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

15
 16 City and County of San Francisco, Plaintiff,
 17 v.
 Donald J. Trump, et al., Defendants.

Case No. 17-cv-485
 Case No. 17-cv-574
 Case No. 17-cv-1535

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 19
 20 County of Santa Clara, Plaintiff,
 21 v.
 Donald J. Trump, et al., Defendants.

AMICUS CURIAE BRIEF OF CALIFORNIA, CONNECTICUT, DELAWARE, DISTRICT OF COLUMBIA, ILLINOIS, MARYLAND, MASSACHUSETTS, NEW MEXICO, NEW YORK, OREGON, AND WASHINGTON IN SUPPORT OF PLAINTIFFS' OPPOSITIONS TO DEFENDANTS' MOTIONS TO DISMISS

22
 23 City of Richmond, Plaintiff,
 24 v.
 Donald J. Trump, et al., Defendants.

Date: July 12, 2017
 Time: 2:00 p.m.
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Trial Date: April 23, 2018

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INTRODUCTION AND STATEMENT OF INTEREST OF AMICI CURIAE

1 President Trump’s Executive Order directs the Attorney General and the Secretary of
2 Homeland Security to “ensure that jurisdictions that willfully refuse to comply with 8 U.S.C.
3 1373 (sanctuary jurisdictions) are not eligible to receive Federal grants,” gives the Secretary
4 discretion to designate a jurisdiction as a “sanctuary jurisdiction,” and orders the Attorney
5 General to “take appropriate enforcement action against any entity that violates 8 U.S.C. 1373, or
6 which has in effect a statute, policy, or practice that prevents or hinders the enforcement of
7 Federal law.” Exec. Order No. 13768, 82 Fed. Reg. 8799, § 9(a) (Jan. 25, 2017). On April 25,
8 2017, this Court entered a nationwide preliminary injunction barring Defendants from enforcing
9 Section 9(a) of that Order. (*See* 17-cv-574 Dkt. 98, at 49 (“PI Order”).) The Court reasoned that
10 the suits by the Plaintiff Counties satisfied the requirements of Article III (*see id.* at 11-35), and
11 that Plaintiffs were likely to succeed in their claims that Section 9(a) violates the separation of
12 powers doctrine, the Spending Clause, the Tenth Amendment, and the Fifth Amendment (*see id.*
13 at 35-44). Although that injunction remains in place, Defendants now ask the Court to dismiss all
14 of Plaintiffs’ claims with prejudice. (17-cv-574 Dkt. 115.) The States of California, Connecticut,
15 Delaware, Illinois, Maryland, Massachusetts, New Mexico, New York, Oregon, and Washington,
16 and the District of Columbia submit this brief as amici curiae in opposition to Defendants’
17 motions to dismiss.
18

19 Amici States have a substantial interest in this litigation. Like all States, amici believe that
20 the safety of their residents and their communities is a matter of paramount importance. Many of
21 the amici States and their political subdivisions have decided to adopt lawful policies or laws
22 designed to improve public safety by focusing local law enforcement agencies on crime
23 prevention rather than engaging in the enforcement of federal immigration law. Others States are
24 considering adopting such policies. Amici are concerned about any attempt by the federal
25 government to coerce state and local jurisdictions into abandoning—or to prevent them from
26 adopting—policies that those jurisdictions believe are important to the safety and well-being of
27 their communities. Relatedly, amici and their political subdivisions receive billions of dollars in
28 federal grant funds that could be affected by the President’s Executive Order.

1 This brief addresses two subjects relevant to the Court’s review of Defendants’ motions to
 2 dismiss. First, amici respond to arguments by Defendants and their amici suggesting that States
 3 and local governments endanger the public by adopting policies defining the degree to which
 4 local police expend resources in service of federal immigration enforcement. In fact, veteran law
 5 enforcement leaders and experts agree that such policies can help law enforcement agencies
 6 *protect* public safety—allowing police to focus limited resources on combatting serious and
 7 violent crime, instead of diverting those resources to the enforcement of federal immigration laws
 8 against individuals who often pose no threat to the community. Equally important, these policies
 9 can help local law enforcement agencies to build a relationship of trust and cooperation with their
 10 communities, in which all residents—regardless of immigration status—feel comfortable
 11 reporting crimes and participating in policing efforts without fear of immigration consequences.

12 Second, amici respond to Defendants’ argument that the Court should dismiss Plaintiffs’
 13 claims with prejudice. Defendants argue that Plaintiffs’ claims fail as a matter of law because of
 14 a two-page guidance memorandum issued by United States Attorney General Sessions after this
 15 Court entered its preliminary injunction. (See 17-cv-574 Dkt. 115-1 (“Sessions Mem.”).) That is
 16 incorrect. Among other things, even if the Executive Order is considered in the light of the
 17 guidance memo, the Plaintiffs have stated a claim under the Spending Clause. Amici States have
 18 unique insights into this issue as recipients of the federal grant funds that are potentially imperiled
 19 by the Executive Order. Plaintiffs have a viable claim that the grant condition imposed by the
 20 Executive Order is ambiguous in its scope and requirements, lacks an adequate nexus to the
 21 purposes of the federal grant programs at issue, and is coercive.

22 ARGUMENT

23 I. POLICIES THAT HELP LOCAL POLICE AVOID BECOMING ENTANGLED IN THE 24 ENFORCEMENT OF FEDERAL IMMIGRATION LAWS PROMOTE PUBLIC SAFETY

25 States and local governments have the primary responsibility for ensuring the safety of their
 26 communities and fighting crime. *See, e.g., United States v. Morrison*, 529 U.S. 598, 618 (2000)
 27 (“[W]e can think of no better example of the police power, which the Founders denied the
 28 National Government and reposed in the States, than the suppression of violent crime and

1 vindication of its victims.”); U.S. Const. amend. X. In exercising their sovereignty and carrying
2 out their responsibility to keep their communities safe, hundreds of jurisdictions in the United
3 States have adopted laws or policies that place lawful limits on the extent to which local agencies
4 become involved in the enforcement of federal civil immigration laws.¹

5 Defendants and their amici have repeatedly criticized such policies and argued that they
6 undermine public safety. (See PI Order at 25-26.) In an amicus brief supporting Defendants’
7 motions to dismiss, West Virginia and nine other States assert that “sanctuary city” policies
8 “cause harm to neighboring States” and “undermine the rule of law and deprive law enforcement
9 of the tools necessary for effective civil and criminal enforcement.” (17-cv-574 Dkt. 118-1, at 1.)
10 On the contrary, lawful policies that avoid entanglement between local police departments and
11 the enforcement of federal immigration laws can improve public safety—allowing local agencies
12 to focus their limited resources on fighting serious and violent crimes, and encouraging greater
13 cooperation with law enforcement by immigrants and their family members. As this Court found
14 in its order granting the preliminary injunction, the “Counties have demonstrated that their
15 sanctuary policies reflect their local judgment of what policies and practices are most effective for
16 maintaining public safety and community health.” (PI Order at 28.)

17 State and local government officials are in the best position to make that kind of judgment
18 and to decide how to allocate scarce resources to serve the particular public safety needs of local
19 communities. Those officials frequently recognize that the use of local law enforcement agencies
20 to enforce federal civil immigration laws can divert critical resources—including the time and
21 attention of officers—away from pressing public safety needs. For example, the chief of police of
22 a small New York town observed that “[o]ur department is set up to do basic law enforcement . . .
23 and really not to specialize in immigration work We’re leaving that up to the people that are
24 being paid to do immigration work.”² The Law Enforcement Immigration Task Force, comprised

25
26 ¹ See N.Y. State Office of the Attorney General, Office of the Attorney General of California, et
27 al., Setting the Record Straight on Local Involvement in Federal Civil Immigration Enforcement 3 (May
28 2017), https://oag.ca.gov/system/files/attachments/press_releases/setting_the_record_straight.pdf (“Local
Involvement”).

² *Id.* at 14.

1 of sheriffs, police chiefs, and police commissioners from across the country, recently noted that
2 “[s]tate and local law enforcement agencies face tight budgets and often do not have the capacity
3 or resources to duplicate the federal government’s work in enforcing federal immigration laws.
4 Rather than apprehending and removing immigrants who have no criminal background or
5 affiliation and are merely seeking to work or reunite with family, it is more important for state
6 and local law enforcement to focus limited resources and funding on true threats to public safety
7 and security.”³

8 State and local governments also have the best perspective on what policies will encourage
9 trust and cooperation between law enforcement officers and the communities they serve.
10 Hundreds of jurisdictions have concluded that public safety is promoted by adopting lawful
11 policies that avoid excessive entanglement between local police and the enforcement of federal
12 immigration laws. That is because the safety of a community increases when all residents—
13 regardless of immigration status—feel comfortable reporting crimes and interacting with local
14 police without fear of immigration consequences. In contrast, when local law enforcement
15 officials are perceived as agents of federal immigration authorities in all situations, it can
16 undermine the trust between law enforcement and the community.

17 As a police chief in Maryland explained, “the reluctance of folks to come forward because
18 they are undocumented and fear deportation is a much greater public safety problem than having
19 people here who may be undocumented but are not committing other crimes”⁴ According to
20 the chief of the Los Angeles Police Department, fear of local law enforcement can “create a
21
22

23 ³ Local Involvement, *supra*, at 13. Indeed, research indicates that immigrants are generally less
24 likely to engage in criminal conduct than other members of the community. *See, e.g.*, Bianca E. Bersani &
25 Alex R. Piquero, *Examining Systematic Crime Reporting Bias Across Three Immigrant Generations*,
26 *Journal of Quantitative Criminology*, July 16, 2016 at 4 (“[R]esearch dating back more than a century
27 documents a pattern whereby the foreign-born are involved in crime at significantly lower rates than their
28 peers.”); Alex Nowrasteh, *Immigration Myths – Crime and the Number of Illegal Immigrants*, (Mar. 20,
2017), <https://www.cato.org/blog/immigration-myths-crime-number-illegal-immigrants> (finding that “both
illegal immigrants and legal immigrants have incarceration rates far below those of native-born
Americans”).

⁴ Local Involvement, *supra*, at 15.

1 whole population of victims” who “become prey for human predators who extort them or abuse
2 them because they know they won’t contact the police.”⁵

3 Recent evidence supports these conclusions. Since the beginning of this year, amidst
4 threats by the Trump Administration to massively increase immigration enforcement through
5 partnerships with local law enforcement agencies, communities with large immigrant populations
6 have experienced worrisome declines in rates of reporting sexual assault and domestic violence.
7 Among the Latino population in Los Angeles, for example, reports of sexual assault dropped by
8 25% in early 2017, and domestic violence reports decreased 10%, compared with the same period
9 in 2016.⁶ In Maryland, Montgomery County reported a roughly 50% drop in calls for sexual
10 assault and domestic violence in the first three months of 2017 compared with the same period in
11 2016.⁷

12 Prominent law enforcement organizations agree that it is best to avoid conscripting local
13 agencies into the enforcement of federal civil immigration laws. The Major Cities Chiefs
14 Association, which represents the 68 largest law enforcement agencies in the United States, has
15 voiced concern that the enforcement of federal civil immigration laws by local police
16 “undermines the trust and cooperation with immigrant communities.”⁸ When undocumented
17 immigrants’ “primary concern is that they will be deported or subjected to an immigration status
18 investigation, then they will not come forward and provide needed assistance and cooperation.”⁹
19 This can “result in increased crime against immigrants and in the broader community, create a
20 class of silent victims and eliminate the potential for assistance from immigrants in solving
21

22 ⁵ *Id.*

23 ⁶ James Queally, *Latinos are reporting fewer sexual assaults amid a climate of fear in immigrant*
24 *communities, LAPD says*, L.A. Times, Mar. 21, 2017, available at <http://www.latimes.com/local/lanow/la-me-ln-immigrant-crime-reporting-drops-20170321-story.html>.

25 ⁷ Jennifer Medina, *Too Scared to Report Sexual Abuse*, N.Y. Times, Apr. 30, 2017, available at
https://www.nytimes.com/2017/04/30/us/immigrants-deportation-sexual-abuse.html?_r=0.

26 ⁸ Major Cities Chiefs Association, Immigration Position (Oct. 2011),
https://majorcitieschiefs.com/pdf/news/immigration_position112811.pdf.

27 ⁹ Craig E. Ferrell, Jr. et al., M.C.C. Immigration Committee Recommendations For Enforcement
28 of Immigration Laws by Local Police Agencies 6 (June 2006),
https://www.majorcitieschiefs.com/pdf/news/MCC_Position_Statement.pdf.

1 crimes or preventing future terroristic acts.”¹⁰ The Law Enforcement Immigration Task Force
2 voiced similar concerns, warning that “criminals can use the fear of deportation to coerce these
3 immigrants into silence, making our communities less safe for everybody,” and that
4 undocumented immigrants who are “victims or witnesses of crime . . . might be afraid to call
5 authorities when criminal activity is happening in their neighborhoods” or even “when someone
6 is sick or injured.”¹¹

7 Indeed, the federal government’s own 21st Century Policing Task Force came to the same
8 conclusion in 2015. In order to “build relationships based on trust with immigrant communities,”
9 it recommended “[d]ecoupl[ing] federal immigration enforcement from routine local policing for
10 civil enforcement and nonserious crime.”¹² It also recommended that the Department of
11 Homeland Security “should terminate the use of the state and local criminal justice system,
12 including through detention, notification, and transfer requests, to enforce civil immigration laws
13 against civil and non-serious criminal offenders.”¹³

14 These conclusions by experts and veteran law enforcement officials make clear that policies
15 imposing boundaries on the degree to which local law enforcement agencies become involved in
16 the enforcement of federal immigration law can enhance public safety. They belie the
17 unsupported assertions of Defendants’ amici that such policies “undermine the rule of law” or
18 “deprive law enforcement of the tools necessary for effective civil and criminal enforcement.”
19 (17-cv-574 Dkt. 118-1, at 1.) Rather, those policies are adopted by state and local officials to
20 ensure that local law enforcement agencies have the resources necessary to protect against
21 genuine threats to public safety, and have the trust and support of their communities in doing so.

22 **II. PLAINTIFFS’ COMPLAINTS STATE VIABLE CLAIMS, INCLUDING UNDER THE** 23 **SPENDING CLAUSE**

24 Defendants ask this Court to dismiss all of Plaintiffs’ claims with prejudice under Federal

25 ¹⁰ *Id.*

26 ¹¹ Local Involvement, *supra*, at 15.

27 ¹² President’s Task Force on 21st Century Policing, Final Report 18 (May 2015),
http://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

28 ¹³ *Id.*

1 Rule of Civil Procedure 12(b)(6). “To survive a Rule 12(b)(6) motion to dismiss, a ‘plaintiff
2 must allege enough facts to state a claim to relief that is plausible on its face.’” *Turner v. City
3 and County of San Francisco*, 788 F.3d 1206, 1210 (9th Cir. 2015). In applying that standard, the
4 Court “must take all allegations of material fact as true and construe them in the light most
5 favorable to the nonmoving party.” *Id.* The standard does not demand a showing that Plaintiffs
6 are likely to prevail on the merits of their claims. *See id.* (the “standard . . . ‘is not akin to a
7 probability requirement’”) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). But here, in its
8 order granting the preliminary injunction, this Court already held that Plaintiffs *are* likely to
9 prevail on the merits of their constitutional claims regarding the Executive Order—which is
10 surely enough to establish that the claims are plausible on their face.

11 Defendants barely mention the Court’s preliminary injunction order in their motions to
12 dismiss. Instead, Defendants argue that Plaintiffs’ claims should be dismissed in light of a recent
13 two-page guidance memo issued by Attorney General Sessions regarding the implementation of
14 Section 9(a) of the Executive Order. (*See, e.g.*, 17-cv-574 Dkt. 115, at 2-3.) That is incorrect.
15 Even reading the Executive Order in light of Attorney General Sessions’ memo, Plaintiffs have
16 stated plausible claims, including under the Spending Clause. As this Court has recognized, the
17 Spending Clause imposes a number of limitations on the federal government’s ability to place
18 conditions on federal funds, and Plaintiffs are likely to succeed on their claims that the Executive
19 Order fails several of these requirements. (*See* PI Order at 37-39.) Those claims remain viable
20 even if the Court takes account of the Attorney General’s memo.

21 ***Plaintiffs have a viable claim that the condition imposed by the Executive Order is***
22 ***ambiguous.*** A condition on the receipt of federal funds must be “unambiguous[,]” to enable
23 “states and local jurisdictions contemplating whether to accept such funds [to] ‘exercise their
24 choice knowingly, cognizant of the consequences of their participation.’” (PI Order at 37
25 (quoting *South Dakota v. Dole*, 483 U.S. 203, 207 (1987)).) Section 9(a) of the Executive Order
26 purports to condition the receipt of federal grants on compliance with 8 U.S.C. § 1373. This
27 Court previously held that Section 9(a) “fail[ed] the ‘unambiguous’” requirement, “because the
28 Order does not make clear to states and local governments what funds are at issue and what

1 conditions apply to those funds.” (*Id.* at 38.) Attorney General Sessions’ guidance memo—
2 which the Attorney General could choose to revoke or modify at any time—does not eliminate
3 that ambiguity.

4 First, it remains unclear what particular funds are at stake. The text of the Order “refers to
5 all federal grants.” (PI Order at 38.) The Attorney General’s memo purports to limit the Order
6 “to federal grants administered by the Department of Justice or the Department of Homeland
7 Security, and not to other sources of federal funding” (Sessions Mem. at 1), and Defendants
8 assure the Court that the restriction on grant eligibility “will be applied only to ‘certain . . . grants’
9 as to which the agency ‘is statutorily authorized to impose such a condition’” (17-cv-574
10 Dkt. 115 at 17). But Defendants still have not offered a definitive list of the grant programs at
11 issue. Defendants observe that “DOJ has *so far* identified only three grant programs whose
12 eligibility will be conditioned on compliance with Section 1373” (*id.* at 19 (emphasis added)),
13 leaving open the possibility that DOJ will identify additional grant programs subject to this
14 condition in the future. The memo implies that certain DHS grant programs will be subject to the
15 condition as well, but does not identify which ones. In short, amici States and their political
16 subdivisions are left without any clear understanding of the reach of this condition.

17 Second, the memo does not eliminate ambiguity surrounding the requirements of the grant
18 condition. It announces that jurisdictions are ineligible for the grant funds if they “fail[] to certify
19 compliance with [8 U.S.C. §] 1373.” (Sessions Mem. at 2.) As this Court has noted, however,
20 the Government has offered “no clear standard” regarding “what 1373 requires.” (PI Order at
21 42.) Indeed, Defendants recently told the Court that they have “not yet figured . . . out” “what it
22 means to ‘willfully refuse to comply’ with Section 1373.” (*Id.* at 20.) And Defendants have
23 muddied the waters further, by suggesting that whether a jurisdiction is in violation of Section
24 1373 may depend in part on whether it declines to comply with ICE detainer requests. (*See id.* at
25 20-21.)¹⁴ That suggestion is contrary to the text of Section 1373, judicial interpretations of that

26 _____
27 ¹⁴ *See also* Jeff Sessions, U.S. Attorney General, Attorney General Jeff Sessions Delivers Remarks
28 Announcing Sanctuary Jurisdictions (Mar. 27, 2017) (transcript available at <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-announcing-sanctuary-jurisdictions>).

1 statute, and the Government’s own position in other litigation.¹⁵ Attorney General Sessions’
2 memo does not clarify any of this ambiguity—leaving amici States unsure of what conduct is
3 necessary, in the Government’s view, to satisfy the grant condition.

4 ***Plaintiffs have a viable claim that the grant condition lacks an adequate nexus to the***
5 ***grant programs at issue.*** As this Court has recognized, “Congress may condition grants under
6 the spending power only in ways reasonabl[y] related to the purpose of the federal program.” (PI
7 Order at 38 (quoting *Dole*, 483 U.S. at 213).) The Court reasoned that “funds conditioned on
8 compliance with Section 1373 must have some nexus to immigration enforcement,” and
9 concluded that the Executive Order “runs afoul of the nexus requirement” because “there is no
10 nexus between Section 1373 and most categories of federal funding.” *Id.* Even read in light of
11 Attorney General Sessions’ memo, Plaintiffs retain a viable claim that the Executive Order fails
12 the nexus test, because most of the grant programs within DOJ or DHS have an insufficient nexus
13 to immigration enforcement.

14 Defendants have so far identified three existing grant programs within DOJ that are
15 conditioned on compliance with Section 1373: the Edward Byrne Memorial Justice Assistance
16 Grant (JAG), the Community Oriented Policing Services Grant (COPS), and the State Criminal
17 Alien Assistance Program (SCAAP). USDOJ is currently enforcing, for the first time, a condition
18 that requires recipients of JAG grants to certify compliance with Section 1373.¹⁶ The JAG
19 program, which awarded \$274.9 million in FY 2016, supports a range of programs including
20

21 ¹⁵ By its terms, Section 1373 says nothing about detention. It only prohibits state or local
22 governments from “prohibit[ing], or in any way restrict[ing], any government entity or official from
23 sending to, or receiving from, the Immigration and Naturalization Service information regarding the
24 citizenship or immigration status, lawful or unlawful, of any individual.” 8 U.S.C. § 1373(a); *see also*
25 *Steinle v. City & Cty. of San Francisco*, --- F. Supp. 3d ---, 2017 WL 67064, at *12 (N.D. Cal. 2017)
26 (“The statute, by its terms, governs only ‘information regarding the citizenship or immigration status,
27 lawful or unlawful, of any individual.’”); Brief of the United States as Amicus Curiae at 22-23,
28 *Massachusetts v. Lunn*, No. SJC-12276 (Mass. Mar. 27, 2017) (“The United States agrees that
immigration detainers are not mandatory”), *available at* <https://www.clearinghouse.net/chDocs/public/IM-MA-0010-0008.pdf>.

¹⁶ *See, e.g.*, Press Release, U.S. Dep’t of Justice, Department of Justice Sends Letter to Nine
Jurisdictions Requiring Proof of Compliance with 8 U.S.C. § 1373 (Apr. 21, 2017), *available at*
<https://www.justice.gov/opa/pr/department-justice-sends-letter-nine-jurisdictions-requiring-proof-compliance-8-usc-1373>.

1 programs for crime prevention and education, drug treatment and enforcement, and mental health
2 programs. *See* 42 U.S.C. § 3751(a)(1).¹⁷ For example, California’s Board of State and
3 Community Corrections uses much of the \$18.2 million it receives from JAG to fund community
4 policing initiatives, particularly for youth who are at-risk or are already involved in the juvenile
5 justice system.¹⁸ Such programs have no apparent relationship with immigration enforcement or
6 compliance with Section 1373. Similarly, DOJ intends to disburse over \$221.5 million in COPS
7 grants in FY 2017, and recently announced that it would require grant recipients to certify
8 compliance with Section 1373.¹⁹ That certification is required for all COPS grants, even though
9 most of the topic areas for grant consideration—such as providing training for law enforcement
10 involved in an active shooter situation, or advancing community policing projects—are unrelated
11 to immigration enforcement.²⁰ The third grant program identified by Defendants, SCAAP,
12 disbursed \$188.9 million in FY 2016, and is intended to “provide[] federal payments to states and
13 localities that incurred correctional officer salary costs for incarcerating undocumented criminal
14 aliens” under certain circumstances.²¹ But that program is slated to be eliminated in the
15 President’s 2018 budget.²²

16 As noted above, Defendants have also suggested that they may identify other DOJ grant
17 programs whose eligibility will be conditioned on compliance with Section 1373. (*See, e.g.*, 17-
18

19 ¹⁷ *See* Alexia Cooper, U.S. Dep’t of Justice, Technical Report: Justice Assistance Grant Program,
2016 1 (Sept. 2016), <https://www.bja.gov/jag/pdfs/JAG-Technical-Report.pdf>.

20 ¹⁸ *See* BSCC, Current JAG Grantee Program Descriptions (Feb. 3, 2017), [http://www.bscc.ca.gov/
21 downloads/2016%20JAG%20Project%20Descriptions%20-%20Rev%202.3.17.pdf](http://www.bscc.ca.gov/downloads/2016%20JAG%20Project%20Descriptions%20-%20Rev%202.3.17.pdf).

21 ¹⁹ *See, e.g.*, COPS, 2017 COPS Anti-Methamphetamine Program (CAMP) Application Guide 2
22 (May 2017), https://cops.usdoj.gov/pdf/2017AwardDocs/camp/App_Guide.pdf; Congressional Research
23 Service, FY2017 Appropriations for the Department of Justice Grant Programs 14 (May 30, 2017),
<https://fas.org/sgp/crs/misc/R44430.pdf>.

23 ²⁰ COPS, Funding Opportunities, Open 2017 Programs, [https://cops.usdoj.gov/
24 Default.asp?Item=65](https://cops.usdoj.gov/Default.asp?Item=65).

24 ²¹ *See* Office of Justice Programs, Bureau of Justice Assistance, State Criminal Alien Assistance
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FY-2016-Award-Details.xlsx](https://www.bja.gov/funding/SCAAP-FY-2016-Award-Details.xlsx).

27 ²² Michael Crowley, Brennan Center for Justice, How Does the Trump Budget Bode for Criminal
28 Justice Grants? (May 24, 2017), [https://www.brennancenter.org/blog/how-does-trump-budget-bode-
criminal-justice-grants](https://www.brennancenter.org/blog/how-does-trump-budget-bode-criminal-justice-grants) (“The Trump budget plans to eliminate \$210 million in funding for SCAAP”).

1 cv-574 Dkt. 115 at 19; *cf.* 17-cv-485 Dkt. 107 at 21 (asking the Court to clarify that defendants
2 are not enjoined from imposing the condition on additional grant programs.) That presents the
3 possibility that the grant condition could be extended to other programs with little or no nexus to
4 immigration enforcement, such as those administered under the Victims of Crime Act (“VOCA”),
5 through which DOJ allocated \$2.3 billion in formula grants to the States in FY 2016.²³ The
6 purpose of VOCA is to provide compensation to and services for individuals who are victims and
7 survivors of crime. *See* 42 U.S.C. §§ 10602(b) & 10603(b). California, which is the largest
8 recipient of funds under VOCA, mainly relies on these federal dollars to finance programs that
9 protect victims of child abuse, sexual assault, domestic violence, or other crimes—programs with
10 no clear linkage to immigration enforcement.²⁴

11 Defendants have implied that certain DHS grant programs will be subject to the grant
12 condition, but have not yet identified any such programs. They appear to argue that there is a
13 sufficient nexus between *any* funds allocated by DHS and immigration enforcement because DHS
14 is “the agency responsible for the admission and removal of non-citizens.” (17-cv-574 Dkt. 115
15 at 17.) But DHS has a range of responsibilities that extend far beyond immigration enforcement.
16 For example, the Federal Emergency Management Agency (“FEMA”) is the primary grant-maker
17 within DHS. For FY 2016, much of the nearly \$10 billion disbursed from FEMA’s Disaster
18 Relief Fund went to support state and local governments during major disasters and
19 emergencies.²⁵ FEMA also made available \$350.1 million in Emergency Management
20 Performance Grants in FY 2017 to assist state and local governments in developing a system of
21 emergency preparedness to protect against hazards including hurricanes, earthquakes, and

22 ²³ Office of Justice Programs, Office for Victims of Crime, OVC Formula Chart, 2016 Crime
23 Victims Fund Allocations (July 7, 2016), <https://ojp.gov/ovc/grants/Crime-Victims-Fund-Compensation-and-Assistance-Allocations-2016.pdf>.

24 ²⁴ California Legislative Analyst Office, The 2015-16 Budget: Improving State Programs for
25 Crime Victims 10-11 (Mar. 18, 2015), <http://www.lao.ca.gov/reports/2015/budget/crime-victims/crime-victims-031815.pdf>; California Governor’s Office of Emergency Services, Victim Services Programs,
26 <http://www.caloes.ca.gov/cal-oes-divisions/grants-management/criminal-justice-emergency-management-victim-services-grant-programs/victim-services-programs>.

27 ²⁵ Dep’t of Homeland Security, Disaster Relief Fund: Monthly Report as of September 30, 2016
28 (October 5, 2016), <https://www.fema.gov/media-library-data/1475780804740-3c63f4e0286ae2b775b7997ed84dfe25/September2016DisasterReliefFundReport.pdf>.

1 floods.²⁶ Even read in light of the Attorney General’s memo, the Executive Order raises the
 2 prospect that the federal government will extend the grant condition to these or other DHS grants
 3 that are entirely unrelated to immigration enforcement.

4 ***Plaintiffs have a viable claim that the Executive Order is coercive.*** This Court previously
 5 held that the grant condition in the Executive Order “is unconstitutionally coercive,” based on its
 6 reading of the Order as applying to all federal grants. (PI Order at 39.) Defendants now argue
 7 that Plaintiffs’ “‘coerciveness’ claim must fail, especially in light of the AG Memorandum.” (17-
 8 cv-00574 Dkt. 115, at 19.) Even reading the condition as limited to DOJ and DHS grant
 9 programs, however, it still potentially affects billions of dollars of annual grant funds. (*See supra*
 10 p. 11.) As amici can attest, the threat of losing that funding can have a profoundly coercive effect
 11 on the actions of state and local governments—especially when the funds support critical or
 12 urgent programs, such as disaster response efforts. Whether that coercive effect is sufficiently
 13 profound to offend the Spending Clause will need to be resolved over the course of this litigation,
 14 after Defendants provide more detailed and definitive information on the scope of the grant
 15 programs affected by the condition. *Cf. Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 681
 16 (2012) (“Whether federal spending legislation crosses the line from enticement to coercion is
 17 often difficult to determine . . .”). For present purposes, Plaintiffs have more than satisfied the
 18 requirements of Rule 12(b)(6) by advancing a plausible claim that President Trump’s Executive
 19 Order “cross[es] the ‘point at which pressure turns into compulsion, and ceases to be
 20 inducement.’” *Id.* at 676; *cf.* 17-cv-00574 Dkt. 36-2 at 4 (statement by President Trump that
 21 defunding “would be a weapon” to be used against “sanctuary cities”).

22 CONCLUSION

23 The Court should deny the motions to dismiss.

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 26 ²⁶ Dep’t of Homeland Security, Notice of Funding Opportunity (NOFO), Fiscal Year (FY) 2017
 27 Emergency Management Performance Grant (EMPG), [https://www.fema.
 28 _EMPEG_NOFO_Final508.pdf](https://www.fema.gov/media-library-data/1496322792825-14e183f5162625ef399f7b09aa0630ff/FY_2017_EMPEG_NOFO_Final508.pdf).

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CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2017, I electronically filed the above document with the Clerk of Court using CM/ECF which will send electronic notification of such filing to all registered counsel.

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