to interpret the Order's broad language narrowly or 'may' choose not to enforce it . . . does not justify deferring review." *Cnty. of Santa Clara*, 250 F. Supp. 3d at 529; *see also City & Cnty. of San Francisco*, 897 F.3d at 1236 ("the possibility of non-enforcement does not mean that the Counties lack standing"). Just as in Plaintiffs San Francisco's and Santa Clara's prior challenges to Executive Order 13,768, Plaintiffs here "have demonstrated that, if their interpretation of the Executive Order[s] [and Bondi Directive] is correct, they will be forced to either change their policies or suffer serious consequences." *City & Cnty. of S.F.*, 897 F.3d at 1236; *see* ECF No. 61 ("Pl. Br.") at 10–13, 23 (discussing Plaintiffs' harm from withholding of federal funds).

In any event, the language of the Executive Orders and Bondi Directive belies Defendants' new assertion that those orders can be disregarded as mere planning. *See City & Cnty. of S.F.*, 897

F.3d at 1239 (finding that the first Trump administration's similarly broad Executive Order was not susceptible to the government's narrow interpretation); *Cnty. of Santa Clara*, 250 F. Supp. 3d. at 515 (same). On its face, Section 17 of EO 14,159 does not merely request an "evaluation" of federal funding; it also includes a mandatory directive that the Attorney General and Secretary of Homeland Security "shall . . . undertake" actions to "ensure that so-called 'sanctuary' jurisdictions . . . do not receive access to Federal funds."[3] ECF No. 61-2 ("Tilak Decl.") Ex. 1. EO 14,218 likewise directs that every Executive department "shall" ensure that federal payments to states and localities "do not, by design or effect . . . abet so-called 'sanctuary' policies." *Id.* Ex. 33. These Executive Orders are also broad in scope, targeting federal funds and payments at large. *See City & Cnty. of S.F.*, 897 F.3d at 1239 (construing EO 13,768 as "threaten[ing] to withdraw all federal grants"). The Bondi Directive similarly directs that DOJ "shall" freeze "the distribution of all funds." Tilak Decl. Ex. 3.

Defendants' arguments are also contradicted by their own conduct and that of other Executive agencies acting under Defendants' direction. For example, far from just "evaluating" federal funding, the Department of Housing and Urban Development ("HUD") has issued immigration-related grant conditions for its Continuum of Care program, which funds services to end homelessness for individuals and families, including persons fleeing domestic violence and sexual assault. These conditions mandate compliance with Executive Order 14,218 and its amorphous directive that federal payments not "abet[] so-called 'sanctuary' policies" "by design or effect." ECF No. 68 ("McSpadden Decl.") Ex. A at p. 3. In addition, on February 19, 2025, Defendant Noem issued a memorandum entitled "Restricting Grant Funding for Sanctuary Jurisdictions" (the "Noem Directive"), which implements the Executive Orders by directing components of DHS not just to review federal assistance awards, but also to "cease providing federal funding to sanctuary jurisdictions." ECF No. 89 ("Nguyen Decl.") Ex. 1 at p. 2. On March 25, Defendant Noem approved the Federal Emergency Management Agency's ("FEMA") recommendation that "conditions or restrictions" related to

[3] Defendants' opposition mistakenly asserts that Plaintiffs do not seek to enjoin Section 17 of EO 14,159. Def. Br. at 6. But, as Plaintiffs have made clear, they *do* seek to enjoin the direction to withhold funding from sanctuary jurisdictions in the first sentence of Section 17. Pl. Br. at 1. Plaintiffs do not, at this time, seek an injunction with respect to the second sentence of Section 17, which threatens civil and criminal enforcement. *See id.* at 6 n.3.

"sanctuary" jurisdictions should be placed on "all open and future awards" for twelve grant programs that fund critical emergency preparedness activities. Supp. Nguyen Decl. Ex. 1 at pp. 2–3.[4] These activities have nothing to do with civil immigration enforcement. They are instead used by Plaintiffs to prepare for and respond to natural disasters, terrorist attacks, and other emergencies. *See id.* at 21–23 (describing purpose and statutory authority for grants); *see, e.g.*, ECF No. 61-6 ("Cole-Tindall Decl.") ¶¶ 14–19; ECF No. 61-10 ("Boyd Decl.) ¶¶ 8–11; ECF No. 76 ("Williams Decl.") ¶ 47 (discussing Plaintiffs' use of these grants). And, on March 27, DHS issued terms and conditions applicable to "all new federal awards" for Fiscal Year 2025 that specifically target "sanctuary" jurisdictions by mandating, *inter alia*, that award recipients "honor requests for cooperation, such as participation in joint operations, sharing of information, or requests for short term detention of an alien pursuant to a valid detainer" and "provide access to detainees" in custody. Supp. Nguyen Decl. Ex. 2 at § IX(1). Making clear that these conditions emanate from the Executive Orders, the terms reiterate that grantees must "comply with the requirements of Presidential Executive Orders related to grants (also known as federal assistance and financial assistance), the full text of which are incorporated by reference." *Id.* § XXXI. Finally, DOJ has made "crystal clear" that "sanctuary" jurisdictions will be "stripped of federal funding," Supp. Nguyen Decl. Ex. 3, and Defendant Bondi has stated that the Administration "will continue to pull ['sanctuary' jurisdictions'] federal funding" in order to coerce these jurisdictions to abandon their policies, *see supra* p. 1 n.2.

Thus, far from merely "evaluating" possible limits, the Executive Orders and Bondi Directive reflect Defendants' determination that funding *will* be withheld—and indeed *is being* conditioned. Plaintiffs have therefore shown a concrete and imminent harm, and their claims are justiciable.[5]

---

[4] A district court recently concluded that the Noem Directive—and FEMA's implementation thereof—effectuate EO 14,159. Mem. & Order, *New York v. Trump*, No. 1:25-cv-00039-JJM-PAS (D.R.I. Apr. 4, 2025), Supp. Nguyen Decl. Ex. 8, at 12–13.

[5] *Trump v. New York*, 592 U.S. 125 (2020), is inapposite. There, the challenged executive action simply directed the Secretary of Commerce to provide the President with a report containing information that the President could evaluate in carrying out a policy related to Congressional apportionment. *Id.* at 129–30. It did not contain the kind of mandatory directives present in the Executive Orders and Bondi Directive. Further, unlike in *New York*, where it was unclear whether the Secretary would even be able to provide the requested information or whether it would be used, *id.* at 132, Defendants here have already stated that federal funding will be stripped from "sanctuary" jurisdictions and have taken steps to withhold and condition funding. *See supra* p. 1 n.2; McSpadden Decl. Ex. A; Nguyen Decl. Ex. 1; Supp. Nguyen Decl. Exs. 1–3. Finally, as the Supreme Court

B. Plaintiffs Need Not Wait for Their Federal Funding to be Withheld

Defendants also argue that Plaintiffs' claims are not justiciable because no funding has yet been withheld. Def. Br. at 9, 11. But, under well-established pre-enforcement standing principles, Plaintiffs need not wait until their federal funding is stripped away before challenging Defendants' unlawful actions. *See City & Cnty. of S.F.*, 897 F.3d at 1236–38; *Cnty. of Santa Clara*, 250 F. Supp. 3d at 517–25 (finding challenge to Executive Order 13,768 to be justiciable before funding was withheld). In assessing pre-enforcement standing, courts look at whether (1) the plaintiffs have "an intention to engage in a course of conduct arguably affected with a constitutional interest," (2) the conduct is "arguably . . . proscribed" by defendants' conduct, and (3) there is a "substantial" threat of future enforcement. *Peace Ranch, LLC v. Bonta*, 93 F.4th 482, 487 (9th Cir. 2024) (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 161–64 (2014)); *Cnty. of Santa Clara*, 250 F. Supp. 3d at 517–25 (applying same analysis to challenge to Executive Order); *see also City & Cnty. of S.F.*, 897 F.3d at 1236 (applying a version of these factors in assessing ripeness). Each factor is satisfied here.

First, each Plaintiff has chosen to adopt policies limiting the use of local resources to enforce federal civil immigration laws. Pl. Br. at 3–5. As this Court has held, such policies implicate Plaintiffs' Tenth Amendment rights. *Cnty. of Santa Clara*, 250 F. Supp. 3d at 525–26. Second, Plaintiffs' choices are targeted by the Executive Orders and Bondi Directive. As Plaintiffs explained in their motion, their policies likely meet Defendants' definition of "sanctuary" jurisdictions. Pl. Br. at 10. The Noem Directive further underscores this conclusion. It defines "sanctuary" jurisdictions to include localities, like many Plaintiffs, that may decline to "honor requests for cooperation, such as participation in joint operations, sharing of information, or requests for short term detention of alien pursuant to a valid detainer," or that fail to "provide access to detainees" in local custody. Nguyen Decl. Ex. 1 at p. 2. Tellingly, Defendants' opposition does not dispute that Defendants regard Plaintiffs as "sanctuary" jurisdictions for purposes of the Executive Orders and Bondi Directive.

observed, the plaintiffs in *New York* did not face any present injury because the census had already concluded, 592 U.S. at 131, whereas here Plaintiffs are suffering present injury from the budgetary uncertainty engendered by Defendants' actions. *See infra* Part I.B.

Third, Plaintiffs face a substantial threat that the Executive Orders and Bondi Directive will be wielded to withhold critical federal funding. This factor "rises or falls with the enforcing authority's willingness to disavow enforcement." *Peace Ranch, LLC*, 93 F.4th at 490; *see also Planned Parenthood Great Northwest v. Labrador*, 122 F.4th 825, 838–39 (9th Cir. 2024). Courts also sometimes look to whether the authorities have "communicated a specific warning or threat to initiate proceedings" and to "the history of past prosecution or enforcement." *Arizona v. Yellen*, 34 F.4th 841, 851 (9th Cir. 2022); *City & Cnty. of S.F.*, 897 F.3d at 1236–37. Here, far from disavowing an intent to withhold funding from "sanctuary" jurisdictions, Defendants have doubled down by continuing to publicly commit to withdrawal of "sanctuary" jurisdictions' funding, and taking specific actions to effectuate that commitment. *See* Part I.A, *supra*; McSpadden Decl. Ex. A; Nguyen Decl. Ex. 1; Supp. Nguyen Decl. Exs. 1–3.[6] Indeed, on March 27, the President declared that he would "end sanctuary cities" through potential further Executive action. Supp. Nguyen Decl. Ex. 4. As for a "history of past prosecution or enforcement," the Court need only look to the first Trump administration's repeated unlawful attempts to defund "sanctuary" jurisdictions through Executive Orders and conditions on DOJ grants—actions that were halted only by injunctions from federal courts, including this Court. That history is repeating itself, and Plaintiffs are once again at risk of losing critical federal funding.

But Plaintiffs' harm is not limited to their credible fear that critical funding *will* be withheld. Plaintiffs have also shown that they face a *present* injury stemming from the budgetary uncertainty wrought by Defendants' actions. Just as with the first Trump administration's efforts to defund "sanctuary" jurisdictions through Executive Order 13,768, the Executive actions challenged here "create[] a contingent liability, potentially placing hundreds of millions of dollars of Plaintiffs' funding at risk." *Cnty. of Santa Clara*, 250 F. Supp. 3d at 528; *see* Pl. Br. 10–13. Plaintiffs therefore once again "cannot make informed decisions about whether to keep spending federal funds on needed services for which they may not be reimbursed; they are forced to make contingency plans to deal with a potential loss of funds . . . and the obligation to mitigate potential harm to their residents and drastic

[6] While the Bondi Directive's threat to impose an across-the-board freeze on the distribution of all DOJ funds has not yet been implemented, DOJ has not disavowed an intent to impose the freeze, and Defendant Bondi and DOJ continue to threaten to use federal funding as a tool to coerce localities.

cuts to service may ultimately compel them to change their policies to comply with what they believe to be an unconstitutional Order." *Cnty. of Santa Clara*, 250 F. Supp. 3d at 526; *see* Pl. Br. at 10–13, 23 (discussing budgetary harms); *see also Clinton v. City of New York*, 524 U.S. 417, 431 (1998).

II. Plaintiffs Have Established a Likelihood of Success on the Merits

On the merits, Defendants continue to mischaracterize the directives in the Executive Orders and Bondi Directive and misconstrue Plaintiffs' arguments. None of Defendants' arguments undermines Plaintiffs' likelihood of success on the merits of each of their claims.

A. Separation of Powers

Defendants attempt to sidestep the clear separation-of-powers violations at issue here by arguing that EO 14,159 refers only to "lawful actions" and the Bondi Directive states that actions will be taken in a manner "consistent with law." Def. Br. at 13. But these boilerplate phrases do not insulate Defendants from judicial review—as both this Court and the Ninth Circuit explained in response to the federal government's efforts to defend Executive Order 13,768 (which similarly directed that "sanctuary" jurisdictions be defunded "consistent with law"). *See City & Cnty. of S.F.*, 897 F.3d at 1240 ("If 'consistent with law' precludes a court from examining whether the Executive Order is consistent with law, judicial review is a meaningless exercise, precluding resolution of the critical legal issues."); *Cnty. of Santa Clara*, 250 F. Supp. 3d at 536 ("The Government's attempt to resolve all of the Order's constitutional infirmities with a 'consistent with law' bandage is not convincing."). Defendants do not address the Ninth Circuit's controlling decision in *City and County of San Francisco*, which held that a substantially similar Executive Order directing that federal funds be withheld from "sanctuary" jurisdictions violated the separation of powers. And Defendants' ongoing efforts to implement the Executive Orders by conditioning a broad swath of federal funds on local assistance with civil immigration enforcement illustrate that Defendants' promises to act "consistent with law" are illusory. *See* Part I.A, *supra*.

Defendants' remaining arguments similarly miss the mark. For example, Defendants address Section 2(b) of EO 14,218. Def. Br. at 13. But they offer no defense of Section 2(a)(ii), the provision that Plaintiffs *actually* challenge and that directs all Executive departments to ensure that federal payments do not "abet so-called 'sanctuary' policies"—regardless of the Congressional authorization

for those payments. Likewise, Defendants address the Bondi Directive's discussion of potential conditions on future grants, but Plaintiffs' arguments focus on the threat to freeze the "distribution of all funds" contained on the first page of the Bondi Directive. *See* Pl. Br. at 16. Defendants offer no defense of this threatened indefinite freeze on the distribution of Congressionally appropriated funds.

B. Spending Clause

Defendants once again mischaracterize the Executive Orders as "merely call[ing] for a deliberation and evaluation of the federal funding." Def. Br. at 14. But, as discussed above, the Executive Orders direct agencies to withhold or condition federal funds and payments at large—ostensibly including allocated and awarded funds where Plaintiffs had no notice and federal funds that have no nexus to civil immigration enforcement.[7] The potential breadth of federal funds and payments covered by the Executive Orders also means that Plaintiffs risk losing all, or a substantial portion, of the federal funds on which they rely to provide essential services, which would effectively coerce them into adopting Defendants' preferred civil immigration enforcement initiatives. And critical terms—such as what constitutes a "sanctuary" policy or "sanctuary" jurisdiction and what amounts to "abet[ting]" such a policy—remain undefined and ambiguous. *See Cnty. of Santa Clara*, 250 F. Supp. 3d at 532–33 (finding similar Spending Clause infirmities with Executive Order 13,768). The Bondi Directive fares no better. It threatens to freeze the distribution of "all" DOJ funds—regardless of whether the funds are already obligated or have any connection to civil immigration enforcement.

Defendants' implementation of the Executive Orders further underscores the Spending Clause violations. For example, following Defendant Noem's February 19 direction, FEMA (a part of DHS) prepared recommendations, which Defendant Noem then approved, to impose immigration-related conditions on grants that support Plaintiffs' ability to plan and prepare for emergencies. *Compare* Supp. Nguyen Decl. Ex. 1 at pp. 2–3, 21–23, *with* Cole-Tindall Decl. ¶¶ 14–19; Boyd Decl. ¶¶ 8–11; Williams Decl. ¶ 47. And DHS has operationalized the Executive Orders by revising the standard

[7] Defendants' assertion that Plaintiffs have not offered any argument or explanation regarding the lack of nexus is simply incorrect. *See* Pl. Br. at 18 (describing how the Executive Orders' purported application to all federal funding would include funds that "have nothing to do with immigration enforcement" and how the Bondi Directive's threatened freeze would apply to DOJ grants that Plaintiffs rely on for purposes unrelated to immigration).

terms for all DHS federal awards to include ambiguous and unlawful conditions requiring grantees to assist with federal civil immigration enforcement (including "requests for cooperation") and comply with the Executive Orders, regardless of the nexus between a grant program and immigration enforcement. Supp. Nguyen Decl. Ex. 2. Likewise, HUD, a department that reports to the President, has conditioned grants to provide services to the homeless on compliance with EO 14,218 and its ambiguous requirement that funds not be used to "abet so-called 'sanctuary' policies" "by design or effect." McSpadden Decl. Ex. A at p. 3.

C. Fifth Amendment

Plaintiffs have a constitutionally protected property interest in the federal funds appropriated for a specific purpose by Congress and awarded to them via contracts with the federal government. *See Cnty. of Santa Clara*, 250 F. Supp. 3d at 536; *see also Lucero v. Hart*, 915 F.2d 1367, 1370 (9th Cir. 1990). Defendants do not contest the existence of such an interest, but instead argue only that the Executive Orders and Bondi Directive merely call for an "evaluation of federal funding" and there has been no "deprivation because there is no final agency action." Def. Br. at 15. As explained above, that argument fails. Defendants do not try to distinguish EO 13,768 or this Court's analysis in *County of Santa Clara*, 250 F. Supp. 3d at 534–36, that broad, standardless directives to agencies to "ensure" that "'sanctuary jurisdictions' are not eligible to receive federal grants" are void for vagueness and violate procedural due process under the Fifth Amendment. *Id.* at 535. In passing, Defendants argue that the Executive Orders and Bondi Directive "do contain various explanations for sanctuary terms," Def. Br. at 15–16, but do not clarify how those supposed explanations "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited" or "provide explicit standards for those who apply them." *Cnty. of Santa Clara*, 250 F. Supp. 3d at 534 (citation and quotation marks omitted).

D. Tenth Amendment

In response to Plaintiffs' Tenth Amendment claim, Defendants assert that Plaintiffs may simply decline to apply for DHS or DOJ grants. Def. Br. at 16. But EO 14,159 and EO 14,218 apply on their face to a much broader swath of federal funds and payments to so-called "sanctuary" jurisdictions. Requiring Plaintiffs to choose between exercising their Tenth Amendment rights to control the use of their local resources and forgoing potentially tens or hundreds of millions of dollars

in federal funding constituting a substantial portion of their budgets is not a choice at all; it is an unconstitutional "gun to the head." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 581 (2012); *see also Cnty. of Santa Clara*, 250 F. Supp. 3d at 533–34. Nor, as discussed above, does Defendants' specious promise to abide by "existing statutory and constitutional authority," Def. Br. at 11, rectify the coercive nature of the Executive Orders.[8]

E. Administrative Procedure Act

Defendants focus only on the Bondi Directive's discussion of potential conditions on future grants. But, as Plaintiffs' motion clearly explains, while they reserve the right to seek future relief if DOJ publishes a list of grants conditioned on compliance with 8 U.S.C. § 1373, Pl. Br. at 8 n.4, their APA arguments for purposes of the *present* motion focus on the Bondi Directive's instruction to freeze the distribution of all DOJ funds to implement the President's directive to defund "sanctuary" jurisdictions, *see* Pl. Br. at 21–22—a threat that Defendants neither disavow nor attempt to defend.[9]

The mandate to freeze distribution of all DOJ funds (presumably including awarded and allocated funds) is undoubtedly a "final agency action" marking the "consummation of the agency's decision-making process." *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997). It states in no uncertain terms that "the Department of Justice *will ensure*, consistent with law, 'sanctuary jurisdictions' *do not* receive access to Federal funds from the Department" and that DOJ "*shall pause the distribution of all funds*." Tilak Decl. Ex. 3 at 1 (emphases added); *see Wilderness Soc'y v. Norton*, 434 F.3d 584, 595 (D.C. Cir. 2006) ("central" to the analysis of the legal effect of an agency policy document is "[t]he

[8] Defendants also raise arguments regarding threats of civil and criminal enforcement. *See* Def. Br. at 16–17. These arguments are premature. Plaintiffs' motion seeks only to enjoin the threats to federal funding—not the threats of civil or criminal enforcement. *See* Pl. Br. at 6 n.3.

[9] The U.S. Supreme Court's recent *per curiam* order in *U.S. Department of Education v. California* (No.24A910), 604 U.S. ---- (2025) does not bear on Plaintiffs' claims. There, in the context of an APA challenge to the termination of specific grant contracts, the Supreme Court vacated the district court's temporary restraining order in part because the APA's "limited waiver of immunity does not extend to orders to enforce a contractual promise of money . . . ." *Id.* at 2. Here, Plaintiffs' APA claim does not seek an order to enforce particular contract promises made by the federal government or recover damages, but instead seeks to prospectively enjoin the unlawful and irreparably harmful policy of indefinitely freezing all DOJ funds without constitutional or statutory authority or reasoned basis. Plaintiffs' claim therefore falls squarely within the APA. *See Bowen v. Massachusetts*, 487 U.S. 879, 904–08 (1988). Further, *U.S. Department of Education* involved solely an APA claim; here, Plaintiffs also have several constitutional claims for injunctive relief.

language actually used by the agency"). "[L]egal consequences will flow" from this across-the-board freeze on funding. *Bennett*, 520 U.S. at 178. Plaintiffs rely on DOJ funding for critical public safety functions, and an indefinite freeze on the distribution of these funds would require them to either incur significant deficits and risk the likelihood that they will not be reimbursed, or slash vital services that protect the safety of their communities. *See* Pl. Br. at 11–12. Courts have found similar directives to be reviewable final agency actions, and not "programmatic" challenges. *See, e.g.*, *New York v. Trump*, No. 25-CV-39-JJM-PAS, 2025 WL 715621, at *8 (D.R.I. Mar. 6, 2025) (OMB Directive directing "temporary pause on all activities related to obligation or disbursement" of federal funds was a final agency action); *Nat'l Council of Nonprofits v. OMB*, No. CV 25-239 (LLA), 2025 WL 597959, at *13 (D.D.C. Feb. 25, 2025) (finding the same directive was not a programmatic policy but "a mandatory command … that produced legal consequences for Plaintiffs and others").

On the merits, to the extent Defendants intimate that this freeze will be made "consistent with law," as discussed above, they cannot wield this phrase as a talisman to evade judicial review. In any event, an indefinite across-the-board freeze for the purpose of effectuating the President's directive to withhold funding from "sanctuary" jurisdictions is unconstitutional and therefore *ultra vires*. *See* Part II.A–D, *supra.* And, while Defendants postulate possible statutory authority to impose conditions on future grants, they provide no statutory basis to freeze all funding (including awarded and allocated funds) in order to review for alignment with the Administration's preferred immigration policy. As Plaintiffs explained (and as DOJ does not dispute) no law authorizes DOJ to impose conditions not authorized by Congress, and the Impoundment Control Act ("ICA") prescribes the circumstances and procedures for the Executive Branch to request deferral or rescission of appropriated funds from Congress, none of which have been satisfied here. Pl. Br. at 22; *see New York*, 2025 WL 715621, at *9–10 (finding that Executive Branch directive and action to "defer or decline the expenditure of appropriated federal funds" likely did not comply with the ICA, and was contrary to law and *ultra vires* under the APA). Finally, Defendants also do not dispute Plaintiffs' arguments that the Bondi Directive is arbitrary and capricious because it is not "reasonable" or "reasonably explained." Pl. Br. at 22.

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III. Plaintiffs Have Established Irreparable Harm

Instead of engaging with Plaintiffs' comprehensive factual showing of irreparable harm, Defendants simply repeat the same unpersuasive arguments they raise with respect to justiciability—i.e., that any harm is speculative because no funds have been impacted. Def. Br. at 21–22. But, as Plaintiffs have amply demonstrated through nearly forty declarations, their *present* ability to budget is being thwarted, requiring them to make impossible choices *now* in the face of the Executive Orders and Bondi Directive's threats to critical federal funding. *See* Pl. Br. at 10–13, 23. Both this Court and the Ninth Circuit have found this very kind of harm to be irreparable. *See City & Cnty. of S.F.*, 897 F.3d at 1243–44; *Cnty. of Santa Clara*, 250 F. Supp. 3d at 537.[10] Defendants' arguments to the contrary do not warrant a different result here.

For example, Defendants posit that "a series of future actions must occur before" the Executive Orders and Directive "could have any concrete effect on Plaintiffs." Def. Br. at 22–23. But Plaintiffs' budgetary harm is present and concrete. *See* Pl. Br. at 10–13. And, contrary to Defendants' assertion that the federal government has not "taken any of these actions," Def. Br. at 22, Defendants are in fact actively making good on the Executive Orders and Bondi Directive's instructions to weaponize federal funding against "sanctuary" jurisdictions. During this very lawsuit, Defendants and other Executive departments have begun to operationalize the Executive Orders by conditioning a wide array of federal funding unrelated to immigration enforcement on local assistance with federal civil immigration enforcement (including ostensibly all DHS awards), and DOJ has made it "crystal clear" that it intends to "strip[] . . . federal funding" as a cudgel to coerce "sanctuary" localities to administer the federal government's immigration priorities. *See* Argument Part I.A, *supra*; McSpadden Decl. Ex. A; Nguyen Decl. Ex. 1; Supp. Nguyen Decl. Exs. 1–3; *see City & Cnty. of S.F.*, 897 F.3d at 1244 (finding that "total loss of federal funding would be catastrophic").

[10] Defendants assert that this case is "dissimilar from past cases[] where Plaintiffs have lodged like claims," Def. Br. at 22, without even acknowledging the prior litigation over Executive Order 13,768—which in fact involved very "like" claims against a substantially similar Executive Order in a virtually identical procedural posture. The sole case that Defendants do cite, *State ex rel. Becerra v. Sessions*, 284 F. Supp. 3d 1015 (N.D. Cal. 2018), is in fact dissimilar in that it involved a single grant that was a tiny portion of the State of California's budget—not the kind of existential funding threat and resulting budgetary uncertainty at issue here.

Defendants also argue that "Plaintiffs' contention that the terms of the directive are ambiguous conflict with their certainty that they will [be harmed] once the federal Government implements their terms." Def. Br. at 22–23. But the breadth and ambiguity of the Executive Orders and Bondi Directive have in fact placed Plaintiffs in a budgetary quandary. As with Executive Order 13,768, the "broad directive[s] and unclear terms" in the Executive Orders and Bondi Directive—and Defendants' accompanying statements and actions—have "caused substantial confusion and justified fear among" Plaintiffs and "impermissibly interfere[] with [Plaintiffs'] ability to operate, to provide key services, to plan for the future, and to budget." *Cnty. of Santa Clara*, 250 F. Supp. 3d at 537. Defendants' claim that the Executive Orders and Directive simply ask departments to evaluate federal awards cannot be squared with the broad text of the Executive Orders and Directive, or with Defendants' public confirmation that they will "end" "sanctuary" cities and "strip" their federal funding, and the actions they have taken to make good on this threat. Part I.A, *supra*.

Finally, Defendants do not dispute that Defendants' actions irreparably harm the trust between Plaintiffs and their local communities. Pl. Br. at 24–25. And they do not contest that "the deprivation of constitutional rights" (which Plaintiffs have established as discussed above) constitutes irreparable injury. *See Melenderes v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012).

IV. The Public Interest and the Balance of Equities Favor an Injunction

"[B]y establishing a likelihood" of a constitutional violation, "Plaintiffs have also established that both the public interest and the balance of the equities favor a preliminary injunction." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014). Defendants' two responses are unavailing. Defendants first describe "the public interest in supporting the enforcement of federal immigration law." Def. Br. at 23. This point did not persuade the Ninth Circuit and should not persuade this Court, either, because whatever interest Defendants have in enforcing immigration law, there is *no* public interest in allowing them to do so in violation of the Constitution and federal law. *See City & Cnty. of S.F.*, 897 F.3d at 1243–44. Moreover, given the irreparable harm that Defendants' actions have inflicted on Plaintiffs' ability to budget for critical public safety-net services, "the public interest cannot be disserved by an injunction that brings clarity to all parties and to citizens dependent on public services." *Id.* at 1244. Defendants also claim that Plaintiffs seek an "advisory opinion[]" on

"executive directives that have not yet been implemented," Def. Br. at 24, but as discussed at length above, the directives at issue have been—and are being—implemented.

The scope of Plaintiffs' requested preliminary injunction is commensurate with the scope of Defendants' violations. The U.S. Supreme Court has long explained that "the scope of injunctive relief is dictated" not by geography but "by the extent of the violation established." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). Here, Plaintiffs' request for a preliminary injunction is no broader than the extent of Defendants' violations: the proposed injunction would sustain the status quo against the unlawful policy of withholding or conditioning funds pursuant to EO 14,159, EO 14,218, or the Bondi Directive based on five types of policies limiting local assistance with civil immigration enforcement that Plaintiffs have adopted. ECF No. 61-1 (Proposed Order) at 2–3. The scope of this injunctive relief accords with other recent injunctions that remain in effect.[11] That some Plaintiffs reside outside of this federal circuit—a fact Defendants perversely argue (without authority) should narrow the injunction—calls instead for widening its scope, because "*such breadth is necessary to give prevailing parties the relief to which they are entitled*." *Bresgal v. Brock*, 843 F.2d 1163, 1170-71 (9th Cir. 1987). No less than Plaintiffs located within this District, the other Plaintiffs too are entitled to the benefit of an injunction to protect their rights against Defendants' illegal acts.

V. Security, If Any, Should be Nominal

Lastly, Defendants fail to justify why, pursuant to Federal Rule of Civil Procedure 65(c), the Court should "require Plaintiffs to post security for any taxpayer funds expended during the pendency of the Court's order." Def. Br. at 24–25. This rule "invest[s] the district court with discretion as to the amount of security required, if any." *Barahona–Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999),

[11] *See, e.g.*, Order Granting Plaintiffs' Motion for a Temporary Restraining Order and Order to Show Cause, *San Francisco Unified School District v. AmeriCorps*, No. 25-cv-02425 (N.D. Cal. Mar. 31, 2025), Supp. Nguyen Decl. Ex. 6, at 11 ("Defendants shall not, at any time now or in the future, pause, freeze, impede, block, cancel, or terminate AmeriCorps funding awards on the basis of recipients' failure . . . to certify, or execute new grants certifying, that the funded programs do not include any 'activities that promote DEI activities.'"); Order, *Nat'l Council of Nonprofits v. Office of Management and Budget*, No. 1:25-cv-00239 (D.D.C. Feb. 25, 2025), Supp. Nguyen Decl. Ex. 5, at 1 ("Defendants are enjoined from implementing, giving effect to, or reinstating under a different name the unilateral, non-individualized directives in OMB Memorandum M-25-13."); Mem. & Order, *New York v. Trump*, No. 1:25-cv-00039-JJM-PAS (D.R.I. Apr. 4, 2025), Supp. Nguyen Decl. Ex. 8, at 14 ("FEMA must immediately cease the challenged manual review process implemented pursuant to Secretary Noem's [] memoranda.").

supplemented, 236 F.3d 1115 (9th Cir. 2001) (collecting cases). It is within the district court's "wide discretion" to waive the bond requirement entirely "if there is no evidence the party will suffer damages from the injunction," *Conn. Gen. Life Ins. Co. v. New Images of Beverly Hills*, 321 F.3d 878, 882 (9th Cir. 2003) (citations omitted), or if "there is a high probability of success that equity compels waiving the bond, the balance of the equities overwhelmingly favors the movant . . . or the requirement of a bond would negatively impact the movant's constitutional rights," *Gilmore v. Wells Fargo Bank, N.A.*, No. C 14-2389-CW, 2014 WL 3749984, at *6 (N.D. Cal. July 29, 2014); *see also Barahona-Gomez*, 167 F.3d at 1237; *East Bay Sanctuary Covenant v. Trump*, 349 F. Supp. 3d 838, 868 (N.D. Cal. 2018).

The Court should reject Defendants' request out of hand because it is entirely unsupported. Defendants offer no explanation of how "taxpayer funds expended during the pendency" of the order could possibly qualify as costs and damages of Defendants' officers and agencies. Moreover, as explained above, the balance of equities weighs strongly in favor of Plaintiffs, who have established a high probability of vindicating important constitutional principles and advance a significant public interest in bringing this litigation. Indeed, Defendants' request is a transparent ploy to discourage such challenges to federal overreaches. *See* Supp. Nguyen Decl. Ex. 7 (March 11, 2025 White House Memorandum) (identifying Rule 65(c) as a "key mechanism" to combat what the federal administration deems "activist judges," "activist organizations," and "frivolous suits"). Perhaps unsurprisingly, Defendants have failed to secure the kind of bond they request here in similar litigation where Defendants have made the same request. *See, e.g.*, *Nat'l Ass'n of Diversity Officers in Higher Educ. v. Trump*, No. 1:25-CV-00333-ABA, 2025 WL 573764, at *30 (D. Md. Feb. 21, 2025), *opinion clarified*, No. 25-CV-0333-ABA, 2025 WL 750690 (D. Md. Mar. 10, 2025), *injunction stayed on appeal*, Order, Dkt. No. 29, No. 25-1189 (4th Cir. Mar. 14, 2025). If the Court decides that a bond is needed, Plaintiffs request that the amount be nominal.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion for a preliminary injunction.

Dated: April 7, 2025

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FILER'S ATTESTATION

I, DAVID CHIU, am the ECF user whose identification and password are being used to file this PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION. Pursuant to Civil Local Rule 5-1(i)(3), I hereby attest that the other above-named signatories concur in this filing.