

EXHIBIT A

1 LOUISE H. RENNE (SBN 36508)
2 JONATHAN V. HOLTZMAN (SBN 99795)
3 LINDA M. ROSS (SBN 133874)
4 lross@publiclawgroup.com
5 RENNE SLOAN HOLTZMAN SAKAI LLP
6 1220 Seventh Street, Suite 300
7 Berkeley, CA 94710
8 Ph. (510) 995-5800
9 Fx. (415) 678-3838

10 Attorneys for Amici Curiae

11 IN THE UNITED STATES DISTRICT COURT
12
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA

14 CITY AND COUNTY OF SAN FRANCISCO,
15
16 Plaintiff,

17 v.

18 DONALD J. TRUMP, President of the United
19 States, UNITED STATES OF AMERICA,
20 JOHN F. KELLY, Secretary of United States
21 Department of Homeland Security,
22 JEFFERSON B. SESSIONS, Attorney General
23 of the United States, DOES 1-100,

24 Defendants

25 COUNTY OF SANTA CLARA,

26 Plaintiff,

27 v.

28 DONALD J. TRUMP, President of the United
States of America, JOHN F. KELLY, in his
official capacity as Secretary of the United
States Department of Homeland Security,
DANA J. BOENTE, in his official capacity as
Acting Attorney General of the United States,
MARK SANDY, in his official capacity as
Acting Director of the Office of Management
and Budget, and DOES 1-50,

Defendants

Case No. 17-cv-00485-WHO
Case No. 17-cv-00574-WHO
(Related cases)

**BRIEF IN OPPOSITION TO DEFENDANTS’
MOTION TO DISMISS**

**FILED BY AMICI CURIAE CALIFORNIA
CITIES AND COUNTIES – COUNTY OF
ALAMEDA, CITY OF BERKELEY, CITY OF
DAVIS, CITY OF EAST PALO ALTO, CITY OF
FREMONT, COUNTY OF MARIN, COUNTY OF
MONTEREY, CITY OF MOUNTAIN VIEW,
CITY OF OAKLAND, CITY OF RICHMOND,
CITY OF SALINAS, CITY OF SAN JOSE, CITY
OF SANTA CRUZ, AND CITY OF SANTA ROSA**

Date: July 12, 2017
Time: 2:00 p.m.
Judge: Hon. William H. Orrick, Ctrm. 2
450 Golden Gate Avenue
San Francisco, CA 94102

Action Filed: January 31, 2017

Date: July 12, 2017
Time: 2:00 p.m.
Judge: Hon. William H. Orrick, Ctrm. 2
450 Golden Gate Avenue
San Francisco, CA 94102

Action Filed: February 3, 2017

RENNE SLOAN HOLTZMAN SAKAI LLP
Attorneys at Law

1 **I. INTRODUCTION**

2 Amici cities and counties of California filed a brief in support of the motions for preliminary
3 injunction filed by the County of Santa Clara and the City and County of San Francisco (“Plaintiffs”). In
4 response to those motions, this Court rightfully entered a nationwide injunction against enforcement of
5 the President’s Executive Order on “sanctuary jurisdictions.” Amici now file this brief in opposition to
6 the federal government’s motion to dismiss. The government claims that the Attorney General’s limiting
7 memorandum resolves all legal issues. Amici strongly disagree. The blatant illegality and threat of
8 irreparable harm remain.

9 **II. ARGUMENT**

10 As established in Amici’s brief in support of the preliminary injunction, California cities and
11 counties rely on federal funds to provide a wide variety of essential services, including low income
12 housing, centers and clinics for low income residents, social services such as Head Start, job training,
13 public transit, emergency services, community policing and criminal justice services. Federal funds
14 provide a significant percentage of city and especially county budgets.

15 Amici recently enacted, or are in the final stages of enacting, balanced budgets for the coming
16 fiscal year July 2017 through June 2018. In doing so, they were able to rely on the preliminary
17 injunction, which enjoined the President’s Executive Order.

18 The Attorney General’s memorandum attempts to rescue the Executive Order by purporting to
19 limit the Order to: (1) certain Department of Justice grants and unspecified Department of Homeland
20 Security (DHS) grants (and not all “federal grants” as stated in the Order), and (2) violations of 8 U.S.C.
21 1373 (and not any “statute, policy or practice that prevents or hinders the enforcement of federal law” as
22 stated in the Order).

23 But nothing in the Attorney General’s memorandum rescues the Executive Order from illegality
24 or changes the harm being faced by Amici. The government still threatens to deny federal funds to
25 Amici and others in retaliation for conduct that is plainly legal or that has yet to be articulated. The
26 threat remains for the following reasons.

27 The Attorney General’s memorandum does not, and cannot, override the President’s Executive
28 Order. Accordingly, the Executive Order’s sweeping directives remain along with the potential for

1 enforcement. If the government truly believed that the Executive Order is of limited legality, as
 2 described in the Attorney General’s memorandum, the President should withdraw the Executive Order.
 3 The President is well aware of this option, which he pursued in the “travel ban” case, where he withdrew
 4 and then narrowed his original executive order. In contrast here, the President’s refusal to withdraw or
 5 revise the “sanctuary jurisdiction” Executive Order is evidence that his administration does *not* intend to
 6 limit its enforcement to the situations proposed by the Attorney General’s memorandum.

7 The Attorney General’s memorandum also is at odds with the statements by the President and the
 8 Attorney General. As detailed in Plaintiffs’ briefs, even after the President took the oath of office, the
 9 President and his surrogates, including the Attorney General, repeatedly threatened to cripple “sanctuary
 10 jurisdictions” by denying all federal funding. These statements are further and compelling evidence that
 11 the administration’s intent, and possible actions, are not bound by the Attorney General’s memorandum.
 12 A belated memorandum drafted by Justice Department attorneys, crafted to defend a lawsuit, cannot
 13 negate statements by elected and appointed officials.

14 Additionally, the President lacked legal authority to issue the Executive Order, and therefore there
 15 is no legal authority to support the Attorney General’s rewrite of the General Order. *Youngstown Sheet*
 16 *& Tube Co. v. Sawyer*, 343 U.S. 579, 586 (1952) (president’s executive order “must stem either from an
 17 act of Congress or from the Constitution itself”). As demonstrated by Plaintiffs, Congress controls
 18 federal spending and Congress has not placed any conditions on federal grants that would deny grant
 19 money to “sanctuary jurisdictions” that fail to comply with 8 U.S.C. 1373 or any other federal law.
 20 Neither the Attorney General’s memorandum nor the government’s briefs identify a single act of
 21 Congress that conditions federal grant money on compliance. In fact, the Plaintiffs demonstrated that
 22 Congress previously refused to enact any such restrictions.

23 Finally, the Attorney General’s memorandum, even if implemented, leaves open the possibility of
 24 illegal conduct by the government against Amici.

- 25 • The memorandum does not purport to bind the Department of Homeland Security, which the
 26 Executive Order also tasked with ensuring “that jurisdictions that willfully refuse to comply with
 27 8 U.S.C. 1373 (sanctuary jurisdiction) are not eligible to receive Federal grants” (Executive
 28 Order, 9(a).) Amici include recipients of DHS grants for a wide variety of emergency

1 preparedness. These grant funds have no nexus to immigration enforcement, and thus even
 2 Congress could not withhold them. *South Dakota v. Dole*, 483 U.S. 203, 207-208 (1987)
 3 (conditions on federal grants must be related "to the federal interest in particular national projects
 4 or programs").

- 5 • The memorandum does not clarify what constitutes a “willful” violation of 8 U.S.C. 1373.
 6 Section 1373 prohibits a state or local jurisdiction from precluding its personnel from
 7 communicating with federal authorities concerning the immigration or citizenship status of an
 8 individual. The memorandum leaves the government’s interpretation uncertain. Is Section 1373
 9 to be limited to its text, or is something more required? This uncertainty threatens Amici, who
 10 include recipients not only of DHS grants, but also of Justice Department grants that aid local law
 11 enforcement. *South Dakota v. Dole*, 483 U.S. at 207 (“if Congress desires to condition the receipt
 12 of federal funds, it ‘must do so unambiguously . . . , enabl[ing] the States to exercise their choice
 13 knowingly, cognizant of the consequences of their participation”).
- 14 • The memorandum does not address civil immigration detainees, which Amici are not required to
 15 honor and which, if honored, may create Fourth Amendment liability. E.g. *Morales v.*
 16 *Chadbourne*, 793 F.3d 208, 215-218 (1st Cir. 2015). The Executive Order suggested that
 17 immigration detainees were a litmus test for compliance. The Attorney General’s memorandum
 18 does not disavow such a test and Amici are left to wonder whether detainees are still an issue.
 19 Again eligibility for multiple federal grants may be involved.

20 Accordingly, even with its purported limitation of the Executive Order, the Attorney General’s
 21 memorandum leaves in place a policy that is either outright illegal or unconstitutionally vague.

22 **III. CONCLUSION**

23 Despite the eleventh hour issuance of the Attorney General’s memorandum, the Executive
 24 Order’s illegal and coercive power remains. The President has not withdrawn the Executive Order, the
 25 Attorney General’s memorandum has no force of law or credibility, and the memorandum itself

26 //

27 //

28 //

continues the uncertainty about what is required of cities and counties. Accordingly, Amici ask that this Court deny the government’s motion to dismiss.

Dated: June 28, 2017

RENNE SLOAN HOLTZMAN SAKAI LLP

By: /s/ Linda M. Ross

LINDA M. ROSS

Attorneys for Amici Curiae

Additional Counsel for Amici Curiae

DONNA R. ZIEGLER
County Counsel, County of Alameda
Office of the County Counsel
1221 Oak Street, Suite 450
Oakland, CA 94612
Ph. (510) 272-6700
Email: donna.ziegler@acgov.org

Attorney for County of Alameda

ZACH COWAN
City Attorney, City of Berkeley
Berkeley City Attorney’s Office
2180 Milvia Street
Berkeley, CA 94701
Ph. (510) 981-6950
Email: zcowan@ci.berkeley.ca.us

Attorney for City of Berkeley

HARRIET STEINER
City Attorney, City of Davis
Best Best & Krieger, LLP
500 Capitol Mall, Ste. 1700
Sacramento, CA 95814
Ph. (916) 551-2821
Email: Harriet.Steiner@bbklaw.com

Attorney for City of Davis

HARVEY LEVINE
Fremont City Attorney
City Attorney’s Office
3300 Capitol Ave., Bldg. A
Fremont, CA 94538
Ph. (510) 284-4030
Email: HLevine@fremont.gov

Attorney for City of Fremont

BRIAN E. WASHINGTON
County Counsel, County of Marin
Office of the County Counsel
3501 Civic Center Dr., Ste. 275
San Rafael, CA 94903
Ph. (415) 473-6117
Email: BWashington@marincounty.org

Attorney for County of Marin

CHARLES J. MCKEE
County Counsel, County of Monterey
Office of the County Counsel
168 West Alisal St., 3rd Flr.
Salinas, CA 93901
Ph. (831) 755-5045
Email: mckeecj@co.monterey.ca.us

Attorney for County of Monterey

RENNE SLOAN HOLTZMAN SAKAI LLP
Attorneys at Law

1 RAFAEL ALVARADO
2 City Attorney, City of East Palo Alto
3 East Palo Alto City Attorney’s Office
4 2415 University Avenue
5 East Palo Alto, CA 94303
6 Ph. (650) 853-5901
7 Email: ralvarado@cityofepa.org

8 *Attorney for City of East Palo Alto*

9 BARBARA PARKER
10 City Attorney, City of Oakland
11 Office of the City Attorney
12 City Hall, 6th Floor
13 1 Frank H. Ogawa Plaza
14 Oakland, CA 94612
15 Ph. (510) 238-3815
16 Email: bjparker@oaklandcityattorney.org

17 *Attorney for City of Oakland*

18 BRUCE GOODMILLER
19 City Attorney, City of Richmond
20 Office of the City Attorney
21 450 Civic Center Plaza, #303
22 Richmond, CA 94804
23 Ph. (510) 620-6509
24 Email: Bruce_Goodmiller@ci.richmond.ca.us

25 *Attorney for City of Richmond*

26 CHRISTOPHER A. CALLIHAN
27 City Attorney, City of Salinas
28 Office of the City Attorney
200 Lincoln Avenue
Salinas, CA 93901-2639
Ph. (831) 758-7256
Email: chrisc@ci.salinas.ca.us

Attorney for City of Salinas

JANNIE L. QUINN
Mountain View City Attorney
City of Mountain View
500 Castro Street
Mountain View, CA 94041
Ph. (650) 903-6496
Email: jannie.quinn@mountainview.gov

Attorney for City of Mountain View

RICHARD DOYLE
City Attorney, City of San Jose
Office of the City Attorney
200 E. Santa Clara St., 16th Flr.
San Jose, CA 95113
Ph. (408) 535-1900
Email: richard.doyle@sanjoseca.gov

Attorney for City of San Jose

ANTHONY P. CONDOTTI
City Attorney, City of Santa Cruz
Office of the City Attorney
333 Church Street
Santa Cruz, CA 95060
Ph. (831) 423-8383
Email: TCondotti@abc-law.com

Attorney for City of Santa Cruz

SUE GALLAGHER
City Attorney, City of Santa Rosa
City Attorney’s Office
100 Santa Rosa Ave., Rm. 8
Santa Rosa, CA 95404
Ph. (510) 995-5800
Email: tstricker@srcity.org

Attorney for City of Santa Rosa

RENNE SLOAN HOLTZMAN SAKAI LLP
Attorneys at Law