

1 Elizabeth J. Cabraser (State Bar No. 83151)
2 Kelly M. Dermody (State Bar No. 171716)
3 Dean M. Harvey (State Bar No. 250298)
4 Katherine C. Lubin (State Bar No. 259826)
5 Michelle A. Lamy (State Bar No. 308174)
6 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
7 275 Battery Street, 29th Floor
8 San Francisco, CA 94111-3339
9 Telephone: 415.956.1000
10 Facsimile: 415.956.1008

11 Kirsten Keith
12 Mayor, City of Menlo Park
13 701 Laurel Street
14 Menlo Park, CA 94025
15 Telephone: 650.308.4618

16 Rebecca H. Dietz
17 City Attorney, City of New Orleans
18 1300 Perdido Street, Suite 5E03
19 New Orleans, LA 70112
20 Telephone: 504.658.9800

21 *Attorneys for Amicus Curiae City of Menlo Park and City of New Orleans*

22 *Additional Counsel for Amici Curiae Listed in Appendix*

23 UNITED STATES DISTRICT COURT
24 NORTHERN DISTRICT OF CALIFORNIA
25 SAN FRANCISCO DIVISION

26 COUNTY OF SANTA CLARA,
27 Plaintiff,

28 v.

29 DONALD J. TRUMP, President of the
30 United States of America, JOHN F.
31 KELLY, in his official capacity as
32 Secretary of the United States Department
33 of Homeland Security, JEFFERSON B.
34 SESSIONS, in his official capacity as
35 Attorney General of the United States,
36 JOHN MICHAEL "MICK" MULVANEY,
37 in his official capacity as Director of the
38 Office of Management and Budget, and
39 DOES 1-50,

40 Defendants.

Case Nos. 17-cv-00574-WHO
17-cv-00485-WHO

**AMICUS BRIEF OF 48 CITIES AND
COUNTIES IN OPPOSITION TO
DEFENDANTS' MOTIONS TO
DISMISS**

Date: July 19, 2017
Time: 2:00 p.m.
Dept.: Courtroom 2
Judge: Hon. William H. Orrick

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CITY AND COUNTY OF SAN FRANCISCO,

Plaintiff,

v.

DONALD J. TRUMP, President of the United States, JOHN F. KELLY, Secretary of the United States Department of Homeland Security, JEFFERSON B. SESSIONS, Attorney General of the United States, DOES 1-100,

Defendants.

1 Amici represent 48 cities and counties from across the country, home to 26,843,083
2 residents. Certain Amici¹ submitted briefs in support of the nationwide preliminary injunction
3 sought by the County of Santa Clara and the City and County of San Francisco. *See* No. 17-cv-
4 00574-WHO Dkt. 61-1; No. 17-cv-00485-WHO, Dkt. 62-1. In those briefs, Amici argued that
5 the nationwide injunction was warranted for three reasons. First, Section 9 of President Trump’s
6 Executive Order 13768—which threatens to defund so-called “sanctuary jurisdictions”—is
7 unlawful on its face, and a nationwide injunction was necessary to protect other jurisdictions from
8 the uncertainty surrounding the Executive Order. Second, the County of Santa Clara and the City
9 and County of San Francisco are likely to succeed on the merits of their challenges, because the
10 Executive Order violates the Tenth Amendment and the procedural and substantive protections of
11 the Due Process Clause. Third, the public interest and the balancing of hardships strongly
12 favored granting a nationwide injunction, to prevent enforcement of an unconstitutional directive
13 while the cases are litigated. The Court granted the requests and entered a nationwide injunction
14 on April 25, 2017. *See* No. 17-cv-00574-WHO, Dkt. 98; No. 17-cv-00485-WHO, Dkt. 82.

15 On June 6 and 7, 2017, Defendants moved to dismiss both cases under Federal Rules of
16 Civil Procedure 12(b)(1) and 12(b)(6). *See* No. 17-cv-00485-WHO, Dkt. 111; No. 17-cv-00574-
17 WHO, Dkt. 115. Defendants’ assert that a May 22, 2017 Memorandum issued by Defendant
18 Sessions (the “AG Memorandum”) regarding the implementation of the Executive Order
19 “clarifies” certain portions of Section 9(a) of the Executive Order. *See* No. 17-cv-00485-WHO,
20 Dkt. 111 at 8; No. 17-cv-00574-WHO, Dkt. 115 at 8. Further, Defendants claim that, because
21 they “have taken no ‘enforcement action’” under Section 9(a) of the Executive Order, the County
22 of Santa Clara and the City and County of San Francisco lack standing to assert their challenges.
23 *Id.* at 10.

24 Amici oppose Defendants’ motions to dismiss for the same reasons set forth in their
25 earlier briefs in support of Plaintiffs’ motions for preliminary injunction. Nothing in the AG

26 ¹ Fourteen new Amici have joined since the filing of the Amicus briefs in support of the County
27 of Santa Clara’s and the City and County of San Francisco’s motions for preliminary injunction:
28 Chelsea, MA; Chula Vista, CA; Cincinnati, OH; Davis, CA; Gary, IN; Ithaca, NY; Lansing, MI;
Madison, WI; Morgan Hill, CA; New Haven, CT; Newark, NJ; Providence, RI; Tucson, AZ; and
Union City, NJ.

1 Memorandum, issued after this Court enjoined the Executive Order, changes the legal analysis or
2 cures the constitutional infirmities that made the preliminary injunction necessary. And nothing
3 in the AG Memorandum lessens the coercion local governments face as they await potential
4 enforcement of the Executive Order. The same risks Amici outlined in their briefs in support of
5 Plaintiffs’ motions for preliminary injunction—including that the Executive Order threatens to
6 undermine local law enforcement efforts by instilling fear in immigrant communities—persist. If
7 anything, the AG Memorandum has served to create additional confusion, thereby worsening the
8 coercive effect of the Executive Order.

9 Amici’s prior arguments apply with only greater force now, as the standard on a motion
10 for preliminary injunction—likelihood of success on the merits—is far more demanding than the
11 standard on a motion to dismiss—a plausible claim for relief. Amici therefore respectfully refer
12 the Court to their earlier briefs. Each argument contained therein supports a denial of
13 Defendants’ motions to dismiss.

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Dated: June 28, 2017

Respectfully submitted,

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

By: /s/ Kelly M. Dermody

Elizabeth J. Cabraser
Kelly M. Dermody
Dean M. Harvey
Katherine C. Lubin
Michelle A. Lamy
LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94117-3339
Telephone: (415) 956-1000
Facsimile: (415) 956-1008

*Attorneys for Amicus Curiae City of Menlo Park
and City of New Orleans*

Kirsten Keith
Mayor, City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025
Telephone: 650.308.4618

Mayor of Amicus Curiae City of Menlo Park

Rebecca H. Dietz
City Attorney, City of New Orleans
1300 Perdido Street, Suite 5E03
New Orleans, LA 70112
Telephone: 504.658.9800

Attorney for Amicus Curiae City of New Orleans

*Additional Counsel for Amici Curiae Listed in
Appendix*

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APPENDIX
Additional Counsel for Amici Curiae

DONNA R. ZIEGLER
County Counsel, County of Alameda
1221 Oak Street, Suite 450
Oakland, CA 94612
Attorney for County of Alameda

CHARLES J. MCKEE
County Counsel, County of Monterey
168 West Alisal Street
Salinas, CA 93901
Attorney for County of Monterey

KIMBERLY M. FOXX
States Attorney for Cook County
69 W. Washington, 32nd Floor
Chicago, IL 60602
Attorney for Cook County

DANA MCRAE
County Counsel
701 Ocean Street, Room 505
Santa Cruz, CA 95060
Attorney for County of Santa Cruz

H. KEVIN WRIGHT
Chief Civil Deputy
For DAN SATTERBERG
King County Prosecuting Attorney
516 Third Avenue, W400
Seattle, WA 98104
Attorney for King County

SHIRLEE ZANE
Chair, Board of Supervisors
County of Sonoma
575 Administration Drive, Room 100A
Santa Rosa, CA 95403
For County of Sonoma

MARGARET L. CARTER
APALLA U. CHOPRA
JAMES W. CROOKS
O'Melveny & Myers LLP
400 S. Hope Street, 18th Floor
Los Angeles, CA 90071
Attorney for County of Los Angeles

DAVID A. ESCAMILLA
Travis County Attorney
SHERINE E. THOMAS
Assistant County Attorney
Travis County Attorney's Office
P.O. Box 1748
Austin, Texas 78767
Attorneys for Travis County

BRIAN E. WASHINGTON
County Counsel
3501 Civic Center Drive, Room 275
San Rafael, CA 94903
Attorney for County of Marin

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28

WILLIAM G. KELLY, JR.
Interim Corporation Counsel
Department of Law
City Hall
Albany, NY 12207
Attorney for City of Albany

ANNE L. MORGAN
City Attorney
City of Austin Law Department
P.O. Box 1088
Austin, TX 78767
Attorney for City of Austin

ZACH COWAN
City Attorney, City of Berkeley
2180 Milvia Street, Fourth Floor
Berkeley, CA 94704
Attorney for City of Berkeley

STANLEY E. HENRY
Mayor, City of Cathedral City
68700 Avenida Lalo Guerrero
Cathedral City, CA 92234
For City of Cathedral City

THOMAS G. AMBROSINO
City Manager
Chelsea City Hall
500 Broadway, Room 302
Chelsea, MA 02150
For City of Chelsea

EDWARD N. SISSEL
Corporation Counsel
30 N. LaSalle Street, Suite 800
Chicago, IL 60602
Attorney for City of Chicago

GARY HALBERT
City Manager
276 Fourth Avenue
Chula Vista, CA 91910
For City of Chula Vista

TONI N. HARP
Mayor, City of New Haven
JOHN ROSE, JR.
Corporation Counsel, City of New Haven
165 Church Street
New Haven, CT 06510
For City of New Haven

RAS J. BARAKA
Mayor, City of Newark
920 Broad Street
Newark, NJ 07102
For City of Newark

BARBARA J. PARKER
City Attorney
Oakland City Attorney's Office
1 Frank H. Ogawa Plaza, 6th floor
Oakland, CA 94612
Attorney for City of Oakland

TRACY REEVE
City Attorney
430 City Hall
1221 SW Fourth Avenue
Portland, OR 97204
Attorney for City of Portland

TRISHKA WATERBURY CECIL
Princeton Municipal Attorney
Mason, Griffin & Pierson, P.C.
101 Poor Farm Road
Princeton, NJ 08540
Attorney for Municipality of Princeton

JEFFREY DANA
City Solicitor
444 Westminster Street, Suite 220
Providence, RI 02903
Attorney for City of Providence

JAMES SANCHEZ
City Attorney
Sacramento City Attorney's Office
915 I Street, Fourth Floor
Sacramento, CA 95814
Attorney for City of Sacramento

1 PAULA BOGGS MUETHING
2 City Solicitor
3 801 Plum Street, Room 214
4 Cincinnati, OH 45202
5 *Counsel for City of Cincinnati*

SAMUEL J. CLARK
City Attorney, City of Saint Paul
400 City Hall
15 Kellogg Blvd W
Saint Paul, MN 55102
Attorney for City of Saint Paul

5 HARRIET A. STEINER
6 City Attorney, City of Davis
7 Best Best & Krieger LLP
8 500 Capitol Mall, Suite 1700
9 Sacramento, CA 95814
10 *Attorney for City of Davis*

CHRISTOPHER A. CALLIHAN
City Attorney, City of Salinas
200 Lincoln Avenue
Salinas, CA 93901
Attorney for City of Salinas

9 KRISTIN M. BRONSON
10 City Attorney, City and County of Denver
11 1437 Bannock Street, Room 353
12 Denver, CO 80202
13 *Attorney for City and County of Denver*

MARGARET D. PLANE
City Attorney, Salt Lake City Corp.
451 S. State Street, Suite 505A
P.O. Box 145478
Salt Lake City, UT 84114
Attorney for Salt Lake City

13 RAFAEL E. ALVARADO JR.
14 City Attorney, City of East Palo Alto
15 2415 University Avenue, 2nd Floor
16 East Palo Alto, CA 94303
17 *Attorney for City of East Palo Alto*

KELLEY BRENNAN
City Attorney, City of Santa Fe
P.O. Box 909
Santa Fe, NM 87501
For City of Santa Fe

16 GREGORY L. THOMAS
17 City Attorney
18 401 Broadway, Suite 101
19 Gary, IN 46402
20 *Attorney for the City of Gary*

JOSEPH LAWRENCE
Interim City Attorney, City of Santa
Monica
1685 Main Street, Suite 310
Santa Monica, CA 90401
Attorney for City of Santa Monica

21 AARON O. LAVINE
22 City Attorney
23 108 E. Green St.
24 Ithaca, NY 14850
25 *Attorney for Svante L. Myrick*
26 *Mayor of Ithaca*

PETER S. HOLMES
Seattle City Attorney
701 Fifth Avenue, Suite 2050
Seattle, WA 98104
Attorney for City of Seattle

24 JEREMY FARRELL
25 Corporation Counsel
26 Jersey City Law Department
27 City Hall – 280 Grove Street
28 Jersey City, NJ 07302
Attorney for Jersey City

FRANCIS X. WRIGHT, JR.
City Solicitor, City of Somerville
93 Highland Avenue
Somerville, MA 02143
Attorney for City of Somerville

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F. JOSEPH ABOOD
Chief Deputy City Attorney
124 W. Michigan Avenue, 5th Floor
Lansing, MI 48933
Attorney for City of Lansing

JOSEPH E. FAHEY
Interim Corporation Counsel
City of Syracuse
233 East Washington Street, Suite 300
Syracuse, NY 13202
Attorney for City of Syracuse

MICHAEL N. FEUER
City Attorney, City of Los Angeles
200 N. Main Street, 800 CHE
Los Angeles, CA 90012
Attorney for City of Los Angeles

MIKE RANKIN
City Attorney, City of Tucson
255 W. Alameda Street, 7th Floor
Tucson, AZ 85726
Attorney for City of Tucson

MICHAEL P. MAY
City Attorney, City of Madison
210 Martin Luther King, Jr. Blvd., Rm. 401
Madison, WI 53703
Attorney for City of Madison

KRYSTLE NOVA, ESQ.
Corporation Counsel
Scarinci Hollenbeck
1100 Valley Brook Avenue
Lyndhurst, NJ 07071
Attorney for City of Union City

SUSAN L. SEGAL
City Attorney, City of Minneapolis
350 South 5th Street, Room 210
Minneapolis, MN 55415
Attorney for City of Minneapolis

MICHAEL JENKINS
City Attorney, City of West Hollywood
Jenkins & Hogin, LLP
1230 Rosecrans Avenue, Suite 110
Manhattan Beach, CA 90266
Attorney for City of West Hollywood

DONALD A. LARKIN
City Attorney, City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Attorney for the City of Morgan Hill