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17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA

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|----|----------------------------------|---|---------------------------------|
| 20 | CITY AND COUNTY OF |) | CASE NO. 3:25-CV-1350 (WHO) |
| | SAN FRANCISCO, <i>et al.</i> , |) | |
| 21 | |) | DEFENDANTS' OPPOSITION TO |
| | Plaintiffs, |) | PLAINTIFFS' MOTION FOR A |
| 22 | |) | PRELIMINARY INJUNCTION |
| | v. |) | |
| 23 | |) | |
| | DONALD J. TRUMP, <i>et al.</i> , |) | |
| 24 | |) | Hearing Date: April 23, 2025 |
| | |) | Time: 2:00 P.M. PST |
| 25 | |) | Honorable William H. Orrick III |
| | Defendants. |) | |
| 26 | |) | |

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8 90 Fed. Reg. 8443 (Jan. 20, 2025) (“E.O. 14,159”) *passim*

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1 **INTRODUCTION**

2 PLEASE TAKE NOTICE that Defendants, by and through their undersigned counsel, pursuant to
3 Local Civil Rule 7(4), submit this opposition to Plaintiffs’ Motion for Preliminary Injunction. This
4 opposition is based on the Memorandum of Points and Authorities; all pleadings and papers in this cause
5 of action; and such oral argument as may be presented at a hearing on April 23, 2025, at 2:00 P.M.

6 Plaintiffs seek “a preliminary injunction prohibiting Defendants from taking any action to
7 withhold, freeze, or condition federal funds based on (1) Section 17 of Executive Order 14,159; (2) Section
8 2(a)(ii) of Executive Order 14,218; or (3) the February 5, 2025 Memorandum from the Attorney General
9 entitled “Sanctuary Jurisdictions Directives[.]”¹ ECF No. 61 at 1² (“Pl. Br.”). But Plaintiffs’ claims do not
10 warrant the extraordinary relief of a preliminary injunction because their claims are both (1) premature
11 and thus not ripe for review and (2) fail to identify a cognizable injury for Article III standing purposes.
12 Additionally, Plaintiffs failed to show a likelihood of success on the merits of their claims because they
13 do not identify any constitutional violations or challenge a final agency action—as is required under the
14 Administrative Procedure Act (“APA”).

15 To be sure, Plaintiffs’ challenge seeks to curb the Executive Branch’s deliberative process
16 concerning federal funding decisions and internal review of state and local governments’ compliance with
17 federal law. But the challenged directives merely provide guidance to executive agencies to review and
18 evaluate. To date, the federal Government has not implemented any actions against the Plaintiffs,
19 stemming from the challenged directives. Therefore, because Plaintiffs’ claims are not ripe for review,
20 Plaintiffs lack Article III standing. Likewise, because Plaintiffs have failed to identify a final agency action
21 from which consequences have flowed, the Court cannot meaningfully evaluate the contours of Plaintiffs’
22 claims with respect to the merits or any putative injury in order to preliminarily enjoin these executive
23 directives. *See Pride Indus., Inc. v. Comm. for Purchase From People Who Are Blind or Severely*
24 *Disabled*, 420 F. Supp. 3d 1035, 1045 (E.D. Cal. 2019) (“Unless or until plaintiff identifies final agency

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27 ¹ Plaintiffs do not articulate that they are seeking injunctive relief on the basis of the Memorandum by
Emil Bove, dated January 21, 2025. Pl. Br. 1, 6, n.3.

28 ² Defendants herein refer to the original page numbers listed at the bottom center of Plaintiffs’ brief in
support of their preliminary injunction motion.

1 action that is subject to the court’s review under the APA, plaintiff is unable to demonstrate any potential
2 for success on the merits, let alone a likelihood of success.”).

3 Plaintiffs essentially concede that their request for a preliminary injunction is premature. They
4 neither point to an agency action that has taken effect against them, nor articulated that any funding has
5 been stopped. Instead, all their claims focus on speculation about conjectural and vague action that they
6 speculate *may* occur in the future. For example, they clarify that they are not seeking a preliminary
7 injunction with respect to Section 17 of Executive Order 14,159 at this time, characterizing the language
8 of the Order a “threat[.]” Pl. Br. 6, n.3. And Plaintiffs reserved their right to seek a future preliminary
9 injunction, “if appropriate” and “[i]f DOJ publishes a list of grants that will be conditioned on compliance
10 with 8 U.S.C. § 1373 or other immigration-related conditions, or begins imposing such conditions. . . .”
11 *Id.* at 8, n.4. Thus, any Order the Court issues would be unmoored from any tangible harm because
12 Plaintiffs have not demonstrated a clear likelihood of success on the merits or irreparable harm. Thus, the
13 Court should deny the preliminary injunction. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22
14 (2008) (“Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent
15 with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon
16 a clear showing that the plaintiff is entitled to such relief.”); *Connecticut v. Massachusetts*, 282 U.S. 660,
17 674 (1931) (“[i]njunctive relief will not be granted against something merely feared as liable to occur at
18 some indefinite time,” nor will such relief be granted for injuries that are merely “theoretical.”).

19 At a minimum, should the Court find any relief is warranted, it must limit relief to the parties
20 before the Court under binding precedent. *See California v. Azar*, 911 F.3d 558, 584 (9th Cir. 2018) (“The
21 scope of an injunction is ‘dependent as much on the equities of a given case as the substance of the legal
22 issues it presents,’ and courts must tailor the scope “to meet the exigencies of the particular case.”).

23 BACKGROUND

24 I. The Executive Orders and Agency Memoranda.

25 *Executive Order 14,159.* On January 20, 2025, the President signed Executive Order 14,159,
26 “Protecting the American People Against Invasion,” which instructed “[e]xecutive departments and
27 agencies (agencies)” to “employ all lawful means to ensure the faithful execution of the immigration laws
28 of the United States against all inadmissible and removable aliens.” Proclamation No. 14,159, 90 Fed.

1 Reg. 8443 (Jan. 20, 2025) (“E.O. 14,159”). Additionally, this Order instructed the Attorney General and
2 the Secretary of Homeland Security to “evaluate and undertake any lawful actions to ensure that so-called
3 ‘sanctuary jurisdictions,’ which seek to interfere with the lawful exercise of Federal law enforcement
4 operations, do not receive access to Federal funds.” *Id.* at § 17.

5 ***Memorandum from Emil Bove.*** On January 21, 2025, then Acting U.S. Deputy Attorney General
6 issued interim guidance regarding the implementation of these Executive Orders. Memorandum from Emil
7 Bove, Acting Deputy Attorney General to All Department Employees, re *Interim Policy Changes*
8 *Regarding Charging, Sentencing, And Immigration Enforcement* (Jan. 21, 2025) (“Bove Memo”). The
9 Bove Memo instructs that the “Supremacy Clause and other authorities require state and local actors to
10 comply with the Executive Branch’s immigration enforcement initiatives.” *Id.* It also explains that
11 “[f]ederal law prohibits state and local actors from resisting, obstructing, and otherwise failing to comply
12 with lawful immigration-related commands and requests pursuant to, for example, the President’s
13 extensive Article II authority with respect to foreign affairs and national security, the INA and the Alien
14 Enemies Act.” *Id.* Accordingly, the “U.S. Attorney’s Offices and litigating components of the Department
15 of Justice [(“DOJ”)] shall investigate incidents involving any such misconduct for potential prosecution,
16 including for obstructing federal functions in violation of . . . statutes, such as 8 U.S.C. §§ 1324, 1373.”
17 *Id.* at 3. In doing so, the Department of Justice’s Civil Division, in cooperation with the Sanctuary Cities
18 Enforcement Working Group, shall “identify state and local laws, policies, and activities that are
19 inconsistent with Executive Branch immigration initiatives.” *Id.* Where appropriate, legal action will be
20 taken to challenge such laws. *Id.*

21 ***Memorandum from Pamela Bondi.*** On February 5, 2025, U.S. Attorney General Pamela Bondi
22 issued “Sanctuary Jurisdiction Directives,” which stated that DOJ “will ensure that, consistent with law,
23 ‘sanctuary jurisdictions’ do not receive access to Federal funds from the Department.” Memorandum from
24 Pamela Bondi, Attorney General to All Department Employees, re *Sanctuary Jurisdiction Directives* (Feb.
25 5, 2025) (“Bondi Memo”). In addition, the memo details that DOJ will, *inter alia*, “exercise its own
26 authority to impose any conditions of funding that do not violate applicable constitutional or statutory
27 limitations.” *Id.* (citing *New York v. DOJ*, 951 F.3d 84, 111 (2d Cir. 2020)). The Bondi Memo defines
28 “sanctuary jurisdictions” as “state or local jurisdictions that refuse to comply with 8 U.S.C. § 1373, refuse

1 to certify compliance with § 1373, or willfully fail to comply with other applicable immigration laws.” *Id.*
2 at 2. Additionally, the Bondi Memo explains that “[c]onsistent with statutory authority and past practice,
3 the Department will require any jurisdiction that applies for certain Department grants to be compliant
4 with 8 U.S.C. § 1373(a)” and instructs that “the Associate Attorney General, in coordination with
5 components that provide Department grants, to report to the Attorney General the grants to which these
6 requirements apply.” The memo also suggests that “to the extent consistent with applicable statutes,
7 regulations, and terms, the Department may seek to tailor future grants to promote a lawful system of
8 immigration. . . .” and reiterated that DOJ will “seek to take any appropriate enforcement action where
9 state or local practices violate federal laws, regulations, or grant conditions.” *Id.* at 2-3 (citing violation of
10 federal laws such as 18 U.S.C. § 371 and 8 U.S.C. §§ 1324 and 1373) (emphasis added).

11 ***Executive Order 14,218.*** Finally, on February 19, 2025, the President signed Executive Order
12 14,218, “Ending Taxpayer Subsidization of Open Borders,” which instructed the head of each agency to
13 “ensure, consistent with applicable law, that Federal payments to States and localities do not, by design
14 or effect, facilitate the subsidization or promotion of illegal immigration, or abet so-called ‘sanctuary’
15 policies that seek to shield illegal aliens from deportation,” to prevent taxpayer resources from supporting
16 illegal immigration and to ensure taxpayer funded benefits do not go to illegal aliens. Proclamation No.
17 14,218, 90 Fed. Reg. 10581 § 2(ii) (Feb. 19, 2025) (E.O. 14,218).³

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20 ³ Defendants note that on March 27, 2025, Plaintiffs filed a Request for Judicial Notice of a February 19,
21 2025, Memorandum from the Secretary of the Department of Homeland Security Kristi Noem to “ALL
22 AGENCIES AND OFFICES” entitled “Restricting Grant Funding for Sanctuary Jurisdictions.” ECF Nos.
23 88, 89. Plaintiffs did not challenge this memo in their Amended Complaint or Motion for Preliminary
24 Injunction and it is improper for consideration here. *See Pac. Radiation Oncology v. Queen’s Med. Ctr.*,
25 810 F.3d 631, 637 (9th Cir. 2015) (explaining that movant “could not prove the likelihood of success
26 requirement of the preliminary injunction analysis because the [] violations alleged in the motion were not
27 contained within the actual complaint”); *accord Colvin v. Caruso*, 605 F.3d 282, 300 (6th Cir. 2010)
28 (explaining that plaintiff “had no grounds to seek an injunction pertaining to allegedly impermissible
conduct not mentioned in his original complaint”); *Little v. Jones*, 607 F.3d 1245, 1251 (10th Cir. 2010)
(similar). Regardless, the Noem Memo, like the Bondi Memo, instructs agency components to “review all
federal financial assistance awards” to determine what, if any, funds are going to sanctuary jurisdictions
and to provide a report on their compliance with the Noem Memo in 30 days. ECF No. 89 at 5. It instructs
components to consult with the General Counsel, the Director of Immigration and Customs Enforcement,
and the Commissioner of Customs and Border Protection or their designees. *Id.* There is no indication that
any action has been taken or that any funds have been affected. Nor is there any indication that Plaintiffs’
have suffered any injury as a result of the Noem Memo.

1 **II. The Executive Has Broad Discretion In The Enforcement Of Immigration Law And**
2 **Congress Intended For State/Local Governments To Work With The Federal Government**
3 **In Carrying Out Immigration Enforcement.**

4 The Federal Government “has broad, undoubted power over the subject of immigration and the
5 status of aliens.” *Arizona v. United States*, 567 U.S. 387, 394 (2012). Through the Immigration and
6 Nationality Act (“INA”), 8 U.S.C. § 1101 *et seq.*, Congress has granted the Executive Branch significant
7 authority to control the entry, movement, and other conduct of foreign nationals in the United States, and
8 to administer and enforce the immigration laws. *See Arizona Dream Act Coal. v. Brewer*, 855 F.3d 957,
9 967 (9th Cir. 2017) (“By necessity, the federal statutory and regulatory scheme, as well as federal case
10 law, vest the Executive with very broad discretion to determine enforcement priorities.”).

11 The INA contains several provisions that address the involvement of state and local authorities in
12 the enforcement of immigration law. For example, 8 U.S.C. § 1373, mandates the sharing of immigration
13 information by state and local actors to the Executive:

14 Notwithstanding any other provision of Federal, State, or local law, a Federal,
15 State, or local government entity or official may not prohibit, or in any way
16 restrict, any government entity or official from sending to, or receiving from,
17 [federal immigration authorities] information regarding the citizenship or
18 immigration status, lawful or unlawful, of any individual.

19 *Id.* § 1373(a). Section 1373 further proscribes any government entity from prohibiting or restricting
20 “maintaining,” or “sending,” or “exchanging” information regarding the immigration status of any
21 individual. 8 U.S.C. § 1373(b). Section 1373(c) provides, in turn, that federal immigration authorities
22 “shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain
23 the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose
24 authorized by law, by providing the requested verification or status information.” A like provision, 8
25 U.S.C. § 1644, entitled “Communication between State and local government agencies and Immigration
26 and Naturalization Service” provides:

27 Notwithstanding any other provision of Federal, State, or local law, no State or
28 local government entity may be prohibited, or in any way restricted, from sending
to or receiving from the Immigration and Naturalization Service information
regarding the immigration status, lawful or unlawful, of an alien in the United
States.

1 Thus, Congress clearly envisioned that local governments would cooperate with the federal
2 Government in the enforcement of immigration laws through information sharing. *See, e.g.*, 8 U.S.C.
3 §§ 1231(a)(2), (a)(4)(A), (a)(1)(B)(iii); 8 U.S.C. § 1226(c)(1), (2).

4 **III. This Litigation.**

5 On February 7, 2025, three cities and three counties filed a Complaint in this action. ECF No. 1
6 (“Compl.”). On February 27, 2025, Plaintiffs amended their Complaint, adding ten additional cities and
7 one county, seeking declaratory and injunctive relief. ECF No. 22 (“Am. Compl.”). In total, sixteen
8 localities bring suit against the United States. Am. Compl. ¶¶ 15–30. Thereafter, on March 17, 2025,
9 Plaintiffs filed a Motion for a Preliminary Injunction, ECF No. 61, accompanied by thirty-nine
10 declarations. ECF Nos. 61-2–82. Plaintiffs specifically request that the Court enter a preliminary
11 injunction “prohibiting Defendants from taking any action to withhold, freeze, or condition federal funds
12 based on (1) Section 17 of Executive Order 14,159; (2) Section 2(a)(ii) of Executive Order 14,218; or (3)
13 the February 5, 2025 Memorandum from the Attorney General entitled “Sanctuary Jurisdictions
14 Directives,” to jurisdictions on the basis that they have policies that limit (i) the honoring of civil
15 immigration detainer requests; (ii) cooperation with administrative warrants for purposes of immigration
16 enforcement; (iii) the sharing of information with federal immigration authorities other than immigration
17 or citizenship status; (iv) the use of local law enforcement to arrest or detain individuals solely for civil
18 immigration violations; or (v) the use of local resources to assist with civil immigration enforcement
19 activities.” Pl. Br. 1.

20 Plaintiffs highlight that they do *not* seek a preliminary injunction against Section 17 of E.O. 14,159
21 or of the provisions in the Bove Memo regarding DOJ seeking civil and criminal enforcement of State or
22 local laws that impede immigration enforcement, Pl. Br. 6, n.3, or of the portion of the Bondi Memo that
23 relates to DOJ “exercise[ing] its own authority to impose any conditions of funding that do not violate
24 applicable constitutional or statutory limitations,” *Id.* at 8, n.4.

25 **STANDARD OF REVIEW**

26 A preliminary injunction is “an extraordinary remedy that may only be awarded upon a clear
27 showing that the plaintiff is entitled to such relief.” *Winter v. NRDC*, 555 U.S. 7, 22 (2008). A “plaintiff
28 seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely

1 to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor,
2 and that an injunction is in the public interest.” *Id.* at 20 (citation omitted). Thus, all four factors must be
3 met for the Court to grant a preliminary injunction, *id.*, and “should not be granted unless the movant, *by*
4 *a clear showing*, carries the burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)
5 (emphasis in original). Importantly, likelihood of success on the merits is the most important *Winter* factor;
6 if a movant fails to meet this threshold inquiry, the court need not consider the other factors. *See Baird v.*
7 *Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023).

8 ARGUMENT

9 I. The Court Should Deny Plaintiffs Injunctive Relief.

10 The Court should deny Plaintiffs’ request for injunctive relief because they fail to satisfy the *Winter*
11 factors. Plaintiffs cannot establish a likelihood of success on the merits, including establishing Article III
12 jurisdiction. In particular, their claims are not currently ripe (and may never be so), because the Executive
13 has not yet made any funding decisions, and thus, neither the Court nor Defendants can evaluate the
14 contours of any putative injury. As Plaintiffs implicitly acknowledge, they could seek additional injunctive
15 relief *should* DOJ publish a list of grants that would be conditioned on compliance with 8 U.S.C. § 1373.
16 *Id.* at 8, n.4. But that has not yet happened. And for the same reasons, Plaintiffs lack standing because
17 they have not established a particularized or concrete injury. Where Plaintiffs seek prospective relief, the
18 Article III standing and ripeness inquiries significantly overlap. *Stavrianoudakis v. United States Fish &*
19 *Wildlife Serv.*, 108 F.4th 1128, 1139 (9th Cir. 2024) (“Constitutional ripeness overlaps with the injury-in-
20 fact element of Article III standing, and ‘therefore the inquiry is largely the same: whether the issues
21 presented are definite and concrete, not hypothetical or abstract.’”).

22 Plaintiffs further cannot demonstrate their likelihood of success on the merits because no final
23 agency action has taken place yet. The executive directives ask for an internal evaluation of funds,
24 indicating by their very language that there is more to come on the Executive’s decision to continue
25 funding certain localities. Plaintiffs also cannot demonstrate irreparable harm. Their motion is premised
26 on conjecture and speculation, not on actions that have come to pass. Such hypothesized injury falls well
27 short of the *likely* irreparable harm that *Winter* demands. 555 U.S. at [[520]]. A preliminary injunction is
28 not the vehicle to address whatever financial “uncertainty” Plaintiffs claim to be suffering by the ongoing,

1 internal evaluations by the Department—which may have not yet produced—and may *never* produce—a
2 penny of financial harm to Plaintiffs. Finally, the balance of public interest and equities militate against
3 granting Plaintiffs’ request because these directives seek to ensure compliance with the law. Thus, the
4 public interest lies in allowing the Executive Branch to pursue the necessary steps to implement these
5 executive directives.

6 **A. Plaintiffs Cannot Establish A Likelihood Of Success On The Merits.**

7 “Two related doctrines of justiciability—each originating in the case-or-controversy requirement
8 of Article III” prevent this Court from granting Plaintiffs’ motion. *Trump v. New York*, 592 U.S. 125, 131
9 (2020). Plaintiffs must demonstrate that their claims are “ripe,” meaning their claims are not dependent
10 on “contingent future events that may not occur as anticipated, or indeed may not occur at all.” *Id.*
11 (citations omitted). Likewise, Plaintiffs must first demonstrate standing, including “an injury that is
12 concrete, particularized, and imminent rather than conjectural or hypothetical.” *Id.* (citations omitted). But
13 Plaintiffs’ claims are “riddled with contingencies and speculation that impede judicial review.” *Id.* As
14 Plaintiffs’ claims are not yet ripe and they lack standing, the Court must deny their preliminary injunction
15 motion. Moreover, even if Plaintiffs’ claims were ripe and they had established standing, they cannot
16 establish a likelihood of success on their constitutional or APA claims.

17 **1. Plaintiffs’ Claims Are Not Ripe.**

18 A dispute is ripe “if it presents concrete legal issues, ... in actual cases, not abstractions.” *Mont.*
19 *Env’t Info. Ctr. v. Stone-Manning*, 766 F.3d 1184, 1188 (9th Cir. 2014) (quotation marks and alteration
20 omitted); see *Anderson v. Green*, 513 U.S. 557, 559 (1995) (per curiam) (“[R]ipeness is peculiarly a
21 question of timing[.]”). The ripeness doctrine “is intended to prevent ‘premature adjudication’ and judicial
22 entanglement in ‘abstract disagreements.’” *United States v. King Cnty.*, 122 F.4th 740, 753 (9th Cir. 2024).
23 Indeed, “a claim is not ripe for adjudication if it rests upon contingent future events that may not occur as
24 anticipated, or indeed may not occur at all.” *Bova v. City of Medford*, 564 F.3d 1093, 1096 (9th Cir. 2009).
25 Necessarily, if contingent events do not unfold, Plaintiffs will not have suffered the concrete and
26 particularized injury called for in *Winter*, 555 U.S. at 22. *Id.*

27 At this stage, Plaintiffs cannot demonstrate a likelihood of success on the merits because their
28 claims are palpably premature. Plaintiffs do not assert that any specific action, stemming from the

1 executive directives, has been taken against them *at all*. Instead, Plaintiffs are challenging guidance and
2 Executive Orders that call for an evaluation of possible, lawful, federal funding limitations. To be clear,
3 none of the challenged executive directives have impacted any federal funding provided to any of the
4 Plaintiffs. Indeed, Plaintiffs have not identified so much as a single cent of federal funding that they have
5 lost because of the challenged actions.

6 As a result, neither the Court nor Defendants can evaluate the contours of their claims, and no
7 Article III “case or controversy” exists right now.⁴ Plaintiffs’ allegations reduce to the theory that the mere
8 existence of Executive Orders and memoranda, providing guidance to executive agencies, somehow
9 already interferes with their state and local sovereignty. But Plaintiffs’ speculation about the possibility
10 of some future harm stemming from the application of this executive guidance is insufficient to establish
11 a case or controversy over which the Court may preside. *See City & Cnty. of San Francisco v. Garland*,
12 42 F.4th 1078, 1086-87 (9th Cir. 2022) (finding plaintiffs’ facial constitutional challenge to federal statute,
13 8 U.S.C. § 1373, as unripe because any future injury was then purely conjectural). This point is further
14 evidenced by Plaintiffs’ proffered declarations. For example, Dwight Dively, (ECF 61-4) testifies as the
15 Chief Operating Officer and Director of Performance, Strategy and Budget for Martin Luther King, Jr.
16 County. ECF 61-4 ¶ 1. But even Mr. Dively admits that “[t]he federal funding discussion in this declaration
17 is necessarily *preliminary*, and intentionally conservative.” *Id.* ¶ 13 (emphasis added). To that end, Mr.
18 Dively speculates what federal funding could be impacted, without ever going as far as to say that funding
19 cuts have actually happened. *Id.* ¶¶ 6, 14. Such conjecture certainly does not provide any basis for the

21 ⁴ For example, Plaintiffs indicate, as with past litigation, that the Byrne Justice Assistance Grant program
22 may be a candidate for budget decreases. *See, e.g.*, ECF Nos. 61-3, 61-15, 61-17. 34 U.S.C.
23 § 10153(a)(5)(D) *may* authorize funding conditioning through a required certification. The “statute makes
24 clear that it is the Attorney General who has authority to ‘require[] or request[] specific information,’ to
25 ensure a grant applicant’s intended compliance with all other applicable federal laws.” *State v. Dep’t of*
26 *Just.*, 951 F.3d 84, 105 (2d Cir. 2020). “Thus, Byrne Program formula funding can be denied to an
27 applicant that fails to provide the required § 10153(a)(5)(D) certification as to any ‘applicable Federal
28 law[],’ whether that law pertains to the particular grant sought or to the applicant seeking it.” *Id.* at 107.
The Second Circuit has confirmed as much, but the Ninth Circuit has not yet decided the issue. *San*
Francisco, 42 F.4th at 1090 (noting that this Circuit has not evaluated whether the federal Government
could condition funding on 34 U.S.C. § 10153(a)(5)(D)). This point makes pellucid that when assessing
the legality of executive spending decisions, the source of money is significant so that the parties can
assess what terms govern the fund distribution. *State v. Dep’t of Just.*, 951 F.3d at 103–04. That the
Government’s spending evaluation is in progress further undercuts that a preliminary injunction would be
appropriate now.

1 extraordinary remedy of a preliminary injunction. *San Francisco*, 42 F.4th at 1086-87. And “speculative
2 contingencies afford no basis for [a court] passing” on unripe questions. *Id.* Therefore, the Court should
3 deny Plaintiffs’ preliminary injunction because they never articulate an injury that is ripe for the Court’s
4 adjudication.

5 **2. Plaintiffs Lack Standing.**

6 Similarly, Plaintiffs cannot establish a likelihood of succeeding on the merits in this case because
7 they lack standing. Plaintiffs must establish an injury that is concrete, particularized, and imminent rather
8 than “conjectural or hypothetical,” *Spokeo v. Robins*, 578 U.S. 330, 339 (2016) (citations omitted), and
9 must do so for each claim and each form of relief they seek, *Daimler Chrysler v. Cuno*, 547 U.S. 332, 352
10 (2006). And for each type of relief requested, Plaintiffs must show that relief will in fact redress their
11 injury. *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 103 (1998). Plaintiffs ask the Court to issue
12 an injunction preventing Defendants from “taking any action to withhold, freeze, or condition federal
13 funds” based on the executive directives. Plaintiffs concede that injury is lacking here, when they clarify
14 that the Government has not yet “taken any action” and no funds have been impacted. Pl. Br. 1.

15 In an attempt to demonstrate injury at this early stage, Plaintiffs repeatedly rely upon previous
16 litigation that arose from DOJ requiring compliance with 8 U.S.C. § 1373 in order to receive the Byrne
17 JAG grant. Pl. Br. 2, 5-6, 19-20, 2, 23, 24. But, “past wrongs are ‘insufficient by themselves to grant
18 standing.’” *Wright v. SEIU*, 48 F.4th 1112, 1118 (9th Cir. 2022). Instead, Plaintiffs must show a likelihood
19 of future harm that is “certainly impending.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013).

20 Additionally, while the Executive Orders direct executive agencies to evaluate federal funding of
21 certain localities, the “when” and “how” of the Executive Branch implementing this general directive, and
22 how it will affect each Plaintiff is “no more than conjecture” at this time. *Trump*, 592 U.S. at 131 (citing
23 *Los Angeles v. Lyons*, 461 U.S. 95, 108 (1983)). Further, the Bondi Memo provides no more of a
24 “concrete” injury than the Orders, as it likewise directs that the Associate Attorney General to create a
25 report identifying grants that may be conditioned upon compliance with immigration laws. Bondi Memo
26 at 2. DOJ is permitted to internally evaluate its funding decisions, regardless of whether it publicly
27 announces that an evaluation process is happening. And as Plaintiffs concede, no list has been published,
28 and no conditions have been placed on specific grants for which Plaintiffs have applied. Pl. Br. 8, n.4.

1 Moreover, any future Executive action “will reflect both legal and practical constraints,” as any
2 action will be lawful, “making any prediction about future injury just that—a prediction.” *Trump*, 592
3 U.S. at 133. As it stands, no action has been taken, no funding has been impacted, and no injury has been
4 suffered. Because neither Defendants, nor Plaintiffs, nor the Court know which grants will be affected,
5 Plaintiffs cannot assert a concrete, particularized, imminent injury. Plaintiffs’ hypothetical injury—that
6 the federal Government may withhold funding or otherwise penalize them for being sanctuary locales—
7 is too speculative for this Court to adjudicate or redress at this time. *See San Francisco*, 42 F.4th at 1087.
8 Specifically, it is too early to meaningfully assess the merits of any specific alleged injury with respect to
9 Plaintiffs’ claims—which may never actually arise.

10 For example, Plaintiffs allege that the Executive Orders and the Attorney General’s Memo violate
11 “Separation of Powers” by decreasing spending without Congressional approval, and run aground of the
12 Spending Clause by, *inter alia*, refusing to disburse already awarded funds and imposing conditions on
13 funding that have no relation to the funds. Pl. Br. 14, 16–19. Missing from Plaintiffs’ equation, however,
14 is the identification of any funding that has been decreased on this basis.⁵ No meaningful analysis can
15 occur without these details. *See e.g., City and Cnty of San Francisco v. Trump*, 897 F.3d 1225, 1234 (9th
16 Cir. 2018) (examining whether Congress tied withholding of funding to compliance when assessing
17 whether an Executive Order violated Separation of Powers); *see also New York v. United States*, 505 U.S.
18 144, 167 (1992) (evaluating the relationship between the conditions and the purpose of the federal
19 spending to determine if such conditions violated Spending Clause); *South Dakota v. Dole*, 483 U.S. 203,
20 206–07 (1987) (same).

21 Similarly, Plaintiffs’ declarations, requesting immediate relief because of alleged financial
22 uncertainty in budget planning, are insufficient to establish a present, concrete injury. For example, Santa
23 Clara County Executive James R. Williams contends preliminary relief is appropriate now because Santa
24 Clara is in an “untenable financial situation, and decisions that must be made while awaiting a final
25 decision could cause the County to go into a financial crisis.” ECF No. 76 ¶61. But he asks the Court to
26

27 ⁵ Plaintiffs’ only reference to any conditioned grants is a notice by the Department of Housing and Urban
28 Development (“HUD”), which is not a named party, and Plaintiffs concede that the notice “appears to
impose conditions on grant renewals and new grants.” Pl. Br. 8, 9, n.5, 6, 11, 17.

1 halt DOJ’s funding *evaluation process*, as again no funding decisions have been made. Because no policies
2 have been implemented, the Court cannot craft an order with any further specificity—any relief would be
3 predictive and advisory, as opposed to remedial.

4 Likewise, Plaintiffs lack standing to bring hypothetical constitutional claims. Plaintiffs lodge a
5 Tenth Amendment claim alleging that compliance with federal law would amount to coercion. Pl. Br. 20–
6 21. However, critical to evaluating whether there is “coercion,” is what amount of funding would be
7 impacted. *State v. DOJ*, 951 F.3d 84, 116 (2d Cir. 2020) (analyzing what percentage of a local government
8 budget may be impacted by federal withholding to evaluate plaintiffs’ Tenth Amendment commandeering
9 claims). Therefore, neither the Court nor Defendants can meaningfully evaluate any such conditions or
10 fund types at this stage, because those decisions have not been made.

11 Moreover, because Plaintiffs cannot identify any funding decrease with specificity whatsoever, it
12 is impossible for the Court to determine the contours of Plaintiffs’ alleged claims and therefore it cannot
13 grant the preliminary injunction sought by Plaintiffs. For instance, in *State ex rel. Becerra v. Sessions*, this
14 Court declined to issue a preliminary injunction to require the federal government to fund a grant on the
15 basis that California was not complying with 8 U.S.C. § 1373 because the case would “benefit from further
16 development.” 284 F. Supp. 3d 1015, 1019, 1037 (N.D. Cal. 2018) (Orrick, J.). There, this Court
17 determined that “[g]iven the number of open questions concerning the federal government’s positions
18 concerning the provisions of the statutes in question, the relatively minimal injury its delay has caused
19 thus far, and the extraordinary nature of the relief sought,” that a preliminary injunction was inappropriate.
20 *Id.* at 1019. Here, since no funding decisions have been made, evaluating the merits of Plaintiffs’ claim is
21 untenable.

22 Finally, Plaintiffs’ claim that the directives violate the Fifth Amendment because they are too
23 vague and thus, do not provide them with any meaningful notice, Pl. Br. 19-20, underscores the premature
24 nature of Plaintiffs’ motion: these executive directives provide guidance for the agencies to begin their
25 evaluation of federal funding decisions to certain localities, and then assess how they may implement any
26 applicable funding changes. As already stated, such deliberative considerations have not imposed any
27 consequence on Plaintiffs to date. Therefore, as Plaintiffs cannot established standing due to a lack of a
28 concrete injury, the Court should not grant the extreme remedy of a preliminary injunction.

3. Plaintiffs Fail to Show a Violation of Separation of Powers.

Even if Plaintiffs' claims were ripe, they still fail to establish a likelihood of success on the merits of their claim that the EOs and Bondi Memo violate separation of powers.⁶ Pl. Br. 14-16. Article I of the Constitution confers on Congress the authority to "lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States." U.S. CONST. Art. I, § 8, cl. 1. As this Court has said, Congress may, "[i]ncident to" its spending power, "attach conditions on the receipt of federal funds," *Cty. of Santa Clara v. Trump*, No. 17-CV-00485-WHO, 2017 WL 1459081, at *21 (N.D. Cal. Apr. 25, 2017) (quoting *Dole*, 483 U.S. at 206), and "Congress can delegate some discretion to the President to decide how to spend appropriated funds" so long as "any delegation and discretion is cabined by [relevant] constitutional boundaries." *Id.* at *21.

Contrary to Plaintiffs' allegations, the executive directives do not attempt to withhold funds or unilaterally impose conditions on federal funds without Congressional authorization. Pl. Br. 14-15. As explained *supra*, Section 17 of EO 14,159 simply calls for an evaluation and undertaking of any *lawful actions* to ensure that "sanctuary" jurisdictions do not receive access to Federal funds. Section 2(b) of EO 14,218 asks certain federal agencies to identify sources of funding for illegal aliens and recommend additional agency action to align federal spending with the Order. Relatedly, the Bondi Memo makes clear that all action will be done "consistent with law" and "applicable statutes, regulations, court orders, and terms." Bondi Memo at 1. Regarding any grants, the Memo confirms that DOJ will require compliance with 8 U.S.C. § 1373(a) as a condition of grant eligibility only where "consistent with statutory authority and past practice." *Id.* at 2. Further, DOJ may seek to tailor future grants to promote a lawful system of immigration. *Id.* Nothing in this language imposes grant conditions that would violate any applicable constitutional or statutory limitation.

⁶ A party challenging the facial constitutionality of an Executive Order must establish that the Order would be unconstitutional in all its applications. *See United States v. Salerno*, 481 U.S. 739, 745 (1987) (facial challenge must establish that "no set of circumstances exists under which [the enactment] would be valid"); *see also Am. Fed'n of State, Cty. & Mun. Employees v. Scott*, 717 F.3d 851 (7th Cir. 2013); *NTEU v. Bush*, 891 F.2d 99, 101 (5th Cir. 1989). That standard is necessarily impossible to meet in relation to Plaintiffs' Separation of Powers claim, since Congress frequently authorizes the Executive to impose discretionary conditions on the receipt of federal grants.

1 Moreover, even if DOJ poses conditions on future grants, Plaintiffs cannot establish any concern
2 over the separation of powers doctrine. In fact, Congress has frequently authorized agencies administering
3 certain grant programs to impose discretionary conditions on their receipt. Those statutory authorizations
4 have taken a variety of forms, including authorizing an agency to ensure that a grant recipient complies
5 “with all provisions of . . . applicable Federal laws,” *see* 42 U.S.C. § 3752(a)(5)(D) (governing DOJ grant
6 program), or allowing an agency to “plac[e] special conditions” on certain grants under appropriate
7 circumstances. *See id.* § 3712(a). Pursuant to these types of statutory authorizations, DOJ has already
8 conditioned eligibility for participation in three DOJ-administered grant programs on the applicant’s
9 certification of compliance with Section 1373. *See generally City & Cnty. of San Francisco v. Trump*, No.
10 3:17-cv-00485 (N.D. Cal. Apr. 14, 2017) (identifying the three programs); *Cty. of Santa Clara*, 2017 WL
11 1459081, at *4 (same). Therefore, Plaintiffs cannot state a viable claim for violation of separation of
12 powers.

13 **4. Plaintiffs Fail to Show a Violation of the Spending Clause.**

14 Plaintiffs similarly cannot show a likelihood of success on their claim that the EOs and Memo
15 violate the Spending Clause at U.S. CONST. art. I, § 8, cl. 1. Pl. Br. 16-18. As the Supreme Court has held,
16 “Congress may attach conditions on the receipt of federal funds, and has repeatedly employed the power
17 to further broad policy objectives by conditioning receipt of federal moneys upon compliance by the
18 recipient with federal statutory and administrative directives.” *South Dakota v. Dole*, 483 U.S. 203, 206
19 (1987) (quotation marks omitted). The *Dole* Court outlined certain limitations that “the exercise of the
20 spending power must be in pursuit of ‘the general welfare’” and conditions on the receipt of federal funds
21 must be stated “unambiguously” so that recipients can “exercise their choice knowingly, cognizant of the
22 consequences of their participation.” *Id.* at 207.

23 Plaintiffs erroneously claim that the EOs “purport to impose” conditions that local jurisdictions
24 were unaware of and could not have voluntarily accepted and that the Memo “imposes retroactive
25 conditions on already-awarded funds.” Pl. Br. 17. Undermining their own argument, Plaintiffs note that
26 the EOs do not identify which Federal funds and payments may be at issue. *Id.* And as Defendants outline
27 in ripeness *supra*, no conditions have been imposed and the EOs merely call for a deliberation and
28 evaluation of the federal funding. Indeed, they do not impose any retroactive conditions. Further, the

1 Bondi Memo language discusses conditions on future grants, *i.e.*, “the Department will require any
2 jurisdiction that *applies* for certain Department grants to be compliant with 8 U.S.C. § 1373(a)” and “the
3 Department *may seek* to tailor *future* grants. . . .” *Id.* (emphasis added). Necessarily, therefore, potential
4 grantees will be able to exercise their choice knowingly, cognizant of the consequences of their
5 participation in grant programs that include any such conditions. *Dole*, 483 U.S. at 207. Finally, Plaintiffs’
6 legal recitation at Paragraph 2—that conditions placed on Congressional spending must have some nexus
7 to with the purpose of the implicated funds”—lacks any argument or explanation as to how they believe
8 the EOs or Memo are incompatible with such a condition. Pl. Br. 17-18; *see also*, *Mayweathers v.*
9 *Newland*, 314 F.3d 1062, 1067 (9th Cir. 2002) (suggesting that the legislation *might* be illegitimate without
10 demonstrating a nexus between the conditions and a specified national interest, is a far cry from imposing
11 an exacting standard for relatedness). Therefore, Plaintiffs cannot demonstrate a likelihood of success on
12 the merits of any spending clause claim.

13 **5. Plaintiffs Fail to Articulate a Due Process Violation.**

14 “To allege a procedural due process claim on the basis of a vague regulation, [Plaintiffs] must first
15 allege a deprivation of a constitutionally protected interest, and second, allege that the deprivation was
16 achieved by means of constitutionally vague policy or procedure.” *Williams v. Vidmar*, 367 F. Supp. 2d
17 1265, 1274 (N.D. Cal. 2005) (citing *Zinerman v. Burch*, 494 U.S. 113, 125 (1990)). Plaintiffs claim that
18 the directives violate the Fifth Amendment because they are too vague and that certain terms lack
19 definitions, thus depriving Plaintiffs of notice of how the executive directives may be enforced. Pl. Br. 19-
20 20. As already stated, such considerations have not imposed any consequence on Plaintiffs to date.
21 Moreover, Plaintiffs do not articulate a policy or procedure causing any alleged deprivation because there
22 is no final agency action, as explained *supra*. The executive directives call for an *evaluation* of federal
23 funding. These directives indicate more information and implementation guidance will be forthcoming.
24 Even Plaintiffs themselves concede that they base their preliminary injunction on financial uncertainty,
25 not on the basis that funds have actually been diminished. In that same vein, because Plaintiffs have not
26 articulated a concrete injury, Defendants cannot evaluate whether any “deprivation of a constitutionally
27 protected interest” has occurred. Finally, the complained about directives do contain various explanations
28

1 for sanctuary terms. *See* E.O. 14,159 § 17 (explaining “sanctuary jurisdictions”); E.O. 14,218 (explaining
2 “sanctuary policies”); Bondi memo (same for sanctuary jurisdictions”).

3 **6. Plaintiffs Fail to Articulate a Violation of the Tenth Amendment.**

4 Plaintiffs fail to show a likelihood of success on the merits with respect to their claim that the
5 Executive directives violate the Tenth Amendment. The Tenth Amendment embodies the principle that
6 the “pre-existing sovereign States” (and their subdivisions) retain their sovereignty under the Constitution
7 and that the Federal Government may not encroach upon that sovereignty. *See U.S. Term Limits, Inc. v.*
8 *Thornton*, 514 U.S. 779, 801 (1995); *New York v. United States*, 505 U.S. 144, 156 (1992). Plaintiffs claim
9 that by “restricting funding and directing enforcement against Plaintiffs for limiting cooperation with
10 federal immigration authorities,” Executive Order 14,159 and the Bondi Memo “seek to commandeer
11 Plaintiffs in furtherance of a federal regulatory program.” ECF No. 1 at ¶ 180; *see also*, Pl. Br. 20-21.
12 Because Plaintiffs may decline to apply for the specific DOJ or DHS grants to which any offensive
13 conditions are attached, there is no commandeering of their sovereignty. *See Env'tl. Def. Ctr., Inc. v. EPA*,
14 344 F.3d 832, 847 (9th Cir. 2003) (“[A]s long as the alternative to implementing a federal regulatory
15 program does not offend the Constitution’s guarantees of federalism, the fact that the alternative is
16 difficult, expensive or otherwise unappealing is insufficient to establish a Tenth Amendment violation.”)
17 (internal quotation marks omitted). Further, the Executive directives speak to the agencies exercising
18 *existing* statutory and constitutional authority. *Cf. United States v. Pickard*, 100 F. Supp. 3d 981, 1011
19 (E.D. Cal. 2015) (rejecting a Tenth Amendment challenge to a statement of agency policy on the grounds
20 that a policy statement “is a very different creature from a statute” in that it does not bind States as would
21 a statute).

22 This Court has no jurisdiction to review yet-to-be-filed enforcement actions arising from the
23 executive directives against Plaintiffs. Nor could Plaintiffs allege that the mere possibility of enforcement
24 action has inflicted any cognizable injury. Indeed, there is always a possibility that the Federal
25 Government may sue a State or local government alleging that the defendant’s laws or policies are
26 constitutionally preempted. *See Arizona v. United States*, 567 U.S. 387, 132 S. Ct. 2492 (2012); *United*
27 *States v. South Carolina*, 720 F.3d 518 (4th Cir. 2013); *United States v. Alabama*, 691 F.3d 1269 (11th
28 Cir. 2012). This authority exists entirely independent of the Executive Order. *Id.* Further, if such action

1 were to occur, the affected jurisdiction would have an opportunity at that time to challenge its propriety
2 and merits.

3 **7. Plaintiffs Fail to Articulate a Violation of the APA.**

4 Presidential actions are not agency actions that are reviewable under the APA, and so Plaintiffs
5 cannot challenge the EOs on that basis and the Court may not issue an injunction as to the President. *See,*
6 *e.g., Franklin v. Massachusetts*, 505 U.S. 788, 801 (1992). As to other Defendants, Plaintiffs have not
7 identified any final agency action for this Court to review. *See* 5 U.S.C. § 704 (APA requires that the
8 agency action is final). Agency action is final only if two conditions are met: (1) the agency action marks
9 “the consummation of the agency’s decision-making process”—it must not be of a merely tentative or
10 interlocutory nature, and (2) the “action must be one by which rights or obligations have been determined,
11 or from which legal consequences flow.” *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (citations
12 omitted). *Both* conditions must be satisfied for agency action to be considered “final” under the APA. *Id.*
13 at 175.

14 Here, Plaintiffs’ APA claim fails because the internal DOJ memos directing the Executive Branch
15 to conduct an internal *evaluation* of federal funding decisions and an internal review of state and local
16 governments’ compliance with federal law is not “final action” under the APA. *Ukiah Valley Med. Ctr. v.*
17 *Fed. Trade Comm’n*, 911 F.2d 261, 264 (9th Cir. 1990) (“The general rule is that administrative orders
18 are not final and reviewable ‘unless and until they impose an obligation, deny a right, or fix some legal
19 relationship as a consummation of the administrative process.’”) (citations omitted). Courts have
20 interpreted the “finality” element with an eye toward pragmatism. *See FTC v. Standard Oil Co.*, 449 U.S.
21 232, 239 (1980) (citing *Abbott Laboratories v. Gardner*, 387 U.S. 136, 149 (1967)). To determine whether
22 an action is “final,” courts “look to whether the action ‘amounts to a definitive statement of the agency’s
23 position’ or ‘has a direct and immediate effect on the day-to-day operations’ of the subject party, or if
24 ‘immediate compliance [with the terms] is expected.’” *Oregon Natural Desert Ass’n. v. U.S. Forest*
25 *Service*, 465 F.3d 977, 982 (9th Cir. 2006) (citation omitted).

26 In *Standard Oil*, the Supreme Court held that the Federal Trade Commission’s issuance of a
27 complaint averring there was “reason to believe” that a party was in violation of the Federal Trade
28 Commission Act was insufficient to satisfy the finality requirement. *Standard Oil*, 449 U.S. at 239, 243.

1 The Supreme Court explained that “reason to believe” was merely a determination that adjudicatory
2 proceedings would commence, and the actual issuance of the complaint was sufficient only to initiate the
3 proceedings. *See id.* at 242. The complaint issued in that case had no effect on the daily operations of
4 defendant’s business, nor did it have any legal force compelling a party to do something or refrain from
5 doing something. *See id;* *see also Franklin*, 505 U.S. at 798 (finding no final agency action where “the
6 Secretary’s report to the President carries no direct consequences for the reapportionment, it serves more
7 like a tentative recommendation than a final and binding determination.”); *New Jersey Hosp. Ass’n. v.*
8 *United States*, 23 F. Supp. 2d 497, 499 (D.N.J. 1998) (finding no final agency action where settlement
9 letters to hospitals “merely indicate a belief by the DOJ that plaintiff’s member hospitals may have
10 violated” the law); *See Fairbanks N. Star Borough v. U.S. Army Corps of Eng’rs*, 543 F.3d 586, 593–94
11 (9th Cir. 2008) (agency determination that certain property contains wetlands subject to the Clean Water
12 Act was not reviewable final action because it did not determine rights or obligations from which legal
13 consequences will flow).

14 Plaintiffs do not challenge any final agency action in this case. In fact, Plaintiffs acknowledge that
15 DOJ has not taken any action to impose conditions on grants or require any compliance with immigration-
16 related laws. Pl. Br. 8, n.4. Rather, Plaintiffs seek to prohibit DOJ from taking “anticipate[d]” future action
17 that could impact their federal funding. Pl Br. 10. For example, the Bondi Memo merely indicates that the
18 “Department will require any jurisdiction that applies for certain Department grants to be compliant with
19 8 U.S.C. § 1373(a)”, Bondi Memo at 2, and that “DOJ shall investigate incidents involving” jurisdictions
20 that “impede, obstruct, or otherwise fail to comply with lawful immigration-related directives” for
21 potential prosecution, *id.* at 3. These are not “definitive statement[s] of position”, but rather “a threshold
22 determination that further inquiry is warranted....” *See Standard Oil*, 449 U.S. at 241.⁷

23
24 ⁷ *See also, Prutehi Litekyan: Save Ritidian v. United States Dep’t of Airforce*, 128 F.4th 1089, 1132 (9th
25 Cir. 2025) (J. Van Dyke dissenting), citing *Cherry v. U.S. Dep’t of Agr.*, 13 F. App’x 886, 890–91 (10th
26 Cir. 2001) (an agency letter furthering a decision made long ago does not count as final); *Veldhoen v. U.S.*
27 *Coast Guard*, 35 F.3d 222, 225 (5th Cir. 1994) (agency’s initiation of an investigation does not qualify as
28 final agency action); *Golden & Zimmermann, LLC v. Domenech*, 599 F.3d 426, 433 (4th Cir. 2010)
(agency’s FAQ explaining law and regulations was not final agency action because, *inter alia*, “if the
[agency] had never published the Reference Guide and FAQ[], the [agency] would still have had the
authority to prosecute licenses for engaging in the conduct described in FAQ[] because legal consequences
do not emanate from FAQ[] but from the [statute] and its implementing regulations.”); *Acquest Wehrle*
LLC v. U.S., 567 F. Supp. 2d 402, 410 (W.D.N.Y. 2008) (no final agency action when “the legal rights

1 Indeed, the cases finding final agency action have involved some concrete act beyond the
2 announcement of a policy or plan. *See, e.g., State ex rel Becerra v. Sessions*, 284 F. Supp. 3d 1015 (N.D.
3 Cal. 2018) (finding final agency action when funding was in fact dependent on the certification condition
4 on the Byrne JAG program); *City of Philadelphia v. Sessions*, 280 F. Supp. 3d 579 (E.D. Penn. 2017)
5 (finding final agency action when the Attorney General conditioned funding Byrne JAG on applicants
6 certifying compliance with 8 U.S.C. § 1373). The key in these cases was *actual implementation*, which
7 simply has not occurred here.

8 The DOJ memos generally describe future efforts to ensure that state and local authorities are
9 complying with federal law or to put state and local authorities on notice that changes are coming. They
10 do not identify or direct immediate denial of Plaintiffs’ specific federal grants. In fact, Plaintiffs concede
11 that DOJ has not yet published a list of grants that will be conditioned upon compliance. Pl. Br. 8, n.4.
12 Nor do the memos’ instructions to identify and review state and local laws or policies have an immediate
13 impact on Plaintiffs’ daily operations. These entities have not been denied any grants, nor have they been
14 subject to criminal or civil penalties pursuant to the memos. The DOJ will need to undertake further review
15 and investigation before it can take any agency action. In other words, the agency’s decision-making
16 process is ongoing—not consummated—and there is no final agency action here.

17 Likewise, the “agency action” requirement articulated in *Bennett* precludes “broad programmatic
18 attacks” on an agency’s administration of a program. *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64
19 (2004); Plaintiffs’ claims against the executive cannot circumvent the programmatic challenge limitations
20 set forth in *Lujan v. National Wildlife Fed’n*, 497 U.S. 871, 882 (1990). In *Lujan*, the Supreme Court
21 announced a prohibition on programmatic challenges and determined that the challenged “program” was
22 “not an agency action” within the meaning of § 702, much less a “final agency action” under § 704. *Id.* In
23 reaching this conclusion, the Court emphasized that § 702 only allows for review of “identifiable agency
24 action,” and that the APA requires challenge to agency action on a “case-by-case” basis, rather than
25 pursuing “wholesale improvement of [an agency] program by court decree.” *Id.* at 891-894. The Court’s
26 prohibition on programmatic challenges was motivated by institutional limits on Article III courts, which

27 _____
28 and obligations of the parties were precisely the same the day after the jurisdictional determination was
issued as they were the day before”).

1 constrain their review to narrow and concrete actual controversies. *See id.* at 891–94; *see also Norton*,
2 542 U.S. at 64 (“The limitation to discrete agency action precludes the kind of broad, programmatic attack
3 we rejected in *Lujan*[.]”). Thus, absent a discrete and final agency action, federal courts cannot review an
4 on-going program or policy. *See, Franklin*, 505 U.S. at 797 (“The core question is whether the agency has
5 completed its decision-making process, and whether the result of that process is one that will directly
6 affect the parties.”). Here, although Plaintiffs challenge DOJ’s evaluation of funding, and no funding has
7 yet been impacted, their suit cuts at the heart of anticipated, programmatic changes, which are squarely
8 precluded from APA review. *Whitewater Draw Nat. Res. Conservation Dist. v. Mayorkas*, 5 F.4th 997,
9 1011 (9th Cir. 2021) (“The Supreme Court’s decision in *National Wildlife* squarely forecloses Plaintiffs’
10 request for judicial review of these seven ‘programs.’”). Therefore, Plaintiffs have failed to establish a
11 likelihood of success on the merits of their APA claim, and the Court should decline their request for a
12 preliminary injunction.

13 Even assuming this Court were to find that the agency memos constitute final agency action,
14 Plaintiffs fail to establish a likelihood of success on the merits with respect to their claims that the Bondi
15 memo exceeds statutory authority and or is contrary to fundamental constitutional principle or an abuse
16 of discretion. Pl. Br. 21. The Bondi Memo relies upon the Attorney General’s authority to impose any
17 conditions of funding that do not violate applicable constitutional or statutory limitations. Bondi Memo at
18 1, citing *New York v. Dep’t of Justice*, 951 F.3d 84, 111 (2d Cir. 2020) (“Because 8 U.S.C. § 1373 is a law
19 applicable to all plaintiffs in this action, the Attorney General was authorized to impose the challenged
20 Certification Condition and did not violate either the APA or separation of powers by doing so.”). So,
21 from the outset, the Memo clearly states that any conditions applied to federal funds will be in accordance
22 with statutory and constitutional law. With respect to constitutional limitations, the Bondi memo comports
23 with the Separation of Powers Clause, the Spending Clause, and the Fifth and Tenth Amendments. *See*,
24 *supra*. With respect to statutory limitations, Plaintiffs fail to articulate which statutory provision(s) the
25 Bondi Memo violates, nor could they at this stage because the degree of agency discretion in implementing
26 grant programs varies depending on the type of grant program and the terms of the authorizing legislation.
27 For instance, 42 U.S.C. § 3752(a)(5)(D), authorizes an agency to ensure that a grant recipient complies
28 “with all provisions of . . . applicable Federal laws,” and Section 3712(a), allows an agency to “plac[e]

1 special conditions” on certain grants under appropriate circumstances. Additionally, the Bondi Memo
2 states that “to the extent consistent with applicable statutes, regulations, and terms, the Department may
3 seek to tailor future grants to promote a lawful system of immigration.” Bondi Memo at 2. Thus, Attorney
4 General Bondi has made it clear that any conditions placed must be in accordance with the law. And the
5 Bondi Memo cites compliance with 8 U.S.C. § 1373 and case law holding that the Attorney General has
6 authority under 8 U.S.C. § 10153(a)(5)(D) to condition grants on compliance with § 1373. As for
7 Plaintiffs’ claim that the Bondi Memo failed to consider the breadth of funding affected or their reliance
8 interests, assuming the grants are conditioned upon compliance with § 1373, such considerations are
9 unwarranted when DOJ is not statutorily authorized to excuse a grant applicant from certifying its
10 willingness to comply with an applicable federal law. *State*, 951 F.3d at 122 (citing 34 U.S.C. §
11 10153(a)(5)(D) and 8 U.S.C. § 1373). Thus, without more, Plaintiffs fail to establish a likelihood of
12 success on the merits of their APA claim.

13 **B. Plaintiffs Cannot Establish Irreparable Harm To Warrant A Preliminary**
14 **Injunction.**

15 Plaintiffs cannot establish irreparable harm because they have failed to identity a concrete and
16 particularized injury. “The threat of irreparable harm must . . . be ‘immediate.’” *Arcsoft, Inc. v. Cyberlink*
17 *Corp.*, 153 F. Supp. 3d 1057, 1071 (N.D. Cal. 2015) (Orrick, J.) (quoting *Caribbean Marine Servs. Co. v.*
18 *Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988)). “[P]laintiffs seeking preliminary relief [must] demonstrate
19 that irreparable injury is *likely* in the absence of an injunction,’ not merely that it is possible.” *Arc of Cal.*
20 *v. Douglas*, 757 F.3d 975, 990 (9th Cir. 2014) (emphasis in original) (quoting *Winter*, 555 U.S. at
21 22)). That injury, moreover, must be “real and concrete” rather than merely “abstract.” *Los Angeles Mem’l*
22 *Coliseum Comm’n v. NFL*, 634 F.2d 1197, 1201 (9th Cir. 1980).

23 Plaintiffs have not established the threat of “immediate” and “concrete” irreparable harm
24 necessary to secure a preliminary injunction because they premise their injury on speculative future loss
25 of funds. Indeed, Plaintiffs have failed to identify the loss of *any* funds—or the future loss—traceable to
26 any action that the Executive has taken. Not even a penny. Here, Plaintiffs premise their injury on the
27 future loss of funds if they are deemed sanctuary jurisdictions because of their refusal to comply with
28 federal law. Pl. Br. 10–13. But this theory is purely conjectural. Although Plaintiffs articulate—at length—

1 the consequences that will flow from any alleged action from the Executive, funding has not yet been
2 impacted, and thus, neither the Court nor Defendants can evaluate the parameters of any so-called injury.
3 Thus, any alleged injury is not “irreparable,” for the purpose of a preliminary injunction. And Plaintiffs’
4 assertion that these executive funding decisions would eliminate “all” of their federal funding, Pl. Br. 10–
5 12, is purely speculative. Thus, Plaintiffs overstate their alleged injury because no funding has been
6 impacted yet. Neither the Court, nor Defendants for that matter, evaluate the parameters of any alleged
7 injury. *See Sampson v. Murray*, 415 U.S. 61, 74 (1974) (“Until administrative action has become final, no
8 court is in a position to say that such action did or did not conform to applicable regulations.”). And, for
9 similar reasons, Plaintiffs have not remotely established that they are *likely* to suffer irreparable harm
10 without issuance of a preliminary injunction as *Winter* mandates. 555 U.S. at 20.

11 As these directives have not yet been implemented, a series of future actions must occur before
12 they or 8 U.S.C. § 1373 could have any concrete effect on Plaintiffs. Among other things, (1) the Attorney
13 General and the Secretary of Homeland Security must identify any state or local governments that
14 constitute “sanctuary jurisdictions” and make formal designations to that effect; (2) evaluate what federal
15 funding is afforded to these entities; (3) “consistent with law,” the Secretary and the Attorney General
16 must then determine which funding may be withheld based on the jurisdiction’s non-compliance with
17 federal law; (4) the Secretary and the Attorney General must determine how to implement those actions
18 and (5) the Attorney General must determine what appropriate actions she can take in relation to any
19 violation of Section 1373 or any statute, policy, or practice that otherwise hinders the enforcement of
20 federal law. These directives thus explicitly contemplate that some time will be required for
21 implementation. As such, Plaintiffs do not allege that the Federal Government has taken any of these
22 actions. They, in fact, concede as much, by clarifying that they are not moving for a preliminary injunction
23 on civil and criminal enforcement threats, Pl. Br. 6, n.3, and reserved the right to seek additional injunctive
24 relief should DOJ publish a list of grants that would be conditioned on compliance with 8 U.S.C. § 1373.
25 *Id.* at 8, n.4. That is because Plaintiffs do not allege that they have applied for funds and received a denial,
26 because no funding decisions have been made. *Id.* at 8, n.5. This litigation is dissimilar from past cases,
27 where Plaintiffs have lodged like claims against the federal Government, and articulated the impact of
28 federal funding decisions with specificity. *State ex rel. Becerra v. Sessions*, 284 F. Supp. 3d 1015, 1019

1 (N.D. Cal. 2018) (Orrick, J.) (evaluating whether the federal government was required to fund a one-
2 million-dollar grant from the Byrne JAG Program and the Office of Community Oriented Policing
3 Services.). These facts are critical for the Court to decide whether a preliminary injunction is appropriate
4 *right now*. *Id.* at 1036 (declining to grant Plaintiffs’ preliminary injunction because it was premature).

5 As this litigation is currently postured, none of those actions have occurred. And Plaintiffs’
6 speculation about what funding may be impacted, Pl. Br. 12–13, in what amount, *id.* at 10–11, and in what
7 jurisdiction, *id.* at 17, confirms that the uncertainty of future harm does not justify preliminary injunctive
8 relief now. *See Winter*, 555 U.S. at 22; *see also Connecticut v. Massachusetts*, 282 U.S. 660, 674 (1931)
9 (An injunction “will not be granted against something merely feared as liable to occur at some indefinite
10 time in the future.”). Indeed, Plaintiffs’ contention that the terms of the directive are ambiguous conflict
11 with their certainty that they will in fact be “injured” “irreparably” once the federal Government
12 implements their terms. *Compare* Pl. Br. 16–19 *with id.* at 22–25. This, too, undermines that granting
13 Plaintiffs’ request for a preliminary injunction is appropriate at this juncture.

14 **C. The Public Interest and the Balance of Equities Militate Against the Injunction.**

15 Lastly, a party seeking a preliminary injunction must “establish . . . that the balance of equities tips
16 in his favor, and that an injunction is in the public interest.” *Winter*, 555 U.S. at 20. Where the Federal
17 Government is the defendant, these factors “merge” into one. *Nken v. Holder*, 556 U.S. 418, 435 (2009).
18 The most pertinent and concretely expressed public interest in relation to this case is contained in 8 U.S.C.
19 § 1373, which expresses the public interest in supporting the enforcement of federal immigration law. *See*
20 *Arizona*, 567 U.S. at 411–412 (“Consultation between federal and state officials is an important feature of
21 the immigration system. Congress has made clear that no formal agreement or special training needs to be
22 in place for state officers to “communicate with the [Federal Government] regarding the immigration
23 status of any individual, including reporting knowledge that a particular alien is not lawfully present in
24 the United States.”) (citing 8 U.S.C. §§ 1357(g)(10)(A), 1373(c)). These directives are meant simply to
25 ensure compliance with the federal statutes. Therefore, the public interest lies in allowing the Executive
26 Branch to pursue the necessary steps to implement the executive directives. *Consumer Fin. Prot. Bureau*
27 *v. Gordon*, 819 F.3d 1179, 1187 (9th Cir. 2016) (“Vindicating the *public* interest (including the public
28 interest in Government observance of the Constitution and laws) is the function of Congress and the Chief

1 Executive.”); *District of Columbia v. United States Dep’t of Agric.*, 444 F. Supp. 3d 1, 45 (D.D.C. 2020)
2 (“The public does have an interest in the executive branch’s ‘effectuating statutes enacted’ by Congress.”).
3 Additionally, the public interest prohibits judicial “advisory opinions,” which Plaintiffs’ motion would
4 require this Court to render in relation to executive directives that have not yet been implemented. *See*
5 *Coal. for a Healthy Cal. v. FCC*, 87 F.3d 383, 386 (9th Cir. 1996).

6 If, however, the Court determines an injunction is warranted then it should be limited to the named
7 Plaintiffs. “[U]niversal injunctions ... intrude on powers reserved for the elected branches,” *United States*
8 *v. Texas*, 599 U.S. 670, 694 (2023) (Gorsuch, J., concurring), and any injunction should, at a minimum,
9 be “narrowed to redress only the injury shown as to [Plaintiffs].” *California v. Azar*, 911 F.3d 558, 584
10 (9th Cir. 2018) (“Although there is no bar against nationwide relief in federal district court ... such broad
11 relief must be *necessary* to give prevailing parties the relief to which they are entitled.” (internal quotation
12 marks and alterations omitted)) (quoting *Bresgal v. Brock*, 843 F.2d 1163, 1170 (9th Cir. 1987); *City and*
13 *Cnty of San Francisco*, 897 F.3d at 1244 (An injunction must be narrowly tailored to remedy the specific
14 harm shown). “The Supreme Court has repeatedly emphasized that nationwide injunctions have
15 detrimental consequences to the development of law and deprive appellate courts of a wider range of
16 perspectives.” *Azar*, 911 F.3d at 583. Related, the Court should limit any injunction to only those Plaintiffs
17 who reside in this judicial district and federal circuit. For example, New Haven, Connecticut is located in
18 the Second Circuit, where binding circuit precedent may foreclose the relief those Plaintiffs seek,
19 depending on what funding decisions are actually executed. *State v. DOJ*, 951 F.3d 84 (2d Cir. 2020).
20 Likewise, Minneapolis and Santa Fe are located in the Eighth and Tenth Circuits, respectively. The
21 jurisdictions within which those localities lie are better suited to make decisions on Plaintiffs’ local laws.
22 *See Americans for Immigrant Just. v. DHS*, No. CV 22-3118 (CKK), 2023 WL 4364096, at *4 (D.D.C.
23 July 6, 2023) (“[A]lthough the ‘plaintiff’s choice of forum is ordinarily entitled to deference,’ that choice
24 is conferred considerably less deference when it is not the plaintiff’s home forum and has few factual ties
25 to the case.”).

26 **D. The Court Should Require Plaintiffs to Post Security.**

27 Pursuant to Federal Rule of Civil Procedure 65(c), “[t]he court may issue a preliminary injunction
28 or a temporary restraining order only if the movant gives security in an amount that the court considers

1 proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or
2 restrained.” Fed. R. Civ. P. 65(c) (emphasis added). To the extent that the Court grants relief to Plaintiffs,
3 Defendants respectfully request that the Court require Plaintiffs to post security for any taxpayer funds
4 expended during the pendency of the Court’s order.

5 **CONCLUSION**

6 For these reasons, the Court should deny Plaintiffs’ preliminary injunction motion.
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1 Dated: March 31, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of March 2025, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which provided an electronic notice and electronic link of the same to all attorneys of record through the Court’s CM/ECF system.

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