

1 OFFICE OF THE COUNTY COUNSEL
 2 COUNTY OF SANTA CLARA
 3 JAMES R. WILLIAMS - # 271253
 County Counsel
 james.williams@cco.sccgov.org
 4 GRETA S. HANSEN - # 251471
 L. JAVIER SERRANO - # 252266
 5 DANIELLE L. GOLDSTEIN - # 257486
 KAVITA NARAYAN - # 264191
 6 JULIE WILENSKY - # 271765
 JULIA B. SPIEGEL - # 292469
 7 ADRIANA L. BENEDICT - # 306936
 8 70 West Hedding Street
 East Wing, Ninth Floor
 9 San Jose, CA 95110-1770
 Telephone: 408 299-5900
 10 Facsimile: 408 292-7240

KEKER, VAN NEST & PETERS LLP
 JOHN W. KEKER - # 49092
 jkeker@keker.com
 ROBERT A. VAN NEST - # 84065
 rvannest@keker.com
 DANIEL PURCELL - # 191424
 dpurcell@keker.com
 CODY S. HARRIS - # 255302
 charris@keker.com
 NICHOLAS S. GOLDBERG - # 273614
 ngoldberg@keker.com
 EDWARD A. BAYLEY - # 267532
 ebayley@keker.com
 633 Battery Street
 San Francisco, CA 94111-1809
 Telephone: 415 391 5400
 Facsimile: 415 397 7188

11 ATTORNEYS FOR PLAINTIFF COUNTY OF SANTA CLARA

12
 13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN FRANCISCO DIVISION

16 COUNTY OF SANTA CLARA,

17 Plaintiff,

18 v.

19 DONALD J. TRUMP, President of the
 20 United States of America, ELAINE DUKE,
 in her official capacity as Acting Secretary
 21 of the United States Department of
 Homeland Security, JEFFERSON B.
 22 SESSIONS, in his official capacity as
 Attorney General of the United States,
 23 JOHN MICHAEL "MICK" MULVANEY,
 24 in his official capacity as Director of the
 Office of Management and Budget, and
 25 DOES 1-50,

26 Defendants.

Case No. 17-cv-00574-WHO

**DECLARATION OF COUNTY OF SANTA
 CLARA CHIEF OPERATING OFFICER
 MIGUEL MÁRQUEZ IN SUPPORT OF
 PLAINTIFF COUNTY OF SANTA
 CLARA'S MOTION FOR SUMMARY
 JUDGMENT**

Date: October 4, 2017
 Time: 2:00 pm
 Dept: Courtroom 2, 17th Floor
 Judge: Hon. William Orrick

Date Filed: February 3, 2017

Trial Date: April 23, 2018

1 I, Miguel Márquez, hereby declare as follows:

2 1. I am the Chief Operating Officer for the County of Santa Clara (the “County”). I
3 submit this Declaration in support of the County of Santa Clara’s Motion for Summary Judgment.
4 I have personal knowledge of the facts stated herein and, if called as a witness, I could testify to
5 them competently under oath.

6 2. I have been the Chief Operating Officer for the County since August 2016. In this
7 capacity, I supervise and oversee the County’s operations, including among many other things,
8 the development and implementation of County departments’ budgets. From 2012-2016, I served
9 as an Associate Justice on California’s Sixth District Court of Appeal. Before my appointment to
10 the Court of Appeal, from 2009-2012, I served as County Counsel and the Acting County
11 Counsel of the County. In this capacity, I advised the County Board of Supervisors and
12 executives on a broad range of legal issues, including issues involving finance, local governance,
13 and local policy issues, including cooperation with Immigration and Customs Enforcement.
14 Before my employment at the County, I represented several other public entities in connection
15 with matters involving governance and finance, among other things.

16 3. I have been in high-level roles at the County and other public entities for nearly
17 twenty years. I am extremely familiar with the County’s policies, structure, operations, and
18 budgeting processes, and have been involved in the preparation of dozens of public entity
19 budgets. I am currently integrally involved in the County’s budget process.

20 4. I am familiar with Executive Order 13768 of January 25, 2017, entitled
21 “Enhancing Public Safety in the Interior of the United States” (the “Executive Order”). Prior to
22 the Court’s April 25, 2017 decision granting the County’s motion for preliminary injunction, the
23 Executive Order threatened to withhold federal funds from “sanctuary jurisdictions.” The
24 potential loss of federal funding if the County is deemed a “sanctuary jurisdiction” under the
25 Executive Order placed the County’s budget process and its plans for providing services in an
26 untenable position. This was due to the tremendous uncertainty relating to the amount of
27 resources that may or may not be available to provide critical services—now and in the future—to
28 County residents. The preliminary injunction helped to reduce that uncertainty, but a permanent

1 injunction is necessary so the County may continue to provide critical services without the
2 Executive Order's threat to take away the County's federal funds.

3 5. The County provides basic safety-net services to the most vulnerable residents in
4 our community. It also serves the public more generally in areas such as emergency planning and
5 public health services.

6 6. The County was established in 1850 as one of the first counties in California.
7 Today, approximately 1.9 million people reside in the County, many of whom are immigrants,
8 and rely on it to provide essential services, such as law enforcement, health care, care for the
9 County's youth and elderly, and other social services. Many of the County's programs serve the
10 County's neediest residents, including abused and neglected children, indigent and uninsured
11 individuals requiring health care, individuals who are mentally ill or substance dependent, and
12 those who are physically or mentally disabled.

13 7. The County oversees most public health and public safety functions in Santa Clara
14 County, including emergency planning and services, disease control and prevention, and criminal
15 justice administration. The County also operates roads, airports, parks, libraries, election
16 systems, and many other critical functions.

17 8. The County's budgeted expenditures for the 2015-2016 fiscal year were
18 approximately \$5.6 billion. The County's actual revenues for the same fiscal year, however, were
19 approximately \$4.8 billion.¹ Federal funds not commingled with other funding sources
20 comprised approximately \$1 billion (21%) of this revenue. An additional approximately \$680
21 million (14%) was comprised of revenues that included a significant federal funding component.
22 This additional amount was dependent upon the receipt of federal funds through a matching
23 requirement or other mechanism. Much of this additional funding was passed through the State
24 of California.

25
26
27 ¹ The "County's actual revenue received is a more useful measure than budgeted expenditures. A
28 budget reflects anticipated revenues and expenditures for an upcoming fiscal year, which may or
may not materialize. By contrast, actual revenues have been received and verified through an
independent audit.

1 9. The County receives federal funding through several types of arrangements, but
2 the most common arrangements are fee-for-service and reimbursement-based. In these
3 arrangements, the County first spends funds or provides a service using County resources, then is
4 reimbursed fully or partially with federal funds. Many of these arrangements are pass-through
5 arrangements, in which the payment is made by another governmental agency (in many cases, the
6 State of California) from federal funds that are earned by the County. Much of the federal
7 funding received by the County's Health and Hospital system, for example, was earned in fee-for
8 service payments. These funds were paid by the State of California's Medicaid program to
9 reimburse the County for the services it previously provided to eligible residents. For each type
10 of funding, the County faces the possibility that, even after reimbursements or other payments are
11 received, those federal funds may later be clawed back through retroactive ineligibility
12 determinations.

13 10. Only a small portion of the federal revenue the County receives is related to law
14 enforcement. Most of the revenues received from the federal government are used to provide
15 health care and social services to County residents.

16 11. Because of the Executive Order, the County faced the immediate possibility that
17 roughly \$1.7 billion of its anticipated annual revenues would be abruptly—and perhaps
18 retroactively—clawed back or withheld. While the County has made efforts to increase some
19 contingency reserves in light of the uncertainty created by the Executive Order, these reserves are
20 not remotely adequate to cover such a funding shortfall. Moreover, the dedication of contingency
21 reserves in light of the uncertainty created by the Executive Order means the County has fewer
22 resources to fund other community services such as programs for a childcare center and services
23 for veterans.

24 12. Because the County is continuing to operate federally funded programs on a daily
25 basis, the County needs the additional certainty provided by a permanent injunction in order to
26 know whether to (1) continue incurring hundreds of millions of dollars in costs that may never be
27 reimbursed by the federal government, (2) discontinue basic safety-net services delivered to its
28 most vulnerable residents, or (3) in an attempt to avoid either of these outcomes, be effectively

1 conscripted into using local law enforcement and other resources to assist the federal government
2 in its immigration enforcement efforts.

3 13. In developing the County's annual budget, the County Executive is required to
4 present a balanced recommended budget for approval by the County's Board of Supervisors.
5 Development of the recommended budget involves careful analysis and weighing a multitude of
6 factors, including anticipated revenues, specific service needs for diverse subsets of County
7 residents, salary and benefit costs for the County's approximately 19,000 employees, and an array
8 of local priorities. The County's adopted budget represents the outcome of this weighing of
9 resources and priorities, and represents the County's determination of what services can and
10 should be provided, given the limited resources at the County's disposal. The services the County
11 provides and the resources it has available are inextricably linked.

12 14. In November of each year, the County Executive's Office of Budget and Analysis
13 (OBA) begins to forecast its estimate of the subsequent fiscal year's anticipated revenues. Then,
14 before March 1 of the ensuing year, each County department must provide a budget submittal to
15 OBA in which the department requests a level of funding necessary to provide services during the
16 upcoming fiscal year. During March and April, OBA balances anticipated revenues with
17 proposed departmental budgets to prepare the County Executive's recommended balanced budget
18 for consideration by the Board of Supervisors during May and June. By June 30, the Board of
19 Supervisors approves a balanced budget for the next fiscal year, as set forth in the County Budget
20 Act, Cal. Gov't Code § 2906(a).

21 15. This budget process is complete and the County's finances have been audited for
22 fiscal year 2015-2016. The financial audit for fiscal year 2016-2017 is in process and nearing
23 completion, and the budget process for fiscal year 2018-2019 is already under way. The County's
24 fiscal year 2017-2018 operations and services are being provided pursuant to the balanced budget
25 that was adopted using the process outline above. As with any other budget, the current budget
26 reflects the County's judgment of how best to fulfill its obligations and priorities with limited
27 resources. Central to this judgment, because of the issuance of the preliminary injunction, was
28 the expectation that the County would receive the federal funds to which it is entitled under its

1 agreements with a number of federal and state agencies. If not permanently enjoined, the
2 Executive Order's threat to withhold federal funds would disrupt this expectation and would
3 throw the County's budget—and therefore its operations and provision of core services to the
4 community—into disarray.

5 16. The County is *currently* spending hundreds of millions of dollars on services for
6 which it is otherwise entitled to receive federal reimbursement. If the preliminary injunction over
7 the Executive Order is removed or not made permanent, those funds may be withheld. The
8 County is continuing to consider how to manage this substantial risk. The County Executive, for
9 example, recently discussed with the County's Board of Supervisors, in a public meeting, the
10 enormous financial risks faced by the County, including the Hobson's choice described above due
11 to the uncertainty regarding current and ongoing federal funding should the County not be
12 protected from the Executive Order by an injunction.

13 17. As the County Executive pointed out, a majority of the federal funding cuts would
14 severely and negatively impact the County's Health and Hospital system. The Santa Clara Valley
15 Medical Center (VMC), which is the only safety-net healthcare provider in Santa Clara County,
16 relies heavily on federal funds and federally dependent funds. In the 2015-2016 fiscal year, VMC
17 received federal revenues and federally dependent revenues of approximately \$1 billion. For the
18 same fiscal year, VMC's total expenditures were approximately \$ 1.4 billion. The County cannot
19 absorb a \$ 1 billion annual funding gap at VMC. Thus, if the preliminary injunction were to be
20 removed and federal funds were withheld, the County would be unable to provide thousands of
21 the County's indigent residents, and thousands of others who use and rely on the County's
22 integrated health and hospital system, with the core services they are otherwise entitled to receive.

23 18. Similarly, the County's Social Services Agency (SSA), which provides services
24 that include child protective services, child welfare, and support to elderly and disabled children
25 and adults, receives more than \$300 million a year in federal revenues. For comparison, SSA's
26 expenditures for the same fiscal year were approximately \$777 million. Thus, if the preliminary
27 injunction were to be removed and federal funding were withheld, the County would be forced to
28

1 decide which of SSA's critical functions it could continue to fund and at what level, and which
2 functions could no longer be funded.

3 19. As another example, the County's Public Health Department, which provides
4 disease control and pandemic response services throughout the County—and functions as the
5 public health agency for each of the cities within Santa Clara County—had, in fiscal year 2015-
6 2016, federal revenues of approximately \$39 million. Its expenditures for the same fiscal year
7 were approximately \$97 million. The County would have to significantly reduce or cut these
8 critical services if federal funding were withheld as called for in the Executive Order.

9 20. The Executive Order forces a current, daily choice about these departments'
10 ongoing operations and provision of core health and safety services to the community. Although
11 the preliminary injunction helped to ease the chaos and uncertainty created by the Executive
12 Order, unless permanently enjoined, the Executive Order will continue to fundamentally disrupt
13 the County's budgeting process for upcoming fiscal years. Without a permanent injunction, the
14 County Executive will be forced to make one of the three choices outlined in paragraph 12 of this
15 declaration with respect to policy and budget recommendations to the Board of Supervisors,
16 cementing one of three untenable choices in the policies and budget for the County and the
17 community it serves.

18 21. Even if the Executive Order is not fully implemented, and is used to target only
19 those funds that would qualify as "grants" under a narrow definition that does not include
20 entitlement programs, a significant portion of the County's resources are at risk. For example, the
21 County conducts a "Single Audit" compiling major federal awards that are subject to annual audit
22 requirements. While this document significantly understates the magnitude of County federal
23 awards because it only includes those awards that are subject to an annual financial audit
24 requirement, it nonetheless reflects that the County received more than \$338 million in federal
25 grant awards in fiscal year 2014-2015, and more than \$400 million in federal grant awards in
26 fiscal year 2015-2016. A true and correct copy of the Federal Compliance Section of the
27 County's Single Audit Report for the Fiscal Year Ended June 30, 2015, is attached hereto as
28

1 Exhibit A. A true and correct copy of the Federal Compliance Section of the County’s Single
2 Audit Report for the Fiscal Year Ended June 30, 2016, is attached hereto as Exhibit B.

3 22. Compliance with the full scope of the federal government’s immigration-related
4 enforcement priorities could also result in significant liability and cost exposure to the County.
5 This could include exposure to liability for Fourth Amendment and other constitutional violations
6 (as several federal and state courts have held), as well as significant fiscal and administrative
7 costs. The federal government has made clear to the County that it does not provide indemnity
8 for such liability or costs. And, of course, the County has an independent duty not to violate the
9 constitutional rights of its residents, whether or not at the behest of another governmental entity.

10 23. In 2010, the County had significant correspondence with the Department of
11 Homeland Security (DHS) relating to DHS’s Immigration and Customs Enforcement’s (ICE)
12 Secure Communities program. While serving as County Counsel, I was the primary author of
13 most of the correspondence sent on behalf of the County.

14 24. In 2010, the County was considering the implications of the Secure Communities
15 program. This program called for local law enforcement agencies to share information with ICE
16 regarding the detention and release of individuals held in local jails. It also called for the County
17 to comply with ICE detainer requests.² During this time, the County became aware that
18 compliance with detainer requests could expose the County to significant potential costs and
19 liabilities.

20 25. I addressed these issues in my August 16, 2010 letter to DHS, attached hereto as
21 Exhibit C. In particular, I inquired whether “ICE [will] reimburse localities for the cost of
22 detaining individuals ... beyond their scheduled release times [and whether] ICE [will] indemnify
23 localities for any liability incurred because of that detention[.]” (Exhibit C at p. 3.) In its
24 response, a true and correct copy of which is attached hereto as Exhibit D, DHS unequivocally
25 indicated that, pursuant to its Regulations, ICE would not be responsible for incarceration costs

26 _____
27 ² This program was replaced by the Priority Enforcement Program (PEP) on November 2014.
28 Section 10 of the Executive Order terminates PEP in favor of reinstatement of the Secure
Communities program.

1 except at its option and pursuant to a written agreement. (Exhibit D at p.3.) It also indicated that
2 it would “not indemnify localities for any liability incurred.” (*Id.*)

3 26. In light of my correspondence with DHS, the County Board of Supervisors
4 instructed me, in my capacity as County Counsel, to take all necessary action to allow the County
5 to opt out of participation in the Secure Communities program. I informed ICE of the County’s
6 intention to do so in correspondence dated October 13, 2010, a true and correct copy of which is
7 attached hereto as Exhibit E.

8 27. Exercising its duty and right as the local policymaking body of the County, the
9 County Board of Supervisors adopted Board Policy 3.54 on Civil Detainer Requests on October
10 18, 2011. A true and correct copy of Board Policy 3.54 is attached hereto as Exhibit F. Because
11 civil immigration enforcement is the responsibility of the federal government, Board Policy 3.54
12 implements the Board’s policy decision that the community is best served by permitting
13 compliance with ICE civil detainer requests only under certain limited circumstances involving
14 serious or violent felonies, and only if ICE agrees to reimburse the County for the full costs
15 associated with compliance. I sent a copy of Board Policy 3.54 to ICE on October 21, 2011. A
16 true and correct copy of my October 21, 2011 letter to ICE is attached hereto as Exhibit G. Board
17 Policy 3.54 remains the County’s policy to this day.

18 28. The County Board of Supervisors also adopted a Resolution affirming the
19 separation between County services and the enforcement of federal civil immigration law. The
20 Resolution prohibits County employees, including law enforcement officers, from initiating an
21 inquiry or enforcement action based solely on an individual’s actual or suspected immigration
22 status, national origin, race/ethnicity, or English-speaking ability. It also prohibits the use of local
23 County funds or resources to investigate, question, apprehend, or arrest an individual solely
24 because of an actual or suspected violation of immigration law, or to transmit to ICE, for
25 purposes of federal immigration enforcement, information collected by the County in the course
26 of providing social services. A true and correct copy of that Resolution is attached hereto as
27 Exhibit H.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

29. Rescission of the County’s policies on federal immigration enforcement efforts and priorities in response to the Executive Order’s threat to withhold federal funds not only impacts the County’s policymaking rights and budgeting capacity, but could also expose the County to significant liability. For example, compliance with ICE detainer requests could expose the County and its officers to liability based on violations of individuals’ constitutional rights, and would require the addition of and reallocation of resources to accommodate a large number of additional jail inmates who would otherwise not be incarcerated.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this Declaration was executed on August 18, 2017 in San José, California.



MIGUEL MÁRQUEZ