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10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA  
 12 SAN FRANCISCO DIVISION  
 13

14 CITY AND COUNTY OF SAN FRANCISCO,  
 15  
 Plaintiff,  
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 v.  
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 18 DONALD J. TRUMP, President of the  
 United States of America, JOHN F.  
 KELLY, in his official capacity as Secretary  
 19 of the United States Department of  
 Homeland Security, JEFFERSON B.  
 20 SESSIONS, in his official capacity as  
 Attorney General of the United States,  
 21 JOHN MICHAEL "MICK" MULVANEY,  
 in his official capacity as Director of the  
 22 Office of Management and Budget, and  
 DOES 1-50,  
 23  
 Defendants.  
 24

Case No. 17-cv-00485 WHO  
**MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF OF SOUTHERN POVERTY LAW CENTER AND OTHER *AMICI* IN SUPPORT OF COUNTY OF SANTA CLARA AND CITY AND COUNTY OF SAN FRANCISCO'S MOTIONS FOR PRELIMINARY INJUNCTION**

Date: April 12, 2017  
 Time: 2:00 p.m.  
 Dept.: Courtroom 2  
 Judge: Hon. William H. Orrick  
 Date Filed: January 31, 2017  
 Trial Date: Not Yet Set

**MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF**

The Southern Poverty Law Center and additional *amici*<sup>1</sup> hereby request permission to file the attached *amici curiae* brief<sup>2</sup> in support of the motions for preliminary injunctions filed by Plaintiffs County of Santa Clara and City and County of San Francisco.<sup>3</sup> In support of this motion, Southern Poverty Law Center and *amici* state:

**I. STATEMENT OF IDENTITY AND INTEREST OF *AMICUS CURIAE* SOUTHERN POVERTY LAW CENTER**

The Southern Poverty Law Center (“SPLC”) is a nonprofit legal advocacy organization based in Montgomery, Alabama, with additional offices in Georgia, Florida, Louisiana, and Mississippi. The SPLC was founded in 1971 with the mission of ensuring civil rights for all. Since then, the SPLC has worked tirelessly to protect the most vulnerable members of society, winning numerous landmark legal victories throughout the American South. The SPLC specifically works to protect the civil rights of immigrants and migrant workers, many of whom face discrimination, exploitation, and outright abuse. For instance, the SPLC has recently launched the Southeast Immigrant Freedom Initiative, a project that will enlist and train lawyers to provide pro bono counsel to immigrants who have been detained and are facing deportation proceedings. The SPLC regularly engages in targeted litigation and advocacy on behalf of immigrant communities.

In the course of its work on behalf of immigrants, the SPLC has acquired experience with local jurisdictions that voluntarily allow their local law enforcement to be commandeered by the federal government in order to enforce federal immigration priorities. Executive Order 13768, 82 Fed. Reg. 8799 (Jan. 25, 2017) (the “Executive Order”), at issue in these cases, seeks to involuntarily compel local jurisdictions across the country to adopt the same practices. The SPLC

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<sup>1</sup> Exhibit 1 to this Motion identifies each of the additional *amici* and explains each *amici*’s interest in, and reasons for, the attached *amici curiae* brief.

<sup>2</sup> Attached as Exhibit 2 to this Motion.

<sup>3</sup> The County of Santa Clara has filed a motion for a nationwide preliminary injunction in *County of Santa Clara v. Trump, et al.*, Case No. 17-cv-574-WHO (N.D. Cal.). Although these two cases have not been consolidated and have separate hearing dates, both cases have been assigned to the same Judge and the Plaintiffs in each case have requested a nationwide preliminary injunction of the same Executive Order. *Amici*’s arguments in their attached brief apply equally to both cases. *Amici* therefore submit the same proposed brief in each case.

1 believes that these practices constitute bad public policy, with harmful consequences for local  
2 jurisdictions and the immigrant communities who live in them, and that the Executive Order  
3 seeking to compel these practices is constitutionally flawed. The SPLC is deeply interested in  
4 this litigation because the Executive Order, if implemented, will have a dramatic impact on issues  
5 that are central to the SPLC's mission and work.

## 6 **II. REASONS FOR AND RELEVANCE OF *AMICI CURIAE* BRIEF**

7 The SPLC focuses primarily on litigation and advocacy in the southern United States. As  
8 described above, many jurisdictions in the SPLC's area of regular operations currently *voluntarily*  
9 employ the same practices that the Executive Order seeks to *involuntarily* compel Santa Clara,  
10 San Francisco, and all local jurisdictions across the country to adopt. The SPLC has witnessed  
11 the consequences of these practices in a variety of jurisdictions across the American South.

12 The proposed brief of *amici curiae* provides a short synopsis of several distinct types of  
13 harm that occur when local police carry out federal immigration laws. These harms are not all  
14 self-evident, but have instead come to light through the SPLC's and other amici's longstanding  
15 relationship with immigrant communities, including their membership in these communities. The  
16 practice of local police voluntarily assisting in the enforcement of federal immigration law is not  
17 as widespread in Santa Clara, San Francisco, or the Northern District of California. Accordingly,  
18 the proposed brief of *amici curiae* is relevant to this litigation because it will permit the SPLC and  
19 other *amici* to share with the Court their experience and understanding of the consequences of the  
20 practices that the Executive Order seeks to compel, based on extensive experience in the southern  
21 United States, where these practices are commonplace.

## 22 **III. CONCLUSION**

23 For the foregoing reasons, the Southern Poverty Law Center and *amici* hereby request the  
24 Court to grant leave to file an *amici curiae* brief in support of County of Santa Clara and City and  
25 County of San Francisco's motions for preliminary injunction.  
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Dated: March 22, 2017

Respectfully Submitted,

Dechert LLP

By: /s/ Nathan M. McClellan

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American Federation of Teachers,  
Americans for Immigrant Justice,  
Asian American Legal Defense and  
Education Fund,  
Asian Americans Advancing Justice (Asian  
Law Caucus, Los Angeles, AAJC, and  
Atlanta),  
Coalition for Humane Immigrant Rights,  
Equal Rights Advocates,  
Florida Immigrant Coalition, Inc.,  
Florida Legal Services, Inc.,  
Greater Birmingham Ministries,  
Greater Rochester Coalition for  
Immigration Justice,  
Illinois Coalition for Immigrant and  
Refugee Rights,  
Immigrant Legal Resource Center,  
Jobs With Justice,  
Justice in Motion,  
Latin American Legal Defense and  
Education Fund,  
LatinoJustice PRLDEF,  
National Employment Law Project,  
National Immigration Law Center,  
New Orleans Workers' Center for Racial  
Justice,  
Northwest Forest Worker Center,  
Refugee and Immigrant Center for  
Education and Legal Services,  
Safe Horizon,  
Southeast Immigrant Rights Network,  
St. Louis Workers Education Society,  
Tennessee Immigrant and Refugee Rights  
Coalition,  
We Belong Together,  
Worker Justice Center of New York, Inc.,  
Workers Defense Project, and  
Worksafe



# Exhibit 1

**Additional Amici**

<b>Num.</b>	<b>Identity of <i>Amici</i></b>	<b>Description of Organization and Interest</b>
1	Adelante Alabama Worker Center	Adelante Alabama Worker Center unites day laborers, domestic workers, and other low-wage and immigrant workers and their families in the Birmingham area to defend our rights, promote our dignity, and pursue justice for all.
2	Alabama Coalition for Immigrant Justice (ACIJ)	The Alabama Coalition for Immigrant Justice is a grassroots, statewide network of individuals and organizations that works to advance and defend the rights of immigrants in Alabama. Our coalition consists of seven non-profit organizations, 15 grassroots immigrant community organizations, and hundreds of individual members.
3	American Federation of Teachers	The American Federation of Teachers (AFT), an affiliate of the AFL-CIO, was founded in 1916 and today represents approximately 1.6 million members who are employed across the nation in K-12 and higher education, public employment and healthcare. The AFT has a longstanding history of supporting and advocating for the civil rights of our members and the communities they serve. The majority of AFT members work in the public sector and provide necessary services, such as healthcare and education, to the public. In their work, AFT members interact everyday with individuals, many of whom fear that they will have to disclose their immigration status when they seek the service of an AFT member. The AFT is greatly concerned about the implications that Executive Order 13768 will have on public employees in their roles as servants to their communities. For these reasons, AFT is uniquely situated to comment on the harmful impact of Executive Order 13768 on local governments' ability to effectively and efficiently serve their residents.

Num.	Identity of <i>Amici</i>	Description of Organization and Interest
4	Americans for Immigrant Justice	<p>Amicus Americans for Immigrant Justice (AI Justice), formerly Florida Immigrant Advocacy Center, is a non-profit law firm dedicated to promoting and protecting the basic rights of immigrants. Since our founding in 1996, AI Justice has served over 90,000 immigrants from all over the world. Our clients are unaccompanied immigrant children; survivors of domestic violence, sexual assault, and human trafficking and their children; immigrants who are detained and facing removal proceedings; as well as immigrants seeking assistance with work permits, legal permanent residence, asylum and citizenship. A substantial portion of our clients include individuals who have been irreparably traumatized and victimized by abuse and violence and are seeking refuge. Part of our mission is to ensure that immigrants are treated justly, and to help bring about a society in which the contributions of immigrants are valued and encouraged. In Florida and on a national level, we champion the rights of immigrants; serve as a watchdog on immigration detention practices and policies; and speak for immigrant groups who have particular and compelling claims to justice.</p>
5	Asian American Legal Defense and Education Fund	<p>The Asian American Legal Defense and Education Fund (AALDEF), founded in 1974, is a national organization that protects and promotes the civil rights of Asian Americans. By combining litigation, advocacy, education, and organizing, AALDEF works with Asian American communities across the country to secure human rights for all. The fears of deportation in the Asian American community are palpable, in light of their long history of discrimination: Muslim immigrant families targeted because of their religion, Japanese American families who were forcibly relocated and imprisoned in camps during World War II, and Chinese American families who were subject to the Chinese Exclusion Act. Giving immigration powers and responsibilities to local and state police forces will clearly deter Asian Americans from relying on those agencies.</p>

Num.	Identity of <i>Amici</i>	Description of Organization and Interest
6	Asian Americans Advancing Justice - Asian Law Caucus	Asian Americans Advancing Justice - Asian Law Caucus (ALC) was founded in 1972 with a mission to promote, advance, and represent the legal and civil rights of Asian and Pacific Islanders, with a particular focus on low-income members of those communities. Advancing Justice - ALC is part of a national affiliation of Asian American civil rights groups, with offices in Los Angeles, Chicago, Atlanta and Washington DC. ALC has a long history of protecting and advocating on behalf of immigrants through direct legal services, impact litigation, community education, and policy work, including around vulnerabilities due to immigration status.
7	Asian Americans Advancing Justice - Los Angeles	Asian Americans Advancing Justice - Los Angeles (Advancing Justice - LA) is the nation's largest legal and civil rights organization for Asian Americans, Native Hawaiians, and Pacific Islanders (AANHPI). Through direct services, impact litigation, policy advocacy, leadership development, and capacity building, Advancing Justice - LA focuses on the most vulnerable members of AANHPI communities, including immigrant members of those communities.
8	Asian Americans Advancing Justice   AAJC	Asian Americans Advancing Justice   AAJC (AAJC) is a national nonprofit organization founded in 1991. Based in Washington D.C., AAJC works to advance and protect civil and human rights for Asian Americans and to build a fair and equitable society for all. Along with our Advancing Justice affiliates, AAJC promotes justice by bringing national and local constituencies together through community outreach, public policy advocacy, and litigation.
9	Asian Americans Advancing Justice-Atlanta	Asian Americans Advancing Justice - Atlanta is the first legal and policy center dedicated to defending democracy for Asian Americans, immigrants and refugees, in Georgia and the southeast. Through its four core program areas, civic engagement, policy advocacy, legal services, and leadership development, Advancing Justice - Atlanta works to build a stronger voice for the New American majority in the New South. As an organization that serves immigrants, it is critical to Advancing Justice - Atlanta's mission that the rights of all immigrants be protected.

Num.	Identity of <i>Amici</i>	Description of Organization and Interest
10	Coalition for Humane Immigrant Rights (CHIRLA)	<p>The Coalition for Humane Immigrant Rights (CHIRLA) was founded in 1986. CHIRLA is a California leader with national impact made of diverse immigrant families and individuals who act as agents of social change to achieve a world with freedom of mobility, full human rights, and true participatory democracy. CHIRLA's mission is to achieve a just society fully inclusive of immigrants. CHIRLA organizes and serves individuals, institutions and coalitions to build power, transform public opinion, and change policies to achieve full human, civil and labor rights. Guided by the power, love, and vision of our community, CHIRLA embraces and drives progressive social change. CHIRLA was formed in response to the Immigration Reform and Control Act (IRCA) of 1986 which made hiring undocumented workers illegal, thus creating a situation ripe for worker exploitation and abuse which have increased since that time.</p>
11	Equal Rights Advocates	<p>Equal Rights Advocates (ERA) is a San Francisco-based women's and worker's rights organization whose mission is to secure and protect equal rights and economic opportunities for women and girls through litigation and advocacy. Founded in 1974, ERA has appeared as amicus curiae in numerous Supreme Court cases, including <i>Meritor Savings Bank, FSB v. Vinson</i>, 477 U.S. 57 (1986); <i>Harris v. Forklift Systems, Inc.</i>, 510 U.S. 17 (1993); <i>Faragher v. Boca Raton</i>, 522 U.S. 1105 (1998); and <i>Burlington Industries v. Ellerth</i>, 524 U.S. 742 (1998). ERA has similarly appeared as amicus curiae in numerous California Supreme Court cases, including <i>Lyle v. Warner Brothers Television Productions</i> (2006) 38 Cal.4th 264; <i>Yanowitz v. L'Oreal USA, Inc.</i> (2005) 36 Cal.4th 1028, <i>Miller v. California Department of Corrections</i> (2005) 36 Cal.4th 446; <i>State Dept. of Health Services v. Superior Court</i> (McGinnis) (2003) 31 Cal.4th 1026; and <i>Schifando v. City of Los Angeles</i> (2003) 31 Cal.4th 1074.</p>
12	Florida Immigrant Coalition, Inc. (FLIC)	<p>The Florida Immigrant Coalition is a statewide alliance of over 60 member organizations, including farmworkers, students, service providers, grassroots organizations and legal advocates, who come together for the fair treatment of all people.</p>

Num.	Identity of <i>Amici</i>	Description of Organization and Interest
13	Florida Legal Services, Inc.	Florida Legal Services is a statewide leader in advancing economic, social, and racial justice. We advocate for poor, vulnerable, and hard to reach people through impact litigation, legislative and administrative advocacy, education, and strategic partnerships. We are a statewide, 501(c)(3) non-profit law office with offices in Tallahassee, Newberry, and Miami.
14	Greater Birmingham Ministries	We serve low income people in the greater Birmingham area with food, clothing, utility assistance, and we also organize people in marginalized groups along with faith communities to challenge injustice and poverty
15	Greater Rochester Coalition for Immigration Justice	Educational and civil rights activists
16	Illinois Coalition for Immigrant and Refugee Rights	ICIRR is dedicated to promoting the rights of immigrants and refugees to full and equal participation in the civic, cultural, social, and political life of our diverse society. In partnership with our member organizations, the Coalition educates and organizes immigrant and refugee communities to assert their rights; promotes citizenship and civic participation; monitors, analyzes, and advocates on immigrant-related issues; and, informs the general public about the contributions of immigrants and refugees.
17	Immigrant Legal Resource Center (ILRC)	The Immigrant Legal Resource Center (ILRC) is a national nonprofit resource center that provides immigration legal trainings, technical assistance, and educational materials, and engages in advocacy and civic engagement to advance immigrant rights.
18	Jobs With Justice	Jobs With Justice is a national network that expands people's ability to come together to improve their workplaces, their communities, and their lives. We create solutions to the problems working people face by leading campaigns, changing the conversation and moving labor, community, student and faith voices to action.
19	Justice in Motion	Justice in Motion challenges a developing and under-addressed crisis in the globalizing economy: abused migrant workers being shut out of the justice system because they returned home to their families. Forcing workers to choose between enforcing their rights and going home is unjust. Justice in Motion protects migrant rights by ensuring justice across borders

Num.	Identity of <i>Amici</i>	Description of Organization and Interest
		through bringing advocates together from both sides of the border.
20	Latin American Legal Defense and Education Fund (LALDEF)	The Latin American Legal Defense and Education Fund (LALDEF) is a grassroots nonprofit organization formed to defend the civil rights of the Latin American community, facilitate its access to health care and education, and advance cross-cultural understanding in the Mercer County, NJ region.
21	LatinoJustice PRLDEF	LatinoJustice PRLDEF was founded in 1972 as the Puerto Rican Legal Defense and Education Fund and is one of the nation's leading civil rights public interest law offices that represents Latinas and Latinos throughout the Eastern seaboard and works to increase their entry into the legal profession. LatinoJustice PRLDEF has a strong interest in addressing civil rights and human rights violations within the Latino communities of the United States and uses the courts to rectify these abuses.
22	National Employment Law Project	Amicus curiae National Employment Law Project (NELP) is a nationwide advocacy organization that has worked for over forty years to defend and expand the labor rights of low wage and immigrant workers. Through training, policy advocacy, education, and strategic intervention in court cases, NELP works to uphold the labor and employment protections of all workers, regardless of their immigration status, so that labor standards are followed for and by all. NELP has participated as amicus curiae in cases around the country addressing issues that impact immigrant workers, including the U.S. Supreme Court's decision in <i>Hoffman Plastic Compounds, Inc. v. NLRB</i> , 535 U.S. 137 (2002), and <i>Rivera v. NIBCO</i> , 364 F.3d 1057 (9th Cir. 2004). This Court's decision will directly enhance NELP's, its clients, and its constituents goals of securing safe workplaces, ensuring that workers can safely and effectively report labor law violations to labor enforcement and other law enforcement agencies without retaliation or intimidation, and ensuring coverage under labor and employment laws for all workers.

Num.	Identity of <i>Amici</i>	Description of Organization and Interest
23	National Immigration Law Center	The National Immigration Law Center (NILC) is the primary national organization in the United States exclusively dedicated to defending and advancing the rights and opportunities of low-income immigrants and their families. Over the past 35 years, NILC has won landmark legal decisions protecting fundamental rights, and has advanced policies that reinforce the values of equality, opportunity, and justice. A major concern of the organization has been federal preemption and state and local authority to adopt policies that promote the wellbeing and sense of inclusion of all community members.
24	New Orleans Workers' Center for Racial Justice	The New Orleans Workers' Center for Racial Justice (Workers' Center) was founded shortly after Hurricane Katrina. Against the backdrop of a political economy that pitted communities of color against each other, a group of Black and immigrant workers came together from public housing developments, FEMA trailer parks, day labor corners, and labor camps across Louisiana to build a new freedom movement: multi-racial; committed to racial, gender, and immigrant justice; and dedicated to telling a new story about possibility in the Southern region as a whole.
25	Northwest Forest Worker Center	The Northwest Forest Worker Center empowers forest workers and harvesters of non-timber forest products in northern California, Oregon and Washington to improve their lives and livelihoods.
26	Refugee and Immigrant Center for Education and Legal Services (RAICES)	RAICES was founded to meet the needs of immigrants and refugees fleeing the civil wars and social upheavals of Central America. The organization provides counsel and representation in a full range of defenses against deportation, family-based immigration cases, visas, and other affirmative applications.
27	Safe Horizon	Safe Horizon is the nation's leading victim assistance organization. Our mission is to provide support, prevent violence, and promote justice for victims of crime and abuse, their families and communities.
28	Southeast Immigrant Rights Network (SEIRN)	SEIRN's mission is to lift up the voice and the leadership of immigrant communities of the Southeast at the regional and national levels. We promote collaboration and exchange between our members, as well as political education and collective action to build just and inclusive communities. SEIRN envisions a shared struggle between the immigrant community and other marginalized communities to build a movement

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		that transforms the Southeast into a place that respects the dignity and the human rights of all.
29	St. Louis Workers Education Society	St. Louis Workers Education Society 501(c)3 non-profit organization that educates and trains local residents, especially people of color, women and youth, to become community leaders. Our focus is on the intersection of workers' rights, racial justice, and disabilities empowerment.
30	We Belong Together	We Belong Together is a campaign anchored by the National Domestic Workers Alliance to mobilize women in support of immigration policies that keep families together and empower women. Immigration reform is rarely thought of as a women's issue, but in fact it is central to the fight for women's equality. Millions of immigrant women who are part of the fabric of our communities, workplaces, and schools are blocked from achieving their full potential because of a broken immigration system. They perform essential jobs, like taking care of our children and our aging parents, and are central to family and community well-being.
31	Worker Justice Center of New York, Inc.	The Worker Justice Center of New York (WJCNY) is the merger of Farmworker Legal Service of NY (FLSNY) and the Workers' Rights Law Center (WRLC). Our merger builds on decades of achievement in providing direct legal services to low-wage workers, empowering communities, and advocating for institutional change. WJCNY pursues justice for those denied human rights with a focus on agricultural and other low-wage workers, through legal representation, community empowerment and advocacy for institutional change.
32	Workers Defense Project	WDP is a worker center and part of a national movement of organizations that seek to provide low-wage workers with the resources they need to improve their working and living conditions. The project provides a source of power and hope for low-wage workers who have little access to these important resources. WDP is one of the few organizations in Texas working to address workplace abuse faced by

Num.	Identity of <i>Amici</i>	Description of Organization and Interest
		low-wage workers. The organization is one of the most established worker centers in the South and a leader in fighting for fair conditions for working people.
33	Worksafe	<p>Worksafe advocates for protective worker health and safety laws and effective remedies for injured workers through the legislature and courts. Worksafe is also a Legal Support Center funded by the State Bar Legal Services Trust Fund Program to provide advocacy, technical and legal assistance, and training to the legal services projects throughout California that directly serve California's most vulnerable low-wage workers. Millions of low-wage and immigrant workers often toil long hours in harsh and hazardous work environments in California. These same workers often face employment and labor violations. Many of these workers are vulnerable immigrant workers who are the target of employer abuse and retaliation. In our work, we have encountered employers who will utilize local law enforcement as a tactic to engage in illegal retaliation based actions against workers that are voicing their concerns, injuries, illnesses, or exercising their rights.</p>

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10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA  
 12 SAN FRANCISCO DIVISION  
 13

14 CITY AND COUNTY OF SAN  
 FRANCISCO,

15 Plaintiff,

16 v.

17 DONALD J. TRUMP, President of the  
 18 United States of America, JOHN F.  
 KELLY, in his official capacity as  
 19 Secretary of the United States Department  
 of Homeland Security, JEFFERSON B.  
 20 SESSIONS, in his official capacity as  
 Attorney General of the United States,  
 21 JOHN MICHAEL "MICK" MULVANEY,  
 in his official capacity as Director of the  
 22 Office of Management and Budget, and  
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23 Defendants.  
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Case No. 17-cv-00485 WHO

**BRIEF OF *AMICUS CURIAE* SOUTHERN  
 POVERTY LAW CENTER AND OTHER  
 AMICI IN SUPPORT OF COUNTY OF  
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 21 \\_year\\_overview+6-2008.pdf?token=CjxGyjZITqFgFmsjkDf0vECPSk0%3D](http://static1.1.sqspcdn.com/static/f/373699/7070512/1274810470237/No_Drivers_License_1_year_overview+6-2008.pdf?token=CjxGyjZITqFgFmsjkDf0vECPSk0%3D)  
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1 **INTRODUCTION**

2 This litigation involves the Constitutionality of Executive Order 13768, 82 Fed. Reg.  
 3 8799, issued by President Donald J. Trump on January 25, 2017 (the “Executive Order”). The  
 4 Executive Order plainly states that any state or local government that the Attorney General and  
 5 Secretary of Homeland Security declare to be a “sanctuary jurisdiction” will lose federal funding.  
 6 The Executive Order does not define “sanctuary jurisdiction,” but the term seems to apply at least  
 7 to any jurisdiction that refuses to comply with 8 U.S.C. § 1373 or declines to comply with civil  
 8 detainer requests from Immigration and Customs Enforcement (“ICE”), *i.e.*, any state or local  
 9 government that refuses to allow ICE to commandeer the local police force to round up or detain  
 10 immigrants.

11 Plaintiffs Santa Clara County (“Santa Clara”) and the City and County of San Francisco  
 12 (“San Francisco”), in separate lawsuits, have challenged the constitutionality of the Executive  
 13 Order. The Southern Poverty Law Center (“SPLC”) and other *amici*<sup>1</sup> submit this amicus brief in  
 14 support of Santa Clara and San Francisco, not to supplement the legal arguments that Santa Clara  
 15 and San Francisco have made but to inform the Court of what has happened in the South and  
 16 other parts of the country, where many local governments *voluntarily* comply with the kind of  
 17 ICE civil detainer requests<sup>2</sup> to which the Executive Order seeks to *force* Santa Clara, San

18 \_\_\_\_\_  
 19 <sup>1</sup> See Motion For Leave To File *Amicus Curiae* Brief Of Southern Poverty Law Center And Other  
 20 *Amici* In Support Of County of Santa Clara and City and County Of San Francisco’s Motion For  
 21 Preliminary Injunction, at Exhibit 1 (additional *amici* include Adelante Alabama Worker Center,  
 22 Alabama Coalition for Immigrant Justice (ACIJ), American Federation of Teachers, Americans  
 23 for Immigrant Justice, Asian American Legal Defense and Education Fund, Asian Americans  
 24 Advancing Justice (Asian Law Caucus, Los Angeles, AAJC, and Atlanta), Coalition for Humane  
 25 Immigrant Rights (CHIRLA), Equal Rights Advocates, Florida Immigrant Coalition, Inc. (FLIC),  
 26 Florida Legal Services, Inc., Greater Birmingham Ministries, Greater Rochester Coalition for  
 27 Immigration Justice, Illinois Coalition for Immigrant and Refugee Rights, Immigrant Legal  
 28 Resource Center (ILRC), Jobs With Justice, Justice in Motion, Latin American Legal Defense  
 and Education Fund, LatinoJustice PRLDEF, National Employment Law Project, National  
 Immigration Law Center, New Orleans Workers' Center for Racial Justice, Northwest Forest  
 Worker Center, Refugee and Immigrant Center for Education and Legal Services (RAICES), Safe  
 Horizon, Southeast Immigrant Rights Network (SEIRN), St. Louis Workers Education Society,  
 Tennessee Immigrant and Refugee Rights Coalition, We Belong Together, Worker Justice Center  
 of New York, Inc., Workers Defense Project, and Worksafe).

<sup>2</sup> These local governments may also have 287(g) agreements with the federal government. For  
 more information on 287(g) agreements, which delegate immigration enforcement authority to  
 local law enforcement agencies pursuant to Memoranda of Understanding with ICE, see  
<https://www.ice.gov/factsheets/287g> (last visited Mar. 14, 2017).

1 Francisco, and every other state and local jurisdiction in the country to accede.

2 ICE has been pushing for years to increase its access to local jurisdictions' law  
 3 enforcement resources.<sup>3</sup> When local jurisdictions have turned their police into *de facto* federal  
 4 immigration agents, lasting harm has followed—to immigrant and non-immigrant residents, to  
 5 local law enforcement, and to the community as a whole. First, when local police become federal  
 6 immigration agents, it places them on a risky path toward racial profiling and other discriminatory  
 7 and abusive police conduct. Second, when local police become federal immigration agents, it  
 8 degrades trust between the police and the communities they serve; community trust is a crucial to  
 9 effective law enforcement, and its absence inflicts serious and lasting harm on both the  
 10 community and the local police. Third, when local police become federal immigration agents, it  
 11 allows private actors to intimidate and exploit immigrant populations. Fourth, an Executive  
 12 Order forcing local jurisdictions to allow federal immigration agents to commandeer their local  
 13 police forces puts those local jurisdictions in the untenable position of choosing between flouting  
 14 the Executive Order, on the one hand, or violating the legally protected civil and constitutional  
 15 rights of their residents, on the other.

## 16 ARGUMENT

### 17 I. Turning Local Police Into Federal Immigration Agents Encourages Racial 18 Profiling and Other Law Enforcement Abuses.

19 The SPLC and other *amici* recognize that police officers have a difficult job, and that most  
 20 of them want to discharge their responsibilities appropriately. Nevertheless, it is also true that  
 21 some police officers and departments have engaged in racial profiling and other racially  
 22 discriminatory or abusive behavior. *Amici's* experience is that turning local police into federal  
 23 immigration agents encourages such racial profiling or abusive conduct, and can increase the  
 24 difficulty of uncovering and correcting such discriminatory or abusive conduct.

25 Local police who are determined to enforce immigration laws sometimes use racial  
 26

27 <sup>3</sup> See generally AMERICAN IMMIGRATION COUNCIL, THE CRIMINALIZATION OF IMMIGRATION IN  
 28 THE UNITED STATES (July 2015) available at: [https://www.americanimmigrationcouncil.org/  
 research/criminalization-immigration-united-states](https://www.americanimmigrationcouncil.org/research/criminalization-immigration-united-states) (last visited Mar. 21, 2017).

1 profiling to decide whom to target and how to treat those individuals. For instance, local law  
 2 enforcement officials may stop Latinos<sup>4</sup> for purported traffic violations as a pretext for  
 3 investigating their immigration paperwork or status. A study of arrest data in Davidson County,  
 4 Tenn. shows that the arrest rates for Hispanic defendants driving without a license more than  
 5 doubled in the year after the county entered a 287(g) agreement to enforce immigration law.<sup>5</sup> In  
 6 Irving, Texas, following the police department's agreement to partner with ICE, arrest data reveal  
 7 an "immediate" and "dramatic" increase in "discretionary arrests of Hispanics for petty offenses –  
 8 particularly minor traffic offenses" consistent with "racial profiling of Hispanics in order to filter  
 9 them through the [federal immigration enforcement program's] screening system."<sup>6</sup> Similar  
 10 conclusions resulted from analysis of data on individuals arrested nationwide under the "Secure  
 11 Communities" program that sends the fingerprints of individuals arrested by local law  
 12 enforcement to the Department of Homeland Security.<sup>7</sup> These data showed that Latinos were  
 13 93% of individuals arrested through Secure Communities although they are only 77% of the  
 14 undocumented population.<sup>8</sup>

15 Such racial profiling is wholly unconstitutional. *See Whren v. United States*, 517 U.S.  
 16 806, 813 (1996) ("[T]he Constitution prohibits selective enforcement of the law based on  
 17 considerations such as race."). Racial profiling violates the Fourteenth Amendment's Equal  
 18 Protection Clause, the Fourth Amendment's ban on unreasonable searches and seizures, and Title  
 19

20 <sup>4</sup> This brief uses the terms "Latinos" and "Hispanics" interchangeably depending on the term used  
 21 in the underlying source. Where ethnicity is not specified, the brief refers to immigrants of all  
 ethnicities.

22 <sup>5</sup> TENNESSEE IMMIGRANT AND REFUGEE RIGHTS COALITION & CRIMINAL JUSTICE PLANNING,  
 CITATIONS/WARRANTS FOR NO DRIVER'S LICENSE BY ETHNICITY AND RACE: COMPARING THE  
 23 YEAR PRIOR TO 287(G) AND THE YEAR FOLLOWING 287(G) (2007) *available at* [http://static1.1.sqspcdn.com/static/f/373699/7070512/1274810470237/No\\_Drivers\\_License\\_1\\_year\\_overview+6-2008.pdf?token=CjxGyjZITqFgFmsjkDf0vECPSk0%3D](http://static1.1.sqspcdn.com/static/f/373699/7070512/1274810470237/No_Drivers_License_1_year_overview+6-2008.pdf?token=CjxGyjZITqFgFmsjkDf0vECPSk0%3D) (last visited Mar. 21, 2017).

24 <sup>6</sup> TREVOR GARDNER II AND AARTI KOHLI, THE C.A.P. EFFECT: RACIAL PROFILING IN THE ICE  
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 25 [https://www.law.berkeley.edu/files/policybrief\\_irving\\_0909\\_v9.pdf](https://www.law.berkeley.edu/files/policybrief_irving_0909_v9.pdf).

26 <sup>7</sup> AMERICAN IMMIGRATION COUNCIL, SECURE COMMUNITIES: A FACT SHEET, *available at*  
<https://www.americanimmigrationcouncil.org/research/secure-communities-fact-sheet> (last  
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28 <sup>8</sup> AARTI KOHLI, PETER L. MARKOWITZ & LISA CHAVEZ, SECURE COMMUNITIES BY THE NUMBERS:  
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1 VI of the Civil Rights Act of 1964, which bars law enforcement agencies that receive federal  
 2 funds from discriminating on the basis of race, color, or national origin. Beyond their  
 3 unconstitutionality, these pretextual stops are also a waste of local police resources and taxpayer  
 4 dollars.<sup>9</sup>

5 Perhaps more importantly, racial profiling threatens the legitimacy of local police  
 6 departments within their own communities. A study of Latinos perceptions of police involvement  
 7 in immigration enforcement found that 62% of Latinos—including citizens and documented and  
 8 undocumented immigrant respondents—said that police officers stop Latinos without good reason  
 9 or cause very or somewhat often.<sup>10</sup> It is unsurprising that cooperation with the police drops when  
 10 people fear that the police will treat them differently because of the color of their skin or their  
 11 ethnic origin.<sup>11</sup>

12 Police racial profiling of people of color is nothing new, but ICE's willingness to deport  
 13 immigrants wrongfully seized complicates and magnifies the problem. A study of ICE arrests in  
 14 Georgia pursuant to immigration detainers revealed a dramatic increase in enforcement against  
 15 immigrants of color facilitated by a growing collaboration between local law enforcement and  
 16 ICE. The number of detainers issued in Georgia increased by at least 17,169% between FY 2007  
 17 and June FY 2013.<sup>12</sup> In FY 2007, 66.7% of individuals subject to ICE detainers were defined by

18 \_\_\_\_\_  
 19 <sup>9</sup> See, e.g., MAI THI NGUYEN & HANNAH GILL, THE 287(G) PROGRAM: THE COSTS AND  
 20 CONSEQUENCES OF LOCAL IMMIGRATION ENFORCEMENT IN NORTH CAROLINA COMMUNITIES 33  
 21 (Feb. 2010) available at [https://isa.unc.edu/files/2012/06/287g\\_report\\_final.pdf](https://isa.unc.edu/files/2012/06/287g_report_final.pdf) (finding that the  
 first year of operating the 287(g) program in Mecklenburg County, North Carolina., cost \$5.3  
 million, and the first year of operation in Alamance County, North Carolina, cost taxpayers \$4.8  
 million).

22 <sup>10</sup> NIK THEODORE, INSECURE COMMUNITIES: LATINO PERCEPTIONS OF POLICE INVOLVEMENT IN  
 IMMIGRATION ENFORCEMENT at 16 (May 2013) (hereafter INSECURE COMMUNITIES) available at  
 23 [http://www.policylink.org/sites/default/files/INSECURE\\_COMMUNITIES\\_REPORT\\_FINAL.PDF](http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF).

24 <sup>11</sup> See, e.g., INSECURE COMMUNITIES at 5-6; see also *U.S. v. East Haven*, No. 12-1652 (D. Conn.  
 filed Nov. 20, 2012) (complaint and settlement agreement arising from East Haven Police  
 25 Department engaging discriminatory policing against Latinos, including by targeting Latinos for  
 discriminatory traffic enforcement, treating Latino drivers more harshly than non-Latino drivers  
 26 after a traffic stop, and by contacting ICE agents to investigate the immigration status of Latino  
 drivers.)

27 <sup>12</sup> ACLU OF GEORGIA, GEORGIA LATINO ALLIANCE FOR HUMAN RIGHTS, NATIONAL DAY  
 LABORER ORGANIZING NETWORK & IMMIGRANT RIGHTS CLINIC AT NYU LAW SCHOOL,  
 28 PREJUDICE, POLICING, AND PUBLIC SAFETY: THE IMPACT OF IMMIGRATION HYPER-ENFORCEMENT  
 IN GEORGIA 10 (July 2014) available at <http://www.law.nyu.edu/sites/default/files/>

1 ICE as having dark or medium complexion. In FY 2013 (through June 2013), 96.4% of  
 2 individuals subject to ICE detainers were defined by ICE as having dark or medium  
 3 complexion.<sup>13</sup>

4 But racial profiling is not the only evil that can result from turning local police into federal  
 5 immigration agents; such federal commandeering of local police can also lead to covering up  
 6 violent police abuse of community members.

7 Consider the experience of Angel Francisco Castro-Torres (“Castro”), a former client of  
 8 SPLC. On the afternoon of March 26, 2010, Castro was riding his bicycle in in Smyrna, Georgia,  
 9 a place where local police act as federal immigration agents. Two police officers began to follow  
 10 Castro and signaled him to stop riding for no reason other than his being Latino. After  
 11 demanding Castro’s immigration documents, the officers beat him, breaking his eye socket and  
 12 cheek bone. The officers then attempted to cover up their attack by taking Castro to the Cobb  
 13 County Jail, which maintains a 287(g) agreement with the Department of Homeland Security.  
 14 The officers knew that from this jail, Castro could be placed into ICE detention and possibly  
 15 deported, making it highly unlikely that the officers’ abusive behavior would have ever come to  
 16 light. Castro’s experience demonstrates how local law enforcement can be corrupted when  
 17 officers are told to enforce federal immigration laws.

18 **II. Turning Local Police Into Federal Immigration Agents Degrades Trust**  
 19 **Between the Police and the Community.**

20 Effective law enforcement requires some degree of trust between police (and other law  
 21 enforcement officials) and the communities they serve. The necessary trust between police and  
 22 the community is jeopardized when local police act as federal immigration agents. Many people  
 23 are reluctant to interact with local police when the police are providing information to ICE to  
 24 assist in deportations, holding local residents on civil detainers for ICE, or otherwise enforcing  
 25 federal immigration policy. A 2012 study found that 44% of Latinos were less likely to contact  
 26 the police if they were victims of crime due to the fear that the police would ask about their

27 \_\_\_\_\_  
 28 upload\_documents/Prejudice\_Policing\_Public%20Safety.pdf.

<sup>13</sup> *Id.* at 14.

1 immigration status or that of people they know.<sup>14</sup>

2 This fear holds both for people who are concerned about their own immigration status and  
3 those concerned for their families or friends.<sup>15</sup> Twenty nine percent of Latino citizens reported  
4 they are less likely to voluntarily offer information about crimes they know have been committed,  
5 and 26 percent said they are less likely to report a crime, due to fear that police will ask about  
6 their family or friends' immigration status.<sup>16</sup> With more than nine million people living in mixed  
7 status families that include documented and undocumented members,<sup>17</sup> it should be unsurprising  
8 that fear transcends documentation status when police refuse to draw clear boundaries between  
9 crime control and immigration enforcement. An undocumented woman in a physically abusive  
10 relationship, for example, may be afraid to seek help from the police; a U.S citizen may fear that  
11 if he provides information to the police about gang activity, it will expose his undocumented  
12 mother to police attention.

13 A Department of Justice ("DOJ") finding of discriminatory policing by the New Orleans  
14 Police Department ("NOPD") found that "members of the Latino immigrant worker community,  
15 who are frequently victimized . . . reported a deep reluctance to report crime – either as victims  
16 or witnesses . . . [because] NOPD officers questioned them about their immigration status."<sup>18</sup> In  
17 2008, a year after the Davidson County, Tennessee sheriff entered into a 287(g) agreement, the  
18 National Council of La Raza and the Tennessee Immigrant and Refugee Rights Coalition  
19 surveyed community members' trust of police. The survey compared the willingness of Latinos  
20

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21 <sup>14</sup> See, e.g., INSECURE COMMUNITIES) at 5-6; see also ADVANCEMENT PROJECT & GEORGIA  
22 LATINO ALLIANCE FOR HUMAN RIGHTS, MANUFACTURING FELONIES: HOW DRIVING BECAME A  
23 FELONY FOR PEOPLE OF COLOR IN GEORGIA 3 (Mar. 2016) (finding that "[i]mmigrant  
24 communities are increasingly wary of local police officers during traffic stops, desperately  
25 seeking to avoid all possible interactions with police, even if and when they are in danger" and  
26 "[w]here immigration is concerned, federal law enforcement cooperation with local police often  
27 leads to the unjust detention and deportation of law-abiding immigrants and impacting families.")  
28 available at [http://b.3cdn.net/advancement/a23a889905f33b63a2\\_lim6bsbhf.pdf](http://b.3cdn.net/advancement/a23a889905f33b63a2_lim6bsbhf.pdf).

<sup>15</sup> See, e.g., INSECURE COMMUNITIES at 6.

<sup>16</sup> *Id.*

<sup>17</sup> PEW RESEARCH CENTER, A NATION OF IMMIGRANTS (2013) available at  
<http://www.pewhispanic.org/2013/01/29/a-nation-of-immigrants>.

<sup>18</sup> DEPARTMENT OF JUSTICE, INVESTIGATION OF THE NEW ORLEANS POLICE DEPARTMENT 63 (Mar.  
16, 2011) available at  
[https://www.justice.gov/sites/default/files/crt/legacy/2011/03/17/nopd\\_report.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2011/03/17/nopd_report.pdf).

1 and Blacks to contact the sheriff's office. While both communities expressed deep discomfort  
2 with interacting with police, 42% of Latinos knew of a crime that had not been reported to police,  
3 compared to 4% of Blacks. This community mistrust of approaching the police in a 287(g)  
4 county extended to future crimes; 54% of Latinos said they would not report a future crime,  
5 compared to 27% of Blacks.<sup>19</sup>

6 The story of Oscar and Jessica Ramirez<sup>20</sup> illustrates what happens when local police  
7 engage in immigration enforcement, leaving broken trust between the police and the immigrant  
8 communities they are supposed to serve. Jessica Ramirez is an undocumented immigrant who  
9 was born in Guatemala and has lived in the United States for a dozen years, since she was twelve.  
10 Oscar Ramirez is an undocumented immigrant who was born in Mexico. Oscar and Jessica  
11 Ramirez and their four children (all of whom are U.S. citizens) live in an area of Alabama where  
12 the local police have been eagerly acting as federal immigration agents.

13 On a foggy morning in October 2014, Oscar Ramirez was involved in a car accident.  
14 Nobody was hurt, but Ramirez was so afraid of interacting with the local police that he fled the  
15 scene of the accident. He was arrested at his home two days later. While Jessica Ramirez  
16 attempted to secure her husband's release, Oscar was transferred to ICE custody, where he  
17 remained for three months. Oscar Ramirez has now been released, but is likely to be convicted  
18 on felony criminal charges and deported to Mexico.

19 Because Oscar Ramirez's fear of the police led him to flee, everyone is worse off. Most  
20 obviously, Oscar has suffered; instead of sorting out the consequences of a minor car accident in  
21 which nobody was hurt, Oscar now risks a felony conviction and deportation to Mexico, he lost  
22 his job as a carpenter—he now works as a landscaper, making much less—and he is saddled with  
23 monthly payments to a bond company.<sup>21</sup> These financial consequences will continue to affect

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25 <sup>19</sup> A. ELENA LACAYO, NATIONAL COUNCIL OF LA RAZA, THE IMPACT OF SECTION 287(G) OF THE  
26 IMMIGRATION AND NATIONALITY ACT ON THE LATINO COMMUNITY 18 (2010), *available at*  
[http://publications.nclr.org/bitstream/handle/123456789/1067/287g\\_issuebrief\\_pubstore.pdf?sequence=1&isAllowed=y](http://publications.nclr.org/bitstream/handle/123456789/1067/287g_issuebrief_pubstore.pdf?sequence=1&isAllowed=y).

27 <sup>20</sup> Pseudonyms. Jessica is a member of *amicus* Alabama Coalition for Immigrant Justice. She  
shared her and her husband's story with the SPLC for purposes of inclusion in this brief.

28 <sup>21</sup> This bond company, Libre by Nexus, has been sued for fraud by other immigrants who were  
required to sign documents in English that they did not understand and were not told of the

1 Oscar Ramirez even in the unlikely event that he is not ultimately convicted and deported.

2 Jessica Ramirez and the Ramirez children (none of whom were in the car at the time of the  
3 accident) have also been harmed. Jessica was five months pregnant at the time of the accident,  
4 and she was forced to raise her children and deal with her pregnancy on her own while her  
5 husband was held in ICE detention facilities. She struggles to care for her family because Oscar's  
6 income has shrunk, because the family has had to make bond payments, and because the family  
7 has had to devote its scarce resources to Oscar's criminal and immigration issues.

8 And most critically, if Oscar Ramirez is deported, his family will face a tragic choice. If  
9 Jessica Ramirez stays in the United States, where her children are citizens, she will have to raise  
10 the children on her own and without their father, she herself will face the threat of deportation,  
11 and the family will lose its primary income-earner; if Jessica moves to Mexico with Oscar, a  
12 country where she has never lived, she will leave behind all of her and her children's friends and  
13 sources of community support and she will deprive her children of the opportunity to grow up in  
14 the United States and receive an education in U.S. schools, even though they are citizens.

15 It is not only the Ramirez family who has been harmed—local law enforcement has been  
16 harmed as well. Instead of making (at most) a routine stop to assist in resolving a minor car  
17 accident, the police were required to conduct an investigation, develop evidence, and make an  
18 arrest, wasting resources that could have been put to better use elsewhere, and local prosecutors  
19 now must prosecute a case that would never have arisen in the first place if Oscar Ramirez felt  
20 that he could trust the police.

21 The Ramirez family's situation provides only one illustration of the consequences of  
22 eroding trust between local police and the communities they serve. That lack of trust undermines  
23 effective law enforcement, wastes community resources, and creates serious problems out of  
24

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27 company's requirement that they wear and pay for the cost of ankle monitors. See Michael E.  
28 Miller, "This company is making millions from America's broken immigration system,"  
WASHINGTON POST (Mar. 9, 2017), available at [https://www.washingtonpost.com/local/this-company-is-making-millions-from-americas-broken-immigration-system/2017/03/08/43abce9e-f881-11e6-be05-1a3817ac21a5\\_story.html?utm\\_term=.1befd42af7f2](https://www.washingtonpost.com/local/this-company-is-making-millions-from-americas-broken-immigration-system/2017/03/08/43abce9e-f881-11e6-be05-1a3817ac21a5_story.html?utm_term=.1befd42af7f2).

1 issues that could have been resolved with appropriate early intervention.<sup>22</sup>

2 **III. Turning Local Police Into Federal Immigration Agents Can Result in Private**  
 3 **Actors Exploiting and Abusing Immigrant Populations.**

4 Even when local police behave in accordance with the highest standards of integrity and  
 5 decency, turning them into immigration agents can create huge problems. When local police are  
 6 charged with enforcing immigration laws, it creates an opportunity for unscrupulous private  
 7 actors to intimidate or exploit immigrant neighbors or employees; a resident or organization with  
 8 a grievance against an immigrant person or community can credibly wield the threat of a phone  
 9 call to local police, which might lead to deportation.

10 One example of this abuse occurred at the Durrett Cheese plant (“Durrett”) in Coffee  
 11 County, Tennessee.<sup>23</sup> Durrett recruited a large number of undocumented and impoverished  
 12 Mixteco (an indigenous Mexican population) immigrants to work at the plant.<sup>24</sup> These  
 13 immigrants spoke Spanish or Mixteco, and barely any English. Durrett proceeded to mistreat  
 14 these employees, referring to them as “stupid Indians” and “donkeys,” and often refusing to pay  
 15 them minimum wage, or pay them at all. This abuse continued for over a year.

16 Eventually, the workers organized and demanded that Durrett pay them their overdue  
 17 and/or withheld wages. In response, Durrett called the Coffee County Sheriff’s Department  
 18 (“CCSD”) and had its own employees arrested for “trespassing” and turned over to ICE. Durrett  
 19 even provided paperwork to the CCSD to assist the Sheriff in reporting the Latino employees to  
 20 ICE. Here, the claimed ground for the arrests—“trespassing”—was entirely pretextual. Durrett’s  
 21 true motivation in having its employees arrested was to exploit local law enforcement’s  
 22 cooperation with federal immigration authorities. By turning its own workers over for  
 23 deportation proceedings, Durrett sought to avoid paying those workers the wages they were fairly

24 <sup>22</sup> See generally IMMIGRANT LEGAL RESOURCE CENTER, SEARCHING FOR SANCTUARY: AN  
 25 ANALYSIS OF AMERICA’S COUNTIES AND THEIR VOLUNTARY ASSISTANCE WITH DEPORTATIONS  
 (Dec. 2016), available at [https://www.ilrc.org/sites/default/files/resources/sanctuary\\_report\\_final\\_1-min.pdf](https://www.ilrc.org/sites/default/files/resources/sanctuary_report_final_1-min.pdf).

26 <sup>23</sup> SOUTHERN POVERTY LAW CENTER, UNDER SIEGE: LIFE FOR LOW-INCOME LATINOS IN THE  
 27 SOUTH (Apr. 2009) at 11, available at

[https://www.splcenter.org/sites/default/files/d6\\_legacy\\_files/downloads/UnderSiege.pdf](https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/UnderSiege.pdf)

28 <sup>24</sup> SPLC later represented many of these workers in their lawsuit against Durrett. See *Montano-Pérez, et al. v. Durrett Cheese Sales, Inc., et al.*, Case No. 3:08-cv-1015 (M.D. Tenn.).

1 due, and to deter any other undocumented workers, whether at Durrett or elsewhere, who found  
 2 themselves underpaid, discriminated against, or otherwise abused. It is hard enough for an  
 3 individual to stand up to an employer and risk being fired; it is much harder when doing so would  
 4 also cause that individual to risk deportation.

5 **IV. The Executive Order Will Jeopardize Local Governments' Access To Federal**  
 6 **Funding Due To The Risk Of Violating Title VI.**

7 Racial discrimination can quickly spread throughout a local police force charged with  
 8 implementing federal immigration law, whether intentionally or simply as an unintended  
 9 consequence of immigration enforcement. When it does, such discrimination places counties  
 10 directly in conflict with Title VI of the Civil Rights Act of 1964 (“Title VI”). Cities that receive  
 11 federal financial assistance are obligated to comply with Title VI, which outlaws discrimination  
 12 on the basis of race, color, or national origin. When local police enter into immigration  
 13 enforcement agreements with ICE, those agreements are sometimes enforced in a manner that  
 14 directly violates Title VI.

15 One of the most notorious examples of this occurred outside the South, but is indicative of  
 16 what can happen when local police dedicate themselves to enforcing immigration law. The  
 17 Maricopa County, Arizona Sheriff’s Office (“MCSO”), under the direction of former Sheriff Joe  
 18 Arpaio, decided that its highest priority was to enforce federal immigration laws. Sheriff Arpaio  
 19 and the MCSO had earned a reputation for cruelty against Latino residents, with Sheriff Arpaio  
 20 explaining that his local police enforced a “pure program to go after the illegals and not the crime  
 21 first.”<sup>25</sup> The DOJ filed suit against the MCSO and the sheriff in 2012, arguing in part that the  
 22 MCSO’s treatment of the county’s Latino residents—including its discriminatory traffic stops and  
 23 cruel conditions of confinement for Latino inmates—violated Title VI. A federal judge in 2013  
 24 determined that Sheriff Arpaio had engaged in rampant civil rights abuses, including the racial  
 25 profiling of Latinos. *See Melendres v. Arpaio*, 989 F. Supp. 2d 822 (D. Ariz. 2013), *adhered to*,

26 <sup>25</sup> Lawrence Downes, *Joe Arpaio’s American Dream*, THE NEW YORK TIMES: TAKING NOTE  
 27 (Jul. 24, 2015), *available at* <https://takingnote.blogs.nytimes.com/2012/07/24/joe-arpaio-american-dream/>; Joe Hagan, *The Long, Lawless Ride of Sheriff Joe Arpaio*, ROLLING STONE  
 28 (Aug. 2, 2012), *available at* <http://www.rollingstone.com/culture/news/the-long-lawless-ride-of-sheriff-joe-arpaio-20120802>.

1 No. CV-07-02513-PHX-GMS, 2013 WL 5498218 (D. Ariz. Oct. 2, 2013), *aff'd in part, vacated*  
 2 *in part*, 784 F.3d 1254 (9th Cir. 2015), *and aff'd*, 784 F.3d 1254 (9th Cir. 2015). In issuing an  
 3 injunction to compel reforms in the MCSO, the judge found that Sheriff Arpaio and his  
 4 department had intentionally targeted and discriminated against Latinos in violation of the  
 5 Constitution, while making cosmetic changes to their policies in an attempt to make them appear  
 6 race-neutral.<sup>26</sup> 989 F. Supp. 2d at 902.

7 Investigations and discrimination lawsuits against local police forces carry a serious  
 8 financial cost for cities. By way of example, Sheriff Arpaio's policies already cost Maricopa  
 9 County more than \$50 million dollars in legal fees.<sup>27</sup> The Executive Order thus creates a catch-22  
 10 for America's sanctuary cities: they must either (1) comply with the Executive Order and risk  
 11 losing federal funding due to Title VI violations, or (2) ignore the Executive Order and risk losing  
 12 federal funding under the terms of the Executive Order. Santa Clara, San Francisco, and every  
 13 other state and local jurisdiction in the country should not be put in the position of potentially  
 14 losing their federal funding for either complying or not complying with the Executive Order.

15 **V. The Executive Order Will Force Local Governments to Choose Between**  
 16 **Losing Federal Funding and Being Exposed to Substantial Civil Liability.**

17 Section 9(b) of the Executive Order threatens de-funding for any jurisdiction that  
 18 "ignore[s] or otherwise fail[s] to honor any detainers with respect to such aliens." If the  
 19 Executive Order is permitted to stand, Santa Clara, San Francisco, and every other state and local  
 20 jurisdiction in the country would risk losing federal funding if they ever failed to comply with any  
 21 ICE detainer request. This provision of the Executive Order would also put the local  
 22 governments in another untenable catch-22. Federal courts have found that ICE detainer requests  
 23 can violate the probable cause requirement of the Fourth Amendment of the Constitution, and can

24 <sup>26</sup> See also *Court Places Limits On Sheriff Arpaio To Prevent Future Racial Profiling Of Latinos*  
 25 *In Arizona*, ACLU (Oct. 2, 2013), available at [https://www.aclu.org/news/court-places-limits-](https://www.aclu.org/news/court-places-limits-sheriff-arpaio-prevent-future-racial-profiling-latinos-arizona)  
 26 *sheriff-arpaio-prevent-future-racial-profiling-latinos-arizona*. Sheriff Arpaio was eventually voted  
 27 out of office after separately being held in contempt of court. The DOJ withdrew the MCSO's  
 28 287(g) agreement in 2011 in light of the abusive conditions in Sheriff Arpaio's jails.

<sup>27</sup> Jaques Billeaud, *Taxpayer costs of Sheriff Joe Arpaio's profiling case: Another \$13M on top of*  
 \$41M, THE ARIZONA REPUBLIC (May 12, 2016), available at  
[http://www.azcentral.com/story/news/local/phoenix/2016/05/12/taxpayer-costs-sheriff-joe-](http://www.azcentral.com/story/news/local/phoenix/2016/05/12/taxpayer-costs-sheriff-joe-arpaios-profiling-case-another-13m-top-41m/84293950/)  
 arpaios-profiling-case-another-13m-top-41m/84293950/.

1 exceed ICE's authority to make warrantless arrests and detain individuals without a neutral  
 2 determination regarding the likelihood of escape. *See, e.g., Jimenez-Moreno v. Napolitano*, No.  
 3 1:11-cv-05452 (N.D. Ill. Sept. 30, 2016) (holding ICE detainers exceed the scope of authority  
 4 delegated by Congress); *Miranda-Olivares v. Clackamas County*, No. 3:12-cv-02317 (D. Or.  
 5 April 11, 2014) (granting summary judgment on claim of unlawful detention against county that  
 6 detained plaintiff pursuant to an ICE detainer)*cf. Villars v. Kubiowski*, 45 F. Supp. 3d 791, 807  
 7 (N.D. Ill. 2014) (no probable cause for a detainer request made to allow the federal government  
 8 time to investigate whether plaintiff had committed a crime).

9 Under the scheme contemplated by Executive Order, Santa Clara would be forced to make  
 10 an unacceptable choice every time it received a detainer request from ICE. On the one hand, it  
 11 could refuse to comply with the request, thus risking being branded a "sanctuary jurisdiction" and  
 12 the concomitant risk to federal funding which that label carries. On the other hand, it could  
 13 choose to comply with the request, thereby perhaps violating the constitutional rights of its  
 14 residents, and exposing the county to litigation and potential liability. Santa Clara's ability to  
 15 receive the federal funding to which it is entitled should not be conditioned on its willingness to  
 16 violate the constitutional rights of its residents.

### 17 CONCLUSION

18 For the reasons set forth above, the SPLC and other *amici* believe that implementation of  
 19 the Executive Order will irreparably harm the residents of Santa Clara, San Francisco, and every  
 20 other state and local jurisdiction in the country by forcing these jurisdictions to engage in federal  
 21 immigration law enforcement activities and imposing upon them the negative consequences for  
 22 law enforcement officers and residents discussed in this brief.

23 Dated: March 22, 2017

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24 By: /s/ Nathan M. McClellan

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Greater Rochester Coalition for  
Immigration Justice,  
Illinois Coalition for Immigrant and  
Refugee Rights,  
Immigrant Legal Resource Center,  
Jobs With Justice,  
Justice in Motion,  
Latin American Legal Defense and  
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LatinoJustice PRLDEF,  
National Employment Law Project,  
National Immigration Law Center,  
New Orleans Workers' Center for Racial  
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Northwest Forest Worker Center,  
Refugee and Immigrant Center for  
Education and Legal Services,  
Safe Horizon,  
Southeast Immigrant Rights Network,  
St. Louis Workers Education Society,  
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**ATTESTATION**

The undersigned hereby attests that all signatories hereto, together with their respective clients on whose behalf this filing is submitted, concur in the contents of the within BRIEF OF *AMICUS CURIAE* SOUTHERN POVERTY LAW CENTER AND OTHER *AMICI* IN SUPPORT OF COUNTY OF SANTA CLARA AND CITY AND COUNTY OF SAN FRANCISCO'S MOTIONS FOR PRELIMINARY INJUNCTION and have authorized this filing.

By: /s/ Nathan M. McClellan  
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