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

21 Defendants.

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

**NOTICE OF MOTION AND MOTION  
FOR ADMINISTRATIVE RELIEF TO  
FILE BRIEF OF *AMICI CURIAE*  
TECHNOLOGY COMPANIES IN  
SUPPORT OF PLAINTIFFS' MOTIONS  
FOR PRELIMINARY INJUNCTION**

Date: April 5, 2017  
Time: 2:00 PM  
Judge: Hon. William H. Orrick  
Crtn: 2  
Date Filed: February 3, 2017  
Trial Date: Not yet set

22 CITY AND COUNTY OF SAN FRANCISCO,

23 Plaintiff,

24 vs.

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

28 Defendants.

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

Date: April 12, 2017  
Time: 2:00 PM  
Judge: Hon. William H. Orrick  
Crtn: 2  
Date Filed: March 22, 2017  
Trial Date: Not yet set

1 Pursuant to Civil Local Rule 7-11, *Amici Curiae* Technology Companies hereby  
 2 respectfully request that the Court grant *amici* leave to file an *amicus curiae* brief in support of  
 3 the Motions for Preliminary Injunction filed by Plaintiffs County of Santa Clara and City and  
 4 County of San Francisco. *Amici*'s proposed brief is attached hereto as Exhibit A. A complete list  
 5 of *amici* is attached hereto as Exhibit B, and attached again as Exhibit 1 to the proposed brief.

6 *Amici* are fifteen companies in the technology space, most of which are located in the  
 7 Plaintiff jurisdictions or neighboring jurisdictions. *Amici*'s interests are gravely and immediately  
 8 threatened by Executive Order 13,768. The American technology sector has always benefited  
 9 enormously from the talents and contributions of diverse groups of people, including immigrants.  
 10 Without the ability to attract and retain the best and brightest minds from around the world, the  
 11 American tech sector – and with it the rest of the American economy – will suffer. The Executive  
 12 Order undermines the ability of technology companies to attract diverse talent by seeking to  
 13 compel localities to abandon the values of diversity and inclusion that have enabled them to  
 14 thrive, in favor of adversity and suspicion towards “outsiders.” Inevitably, targeting certain  
 15 groups for expulsion also tends to render others – including lawful immigrants and citizens of  
 16 similar national or ethnic ancestry –the subject of bigotry. Technology companies cannot thrive if  
 17 their employees feel fearful and unwelcome.

18 The Executive Order further undercuts the competitiveness of American technology  
 19 companies by making most of the major technology centers around the country less desirable, less  
 20 safe places to live. In threatening to withdraw all federal funding or grants from sanctuary  
 21 jurisdictions – and in failing to define that term such that one can know with reasonable assurance  
 22 whether a jurisdiction falls within that category and will suffer the punishments to be imposed on  
 23 such governmental entities – the Order has thrown all of America’s major technology hubs into a  
 24 state of financial limbo. Companies cannot attract workers to cities that may lose the ability to  
 25 provide basic government services at any time. Nor can they attract employees to cities where  
 26 they feel unsafe, an inevitable result of the Order’s attempt to override the judgment of local  
 27 officials and commandeer state actors into acting as immigration enforcement officers.

1 *Amici's* proposed brief describes in greater detail how the Executive Order is adverse to  
2 the interest of *amici*, the tech sector more broadly, and the communities in which they are  
3 embedded. *Amici* have consulted with the parties regarding *amici's* request to file an *amicus*  
4 brief. Plaintiffs have no objection to *amici's* request, and Defendant takes no position on the  
5 motion. *Amici's* proposed brief is twelve pages long and otherwise complies with this Court's  
6 Order regarding *amicus* briefs. *See* Dkt. No. 40.

7 For these reasons, *Amici* respectfully requests that the Court grant leave to file the Brief of  
8 *Amici Curiae* Technology Companies in Support of Plaintiffs' Motions for Preliminary  
9 Injunction.

10  
11 Dated: March 22, 2017

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19 MULVANEY, in his official capacity as  
Director of the Office of Management and  
20 Budget, and DOES 1-50,

21 Defendants.

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

**[PROPOSED] ORDER GRANTING  
MOTION FOR ADMINISTRATIVE  
RELIEF FOR LEAVE TO FILE BRIEF OF  
*AMICI CURIAE* TECHNOLOGY  
COMPANIES IN SUPPORT OF  
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Case No. 3:17-cv-00485-WHO

Date: April 12, 2017  
Time: 2:00 PM  
Judge: Hon. William H. Orrick  
Crtm: 2  
Date Filed: March 22, 2017  
Trial Date: Not yet set

1 *Amici Curiae* Technology Companies (“*Amici*”) have moved under Civil Local Rule 7-11  
2 for leave to file the Brief of *Amici Curiae* Technology Companies in Support of the Motions for  
3 Preliminary Injunction filed by Plaintiffs Santa Clara County and the City and County of San  
4 Francisco. None of the parties to this matter have any objection to *Amici*’s request.

5 For the reasons stated in *Amici*’s motion, the Court GRANTS the Motion for  
6 Administrative Relief to the File Brief of *Amici Curiae* Technology Companies in Support of  
7 Plaintiffs’ Motions for Preliminary Injunction. Accordingly, IT IS HEREBY ORDERED that the  
8 Brief of *Amici Curiae* Technology Companies in Support of Plaintiffs’ Motions for Preliminary  
9 Injunction is deemed filed.

10  
11 **IT IS SO ORDERED.**

12  
13 Dated: \_\_\_\_\_, 2017

\_\_\_\_\_  
The Honorable William H. Orrick  
United States Judge

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# **EXHIBIT A**

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

**BRIEF OF *AMICI CURIAE*  
TECHNOLOGY COMPANIES IN  
SUPPORT OF PLAINTIFFS' MOTIONS  
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**INTRODUCTION**

*Amici Curiae* Technology Companies<sup>1</sup> urge this Court to reject the President’s bid to exceed his constitutional powers and punish communities whose local governments choose – consistent with their rightful role in our federal system – to decline conscription into a scheme of immigration law enforcement that threatens to undermine public safety, impair local justice, and up-end community stability. *Amici* and the communities in which they are embedded have benefited from the open values, the diverse and inclusive culture, the lawful and welcoming immigration practices, and the supportive local governments that are jeopardized by a hastily imposed Executive Order.

*Amici* file this brief in support of the Motions for Preliminary Injunction of the County of Santa Clara and the City and County of San Francisco, which seek to enjoin the enforcement of Executive Order 13,768 (hereafter, the “Order”). In addition to the perils that the Order poses to local public order and to the values that have been critical to the prosperity of *amici* across the country, the Order threatens the ability of American technology companies to recruit talented employees on a global scale and to compete with technology companies abroad. The harms to *amici* and their communities will remain unless and until the Order is enjoined, regardless of whether the federal government actively attempts to enforce the Order or passively relies on the draconian threats that the Order embodies to pressure local governments into compliance even prior to enforcement.

The Order purports to vest the U.S. Attorney General and Secretary of Homeland Security with the discretion to designate certain state, county, or local government entities as “sanctuary jurisdictions,” and to withhold *all* federal grants from such jurisdictions.

The Order does not define “sanctuary jurisdiction.” But by referring to jurisdictions that have a “statute, policy, or practice” in effect that “prevents or hinders the enforcement of federal law,” the Order appears to target those local city and county jurisdictions which have concluded that participating in federal immigration law enforcement – yoking themselves to U.S. Immigration and Customs Enforcement (ICE) in locating, detaining, and deporting alleged

<sup>1</sup> A list of the companies submitting this brief is attached as Exhibit 1.

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1 undocumented immigrants – would interfere with the local jurisdictions’ ability to perform the  
 2 government activities which it is their primary responsibility to perform. While the reach of the  
 3 Order is vague in important ways, it plainly seeks to raise the specter of significant punishment  
 4 directed at such communities so as to intimidate them into submission.

5 The Order’s attempt to commandeer state and local governments and turn them into  
 6 agents of the federal government’s deportation program – and the punishment it appears to  
 7 mandate for jurisdictions that resist – undermines the interest of *amici* in at least three ways.

8 First, the conduct that the Order unconstitutionally seeks to compel is antithetical to the  
 9 values, practices and culture of Silicon Valley, the Bay Area, and tech hubs across the country.  
 10 Silicon Valley has become the technological capital of the world because of the talents, drive, and  
 11 ingenuity of people from all over the world. This diversity is one of our greatest strengths, and is  
 12 fundamental to who we are. The protective policies of San Francisco and Santa Clara are now  
 13 under assault as a result of the Order, which targets our values as companies and as a community.  
 14 The Order demands that Plaintiffs abandon those values in favor of values that have no place in  
 15 our community. This attack on the values of our companies and communities is likely to injure  
 16 our economic as well as our moral well-being.

17 Second, looking beyond Silicon Valley and the Bay area, the vast majority of  
 18 technological hubs in America exist in jurisdictions that might well be designated as “sanctuary  
 19 jurisdictions” and deprived of federal funding. The Order has overnight thrown these tech hubs  
 20 into financial limbo, uncertain whether they will have the means to provide basic government  
 21 services. By its mere existence, consequently, the Order has rendered these centers of  
 22 technological innovation less attractive places to live, work, and do business, undermining the  
 23 competitiveness of American business.

24 The Constitution constrains federal authority to rescind funding to states, *inter alia*, to  
 25 avoid precisely this type of uncertainty. In disregarding these limitations, the Order effectively  
 26 and immediately transforms the communities hosting America’s major concentrations of  
 27 technological energy and talent into jurisdictions whose technological infrastructure, educational  
 28 and social systems, and most vulnerable citizens, are all at risk from governmental failure.

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1 Third, the Order makes residents of jurisdictions targeted under the Order less safe. State  
2 and local officials have a far closer connection to the criminal law threats and issues facing their  
3 constituents than does the federal government. Notwithstanding, the Order seeks to override their  
4 seasoned judgment and direct the allocation of their resources towards enforcement of federal  
5 laws. While this makes all residents less safe, the Order’s sting is particularly sharp for  
6 immigrants, including those who are lawfully in the United States.

7 By purporting to authorize punishing anyone who “facilitates [the] presence” of an  
8 allegedly unlawful immigrant in the United States, the Order in effect penalizes association with  
9 immigrants unless one is certain of their lawful status in the United States. The hostility and  
10 bigotry promoted by this punishment impacts lawful as well as undocumented immigrants, and  
11 runs contrary to the values of *amici* and of America.

12 **ARGUMENT**

13 **I. THE ORDER UNLAWFULLY SEEKS TO COMPEL CONDUCT**  
14 **ANTITHETICAL TO THE VALUES OF INNOVATIVE COMPANIES**  
15 **AND THEIR COMMUNITIES**

16 Few Americans regularly go a day without using technology developed at least in part by  
17 an American immigrant. When we search the Internet (Google was co-founded by Sergei Brin, a  
18 refugee from the Soviet Union), when we use computers employing microchips (microchips were  
19 developed by Intel co-founder Andrew Grove, a refugee from Hungary), when we plug in our  
20 cellphones (rechargeable batteries were developed by Samar Basu, immigrant from India), we  
21 benefit from just a few of the myriad contributions of immigrants to the American technological  
22 sector.

23 This is nothing new: from the telephone in 1875 (Alexander Graham Bell, Scotland) to the  
24 blender in 1932 (Stephen Poplawski, Poland), to the ATM machine in 1963 (Luther George  
25 Simjian, Turkey), immigrants have consistently pushed technology forward with their ingenuity,  
26 drive, and desire to give back to America.

27 Recognizing the immense importance of immigrants and their talents to the development  
28 of technology, Silicon Valley has long aspired to be a place where people of all backgrounds and  
origins can make their mark. It is a place where the ability to build something from the ground up

1 matters more than pedigree or family name, a place where raw talent from all corners of the Earth  
2 is unleashed. In the words of Google CEO Sundar Pichai, “We are able to build products for  
3 everyone because we attract talent from around the world. Immigration is a strength for this  
4 industry and our country – it’s one of our defining characteristics.”<sup>2</sup>

5 Of course, technology companies bring talented employees to the United States through  
6 lawful means such as the H1-B program, so their lawfully-present employees are not directly  
7 targeted by the Order. But the Order’s effect goes beyond targeting individuals to targeting the  
8 values that have enabled the technology industry to thrive. Silicon Valley cannot be a place of  
9 inclusiveness and equality if its local leaders are unlawfully compelled to act as agents of ICE in  
10 the federal government’s deportation program, if fear, disruption and suspicion of “the Other”  
11 become government policy. And when millions who have lived amongst us for many years are  
12 demonized and targeted for expulsion, those who look like “them,” whether lawful immigrants or  
13 citizens of similar ancestry, also find themselves suspect and targeted by bigotry.

14 Silicon Valley, and its sister innovative communities across the nation, cannot be places  
15 where talented people of all origins thrive if citizens and lawful residents are afraid for their basic  
16 safety and well-being because of such discrimination and enmity, which inevitably have  
17 accompanied the campaign against those who are undocumented. People from different  
18 backgrounds cannot come together to develop the world’s most sophisticated products, making  
19 our companies and communities more prosperous, if they are forced to police one another’s  
20 immigration status, and if many among them are made frightened and unwelcome.

21 Santa Clara, San Francisco, and the other “sanctuary jurisdictions” have adopted policies  
22 that reflect the values of their residents – including *amici* – and reflect a belief that immigration  
23 makes us stronger, smarter, and better.<sup>3</sup> The conduct that the Order seeks to compel –  
24 engagement in bias-promoting immigration enforcement – is antithetical to those values.

25 \_\_\_\_\_  
26 <sup>2</sup> Walt Mossberg, *Immigration Builds America’s Tech Dominance*, Recode, (Feb 1, 2017),  
available at <http://www.recode.net/2017/2/1/14466978/mossberg-immigration-innovation-tech>

27 <sup>3</sup> For convenience we use the term “sanctuary jurisdiction” or cognates from time to time;  
28 because the term is vague, *amici* do not thereby intend to concede that any particular entity is a  
“sanctuary jurisdiction” within the meaning of the Order.

1 **II. THE ORDER UNDERMINES THE ABILITY OF AMERICAN COMPANIES**  
2 **TO COMPETE GLOBALLY**

3 In light of the enormous contribution of immigrants to all fields of technology, American  
4 companies recognize we can remain competitive only by recruiting the best potential employees  
5 from around the world. The Order undermines their ability to do so.

6 **A. The Order Decreases the Livability of Nearly Every Major American**  
7 **Innovation Hub**

8 **1. Most Centers of American Innovation are at Risk of Being Designated**  
9 **as “Sanctuary Jurisdictions”**

10 As Plaintiffs point out in their Motions, the Order provides no definition for the term  
11 “sanctuary jurisdiction.” Rather, the Order grants the Attorney General and Secretary of  
12 Homeland Security “the authority to *designate, in his discretion and to the extent consistent with*  
13 *the law*, a jurisdiction as a sanctuary jurisdiction.” Order § 9(a) at 8801, emphasis added. Since  
14 American law offers no definition of “sanctuary jurisdiction,” the Order’s grant of discretion is in  
15 reality unbounded.

16 The Order also neglects to explain key phrases that might – properly explicated – have  
17 shed light on which entities must bear the punishments accompanying being branded as a  
18 “sanctuary jurisdiction.” Moreover, the Order’s reference to jurisdictions with a “statute, policy,  
19 or practice, that prevents or hinders the enforcement of federal law” is also hopelessly vague. *Id.*  
20 Further, the Order provides no mechanism for a jurisdiction to challenge its designation as a  
21 “sanctuary jurisdiction” and thus obtain redress and judicial review of a unilateral, wholly  
22 discretionary determination by a member of the federal executive branch. In light of these  
23 ambiguities, *amici* have no way of knowing with reasonable confidence which localities in which  
24 they operate are likely to lose federal funding, no way of planning for or resisting such potential  
25 losses in their communities, and no confidence that a community once so labeled can ever escape  
26 it. This level of uncertainty alone represents a substantial business hindrance (and supports the  
27 void for vagueness arguments set forth by Plaintiff Santa Clara County).

28 That said, under most conventional understandings of the terms “sanctuary city,” nearly  
every major hub for technology in the United States is at least at risk of being so designated.

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SAN FRANCISCO

1 America’s most well-known technology hubs – Silicon Valley and the Bay Area – are represented  
 2 by the Plaintiffs in this matter and plainly bear such risk, for the reasons stated in their briefs. But  
 3 they are not alone: most American cities that house major technology companies (or major offices  
 4 of technology companies) would face a substantial probability of being punished as sanctuary  
 5 cities. Austin, Boston, Denver, Chicago, New York, North Carolina’s Research Triangle,  
 6 Portland, and Seattle, to name a few, contain remarkable concentrations of technological talent  
 7 and knowledge, thanks in part to the eagerness of the best minds from around the world – and  
 8 many others of diverse ancestry – to work there. There is, moreover, a well-known synergy  
 9 between technological advances by one enterprise, in one tech center, and further advances made  
 10 by other entrepreneurs in other cities. For that reason harm to the culture and corresponding  
 11 growth of technology in any of our cities tends to slow progress everywhere.

12 **2. The Executive Order Undermines the Ability of *Amici* to Recruit**  
 13 **Employees to “Sanctuary Cities”**

14 To compete in a global marketplace for exceptionally talented employees, companies  
 15 must be able to offer those it recruits an opportunity to live in appealing places – or at least  
 16 communities that are welcoming. Nearly all employees have certain base level requirements  
 17 without which they would not seriously consider relocating somewhere: reliable law-enforcement  
 18 and safety services; accessible, high-quality public schools; and decent community infrastructure  
 19 are a few among such baseline requirements.

20 The Order threatens such baseline requirements in every impacted city. Santa Clara and  
 21 San Francisco have described how rescinding federal funding would cripple their ability to  
 22 provide essential government services. *See, e.g.*, Dkt. No. 1 ¶¶ 27-45. But they are not alone. If  
 23 the Order were enforced, reports note that Los Angeles County stands to lose \$582 million in  
 24 federal grants, and Seattle and Denver would lose \$72.7 and \$39 million respectively.<sup>4</sup> Chicago’s  
 25 2016 budget reflected anticipated payments of \$1.48 *billion* from the federal government.<sup>5</sup> The

26 <sup>4</sup> Rory Carroll, Robin Respaut, & Andy Sullivan, *Top 10 Sanctuary Cities Face Roughly \$2.27*  
 27 *Billion in Cuts by Trump Policy*, Reuters (January 26, 2017), available at  
<http://www.reuters.com/article/us-usa-trump-sanctuarycities-idUSKBN1592V9>.

28 <sup>5</sup> Lydia O’Neil, *Sanctuary Cities 2017: How Much Money DO They Receive From the Federal*

1 sudden loss of this magnitude of funds threatens to disrupt basic government functions on a  
2 massive scale. Impacted jurisdictions will face a Hobson’s choice between protecting their most  
3 vulnerable residents and preserving services and infrastructure that support economic activity.

4 While Defendants contend that Plaintiffs’ motions are not ripe because no jurisdictions  
5 have yet been designated as sanctuary jurisdictions and stripped of funding, the threat of the loss  
6 of federal grants and the concomitant collapse of local services itself deters relocation to these  
7 cities. If a financially sound city can be thrown into chaos at any time by a discretionary and  
8 arbitrary decision of the Attorney General, with no articulated mechanism for review based on no  
9 clearly defined standards or rules, people with options will not choose to relocate to that city.

10 Indeed, the Order has had an unsurprising over-deterrent effect: technological hubs have  
11 already started adjusting their budgets (tried to deal with the unexpected slash in revenues) to  
12 reflect uncertainty over whether they will receive federal funds, resulting in the diversion of funds  
13 from other government services.<sup>6</sup>

14 Defendants could have drafted specific regulations and then later drafted an order  
15 compelling compliance with reasonably articulated standards. Instead they demand compliance  
16 with vague directives, perhaps intending that jurisdictions surrender their rights by avoiding even  
17 the appearance of being a “sanctuary jurisdiction.” The executive branch has no right to coerce  
18 local governments to abandon their rights through overreach facilitated by deliberate vagueness.

19 Defendants cannot publish unintelligible commands without defining their actual scope  
20 and then contend that the harms caused by confusion over compliance are not ripe for judicial  
21 review. So long as the Order stands, American tech hubs remain under threat and the ability of  
22 *amici* to recruit talented employees is diminished.

23 America’s tech sector is overwhelmingly concentrated in cities now at risk of losing all

24 \_\_\_\_\_  
25 *Government?*, International Business Times, January 25, 2017, available at  
[http://www.ibtimes.com/sanctuary-cities-2017-how-much-money-do-they-receive-federal-  
26 government-248146](http://www.ibtimes.com/sanctuary-cities-2017-how-much-money-do-they-receive-federal-government-248146).

27 <sup>6</sup> Jeff Mays & Ben Fractenberg, *New York Could Lose Billions as Trump Attacks Sanctuary*  
*Cities*, DNA Info (January 25, 2017), available at [https://www.dnainfo.com/new-  
28 york/20170125/midtown/sanctuary-city-new-york-funding-how-much](https://www.dnainfo.com/new-york/20170125/midtown/sanctuary-city-new-york-funding-how-much) (noting that New York  
City reallocated funds in 2017 budget to increase reserves in case of loss of federal funds).



1 federal grants if the Order is allowed to stand, and this risk significantly undermines the  
 2 competitiveness of American companies as well as the stability of the communities in which  
 3 technology companies are found. This in turn threatens the larger well-being of the American  
 4 economy: the technology sector accounts for more than seven percent of the United States' gross  
 5 domestic product and over eleven percent of the national private sector payroll.<sup>7</sup> The  
 6 ramifications of any blow to American technology companies are thus bound to ripple through  
 7 other American industries.

8 **B. The Order Makes American Cities Less Safe**

9 While talented employees – both lawful immigrants and U.S. citizens of targeted ancestry  
 10 – will generally not relocate to a city that cannot provide basic government services, they will  
 11 also shun cities in which they feel unwelcome and unsafe. The Order undermines the safety of  
 12 sanctuary cities, and with that the ability of American technology companies to attract employees.

13 **1. The Order Seeks to Override the Reasoned Judgment of Potential**  
 14 **Sanctuary Jurisdictions as to the Best Allocation of their Public Safety**  
 15 **Resources**

16 As Plaintiffs explained in their complaints, their respective policies regarding involvement  
 17 with federal immigration enforcement were specifically designed to enhance public safety for  
 18 citizens and non-citizens alike. *See* Dkt. 1 ¶ 58 in Case No. 17-00574; Dkt. 20 ¶ 33 in Case No.  
 19 17-00485.

20 When local law enforcement officers are perceived as de facto agents of ICE, victims and  
 21 witnesses of crimes are hesitant to engage with the legal system at all. *Id.* ¶ 59. Fear that a police  
 22 report will result in deportation has already become so acute that even when local agencies are  
 23 not assisting with immigration enforcement, crime victims have become reluctant to report crimes  
 24 of violence.<sup>8</sup> And California judicial officials consider the looming presence of ICE officers at  
 25 local courthouses likely to deter witnesses and victims from engaging with the criminal justice

26 <sup>7</sup> *Cyberstates 2016: The Definitive State-by-State Analysis of the U.S. Tech Industry*, Computing  
 Technology Industry Association (March 1, 2016).

27 <sup>8</sup> James Quelly, *Latinos are Reporting Fewer Sexual Assaults Amidst a Climate of Fear in*  
 28 *Immigrant Communities, LAPD Says*, Los Angeles Times, (March 22, 2017).

1 system. The Chief Justice of the California Supreme Court recently wrote to Attorney General  
2 Sessions and Secretary Kelly expressing this very concern, and requesting that that ICE agents  
3 cease “stalking” undocumented immigrants inside California state courthouses. Chief Justice  
4 Cantil-Sakauye explained that “public trust and confidence in our state court system” are  
5 diminished when “the public feels that our state institutions are being used to facilitate other goals  
6 and objectives” such as immigration enforcement.<sup>9</sup>

7 Manifestly, the public interest in encouraging undocumented persons to report crimes,  
8 serve as witnesses, and cooperate with law enforcement is a substantial interest, one reflected in  
9 federal law itself but undermined by the Order.<sup>10</sup>

10 The best use of ICE resources must be left to the determination of federal authorities. But  
11 local counties and cities must remain free to allot their own public safety resources as they  
12 choose, and to decline participation in immigration enforcement when they decide public safety  
13 compels abstention from cooptation. As the Supreme Court held in *Printz v. United States*, the  
14 Constitution bars the federal government from commandeering state officers or resources to assist  
15 in enforcing federal programs. 521 U.S. 898, 925 (1997) (“[T]he Federal Government may not  
16 compel the States to implement, by legislation or executive action, federal regulatory programs”).  
17 The federal government cannot and should not override the judgment of city, state, and county  
18 officials regarding participation in immigration enforcement.

19 **2. The Order Threatens the Well-being of Lawful Immigrants**  
20 **And Others by Penalizing Those Who Provide Services to**  
21 **Undocumented Immigrants**

22 On its face the Order concerns an enforcement scheme targeting only non-citizens  
23 removable from the United States. Unfortunately, history compels the conclusion that when

24 <sup>9</sup> California Supreme Court Chief Justice Tani G. Cantil-Sakauye & Cathal Conneely, *Chief*  
25 *Justice Cantil-Sakauye Objects to Immigration Enforcement Tactics at California Courthouses*,  
26 California Court Newsroom (March 16, 2017), available at  
[http://newsroom.courts.ca.gov/news/chief-justice-cantil-sakauye-objects-to-immigration-](http://newsroom.courts.ca.gov/news/chief-justice-cantil-sakauye-objects-to-immigration-enforcement-tactics-at-california-courthouses)  
27 [enforcement-tactics-at-california-courthouses](http://newsroom.courts.ca.gov/news/chief-justice-cantil-sakauye-objects-to-immigration-enforcement-tactics-at-california-courthouses)

28 <sup>10</sup> The policy is reflected in federal immigration law, with authorizes so-called “U-Visas” to  
normalize the immigration status of undocumented persons who are the victims of serious crimes  
and assist the police or prosecutors in the investigation or prosecution of such crimes.  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U); INA § 101(a)(15)(U).

1 nativist impulses come to the fore and people become suspect for appearing “foreign,” the  
2 impacts are never so constrained. Whatever the intent behind the Order, once national origin and  
3 ancestry are treated as legitimate bases for suspicion, all immigrants – as well as those thought to  
4 look like them – pay the price. While this pattern has been repeated many times throughout our  
5 nation’s history, this Order practically compels discrimination on the basis of national origin by  
6 effectively penalizing association with immigrants unless one is certain of their documentation  
7 status.

8 Section 6 of the Order provides that the Secretary of Homeland Security is authorized to  
9 ensure the collection and assessment of “fines and penalties” against not only immigrants present  
10 without authorization in the United States, but also against “those who facilitate their presence in  
11 the United States.” The Order does not state that such facilitation must be “knowing,” and  
12 liability appears to be strict. Importantly, the phrase “facilitate their presence” is not defined or  
13 clarified anywhere in the Order. Neither does the Order set forth any process for appealing the  
14 Secretary’s arbitrary determinations. Actually, of course, the Secretary has no constitutional  
15 authority to create new crimes and infractions at all, nor to specify their fines and punishments.

16 As Santa Clara County correctly alleges in its Complaint, based on the vague wording of  
17 the Order, this section could reasonably be read to authorize the imposition of fines against any  
18 county employee providing an undocumented immigrant with basic services such as medical care.  
19 Docket 1 ¶ 6. Taking this vague definition beyond its impact on the County, the phrase  
20 “facilitates their presence” could as well be said to apply to any person renting a home or  
21 apartment to an undocumented immigrant, providing any form of financial assistance to an  
22 undocumented person, or providing any other services from childcare to legal advice.

23 Such a broad and vague prohibition on interacting with undocumented immigrants has a  
24 two-fold impact on immigrants lawfully present in the United States.

25 First, by threatening anyone who unknowingly aids an undocumented immigrant, the  
26 Order almost compels discrimination against immigrants. Workers lawfully in the United States  
27 can expect to encounter widespread refusals to provide them with services absent proof of their  
28 documentation status, as service providers fear otherwise being subjected to unspecified fines and

1 penalties. Rather than being treated fairly and equally in their new homes, lawfully-present  
2 immigrants may well find others loathe to interact with them absent proof of their lawful  
3 presence. “Let me see your papers” may no longer be a trope from old movies, but a  
4 contemporary means of degradation of those deemed suspect based on their apparent national  
5 origin – and a sign of what feels to many like the police state.

6 Most Americans cannot imagine an existence in which we are asked to prove our legal  
7 status every time we seek medical care, child care, or even dinner at a restaurant, and in which  
8 such a regulation provides a cover for discriminatory challenges. Indeed, the idea of this sort of  
9 second class citizenship offends fundamental American values and invokes memories of some of  
10 the darkest eras in our history. But so long as people can be subjected to unspecified fines and  
11 penalties for even inadvertently aiding an undocumented person, at the unfettered discretion of  
12 immigration officials, that could become the reality for many immigrants lawfully working in  
13 America.<sup>11</sup> Among the deep issues this raises, it means that technology companies cannot  
14 realistically attract talented workers to the United States if they expect to face this sort of  
15 treatment.

16 Second, immigrants lawfully in the United States will also have reason to fear being  
17 subjected to fines or penalties for interacting with people from their home country, regardless of  
18 their knowledge of that person’s status. All across the country, while integrating into American  
19 life, immigrants also maintain their own traditions in part through connections with other persons  
20 from their native countries. Through churches, community centers, and other groups many  
21 immigrants find communities comprised of people who have lived through a similar journey and  
22 who share a similar background. But the Order threatens the very existence of such communities  
23 by threatening every member if a single member is undocumented and the community may be  
24 deemed somehow to have “facilitated” that person’s presence in the United States.

25 Not only could a church that provides food or other basic necessities to an undocumented

26 <sup>11</sup> This discrimination and policing of documentation status appears to have already begun, as  
27 four Latina women recently reported that a server at a California restaurant refused to provide  
28 them with dinner until they provided proof of residency. *See Cleve Wootson, A California  
Waiter Refused to Serve 4 Latina Customers Until He Saw Proof of Residency*, Washington Post,  
March 19, 2017.

1 immigrant be subject to a fine of unspecified size under the Order, so too could any person who  
 2 contributed to that church under the theory that they facilitated the presence of undocumented  
 3 immigrants by providing financial support to an organization that supports them. And the  
 4 existence of such a legal standard may well be used as an excuse for surveillance of churches and  
 5 community resources. This limitless policing of those who would provide assistance to the  
 6 undocumented will drive fear into all immigrant communities, including their members who are  
 7 lawfully present in the United States.

8 Finally, it bears noting that this sort of strict liability, guilt-by-association is essentially  
 9 unprecedented in the American legal system. While the law may appropriately bar *knowingly*  
 10 aiding or abetting the commission of crimes, it does not criminalize the *unknowing* provision of  
 11 aid to a person that has committed a crime.

12 Citizens can offer aid, serve food, or provide medical assistance to those who, it turns out,  
 13 have committed even the most heinous of crimes without fear that they will be subjected to fines  
 14 or penalties. When interacting with an undocumented person – or someone of apparently similar  
 15 ancestry – is penalized, the government effectively ensures that all immigrants will be treated  
 16 with fear and mistrust, and that discrimination on account of national origin will be perpetuated  
 17 under color of law.

## 18 CONCLUSION

19 The Order promotes values at odds with those of America society, and antithetical to the  
 20 values, culture and practices of the technology industry, both here and nationally, and to the  
 21 values of the communities in which the tech industry is embedded. The Order also defies  
 22 constitutional standards and imperils the safety, efficacy and well-being of the technology  
 23 industry and of communities that seek to uphold the values of openness, tolerance, and  
 24 inclusiveness. *Amici* therefore respectfully request that the Court grant the Counties' motions and  
 25 enjoin enforcement of the Order on a nationwide basis.

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Dated: March 22, 2017

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# **EXHIBIT 1**

**EXHIBIT 1**

1. Ampush Media, Inc.
2. Appboy Inc.
3. Azavea
4. Checkr, Inc.
5. Chegg Inc.
6. Eventbrite
7. General Assembly
8. IDEO
9. Knotel
10. Managed by Q Inc.
11. Mapbox
12. Marin Software
13. Minted LLC
14. SugarCRM Inc.
15. Work & Co



# **EXHIBIT B**

**EXHIBIT B**

1. Ampush Media, Inc.
2. Appboy Inc.
3. Azavea
4. Checkr, Inc.
5. Chegg Inc.
6. Eventbrite
7. General Assembly
8. IDEO
9. Knotel
10. Managed by Q Inc.
11. Mapbox
12. Marin Software
13. Minted LLC
14. SugarCRM Inc.
15. Work & Co