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

16 COUNTY OF SANTA CLARA,

17 Plaintiff,

18 v.

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

24 Defendants.  
25

Case No. 17-cv-00574-WHO

**BRIEF OF SILICON VALLEY COUNCIL OF  
NONPROFITS, NONPROFIT  
ASSOCIATIONS, AND NONPROFIT  
ORGANIZATIONS AS AMICI CURIAE IN  
SUPPORT OF PLAINTIFF'S OPPOSITION  
TO DEFENDANTS' MOTION TO DISMISS**

Date: July 12, 2017  
Time: 2:00 p.m.  
Dept. Courtroom 2  
Judge: Hon. William H. Orrick

1 **I. INTRODUCTION & INTEREST OF *AMICI CURIAE***

2 *Amici*<sup>1</sup> filed a brief in support of Plaintiff’s motion for a preliminary injunction against  
3 Executive Order 13,768 on March 22, 2017. (Dkt 78-1.) In light of the order granting the  
4 preliminary injunction, Attorney General Jeff Sessions issued a memorandum purporting to interpret  
5 the Executive Order (Dkt. 115-1) (the “AG Memo”), and the Government subsequently filed a  
6 Motion to Dismiss on that basis. *Amici* submit this brief in opposition to the Motion to Dismiss  
7 because the harm outlined in their brief in March still exists.

8 The AG Memo did nothing to reduce the uncertainty created by the Executive Order or the  
9 irreparable harm that this Court has already determined that *amici* and others face. (*See* Dkt. 98 (“PI  
10 Order”) at 49:10-12.) The concerns identified by *amici* in their initial brief remain and fears in the  
11 immigrant community have only increased. The AG Memo does not change the legal effect, the  
12 plain meaning, or the intent of the Executive Order.

13 **II. ARGUMENT**

14 **A. The AG Memo Has Had No Effect on the Irreparable Harm to Nonprofits**  
15 **Caused by Severe Budgetary Uncertainty.**

16 In March, “budget uncertainty was causing the Counties [of Santa Clara and San Francisco]  
17 irreparable harm” (PI Order at 44:28), and nonprofit organizations similarly faced severe budgetary  
18 uncertainty in light of the Executive Order. (Dkt. 78-1, Brief of Silicon Valley Council of  
19 Nonprofits, Nonprofit Associations, and Nonprofit Organizations as *Amici Curiae* Supporting  
20 Plaintiff’s Motion for Preliminary Injunction (“Brief of Nonprofit Associations and Organizations”)  
21 at 3-7.) They were developing contingency plans and considering cutting programs and services that  
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23 <sup>1</sup> *Amici curiae* include nine nonprofit associations (API Council of San Francisco, California  
24 Association of Nonprofits, Coalition of Agencies Serving the Elderly, HIV/AIDS Provider Network,  
25 Homeless Emergency Service Providers Association, San Francisco Human Services Network, San  
26 Francisco Latino Parity and Equity Coalition, San Francisco Mental Health Contractors Association,  
27 and Silicon Valley Council of Nonprofits) and fourteen individual nonprofit organizations (Abode  
28 Services, Asian Americans for Community Involvement, Caminar, Catholic Charities of Santa Clara  
County, Community Solutions, Destination: Home, Fresh Lifelines for Youth, HealthRIGHT 360,  
The Health Trust, LifeMoves, Second Harvest Food Bank of Santa Clara and San Mateo Counties,  
Silicon Valley Independent Living Center, West Valley Community Services, and Yu-Ai Kai  
Japanese American Community Senior Service). Descriptions of all of the *amici* are provided in  
Appendix A.

1 are desperately needed in the communities they serve, right when those services are needed most.  
 2 (*Id.*) Despite the AG Memo, the situation has not improved. *Amici* remain unsure whether to plan  
 3 for severe cuts due to the Executive Order. Some have been forced to hold funds in reserve in case  
 4 the cuts occur—and the result is that those funds are unavailable for the essential social services  
 5 these nonprofits provide. Nonprofits cannot rely on the AG Memo because its legal effect is  
 6 uncertain and they do not know whether AG Sessions will change his mind tomorrow.<sup>2</sup> Indeed,  
 7 “the question of whether (and in what sense) the opinions of the Attorney General, and, more  
 8 recently, the Office of Legal Counsel, are legally binding within the executive branch remains  
 9 somewhat unsettled.” (See Dkt. 119, Plaintiff Santa Clara County’s Opposition to Defendants’  
 10 Motion to Dismiss, at 10 (quoting Randolph D. Moss, *Executive Branch Legal Interpretation: A*  
 11 *Perspective from the Office of Legal Counsel*, 52 Admin. L. Rev. 1303, 1318 (2000).)

12 Further, the AG Memo does not change the plain meaning of the Executive Order. The AG  
 13 Memo essentially parrots the Government’s statements during oral argument on the Preliminary  
 14 Injunction, but this Court has already held that the Government’s narrow interpretation of the  
 15 Executive Order was “implausible,” “in conflict with the Order’s express language and is plainly not  
 16 what the Order says.”<sup>3</sup> (PI Order at 14:22-24, 15:7.) In the statutory construction context, “[t]he  
 17 Supreme Court has acknowledged that applying a narrow construction to an unconstitutionally  
 18 overbroad statute does not address the confusion and potential deterrent effect caused by the  
 19 language of the law itself.” (PI Order at 16:10-15 (citing *Erznoznik v. City of Jacksonville*, 422 U.S.  
 20 205, 216 (1975).) Accordingly, the AG Memo has not alleviated any of *amici*’s concern that they

21 \_\_\_\_\_  
 22 <sup>2</sup> The concern that the administration will change its mind and double down on the plain intent of the  
 23 Executive Order to withhold all federal funding from sanctuary jurisdictions is well-founded. In a  
 24 similar context, even though the administration issued a second, watered-down version of the “travel  
 25 ban” Executive Order, President Trump has admitted that his intent remained the same: “People, the  
 26 lawyers and the courts can call it whatever they want, but I am calling it what we need and what it is,  
 27 a TRAVEL BAN!” The President went on to state that he preferred the first version and he wanted  
 28 Government lawyers to seek a tougher version than the “watered-down” one. See Kalhan  
 Rosenblatt, *Trump Tweets in Favor of ‘Original’ Travel Ban, Not the ‘Watered Down Version’*,  
 NBC NEWS (June 5, 2017, 9:04 AM), [http://www.nbcnews.com/news/us-news/trump-tweets-favor-  
 original-travel-ban-not-watered-down-version-n768191](http://www.nbcnews.com/news/us-news/trump-tweets-favor-original-travel-ban-not-watered-down-version-n768191).

<sup>3</sup> The AG Memo is identical to the narrow interpretation set forth at oral argument on the  
 preliminary injunction. (Compare PI Order at 15:5-17 with AG Memo.)

1 potentially face imminent loss of federal, county, municipal, and some private funding.

2 **B. Nonprofit Constituents Are Afraid to Access Public Services and Their Fear Has**  
 3 **Not Dissipated in Light of the AG Memo.**

4 In light of the Executive Order, immigrants nationwide are afraid to seek services from  
 5 public organizations and report crimes to governmental entities. Fear of accessing crucial public  
 6 health and safety services and fear of reporting crimes puts these individuals at risk and causes harm  
 7 to the community at large. (Brief of Nonprofit Associations and Organizations at 9.) This fear has  
 8 not dissipated in response to the AG Memo.

9 Despite the AG Memo, the Government has continued to project an aggressive attitude  
 10 toward immigration enforcement, and combined with the threats against sanctuary jurisdictions at  
 11 issue in this case, fear in the community is rampant. This is in line with the message consistently  
 12 coming from the White House, from the pledge to “Cancel all federal funding to sanctuary cities”  
 13 displayed prominently in Steve Bannon’s office to the administration’s proposed budget that  
 14 suggests President Trump still plans to withhold federal funds from sanctuary jurisdictions. Colleen  
 15 Shalby, *Here are Steve Bannon's white-board goals, transcribed and annotated*, LA TIMES (May 3,  
 16 2017, 2:31 PM), [http://www.latimes.com/politics/washington/la-na-essential-washington-updates-  
 17 read-steve-bannon-s-38-white-board-1493835845-htmllstory.html](http://www.latimes.com/politics/washington/la-na-essential-washington-updates-read-steve-bannon-s-38-white-board-1493835845-htmllstory.html); Jonathan Blitzer, *Trump’s Budget*  
 18 *Contains a Warning Shot for Sanctuary Cities*, NEW YORKER (May 28, 2017),  
 19 [http://www.newyorker.com/news/news-desk/trumps-budget-contains-a-warning-shot-for-sanctuary-  
 20 cities](http://www.newyorker.com/news/news-desk/trumps-budget-contains-a-warning-shot-for-sanctuary-<br/>
  20 cities).

21 The fear caused by the Executive Order in immigrant communities around the country is  
 22 even stronger than it was in March, and shows no signs of letting up. KQED reports that “[e]ven in  
 23 Northern California, where many cities and counties have designated themselves sanctuaries . . . fear  
 24 is rife.” Virginia Fay, *Retreat From Needed Services as Deportation Fears Loom*, KQED News  
 25 (June 15, 2017), [https://ww2.kqed.org/news/2017/06/15/back-into-the-shadows-immigrants-retreat-  
 26 from-needed-services-as-deportation-fears-loom/](https://ww2.kqed.org/news/2017/06/15/back-into-the-shadows-immigrants-retreat-<br/>
  26 from-needed-services-as-deportation-fears-loom/). The San Francisco Police Department data shows  
 27 “a 14 percent decrease in reports of domestic violence by Hispanic women in the first three months  
 28 of the year, compared to the same time period in the previous year.” *Id.* Police chiefs in Houston

1 and Los Angeles have reported similarly concerning decreases in reports of sexual and domestic  
2 violence. *Id.*

3 Lisa Sherman-Nikolaus, policy manager at the Tennessee Immigrant and Refugee Rights  
4 Coalition, reports that immigrants in her community “don’t trust local law enforcement and are  
5 reluctant to report crimes, visit a health clinic or drive their children to school.” Ariana Maia  
6 Sawyer, *Nashville immigrants live in fear, make plans for deportation*, USA TODAY NETWORK (May  
7 30, 2017, 6:37 PM), [http://www.tennessean.com/story/news/local/2017/05/30/nashville-immigrants-](http://www.tennessean.com/story/news/local/2017/05/30/nashville-immigrants-live-in-fear-trump-deportation/341126001/)  
8 [live-in-fear-trump-deportation/341126001/](http://www.tennessean.com/story/news/local/2017/05/30/nashville-immigrants-live-in-fear-trump-deportation/341126001/). Similarly, in California, Alameda County Assistant  
9 District Attorney Teresa Drenick reports that parents are keeping their children home from school  
10 for extended periods of time out of fear of deportation. Fay, *supra*. And, the Alameda Health  
11 Consortium, a nonprofit group of health centers, has reported a “drop-off” in immigrant patients with  
12 chronic illnesses, due to fear of being deported. *Id.* San Francisco Human Services Agency and  
13 Second Harvest Food Bank report that even documented immigrants are un-enrolling from, or  
14 hesitating to take advantage of, government food assistance programs. *Id.* *Amici* organizations have  
15 experienced similar un-enrollment and reports of community members scared to access services.  
16 Some *amici* organizations are spending precious resources to educate immigrants about their rights  
17 and encouraging scared consumers to use their services.

18 In sum, the irreparable harm to nonprofit constituents outlined by *amici* in March remain  
19 unchanged by the AG Memo. The Court should deny the Government’s motion to dismiss.

20 **III. CONCLUSION**

21 On behalf of their organizations, their clients and the communities they serve, *amici curiae*  
22 urge this Court to deny the Government’s motion to dismiss, consistent with its previous decision on  
23 the preliminary injunction.

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Dated: June 28, 2017

COOLEY LLP &  
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*/s/ Maureen P. Alger*

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