

EXHIBIT 1

FENWICK & WEST LLP
ATTORNEYS AT LAW
SAN FRANCISCO

1 KATHRYN J. FRITZ (CSB No. 148200)
kfritz@fenwick.com
2 FENWICK & WEST LLP
555 California Street, 12th Floor
3 San Francisco, CA 94104
Tel: (415) 875-2300; Fax: (415) 281-1350
4

MITCHELL ZIMMERMAN (CSB No. 88456)
mzimmerman@fenwick.com
PATRICK E. PREMIO (CSB No. 184915)
ppremio@fenwick.com
FENWICK & WEST LLP
801 California Street
Mountain View, CA 94041
Tel: (650) 988-8500; Fax: (650) 938-5200

5 ANNASARA G. PURCELL (CSB No. 295512)
apurcell@fenwick.com
6 FENWICK & WEST LLP
1191 Second Avenue, 10th Floor
7 Seattle, WA 98101
Tel: (206) 389-4510; Fax: (206) 389-4511
8

MEGHAN RHEA (CSB No. 197307)
rhea@wgrpc.com
WG+R LAW GROUP, P.C.
2233 Santa Clara Avenue
Alameda, CA 94501
Tel: (510)323-4034; Fax: (510)747-1724

9 ATTORNEYS FOR *AMICI CURIAE* TECHNOLOGY COMPANIES

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 SAN FRANCISCO DIVISION

13 COUNTY OF SANTA CLARA,

14 Plaintiff,

15 vs.

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

21 Defendants.

22 CITY AND COUNTY OF SAN FRANCISCO,

23 Plaintiff,

24 vs.

25 DONALD J. TRUMP, President of the United
States, UNITED STATES OF AMERICA,
JOHN F. KELLY, Secretary of United States
26 of Homeland Security, JEFFERSON B.
SESSIONS, Attorney General of the United
27 States, DOES 1-100,

28 Defendants.

Case No. 3:17-cv-00574-WHO

**BRIEF OF *AMICI CURIAE*
TECHNOLOGY COMPANIES IN
OPPOSITION TO DEFENDANTS'
MOTIONS TO DISMISS**

Date: July 12, 2017
Time: 2:00 pm
Judge: Hon. William H. Orrick
Crtm: 2

Date filed: February 3, 2017
Trial date: April 23, 2018

Case No. 3:17-cv-00485-WHO

1 **INTRODUCTION**

2 This Court previously granted leave to *Amici Curiae* Technology Companies¹ to file a
 3 brief, urging the Court to enjoin the President’s unconstitutional effort to punish communities
 4 whose local governments choose to decline conscription into a scheme of federal immigration law
 5 enforcement. *Amici* and their communities have benefited from the open values, the diverse and
 6 inclusive culture, the lawful and welcoming immigration practices, and the supportive local
 7 governments that are all jeopardized by Executive Order 13,768, and which the Court’s
 8 Preliminary Injunction has served to protect. The concerns stated in *Amici*’s original brief remain
 9 as troubling as ever, hence we supplement our original statement to respond to the motion to
 10 dismiss. We will be very brief.

11 ***AMICI CURIAE* TECHNOLOGY COMPANIES’**
 12 **CONTINUING INTEREST AND CONCERN**

13 As we explained earlier, our two concerns were that (1) the Executive Order unlawfully
 14 seeks to compel conduct antithetical to the values of innovative companies and their
 15 communities, and (2) the Order undermines the ability of American companies to compete
 16 globally by decreasing the livability of nearly every major American innovation hub and making
 17 American cities less safe.

18 The principal response of defendants and their *amici* to such concerns is that they are
 19 mooted by the narrowing interpretation of the Order offered by the Attorney General. Not so.

20 First, the Order speaks for itself. Its express purpose is to: “Ensure that jurisdictions that
 21 fail to comply with applicable Federal law do not receive Federal funds, except as mandated by
 22 law.” (Order, § 2(c).) The Order’s stated purpose is not to deny “those Federal funds granted by
 23 the Department of Justice and the Department of Homeland Security.” The purpose refers,
 24 without qualification, to “Federal funds,” and therefore applies to any and all Federal funds.

25 The section of the Order which effects this purpose is even more unequivocal. It instructs
 26 the Attorney General and DHS Secretary to “ensure that jurisdictions that willfully refuse to
 27 comply with 8 U.S.C. 1373 (sanctuary jurisdictions) are *not eligible to receive Federal grants*,

28 ¹ A list of the companies submitting this brief is attached as Exhibit A.

1 except as deemed necessary for law enforcement purposes by the Attorney General or the
 2 Secretary.” (Order, § 9(a), emphasis added.) Again, the Order refers to “Federal grants,” not
 3 “grants from the U.S. Departments of Justice and Homeland Security.” Indeed, by its terms the
 4 only Federal grants that might possibly be exempted from the bar are grants from DOJ and DHS –
 5 all other Federal grants are, by its terms, to be denied.

6 Second, even if the Attorney General’s interpretation of the Order had binding legal force
 7 – which it does not – plainly the Attorney General’s creative re-write of the Order could be
 8 reversed at any time by a chief executive who has frequently changed course. Catastrophic
 9 impact on our communities remains a real danger absent injunctive relief.

10 **AMICI’S CONCERNS REGARDING THE EVIDENCE-FREE ASSERTIONS**
 11 **OF THE TEN-STATE *AMICI* BRIEF**

12 The ten states who seek to file an amicus brief in support of defendants have no actual
 13 interest in these proceedings, and their effort to manufacture a concern unintentionally reveals the
 14 same fact-free bias that appears to animate the Order itself.

15 Nothing in the Court's Injunction nor any of the relief plaintiffs seek would prevent the ten
 16 states from voluntarily enlisting in federal immigration enforcement. Their effort here is therefore
 17 not needed to protect their prerogatives, but rather simply seeks to prevent other states and
 18 localities from making their own judgments on whether public safety is endangered when local
 19 police are seen as agents of immigration enforcement.

20 The ten states’ contention that so-called “sanctuary cities” pose a danger to their states
 21 embodies precisely the kind of evidence-free, anti-immigrant animus that *Amici* Technology
 22 Companies fear will negatively impact their communities and undermine the spirit of tolerance
 23 and openness that are the key to the economic, as well as moral, well-being of *Amici* Technology
 24 Companies and the communities in which are they are embedded. The ten states assert:

25 “[S]anctuary jurisdictions can cause harm to neighboring States—even States
 26 that have no sanctuary jurisdictions—by making it easier for people who are not
 27 lawfully in this country, and who have committed civil or criminal offenses, to
 28 evade capture by law enforcement and to travel out-of-state. For example, the
 City of Baltimore, which has adopted sanctuary city policies, is a significant
 source of illegal drugs for the Eastern Panhandle of West Virginia. Sanctuary
 policies deprive law enforcement in Baltimore and similar jurisdictions of

1 important tools that could assist with preventing out-of-state drug trafficking.

2 Neither logic nor evidence supports these claims, which promote the canard that
 3 undocumented immigrants are a suspect, criminal group. The term “sanctuary cities” itself
 4 represents a misleading characterization, since none of the supposed “sanctuary” jurisdictions
 5 offers actual sanctuary to undocumented immigrants, let alone criminals sought by federal, state
 6 or local law enforcement authorities. Nor has any “sanctuary” state or local government entity
 7 taken steps to hinder federal immigration law enforcement. And absolutely nothing about the
 8 policy of declining to participate in federal immigration efforts – the policies actually under
 9 attack by the Executive Order – assists violent criminals in evading capture. As the Brief Amici
 10 Curiae of Individual Sheriffs and Police Chiefs (Dkt. 59-1) submitted in support of the Motion for
 11 Preliminary Injunction makes clear: “When community residents live in constant fear that
 12 interactions with local police could result in deportation, there is a fundamental breakdown in
 13 trust that impedes the police from doing their jobs and threatens public safety.” (Police Chiefs’
 14 Amici at 2.) The Amici Sheriffs and Police Chiefs including those from Michigan, Nevada, Ohio
 15 and Texas – 4 of the 10 states that submitted the latest amicus brief – cite multiple studies and
 16 examples demonstrating that “crime is statistically significantly lower in counties that do not hold
 17 people in custody beyond their release date pursuant to an ICE detainer compared to those that
 18 do.” (*Id.* at 6.)

19 Regarding the ten states’ one supposed example, no evidence is offered or referenced
 20 indicating that Baltimore is a significant source of the illegal drugs plaguing West Virginia, that
 21 undocumented immigrants play a role in drug trafficking in West Virginia, or that Baltimore’s
 22 reported policy of separating local law enforcement from immigration enforcement encourages
 23 drug traffickers. The tragic reality appears to be that most of the drugs that are killing West
 24 Virginians are coming from drug companies, not undocumented immigrants.² And it is equally a

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 26 ² See, e.g., a December 2016 *Fox Business* story, “Report: DEA records show West Virginia
 27 flooded with drugs” (<http://www.foxbusiness.com/markets/2016/12/19/report-dea-records-show-west-virginia-flooded-with-drugs.html>) (“Drug wholesalers shipped 780 million hydrocodone
 28 and oxycodone pills to West Virginia in just six years That amounts to 433 of the frequently abused opioid pills for every man, woman and child in the state”).

1 reality – contrary to the rhetoric often employed by President Trump – that immigrants have
 2 substantially *lower* rates of criminal activity than non-immigrant Americans. As *The New York*
 3 *Times* reported in January 2017, “several studies, over many years, have concluded that
 4 immigrants are less likely to commit crimes than people born in the United States. . . . Analyses
 5 of census data from 1980 through 2010 show that among men ages 18 to 49, immigrants were
 6 one-half to one-fifth as likely to be incarcerated as those born in the United States.”³ And only
 7 half of one percent of undocumented immigrants are incarcerated for non-immigration crimes,
 8 one-third the incarceration rate of native-born Americans. (Cato Institute study, March 2017,
 9 reported at <https://www.cato.org/blog/immigration-myths-crime-number-illegal-immigrants>.)

10 Baseless appeals to the anti-immigrant fears and prejudices, appeals that endanger our
 11 values and our communities’ economic well-being, will not assist this Court in resolving this
 12 case. They certainly do not show that the harms that plaintiffs and plaintiffs’ *amici* suffer are
 13 unreal or prematurely asserted. The Court correctly found that plaintiffs were likely to succeed on
 14 the merits, and dismissal is plainly inappropriate.

15 Dated: June 28, 2017

FENWICK & WEST LLP

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 17 By: /s/ Kathryn J. Fritz

Kathryn J. Fritz
 FENWICK & WEST LLP
 San Francisco, CA

19 Mitchell Zimmerman
 Patrick M. Premo
 FENWICK & WEST LLP
 Mountain View, CA

Annasara G. Purcell
 FENWICK & WEST LLP
 Seattle, WA

21
 22 Attorneys for *Amici Curiae*
 Technology Companies

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 27 ³ “Contrary to Trump’s Claims, Immigrants Are Less Likely to Commit Crimes,” *New York*
 28 *Times*, January 26, 2017, found at <https://www.nytimes.com/2017/01/26/us/trump-illegal-immigrants-crime.html?mcubz=1&r=0>.

EXHIBIT A

EXHIBIT A

1. Appboy Inc.
2. Azavea
3. Checkr, Inc.
4. Chegg Inc.
5. General Assembly
6. IDEO
7. Knotel
8. Mapbox
9. Marin Software
10. Minted LLC
11. Work & Co