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10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 12 SAN FRANCISCO DIVISION

15 CITY AND COUNTY OF SAN FRANCISCO,
 16 Plaintiff,
 17 v.
 18 DONALD J. TRUMP, President of the United
 19 States, UNITED STATES OF AMERICA,
 20 JOHN F. KELLY, Secretary of the United
 States Department of Homeland Security,
 21 DANA J. BOENTE, Acting Attorney General
 of the United States, DOES 1-100,
 22 Defendants.

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

**STATE OF CALIFORNIA'S
 ADMINISTRATIVE MOTION FOR
 LEAVE TO FILE AN AMICUS CURIAE
 BRIEF IN SUPPORT OF PLAINTIFF'S
 MOTION FOR PRELIMINARY
 INJUNCTION**

Date: April 14, 2017
 Time: 2:00 p.m.
 Courtroom: 2
 Judge: Honorable William H. Orrick
 Trial Date: None Set
 Action Filed: January 31, 2017, 2017

24 The State of California respectfully moves, pursuant to the Court's inherent authority and
 25 its order of March 21, 2017, for leave to file a brief as amicus curiae supporting the City and
 26 County of San Francisco ("San Francisco") in its case challenging President Trump's
 27 unconstitutional Executive Order regarding "sanctuary jurisdictions." *See* Exec. Order 13768, 82
 28

1 Fed. Reg. 8799 (Jan. 25, 2017).

2 **IDENTITY OF AMICUS CURIAE**

3 The California Attorney General is the State’s chief law officer. Plaintiff City and County
4 of San Francisco is a political subdivision of the State of California.

5 **MOVANT’S INTEREST**

6 The State of California has a significant interest in maintaining its sovereign authority to
7 determine the discretion state and local law enforcement agencies should have regarding the level
8 of engagement with federal immigration enforcement that best serves their communities. Both
9 California and many law enforcement agencies throughout the State and the country have long
10 concluded that public safety is facilitated when all residents, regardless of immigration status, are
11 encouraged to report crimes and participate in policing efforts without fear of immigration
12 consequences.

13 California has enacted legislation – including the TRUST and TRUTH Acts – that reflect
14 the Legislature’s judgment about the correct balance between the use of state and local resources
15 to assist with federal immigration efforts and the State’s local interest in preserving community
16 trust and protecting public safety. The Attorney General of California, as the State’s chief law
17 officer, has a duty to administer the State’s laws, and has an interest in seeing that these State
18 laws are properly interpreted and enforced, and not undermined by overbroad and
19 unconstitutional federal directives.

20 As the State with the largest immigrant population in the country—and with a state budget
21 that relies on over \$90 billion in federal funds annually—California’s interests would be directly
22 affected by any decision construing the Trump administration’s Executive Order. By threatening
23 the withdrawal of federal funds and the institution of enforcement actions, the Executive Order
24 has created concern and confusion for residents and local jurisdictions within this State.

PROPOSED AMICUS BRIEF'S RELEVANCE AND AID TO THE COURT

1
2 “District courts frequently welcome amicus briefs from non-parties . . . if the amicus has
3 unique information or perspective that can help the court beyond the help that the lawyers from
4 the parties are able to provide.” *Sonoma Falls Developers, L.L.C. v. Nev. Gold & Casinos, Inc.*,
5 272 F. Supp. 2d 919, 925 (N.D. Cal. 2003) (quotations omitted). In addition, participation of
6 amicus curiae may be appropriate where legal issues in a case have potential ramifications
7 beyond the parties directly involved. *Id.* California has a unique perspective as the political
8 entity of which Plaintiff is a part, and as a sovereign government with important state laws
9 addressing state and local discretion to determine the level of engagement with federal
10 enforcement of federal immigration law. The State’s amicus brief provides the Court a helpful
11 perspective from the State government, and an important insight into the proper scope and
12 interpretation of the State laws that are at issue in this lawsuit. Moreover, the State of California
13 has direct experience with and helpful evidence to add as to the impacts of local entanglement
14 with federal immigration enforcement, particularly as it relates to state and local law enforcement.
15 The proposed amicus brief will provide context and support for Plaintiff’s assertions of harm,
16 providing specific information that will aid the Court in determining whether Plaintiffs have met
17 their burden of persuasion on each element of the preliminary injunction standard.

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21 Specifically, the President’s Executive Order has created concern and confusion for the
22 residents and the law enforcement agencies of the State. No California law, including the TRUST
23 and TRUTH Acts, conflicts with federal law nor interferes with federal efforts to enforce
24 immigration law. Moreover, these state laws are an expression of California’s sovereign and
25 public interest in “the exercise of sovereign power over individuals and entities within . . . [their]
26 jurisdiction” that includes “the power to create and enforce a legal code, both civil and criminal,”
27 particularly when such laws serve the State’s interest “in the well-being of [their] populace.”
28

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10 IN THE UNITED STATES DISTRICT COURT
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 12 SAN FRANCISCO DIVISION

<p>14 CITY AND COUNTY OF SAN FRANCISCO, 15 16 Plaintiff, 17 v. 18 DONALD J. TRUMP, President of the United States, UNITED STATES OF AMERICA, 19 JOHN F. KELLY, Secretary of United States Department of Homeland Security, DANA J. 20 BOENTE, Acting Attorney General of the United States, DOES 1-100, 21 22 Defendants.</p>	<p>Case No. 3:17-cv-00485-WHO STATE OF CALIFORNIA’S AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION Date: April 14, 2017 Time: 2:00 p.m. Courtroom: 2 Judge: Honorable William H. Orrick Trial Date: None Set Action Filed: January 31, 2017</p>
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INTRODUCTION AND STATEMENT OF INTEREST OF AMICUS CURIAE

1 The Attorney General is the State’s chief law officer and is vested with supervisorial
2 authority over local law enforcement agencies in the State of California. The State has a strong
3 interest in ensuring public safety and protecting the rights of its residents by maintaining an
4 effective law enforcement system. Like many local law enforcement agencies in California and
5 throughout the Nation, the State has concluded that public safety is best protected when all
6 members of our community—regardless of immigration status—are encouraged to report crimes
7 and participate in policing efforts without fear of immigration consequences. California law
8 reflects this faith in community policing by promoting a relationship of trust and engagement
9 between law enforcement and the people they protect, while also providing law enforcement
10 agencies with the discretion to engage with federal immigration authorities in certain
11 circumstances. It is in the best interest of the State to see that California statutes protecting these
12 priorities are properly interpreted and enforced, and are not undermined by overbroad and
13 unconstitutional federal directives.

14 Executive Order 13768, issued on January 25, 2017, is an aggressive attempt by President
15 Trump to coerce state and local jurisdictions into participating in immigration enforcement, even
16 in situations where that participation would undermine public safety and go against the best
17 judgment of the law enforcement officials who are most familiar with local communities. Among
18 other things, the Executive Order: reinstates the federal “Secure Communities” program, which
19 enlists local authorities in detaining persons the federal government believes to be removable;
20 directs that eligibility for federal funds will depend on whether a jurisdiction willfully refuses to
21 comply with 8 U.S.C. 1373, a federal statute regarding the sharing of “information regarding the
22 citizenship or immigration status” of individuals with the federal government; gives the Secretary
23 of Homeland Security discretion to designate local jurisdictions as “sanctuary jurisdictions”;
24 orders the Secretary to publish a weekly report of jurisdictions that decline detainer requests; and
25 orders the United States Attorney General to take enforcement action against entities that violate
26 Section 1373 or have statutes, policies, or practices that prevent or hinder the enforcement of
27

28

1 Federal law.¹ As the State with the largest immigrant population in the country—and with a state
 2 budget that relies on over \$90 billion in federal funds annually—California’s interests would be
 3 directly affected by any decision construing this Executive Order. Although no California law
 4 conflicts with Section 1373, the Executive Order has created concern and confusion for residents
 5 and local jurisdictions within this State.

6 To assist the Court in understanding the risks and confusion created by the Executive
 7 Order, this brief will first review developments in federal law and policy that prompted California
 8 to adopt statutes protecting the State’s discretion to make public-safety judgments about when
 9 and how to assist federal authorities in carrying out their responsibilities to enforce federal
 10 immigration laws. Those developments include the introduction of the original Secure
 11 Communities program, widespread concerns about the constitutionality of that program, the
 12 federal government’s decision to terminate the program in light of those concerns, and President
 13 Trump’s decision to revive the program in an even more coercive form. Next, the brief will
 14 describe the two statutes that California adopted—the TRUST Act and the TRUTH Act—to
 15 protect public safety and resident’s constitutional rights, and the potential ramifications of the
 16 Executive Order for those state laws.

17 ARGUMENT

18 I. THE EXECUTIVE ORDER REVIVES PAST FEDERAL ATTEMPTS TO COMPEL STATE 19 PARTICIPATION IN IMMIGRATION ENFORCEMENT

20 A. The Original Secure Communities Program

21 In 2008, the Department of Homeland Security (DHS) launched the Secure Communities
 22 program, which enlisted local law enforcement agencies to engage in federal immigration
 23 enforcement. First, when state or local law enforcement authorities submitted fingerprints of a
 24 person booked for arrest to the FBI, the FBI shared those fingerprints with Immigration and
 25 Customs Enforcement (ICE), which used them to determine if the person was subject to removal.²

26 ¹ Exec. Order No. 13768, 82 Fed. Reg. 8799, §§ 9, 10 (Jan. 25, 2017).

27 ² U.S. Immigration and Customs Enforcement, “Secure Communities – Overview,”
 28 <https://www.ice.gov/secure-communities>.

1 Second, if ICE thought the person was removable, it could ask local agencies to detain the
2 person—without any federal reimbursement—beyond the time when they would normally be
3 released. The program authorized ICE to issue a “detainer” request to state or local law
4 enforcement, asking the local agency to hold the person for an additional 48 hours to allow time
5 for ICE to interview the person or take them into custody.³ As the California Legislature later
6 determined, Secure Communities raised serious Fourth Amendment concerns and undermined
7 California’s community policing efforts. *See* 2013 Cal. Stat., Ch. 570, § 1(d); *infra* p. 10.

8 Despite language in the standard ICE detainer form suggesting that state and local agencies
9 were “require[d]” to hold individuals that were the subject of an ICE detainer request, federal
10 courts held that the requests were voluntary in nature.⁴ For example, the Third Circuit concluded
11 that “immigration detainers do not and cannot compel a state or local law enforcement agency to
12 detain suspected aliens subject to removal” and that local law enforcement agencies are “free to
13 disregard the ICE detainer.” *Galarza v. Szalczyk*, 745 F.3d 634, 636, 645 (3rd Cir. 2014); *see*
14 *also Miranda-Olivares v. Clackamas Cnty.*, Case No. 12-02317, 2014 WL 1414305 (D. Or. Apr.
15 11, 2014) (same); *cf. Garcia v. Taylor*, 40 F.3d 299, 303-04 (9th Cir. 1994), *superseded on other*
16 *grounds by* 8 U.S.C. § 1252(i) (in habeas context, detainers do not allow, much less compel, law
17 enforcement agencies to hold someone past end of term).

18 Federal courts also held that prolonged detentions by local authorities pursuant to ICE
19 detainer requests violated the Fourth Amendment unless they were independently supported by
20 probable cause. *See, e.g., Morales v. Chadbourne*, 793 F.3d 208, 217-18 (1st Cir. 2015)
21 (detention solely on ICE detainer constituted a new seizure for Fourth Amendment purposes that
22 “must be supported by a new probable cause justification”); *Miranda-Olivares*, 2014 WL
23 1414305, at *11 (hold pursuant to a detainer a new seizure and “ICE detainer alone did not

24 ³ *Id.* at “How does Secure Communities Work?”

25 ⁴ The original detainer form used under the Secure Communities program stated: “It is requested
26 that you: Please accept this notice as a detainer.... Federal regulations (8 CFR 287.7) require that you
27 detain the alien for a period not to exceed 48 hours (excluding Saturdays, Sundays and Federal holidays)
28 to provide adequate time for ICE to assume custody of the alien.” *Galarza v. Szalczyk*, 745 F.3d 634, 637
(3d Cir. 2014) (quoting form). As discussed *infra* p. 5, DHS has issued a new form that again at least
implies compliance is not voluntary.

1 demonstrate probable cause.”); *Gonzalez v. ICE*, Case No. 13-0441, 2014 WL 12605368, at *12-
 2 13 (C.D. Cal. July 28, 2014) (plaintiffs “sufficiently pleaded that Defendants exceeded their
 3 authorized power” by issuing “immigration detainers without probable cause”).

4 The Secure Communities program caused direct harm within the State of California.
 5 Residents who had been held pursuant to ICE detainer requests sued to vindicate their
 6 constitutional rights. Several of our local governments paid settlements to such plaintiffs out of
 7 state and local tax revenues.⁵ Concerns arising from these incidents informed the California
 8 Legislature’s adoption of the TRUST Act, which aimed to retain an appropriate amount of state
 9 and local discretion in determining whether considerations of public safety weigh in favor of
 10 cooperating with federal immigration enforcement. *See infra*, p. 10.

11 **B. Recognizing State Concerns, the Federal Government Eliminates the**
 12 **Secure Communities Program**

13 In 2014, DHS announced that the Secure Communities program would be discontinued,
 14 acknowledging an “increasing number of federal court decisions that hold that detainer-based
 15 detention by state and local law enforcement agencies violates the Fourth Amendment.”⁶
 16 Moreover, DHS recognized that Secure Communities engendered “general hostility toward the
 17 enforcement of our immigration laws” from law enforcement throughout the country.⁷ DHS
 18 created a new program entitled “Priority Enforcement Program” (PEP) to replace Secure
 19 Communities. The new program still relied on fingerprint-based biometric data submitted by
 20 state and local law enforcement to the FBI. But due to the Fourth Amendment concerns
 21

22 ⁵ For example, Los Angeles paid a settlement of \$255,000 in *Roy v. County of Los Angeles*, No.
 23 12-cv-9012 (C.D. Cal.). Notice of Meeting, County of Los Angeles Claims Board (Nov. 16, 2015)
 24 (recommended settlement of \$255k to County Board for detaining individual for 89 days pursuant to ICE
 25 hold), http://file.lacounty.gov/SDSInter/lac/1016994_111615.pdf. *See also* Settlement Agreement at 2-5,
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26 ⁶ U.S. Dep’t of Homeland Sec. Mem. From Jeh Charles Johnson, Sec’y of Homeland Sec.,
 “Secure Communities,” at 2 (Nov. 20, 2014), https://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf.

27 ⁷ *Id.* at 1.

1 surrounding the original detainer requests, DHS replaced them with “requests for notification
 2 (*i.e.*, requests that state or local law enforcement notify ICE of a pending release during the time
 3 that person is otherwise in custody under state or local authority).”⁸ Requests for detention were
 4 only to be used in special circumstances where consistent with Fourth Amendment requirements.⁹

5 **C. Executive Order 13768 Restores the Secure Communities Program and**
 6 **Threatens Cuts to State and Local Funding**

7 On January 25, 2017, without addressing any of the concerns that DHS had previously
 8 raised about Secure Communities, the President directed DHS to terminate PEP and re-institute
 9 the Secure Communities program. Exec. Order, § 10(a). DHS has already taken action to
 10 execute this directive. In his memorandum implementing the Executive Order, DHS Secretary
 11 Kelly ordered that “[e]ffective immediately, [PEP] is terminated and the Secure Communities
 12 Program shall be restored.”¹⁰ On March 24, 2017, DHS replaced the PEP forms with a single
 13 new form.¹¹ The new form removes the language stating that the request is “voluntary” and
 14 provides less information to local law enforcement about the individual than the prior form.¹² On
 15 the same day, DHS released a new policy for issuing detainers, requiring that all detainer requests
 16 be accompanied with an administrative warrant.¹³ These “warrants” are signed by an
 17 immigration officer—not a neutral magistrate—and provide local law enforcement with no
 18 substantial additional information about why ICE is requesting the detainer.

19
 20 ⁸ *Id.* at 2 (emphasis in original).

21 ⁹ *Id.*

22 ¹⁰ U.S. Dep’t of Homeland Sec. Mem. from John Kelly, Sec’y of Homeland Sec., “Enforcement
 23 of the Immigration Laws to Serve the National Interest,” at 3 (Feb. 20, 2017), https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf.

24 ¹¹ See I-247A, “Immigration Detainer-Notice of Action,” <https://www.ice.gov/sites/default/files/documents/Document/2017/I-247A.pdf>.

25 ¹² The new form no longer requires a description of why the individual fits into DHS’s
 26 immigration enforcement priorities, including the specific prior criminal action that made the individual a
 priority for removal under PEP.

27 ¹³ ICE Policy No. 10074.2, “Issuance of Immigration Detainers by ICE Officers” § 2.4 (Mar. 24,
 28 2017), <https://www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf>.

1 None of these changes appear to resolve the Fourth Amendment concerns surrounding the
2 Secure Communities program. The revised forms and administrative warrants may not in all
3 cases provide local authorities with the information necessary to make an independent
4 determination that there is probable cause to detain an individual for an extended period, nor the
5 assurance that a neutral magistrate has made such a determination. And recent developments
6 suggest that ICE may not have this information, or no way to provide it. Last week, in releasing
7 its first weekly list of jurisdictions that declined detainer requests, ICE admitted that “it does not
8 document, in a systematically reportable manner, the immigration status of an alien at the time of
9 detainer issuance.”¹⁴ If ICE cannot provide documentation to local law enforcement of an
10 individual’s immigration status when it issues a detainer request or administrative warrant, it is
11 unclear how it can provide the independent probable cause necessary under the Fourth
12 Amendment for state and local law enforcement agencies to constitutionally detain individuals.

13 At the same time, it appears that the Administration may be abandoning its position that
14 detainer requests are voluntary. In remarks on March 27, U.S. Attorney General Sessions said
15 that “some states and cities have adopted policies designed to frustrate the enforcement of our
16 immigration laws. *This includes refusing to detain known felons under federal detainer requests,*
17 *or otherwise failing to comply with these laws.*”¹⁵ Especially when considered in light of the
18 Administration’s deletion of the word “voluntary” from its detainer request form, those remarks
19 suggest that the Administration is attempting to convince local jurisdictions that they are required
20 by law to accede to federal detainer requests. Such a position would be at odds with anti-
21 commandeering principles under the Tenth Amendment. *See infra* p. 11.

22 In addition to reviving the Secure Communities program, President Trump’s Executive
23 Order stated that eligibility for federal funds will depend upon whether a jurisdiction “willfully
24 refuse[s] to comply with 8 U.S.C. 1373 (sanctuary jurisdictions),” and ordered the U.S. Attorney

25 ¹⁴ ICE, “Weekly Declined Detainer Outcome Report for Recorded Declined Detainers Jan. 28-Feb.
26 3, 2017,” at 34 (Mar. 20, 2017), https://www.ice.gov/doclib/ddor/ddor2017_01-28to02-03.pdf.

27 ¹⁵ U.S. Attorney General Sessions, “Attorney General Jeff Sessions Delivers Remarks Announcing
28 Sanctuary Jurisdictions” (Mar. 27, 2017) (Sessions Remarks), <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-announcing-sanctuary-jurisdictions> (emphasis added).

1 General to take enforcement actions against “any entity that violates 8 U.S.C. 1373, or which has
2 in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law.”¹⁶

3 This week, Attorney General Sessions indicated that the Administration may take the position
4 that Section 1373 requires compliance with detainer requests, suggesting that a policy of refusing
5 detainees “frustrate[s] the enforcement of our immigration laws,” and declaring that such policies
6 place jurisdictions “at risk of losing valuable federal dollars.”¹⁷

7 These statements are bound to create confusion for state and local officials. By its terms,
8 Section 1373 says nothing about detention. It only prohibits state or local governments from
9 “prohibit[ing], or in any way restrict[ing], any government entity or official from sending to, or
10 receiving from, the Immigration and Naturalization Service *information regarding the citizenship*
11 *or immigration status*, lawful or unlawful, of any individual,” or from prohibiting the
12 maintenance or exchange of information regarding the immigration status of any individual. 8
13 U.S.C. § 1373(a)-(b) (emphasis added). Yet the Administration appears to be using Section 1373
14 as a means of intimidating state and local jurisdictions into detaining immigrants—even when
15 local officials have no independent probable cause justifying such a detention, and even when it
16 would contravene local policies or laws or local public-safety judgments. The State has an
17 interest in protecting local and state law enforcement agencies from such federal intimidation.

18 **II. FOR PUBLIC SAFETY REASONS, CALIFORNIA HAS ENACTED LEGISLATION**
19 **REGARDING LOCAL LAW ENFORCEMENT DISCRETION TO ENGAGE IN FEDERAL**
20 **IMMIGRATION ENFORCEMENT**

21 States have an interest in “the exercise of sovereign power over individuals and entities
22 within . . . [their] jurisdiction” that includes “the power to create and enforce a legal code, both
23 civil and criminal.” *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 601
24 (1982). Moreover, the States have an independent interest in the “well-being of [their] populace.”
25 *Id.* at 602. As an exercise of this sovereign right to protect the health, welfare, and safety of its
26 residents, California has adopted statutes that facilitate public safety by increasing trust between

27 ¹⁶ Exec. Order 13,768, 82 Fed. Reg. 8799, §§ 9, 10 (Jan. 25, 2017).

28 ¹⁷ Sessions Remarks.

1 law enforcement agencies and the communities they protect. These important statutes are
 2 consistent with federal law, and the State has a strong interest in ensuring that they are not
 3 misconstrued or undermined by the Executive Order and the federal government’s attempts to
 4 coerce compliance.

5 **A. Public Safety Is Best Served by Allowing State and Local Entities to Make**
 6 **Decisions That Build Trust with Local Communities**

7 The safety of a community increases when all residents—regardless of immigration
 8 status—feel comfortable reporting crimes and interacting with local police without fear of
 9 immigration consequences. In contrast, when local law enforcement agencies take an active role
 10 in enforcing federal immigration laws with no view to balancing immigration enforcement
 11 against local public safety priorities, and when law enforcement officials are perceived as arms or
 12 agents of federal immigration authorities in all situations, it can undermine the trust between law
 13 enforcement and the community. Indeed, recent data suggest that many undocumented
 14 immigrants are already fearful to seek the assistance of or make reports to local law enforcement.
 15 For example, one study of Latinos in four major cities found that 70% of undocumented
 16 immigrants and 44% of all Latinos are less likely to contact law enforcement if they are victims
 17 of a crime for fear that the police will ask them or people they know about their immigration
 18 status.¹⁸ This fear may already be increasing—for example, the Los Angeles Police Department
 19 announced last week that reports from Hispanics of rape in Los Angeles has fallen 25% from last
 20 year; reports of domestic violence are down 10%.¹⁹ LAPD “believes deportation fears may be
 21 preventing Hispanic members of the community from reporting when they are victimized.”²⁰
 22 This fear endangers public safety for everyone—including non-immigrant residents.

23 California is not the only jurisdiction that has come to this conclusion. The Major Cities
 24 Chiefs Association (MCCA), which represents the 68 largest law enforcement agencies in the

25 ¹⁸ Nik Theodore, Dep’t of Urban Planning and Policy, Univ. of Ill. At Chicago, *Insecure*
 26 *Communities: Latino Perceptions of Police Involvement in Immigration Enforcement* 5 (May 2013),
 27 http://www.policylink.org/site/default/files/INSECURE_Communities_Report_Final.PDF.

28 ¹⁹ Los Angeles Police Dep’t, “Decline in Reporting of Domestic Abuse Among Hispanic
 Population,” (Mar. 21, 2017), http://www.lapdonline.org/home/news_view/61998.

²⁰ *Id.*

1 United States, has voiced similar concerns about local and state agencies enforcing federal
2 immigration law indiscriminately because it “undermines the trust and cooperation with
3 immigrant communities.”²¹ When undocumented immigrants’ “primary concern is that they will
4 be deported or subjected to an immigration status investigation, then they will not come forward
5 and provide needed assistance and cooperation.”²² Commingling local law enforcement with
6 federal immigration enforcement “result[s] in increased crime against immigrants and in the
7 broader community, creat[ing] a class of silent victims and eliminat[ing] the potential for
8 assistance from immigrants in solving crimes or preventing future terroristic acts.”²³

9 The federal government’s own 21st Century Policing Task Force came to the same
10 conclusion. In order to “build relationships based on trust with immigrant communities,” it
11 recommended “[d]ecoupl[ing] federal immigration enforcement from routine local policing for
12 civil enforcement and nonserious crime.”²⁴ It also recommended that DHS “should terminate the
13 use of the state and local criminal justice system, including through detention, notification, and
14 transfer requests, to enforce civil immigration laws against civil and non-serious criminal
15 offenders.”²⁵ These conclusions are supported by data from a recent study, which shows that
16 crime is statistically significantly lower in counties that do not assist federal immigration
17 enforcement officials by holding people beyond their release date on the basis of immigration
18 detainers, when compared to counties that comply with immigration detainer requests.²⁶
19 Recognizing state and local discretion to determine when and how to assist with federal

20 ²¹ Major Cities Chiefs Association, “Immigration Position” (Oct. 2011),
21 https://majorcitieschiefs.com/pdf/news/immigration_position112811.pdf.

22 ²² Craig E. Ferrell, Jr. et al., “M.C.C. Immigration Committee Recommendations For Enforcement
23 of Immigration Laws by Local Policy Agencies,” at 6 (June 2006), [https://www.majorcitieschiefs.com/pdf/
24 news/MCC_Position_Statement.pdf](https://www.majorcitieschiefs.com/pdf/news/MCC_Position_Statement.pdf).

25 ²³ *Id.*

26 ²⁴ President’s Task Force on 21st Century Policing, *Final Report* 18 (Washington D.C. May
27 2015), http://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

28 ²⁵ *Id.*

²⁶ Tom K. Wong, *The Effects of Sanctuary Policies on Crime and the Economy*, CTR. FOR AM.
PROGRESS (Jan. 26, 2017),
[https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effectsofsanctuary-
policies-on-crime-and-the-economy/](https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effectsofsanctuary-policies-on-crime-and-the-economy/).

1 immigration efforts based on local public safety concerns thus increases public safety for all state
2 residents.

3 **B. California Laws Increase Public Safety and Protect Residents’**
4 **Constitutional Rights by Retaining State and Local Discretion to**
5 **Determine When and How to Assist Federal Immigration Authorities**

6 **1. The TRUST Act**

7 Many local jurisdictions objected to Secure Communities in its initial incarnation because
8 of its impact on the relationship between communities and local law enforcement and the Fourth
9 Amendment problems it created.²⁷ In 2013, as a response to these growing concerns and to
10 protect the public safety of its residents, California enacted the Transparency and Responsibility
11 Using State Tools Act (TRUST Act), Government Code sections 7282 and 7282.5. The TRUST
12 Act limits the situations in which local law enforcement agencies may comply with ICE detainer
13 requests to those situations where, in the State’s considered judgment, public safety weighs in
14 favor of assistance to federal immigration authorities. If a law enforcement agency wishes to
15 comply with a voluntary ICE detainer request, the TRUST Act requires two conditions be met.
16 First, the continued detention cannot violate any federal, state, or local law, or any local policy.
17 Cal. Gov’t Code § 7282.5(a). Importantly, this includes the protections afforded by the Fourth
18 Amendment. Second, the individual must have been convicted of certain specific crimes or meet
19 other specific criminal criteria.²⁸ Only if both conditions are met may local law enforcement
20 detain an individual for up to 48 hours beyond their release date to permit ICE to assume custody
21 of the individual.

22 In passing the law, the Legislature explicitly found that “[t]he Secure Communities
23 program and immigration detainers harm community policing efforts because immigrant residents
24 who are victims of or witnesses to crime, including domestic violence, are less likely to report

24 ²⁷ Cal. Sen. Comm. on Public Safety, “Report on AB 4,” at 8-9 (Jul. 1, 2013),
25 https://leginfo.legislature.gov/faces/billAnalysisClient.xhtml?bill_id=201320140AB4 (collecting local
26 concerns and citing then-San Francisco Sheriff Hennessey expressing dismay at Secure Communities and
27 stating, “There should be no penalty for a victim of a crime to call the police.”).

28 ²⁸ The statute sets out seven criteria, including if the “individual has been convicted of a felony
punishable by imprisonment in a state prison” or “has been convicted within the past five years of a
misdemeanor that is punishable as either a misdemeanor or a felony.” Cal. Gov’t Code § 7282.5(a).

1 crime or cooperate with law enforcement when any contact with law enforcement could result in
2 deportation.” 2013 Cal. Stat., Ch. 570, § 1(d). Moreover, based on experience, the State found
3 that “[t]he program can result in a person being held and transferred into immigration detention
4 without regard to whether the arrest is the result of a mistake, or merely a routine practice of
5 questioning individuals involved in a dispute without pressing charges. Victims or witnesses to
6 crimes may otherwise have recourse to lawful status (such as U-visas or T-visas) that detention
7 resulting from the Secure Communities program obstructs.” *Id.*

8 Importantly, the TRUST Act only limits a law enforcement agency’s discretion to *detain*
9 individuals. The Act does not prohibit compliance with Section 1373, which applies only to
10 sharing “information regarding the *citizenship or immigration status*” of individuals with the
11 federal government. 8 U.S.C. § 1373 (emphasis added); *see Steinle v. City & Cty. of San*
12 *Francisco*, --- F. Supp. 3d ---, 2017 WL 67064, at *12 (N.D. Cal. 2017) (“The statute, by its
13 terms, governs only ‘information regarding the citizenship or immigration status, lawful or
14 unlawful, of any individual.’”). There is no conflict between these two statutes, and following the
15 TRUST Act does not cause any agency to violate Section 1373. Moreover, any reading of
16 Section 1373 that compelled state and local officials to accede to federal detainer requests would
17 raise serious Tenth Amendment concerns. *Printz v. United States*, 521 U.S. 898, 925 (1997)
18 (“The Federal Government . . . may not compel the States to implement, by legislation or
19 executive action, federal regulatory programs.”). Nor does following the TRUST Act cause any
20 agency to “prevent[] or hinder[] the enforcement of Federal law.” To the extent the State can
21 determine what is meant by that broad phrase, the requirements of the TRUST Act are in
22 compliance with federal immigration laws and regulations, and do not interfere with the federal
23 government’s ability to use federal resources to enforce federal immigration law. Nevertheless,
24 the reinstatement of Secure Communities and the Administration’s recent suggestion that federal
25 law makes detainer requests mandatory raise the same serious concerns about public safety and
26 constitutional violations that originally prompted enactment of the TRUST Act.

2. The TRUTH Act

1
2 More recently, California added to its policy of enhancing trust between immigrant
3 communities and local law enforcement by enacting the Transparent Review of Unjust Transfers
4 and Holds (TRUTH) Act, Government Code sections 7283, 7283.1, and 7283.2. The TRUTH
5 Act provides individuals who are in the custody of local law enforcement agencies with
6 information about their legal and procedural rights should ICE agents wish to talk to them. Cal.
7 Gov't Code § 7283.1(a)-(b). The TRUTH Act also increases transparency around local
8 cooperation with federal authorities by making records relating to ICE access subject to
9 disclosure under the California Public Records Act. *See id.* § 7283.1(c)-(d); *see also* 2016 Cal.
10 Stat., c. 768 (A.B. 2792) § 1(h)-(i). The TRUTH Act reflects a renewed commitment by the State
11 to the policy that public safety and the public interest are best served by preserving state and local
12 discretion to determine an appropriate level of engagement between local law enforcement and
13 federal immigration authorities based on local public safety and policy concerns.

14 Like the TRUST Act, the TRUTH Act does not prohibit compliance with 8 U.S.C. § 1373.
15 It does not prohibit or limit the exchange of immigration or citizenship information with the
16 federal government—the only topic governed by Section 1373. The State has a clear interest in
17 seeing that the policies and protections in its laws continue to benefit its residents, and are not
18 undermined by the federal government's actions to coerce compliance from state and local law
19 enforcement.

CONCLUSION

20
21 California has a sovereign right and responsibility to protect the safety and the
22 constitutional rights of its residents, including by adopting laws and policies that place
23 appropriate limits on the ability of the federal government to use state and local resources for the
24 enforcement of federal immigration policy. President Trump's ambitions to compel state and
25 local authorities to enforce federal immigration policy are subject to—and constrained by—
26 federal statutory and constitutional law. California authorities are entitled to promote their own
27 laws and policies to protect public safety through legislation such as the TRUST and TRUTH
28 Acts, which does not conflict with federal law.

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Dated: March 29, 2017

Respectfully Submitted,

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 9

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

14
 15 CITY AND COUNTY OF SAN FRANCISCO,

16 Plaintiff,

17 v.

18 DONALD J. TRUMP, President of the United
 19 States, UNITED STATES OF AMERICA,
 JOHN F. KELLY, Secretary of United States
 20 Department of Homeland Security, DANA J.
 BOENTE, Acting Attorney General of the
 21 United States, DOES 1-100,

22 Defendants.
 23

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

**[PROPOSED] ORDER GRANTING
 STATE OF CALIFORNIA'S
 ADMINISTRATIVE MOTION FOR
 LEAVE TO FILE AN AMICUS BRIEF**

Date: April 14, 2017
 Time: 2:00 p.m.
 Courtroom: 2
 Judge: Honorable William H. Orrick
 Trial Date: None Set
 Action Filed: January 31, 2017

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[PROPOSED] ORDER

After consideration of the motion and proposed brief, pursuant to its inherent authority, the Court finds that the amicus curiae brief will assist the Court in deciding the motion for preliminary injunction. Accordingly, the State of California’s administrative motion for leave to file an amicus curiae brief in support of Plaintiff’s motion for preliminary injunction is GRANTED and the Court ORDERS that the brief submitted by the State of California be filed.

IT IS SO ORDERED.

Dated: _____

WILLIAM H. ORRICK
United States District Court Judge