Case Nos. 17-17478, 17-17480

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CITY AND COUNTY OF SAN FRANCISCO, Plaintiff-Appellee, v. DONALD J. TRUMP, President of the United States, et al., Defendants-Appellants.	No. 17-17478 U.S. District Court for Northern California, San Francisco No. 3:17-cv-00485-WHO
COUNTY OF SANTA CLARA, Plaintiff-Appellee, v. DONALD J. TRUMP, et al., Defendants-Appellants.	No. 17-17480 U.S. District Court for Northern California, San Francisco, No. 3:17-cv-00574-WHO

BRIEF OF *AMICUS CURIAE* 56 CITIES AND COUNTIES IN SUPPORT OF PLAINTIFFS-APPELLEES

Toni N. Harp
Mayor,
City of New Haven
John Rose, Jr.
Corporation Counsel,
City of New Haven
165 Church Street
New Haven, CT 06510
Telephone: 203.946.8200

Rebecca H. Dietz
City Attorney,
City of New Orleans
1300 Perdido Street,
Suite 5E03
New Orleans, LA 70112
Telephone: 504.658.9800

Elizabeth J. Cabraser
Kelly M. Dermody
Dean M. Harvey
Katherine C. Lubin
Michelle A. Lamy
LIEFF CABRASER
HEIMANN & BERNSTEIN
275 Battery Street, 29th Fl.
San Francisco, CA 94111
Telephone: 415.956.1000

Attorneys for Amicus Curiae City of New Haven and City of New Orleans
Additional Counsel for Amici Curiae Listed in Appendix

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

TABLE OF AUTHORITIES
(continued)

Page

Statutes

TABLE OF AUTHORITIES
(continued)

Page

INTEREST AND IDENTITY OF *AMICI CURIAE*

The following 56 Cities and Counties ("Amici") file this brief under Rule 29(a) of the Federal Rules of Appellate Procedure:[1]

County of Alameda, California
City of Albany, New York
City of Austin, Texas
City of Berkeley, California
City of Cathedral City, California
City of Chelsea, Massachusetts
City of Chicago, Illinois
City of Cincinnati, Ohio
Cook County, Illinois
City of Davis, California
City and County of Denver, Colorado
City of Eugene, Oregon
City of Fremont, California
City of Gary, Indiana
City of Hyattsville, Maryland
City of Ithaca, New York
King County, Washington
City of Lansing, Michigan
City of Lawrence, Massachusetts
County of Los Angeles, California
City of Los Angeles, California
City of Madison, Wisconsin
City of Malibu, California
County of Marin, California
City of Menlo Park, California
City of Minneapolis, Minnesota
County of Monterey, California

[1] The Department of Justice, the City and County of San Francisco, and the County of Santa Clara consented to the filing of this brief. Accordingly, a motion for leave to file is unnecessary. Fed. R. App. P. 29(a)(2). No party or party's counsel authored this brief in whole or in part, and no party or person contributed money towards its preparation and submission. Fed. R. App. P. 29(a)(4).

City of Morgan Hill, California
Metropolitan Government of Nashville, Tennessee
City of New Haven, Connecticut
City of New Orleans, Louisiana
City of Newark, New Jersey
City of Oakland, California
City of Philadelphia, Pennsylvania
City of Portland, Oregon
Town of Portola Valley, California
Municipality of Princeton, New Jersey
City of Providence, Rhode Island
City of Sacramento, California
City of Saint Paul, Minnesota
City of Salinas, California
Salt Lake City, Utah
City of Santa Ana, California
City of Santa Clara, California
City of Santa Cruz, California
County of Santa Cruz, California
City of Santa Fe, New Mexico
City of Santa Monica, California
City of Seattle, Washington
City of Somerville, Massachusetts
County of Sonoma, California
Travis County, Texas
City of Trenton, New Jersey
City of Tucson, Arizona
City of Union City, New Jersey
City of West Hollywood, California

Amici have an interest in this appeal, which concerns the District Court's order permanently enjoining Section 9(a) of President Trump's Executive Order 13768 (the "Executive Order"). President Trump's threat to use the Executive Order to defund sanctuary jurisdictions is a weapon not only against the City and County of San Francisco ("San Francisco") and the County of Santa Clara ("Santa

Clara") but against *all* local governments, including Amici. Moreover, Amici represent the interconnected web of local governments that span our nation. A cut in funding to any jurisdiction results in greater burdens on the services provided by other jurisdictions. Amici therefore have an interest in addressing this Court on the importance of maintaining the nationwide injunction in this case.

Amici also have an interest in maintaining control over a core realm of local governance—the setting of enforcement priorities for local police and sheriff's departments—consistent with the federalism principles inherent in our Constitution. The Executive Order threatens these basic Constitutional protections in a manner uniform to Amici.

SUMMARY OF ARGUMENT

Amici represent 56 cities and counties from 23 states across the country, home to 29,085,854 residents. Amici's individual policies regarding 8 U.S.C. § 1373 and/or Immigration and Customs Enforcement ("ICE") civil detainer requests are diverse. Some Amici consider themselves to be "sanctuaries," while others do not. But all agree that the Executive Order violates the Constitution. Amici therefore urge this Court to affirm the District Court's nationwide injunction of the Executive Order.

The nationwide injunction is necessary and appropriate for three reasons. *First*, the District Court has broad discretion to frame the scope of injunctive relief,

and exercised that discretion to enter a nationwide injunction. The District Court's order is proportional to the constitutional violation and supported by ample precedent. *Second*, Article III does not limit the District Court's discretion to fashion the scope of injunctive relief, even where that relief benefits parties, like Amici, that are not before the court. *Third*, adequate relief cannot be provided to either Santa Clara or San Francisco without a nationwide injunction, because local governments are interconnected and interdependent.

Amici also write to express the importance of maintaining a nationwide injunction. The Executive Order threatens to usurp Amici's control over a core realm of local governance—the setting of enforcement priorities for local police and sheriff's departments. Without the nationwide injunction, the unconstitutional Executive Order could be used as a tool to coerce the nation's local jurisdictions into becoming de facto agents of the Executive Branch.

For these reasons, as set forth below, Amici respectfully submit that the District Court's decision should be upheld.

ARGUMENT

I. The Nationwide Injunction Is Necessary and Appropriate

A. Courts have Broad Discretion to Frame Injunctive Relief, and the District Court Exercised that Discretion Properly

Federal courts possess "broad powers and wide discretion to frame the scope of appropriate equitable relief." *Sec. & Exch. Comm'n v. United Fin Grp., Inc.*,

474 F.2d 354, 358-59 (9th Cir. 1973). This power is not limited by a court's geographic boundaries. "Once a court has obtained personal jurisdiction over a defendant, the court has the power to enforce the terms of the injunction outside the territorial jurisdiction of the court, including issuing a nationwide injunction." *United States v. AMC Entm't, Inc.*, 549 F.3d 760, 770 (9th Cir. 2008). *See also Missouri v. Jenkins*, 515 U.S. 70, 88 (1995) ("[T]he nature of the . . . remedy is to be determined by the nature and scope of the constitutional violation.") (citation omitted); *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979) (noting that courts should consider "the extent of the violation," not the "geographical extent" of the plaintiffs, in fashioning appropriate injunctive relief); *Texas v. United States*, 809 F.3d 134, 188 (5th Cir. 2015) ("[Judicial] power is not limited to the district wherein the court sits but extends across the country. It is not beyond the power of a court, in appropriate circumstances, to issue a nationwide injunction.") *aff'd by an equally divided Court*, 136 S. Ct. 2271 (2016).

As set forth below, the nationwide injunction is an appropriate exercise of the District Court's discretion.

B. Article III Does Not Limit a Court's Discretion to Fashion Appropriate Injunctive Relief

The federal government argues that San Francisco and Santa Clara lack Article III standing to seek a nationwide injunction of the Executive Order.[2] The federal government's arguments are wrong and are contradicted by binding Supreme Court and Ninth Circuit precedent.

Article III does not require that injunctive relief benefit only the plaintiffs. To the contrary, it is well-settled that when a federal government policy is unlawful on its face, courts can and should enjoin that policy to the benefit of individuals not before the court. *See, e.g.*, *Obergefell v. Hodges*, 135 S. Ct. 2584, 2604-2605 (2015) (affirming injunction restraining state prohibitions on same-sex marriage, in suit brought by individual same-sex couples); *Wisconsin v. Constantineau*, 400 U.S. 433, 439 (1971) (affirming invalidation of state law requiring retailers to post lists of individuals to whom liquor could not be sold, in suit brought by individual whose name appeared on a list); *Earth Island Inst. v.*

[2] The federal government appears to concede that if the District Court's construction of the Executive Order is valid—which it is—then San Francisco and Santa Clara have Article III standing to seek an injunction of the Executive Order as to themselves. *See* U.S. Br. at 29 ("[A]ssuming . . . that this Court were to agree with the district court's reasoning, it would be necessary to vacate the injunction insofar as it extends to entities other than the plaintiffs in this case."). Amici therefore address only the federal government's contention that Article III limits San Francisco's and Santa Clara's ability to obtain injunctive relief that benefits other jurisdictions, like Amici.

Ruthenbeck, 490 F.3d 687, 699 (9th Cir. 2007) (affirming nationwide injunction of regulations exempting certain timber sales from federal notice and comment processes, in suit brought by individual environmental organizations) *rev'd on other grounds*, 555 U.S. 488 (2009). *See also Harmon v. Thornburgh*, 878 F.2d 484, 495 n.21 (D.C. Cir. 1989) ("When a reviewing court determines that agency regulations are unlawful, the ordinary result is that the rules are vacated—not that their application to the individual petitioners is proscribed.").[3]

Indeed, just last year the Supreme Court left in place portions of a nationwide injunction against a uniform federal policy, over the objections of dissenting Justices who made the same arguments the federal government makes here. *See Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080, 2090 (2017) (Thomas, J. dissenting) ("[A] court's role is to provide relief only to claimants . . . .") (internal quotation marks and citation omitted). This Court also recently

[3] Although claims challenging unlawful federal rules or policies often arise under the Administrative Procedure Act, the same principle applies here. *See*, *e.g.*, *Washington v. Trump*, No. C17-0141JLR, 2017 WL 462040, at *2 (W.D. Wash. Feb. 3, 2017), *appeal dismissed* 2017 WL 3774041 (9th Cir. Mar. 8, 2017); *Washington v. Trump*, 847 F.3d 1151, 1166-1167 (9th Cir. 2017), *reconsideration en banc denied* 853 F.3d 933 (9th Cir. 2017), *reconsideration en banc denied* 858 F.3d 1168 (9th Cir. 2017), *cert. denied sub nom.* 138 S. Ct. 448 (2017); *Texas v. United States*, 809 F.3d 134, 188 (5th Cir. 2015), *aff'd by an equally divided Court*, 136 S. Ct. 2271 (2016); *cf. City of Carmel-By-The-Sea v. United States Dep't of Transp.*, 123 F.3d 1142, 1166 (9th Cir. 1997) ("[U]nder certain circumstances, Executive Orders, with specific statutory foundation, are treated as agency action and reviewed under the Administrative Procedure Act.").

upheld a nationwide injunction against a different executive order, because "[n]arrowing the injunction to apply only to Plaintiffs would not cure the statutory violations identified, which in all applications" violated federal law. *Hawaii v. Trump*, 859 F.3d 741, 788 (9th Cir. 2017), *vacated as moot*, 874 F.3d 1112 (9th Cir. 2017). Numerous courts around the country have applied this principle to issue or affirm nationwide injunctions. *See, e.g., Int'l Refugee Assistance Project v. Trump*, 241 F. Supp. 3d 539, 565-566 (D. Md.) (preliminarily enjoining enforcement, in part, of executive order on a nationwide basis), *vacated as moot*,138 S. Ct. 353 (2017); *Washington v. Trump*, No. C17-141JLR, 2017 WL 462040, at *2 (W.D. Wash. Feb. 3, 2017) (preliminarily enjoining implementation of executive order nationwide); *Washington v. Trump*, 847 F.3d 1151, 1166-67 (9th Cir. 2017) (holding that federal government had failed to demonstrate it was likely to succeed on claim that nationwide injunction was overbroad); *Texas v. United States*, 809 F.3d 134, 187-188 (5th Cir. 2015) (affirming nationwide preliminary injunction of directive from Secretary of Department of Homeland Security), *aff'd by an equally divided Court*, 136 S. Ct. 2271 (2016).

The cases on which the federal government relies do not address the relevant issue: a district court's broad remedial power to fashion the scope of injunctive relief. In *McKenzie v. City of Chicago*, for example, the plaintiffs lacked Article III standing to seek an injunction *even for themselves*, because neither plaintiff

owned a building that was at risk of demolition under the challenged city ordinance. 118 F.3d 552, 554 (7th Cir. 1997). *McKenzie* therefore stands for the unremarkable (and unchallenged) premise that a plaintiff must adequately allege a threatened or actual injury to seek injunctive relief.[4] The federal government's other legal authority is equally unavailing.[5]

As in each of these cases, nationwide relief is appropriate because the Executive Order purports to apply to *all* jurisdictions receiving federal funding and harms *all* jurisdictions in the same unconstitutional way. San Francisco's and Santa Clara's challenges to the Executive Order are not premised on any unique applications as to them, but rather to the Executive Order itself. *See* Santa Clara Br. at 42 ("Defendants have never argued, much less submitted evidence establishing, that the merits of these constitutional claims differ across jurisdictions."); San Francisco Br. at 9-27 (arguing that the Executive Order unlawfully threatens all sanctuary jurisdictions with the loss of federal funds). The

---

[4] The same is true of several of the federal government's other cited authorities. *See Alvarez v. Smith*, 558 U.S. 87, 92-93 (2009); *Monsanto Co. v. Geertsen Seed Farms*, 561 U.S. 139, 163 (2010); *Summers v. Earth Island Inst.*, 555 U.S. 488, 494-95 (2009).

[5] *Zepeda v. U.S. I.N.S.*, 753 F.2d 719 (9th Cir. 1983) predated *Bresgal v. Brock*, 843 F.2d 1163, 1169 (9th Cir. 1987), where this Court clarified that "[t]here is no general requirement that an injunction affect only the parties in the suit." And *Warth v. Seldin*, 422 U.S. 490, 499-500 (1975) expressly recognized that Article III standing is not negated even where "the court's judgment may benefit others collaterally."

Executive Order thus constitutes the type of uniform and widespread institutional policy or practice that courts can—and regularly do—enjoin as to all affected. *See* Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 1771 (3d ed. 2017) (noting when a court "strike[s] down a statute, rule, or ordinance on the ground that it is constitutionally offensive," relief "generally will benefit not only the claimant but all other persons subject to the practice or the rule under attack").

C. A Nationwide Injunction Is Necessary to Provide Adequate Relief

This Court has made clear that an injunction is "not necessarily made over-broad by extending benefit or protection to persons other than prevailing parties in the lawsuit—even if it is not a class action—*if such breadth is necessary to give prevailing parties the relief to which they are entitled*." *Bresgal v. Brock*, 843 F.2d 1163, 1170-1171 (9th Cir. 1987) (emphasis in original). In *In Los Angeles Haven Hospice, Inc. v. Sebelius*, 638 F.3d 644, 664 (9th Cir. 2011), this Court reiterated that "there is no bar against nationwide relief in the district courts or courts of appeal, even if the case was not certified as a class action, if such broad relief is necessary to give prevailing parties the relief to which they are entitled."[6]

[6] Nationwide injunctive relief was inappropriate in *Los Angeles Haven Hospice* because of concerns about "the great uncertainty and confusion that would likely flow from a nationwide injunction," which do not exist here. 638 F.3d at 665. There, plaintiffs challenged a regulation that had been in place for decades, the removal of which would "disrupt the administration of the Medicare program" and "create great uncertainty for the government, Medicare contractors, and the hospice providers." *Id*. Those concerns do not exist here because San Francisco

The nationwide injunction is necessary to provide adequate relief to San Francisco and Santa Clara. Even if the Executive Order was enjoined as to only Santa Clara and San Francisco, both jurisdictions would still be harmed if the federal government denied other jurisdictions the money they need to properly operate. President Trump's threat to use the Executive Order to "defund" sanctuary jurisdictions is a "weapon" not only against Santa Clara and San Francisco, but against every jurisdiction in the interconnected web of local governments that span our nation.[7] Providing complete relief to any one jurisdiction therefore requires relief to all jurisdictions.

No local jurisdiction is an island unto itself: free movement of persons among cities and counties is not only a fundamental right,[8] but also a basic facet of modern life. A cut in funding to one jurisdiction results in greater burdens on the services provided by nearby jurisdictions. Local governments provide the vast majority of essential services to people living in this country. Amici use federal

---

and Santa Clara challenged the Executive Order before enforcement, such that an injunction preserves (not upends) the status quo.

[7] In the immediate aftermath of the Executive Order, the President told an interviewer that "defunding" is a "weapon" against sanctuary jurisdictions: "I don't want to defund anybody. I want to give them the money they need to properly operate as a city or a state. If they're going to have sanctuary cities, we may have to do that. Certainly that would be a weapon." SER 229.

[8] *United States v. Guest*, 383 U.S. 745, 758 (1966) ("[F]reedom to travel throughout the United States has long been recognized as a basic right under the Constitution.").

funding (received directly, or through other jurisdictions, such as counties and states) to fund essential social services, such as emergency health care to the uninsured, disaster relief efforts, and programs that feed the hungry. "City government is where the rubber meets the road. Cities pave our streets, fight crime and fires, prepare us for disaster, bring water to our taps, take our trash away, build and maintain our parks—the list goes on and on. These services cost money." Tex. Mun. League, *How Cities Work*, 1 (2013), *available at* https://www.tml.org/HCW/HowCitiesWork.pdf.

If either San Francisco or Santa Clara is targeted pursuant to the Executive Order, neighboring local governments will suffer a greater demand for their services, and suffer consequences to their residents if either San Francisco or Santa Clara is unable to properly operate. By the same token, if San Francisco and Santa Clara receive individual carve-outs, but the Executive Order remains in effect as to the rest of the country, San Francisco and Santa Clara will suffer a greater demand for their services and continue to be harmed by the unconstitutional Executive Order. San Francisco and Santa Clara may also receive less funding from sources that would continue to be impacted by the Executive Order, such as the State of California. *See* Santa Clara Br. at 42 n.23.

Accordingly, only a nationwide injunction can provide San Francisco and Santa Clara adequate relief.

II. The Executive Order Interferes with a Core Realm of Local Governance for Amici

The Supreme Court has long recognized that "[t]he Constitution requires a distinction between what is truly national and what is truly local." *United States v. Morrison*, 529 U.S. 598, 617-618 (2000). It is the states and local governments, not the federal government, that "can and do perform many of the vital functions of modern government—punishing street crime, running public schools, and zoning property for development, to name but a few. . . ." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 535 (2012). This unique domain of authority, which "the Founders denied the National Government and reposed in the States," is the "police power . . . ." *Morrison*, 529 U.S. at 618.

By entrusting this police power to local and state governments, the Founders "ensured that powers which in the ordinary course of affairs, concern the lives, liberties, and properties of the people were held by governments more local and more accountable than a distant federal bureaucracy." *Nat'l Fed'n of Indep. Bus.*, 567 U.S. at 536 (internal quotation marks and citation omitted). Because state and local governments are better positioned to carry out the daily tasks of governance, "[o]nce we are in this domain of the reserve power of a State, we must respect the wide discretion on the part of the legislature in determining what is and is not necessary." *East N.Y. Sav. Bank v. Hahn*, 326 U.S. 230, 233 (1945) (internal quotation marks and citation omitted).

The Executive Order interferes with that discretion in a core realm of local governance: the setting of enforcement priorities for local police and sheriff's departments. There is "no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims." *Morrison*, 529 U.S. at 618. Local law enforcement authorities are entrusted to carry out that role, but the Executive Order impairs their ability to do so: it deprives local governments of the power to make policy judgments about local safety needs, and replaces these local judgments with the President's unilateral preferences. Even Congress, pursuant to its exclusive legislative power, could not use that power to so intrude on state and local prerogatives. *See New York v. United States*, 505 U.S. 144, 162 (1992) ("[T]he Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress' instructions."). It follows, then, that the President may not do so by executive fiat, particularly when doing so conflicts with duly enacted congressional appropriations that contain none of the conditions the Executive Order imposes. *Cf. In re Aiken Cnty.*, 725 F.3d 255, 261 n.1 (D.C. Cir. 2013) ("[E]ven the President does not have unilateral authority to refuse to spend the funds.").[9]

[9] Thus, the Executive Order also violates the separation of powers, as the President has no Congressional authorization to impose the spending limits. *See* U.S. Const. art. I, § 8, cl. 1 ("The Congress shall have Power To lay and collect Taxes, Duties,

Amici respectfully submit that decisions as to whether local law enforcement authorities should deploy their limited resources to collect information related to immigration status or share that information with federal authorities must rest with local governments and the States. Local authorities are best positioned to assess their enforcement priorities, weigh the costs and benefits of different options, and make judgments about what will best promote the safety of their communities. Moreover, local officials ultimately assume the burden of, and can be held accountable to their communities for, their policy choices. *Cf. New York*, 505 U.S. at 169 ("[W]here the Federal Government directs the States to regulate, it may be state officials who will bear the brunt of public disapproval, while the federal officials who devised the regulatory program may remain insulated from the electoral ramifications of their decision."); *Printz v. United States*, 521 U.S. 898, 920 (1997) ("The Constitution thus contemplates that a State's government will represent and remain accountable to its own citizens.").

Based on decades of on-the-ground experience, some jurisdictions have concluded that their mission of preventing crime and protecting victims can be thwarted by certain activities that amount to enforcement of federal immigration laws by local officials, such as collecting and producing information about immigration status from persons who are victims or witnesses of crimes. *See*, *e.g.*,

---

Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States . . . .").

Cal. TRUST Act, 2013 Cal. Legis. Serv. Ch. 570 (A.B. 4) § 1(d) (finding that such activities "harm community policing efforts because immigrant residents who are victims of or witnesses to crime, including domestic violence, are less likely to report crime or cooperate with law enforcement when any contact with law enforcement could result in deportation").[10] Courts have also recognized that compelled disclosure of immigration status may result in "countless acts of illegal and reprehensible conduct [going] unreported," as victims or witnesses may be chilled from reporting or complaining about unlawful conduct. *See, e.g.*, *Rivera v.*

[10] *See also* Governor of Ill. Pat Quinn, Exec. Order Establishing Governor's New Americans Trust Initiative, 1 (Jan. 5, 2015), *available at* http://www.catrustact.org/uploads/2/5/4/6/25464410/quinn_executive_order2015-02-1.pdf (finding that "community policing efforts are hindered when immigrant residents who are victims of or witnesses to crime, including domestic violence, are less likely to report crime or cooperate with law enforcement out of fear that any contact with law enforcement could result in deportation"); Resolution dated May 21, 2012, City of Amherst, Mass., *available at* http://www.catrustact.org/uploads/2/5/4/6/25464410/amherst_resolution_2012.pdf (finding that federal immigration cooperation "has already been shown to increase distrust and fear of local authorities, making many immigrants afraid to be witnesses and report crimes against themselves and others"); City & Cnty. of San Francisco, "Due Process for All and Sanctuary" Ordinance, § 12I.1 (Jun. 7, 2016), *available at* http://www.catrustact.org/uploads/2/5/4/6/25464410/sf_due_process_ordinance_2016.pdf (finding that "civil immigration detainers and notifications regarding release undermine community trust of law enforcement by instilling fear in immigrant communities of coming forward to report crimes and cooperate with local law enforcement agencies"); King Cnty., Ordinance 17706, § 1(A) (Dec. 3, 2013), *available at* http://www.catrustact.org/uploads/2/5/4/6/25464410/king_co_ice_detainer_requests_ordinance_12-2-13.pdf (noting that "[t]estimony established that the threat of deportation for the immigrant community is so strong that many persons are afraid to report domestic violence or witnessed crime").

NIBCO, Inc., 364 F.3d 1057, 1065 (9th Cir. 2004) (preventing employer defendant from discovering immigration status of Title VII plaintiffs alleging national origin discrimination).

Amici do not address the independent conclusion of each Amicus jurisdiction on this issue, but collectively they contend that each locality must be able to independently evaluate its own needs and set its own priorities according to its judgment. By upending the independent judgment of local officials responsible for "the suppression of violent crime and vindication of its victims," *Morrison*, 529 U.S. at 618, the Executive Order intrudes upon a power reserved for the states and local governments, and threatens to undermine the mission of local law enforcement.

CONCLUSION

For the foregoing reasons, Amici respectfully submit that the decision below should be affirmed.

Respectfully Submitted,

/s/ Kelly M. Dermody

Elizabeth J. Cabraser
Kelly M. Dermody
Dean M. Harvey
Katherine C. Lubin
Michelle A. Lamy
Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Telephone: 415.956.1000

Toni N. Harp
Mayor, City of New Haven
John Rose, Jr.
Corporation Counsel, City of New Haven
165 Church Street
New Haven, CT 06510
Telephone: 203.946.8200

Rebecca H. Dietz
City Attorney, City of New Orleans
1300 Perdido Street, Suite 5E03
New Orleans, LA 70112
Telephone: 504.658.9800

Attorney for Amicus Curiae City of New Haven and City of New Orleans

Additional Counsel for Amici Curiae Listed in Appendix

February 12, 2018

Additional Counsel for Amici Curiae

DONNA R. ZIEGLER
County Counsel, County of Alameda
1221 Oak Street, Suite 450
Oakland, CA 94612
Attorney for County of Alameda

WILLIAM G. KELLY, JR.
Interim Corporation Counsel
City of Albany
24 Eagle Street
Albany, NY 12207
Attorney for City of Albany

ANNE L. MORGAN
City Attorney
City of Austin Law Department
P.O. Box 1088
Austin, TX 78767
Attorney for City of Austin

FARIMAH F. BROWN
City Attorney, City of Berkeley
2180 Milvia Street, Fourth Floor
Berkeley, CA 94704
Attorney for City of Berkeley

STANLEY E. HENRY
Mayor, City of Cathedral City
68700 Avenida Lalo Guerrero
Cathedral City, CA 92234
For City of Cathedral City

CHERYL WATSON FISHER
City Solicitor, City of Chelsea
Chelsea City Hall
500 Broadway, Room 302
Chelsea, MA 02150
For City of Chelsea

EDWARD N. SISKEL
Corporation Counsel of the
City of Chicago
30 N. LaSalle Street, Suite 800
Chicago, IL 60602
Attorney for the City of Chicago

PAULA BOGGS MUETHING
City Solicitor
801 Plum Street, Room 214
Cincinnati, OH 45202
Counsel for City of Cincinnati

KIMBERLY M. FOXX
States Attorney for Cook County
69 W. Washington, 32nd Floor
Chicago, IL 60602
Attorney for Cook County

HARRIET A. STEINER
City Attorney, City of Davis
Best Best & Krieger LLP
500 Capitol Mall, Suite 1700
Sacramento, CA 95814
Attorney for City of Davis

KRISTIN M. BRONSON
City Attorney, City and County of Denver
1437 Bannock Street, Room 353
Denver, CO 80202
Attorney for City and County of Denver

GLENN KLEIN
Eugene City Attorney's Office
125 E. 8th Avenue
Eugene, OR 97401
Of Attorneys for City of Eugene

HARVEY LEVINE
City Attorney, City of Fremont
3300 Capitol Ave., Building A
Fremont, CA 94538
Attorney for the City of Fremont

GREGORY L. THOMAS
City Attorney
401 Broadway, Suite 101
Gary, IN 46402
Attorney for the City of Gary

E. I. CORNBROOKS IV
City Attorney, City of Hyattsville
Karpinski, Colaresi & Karp, P.A.
120 East Baltimore Street, Suite 1850
Baltimore, MD 21202
Attorney for the City of Hyattsville

AARON O. LAVINE
City Attorney
108 E. Green St.
Ithaca, NY 14850
Attorney for Svante L. Myrick, Mayor of Ithaca

H. KEVIN WRIGHT
Chief Civil Deputy
For DAN SATTERBERG
King County Prosecuting Attorney
516 Third Avenue, W400
Seattle, WA 98104
Attorney for King County

F. JOSEPH ABOOD
Chief Deputy City Attorney
124 W. Michigan Avenue, 5th Floor
Lansing, MI 48933
Attorney for City of Lansing

CHARLES BODDY
City Attorney, City of Lawrence
200 Common Street
3rd Floor, Room 306
Lawrence, MA 01840
Attorney for the City of Lawrence

MARGARET L. CARTER
DANIEL SUVOR
JAMIE CROOKS
O'Melveny & Myers LLP
400 S. Hope Street, 18th Floor
Los Angeles, CA 90071
Attorney for County of Los Angeles

MICHAEL N. FEUER
City Attorney, City of Los Angeles
200 N. Main Street, 800 CHE
Los Angeles, CA 90012
Attorney for City of Los Angeles

MICHAEL P. MAY
City Attorney, City of Madison
210 Martin Luther King, Jr. Blvd.,
Room 401
Madison, WI 53703
Attorney for City of Madison

CHRISTI HOGIN
City Attorney, City of Malibu
Jenkins & Hogin, LLP
1230 Rosecrans Avenue Suite 110
Manhattan Beach, CA 90266
Attorney for City of Malibu

BRIAN E. WASHINGTON
County Counsel
3501 Civic Center Drive, Room 275
San Rafael, CA 94903
Attorney for County of Marin

WILLIAM L. MCCLURE
City Attorney, City of Menlo Park
1100 Alma Street, Suite 210
Menlo Park, CA 94025-3392
Attorney for City of Menlo Park

SUSAN L. SEGAL
City Attorney, City of Minneapolis
350 South 5th Street, Room 210
Minneapolis, MN 55415
Attorney for City of Minneapolis

CHARLES J. MCKEE
County Counsel, County of Monterey
168 West Alisal Street
Salinas, CA 93901
Attorney for County of Monterey

DONALD A. LARKIN
City Attorney, City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Attorney for the City of Morgan Hill

JON COOPER
Director of Law, Metropolitan
Government of Nashville
Metro Courthouse, Suite 108
P.O. Box 196300
Nashville, TN 37219
Attorney for Metropolitan Government of Nashville

RAS J. BARAKA
Mayor, City of Newark
920 Broad Street
Newark, NJ 07102
For City of Newark

BARBARA J. PARKER
City Attorney
Oakland City Attorney's Office
1 Frank H. Ogawa Plaza, 6th floor
Oakland, CA 94612
Attorney for City of Oakland

SOZI PEDRO TULANTE
City Solicitor
City of Philadelphia Law Department
1515 Arch Street, 17th Floor
Philadelphia, PA 19102
Attorney for the City of Philadelphia

TRACY REEVE
City Attorney
430 City Hall
1221 SW Fourth Avenue
Portland, OR 97204
Attorney for City of Portland

JOHN RICHARDS
Mayor
Town of Portola Valley
Portola Valley Town Hall
765 Portola Road
Portola Valley, CA 94028
For Town of Portola Valley

TRISHKA WATERBURY CECIL
Princeton Municipal Attorney
Mason, Griffin & Pierson, P.C.
101 Poor Farm Road
Princeton, NJ 08540
Attorney for Municipality of Princeton

JEFFREY DANA
City Solicitor
444 Westminster Street, Suite 220
Providence, RI 02903
Attorney for City of Providence

MATTHEW RUYAK
Interim City Attorney, City of Sacramento
915 I Street, Fourth Floor
Sacramento, CA. 95814
Attorney for City of Sacramento

LYNDSEY OLSON
City Attorney, City of Saint Paul
400 City Hall
15 Kellogg Blvd W
Saint Paul, MN 55102
Attorney for City of Saint Paul

CHRISTOPHER A. CALLIHAN
City Attorney, City of Salinas
200 Lincoln Avenue
Salinas, CA 93901
Attorney for City of Salinas

MARGARET D. PLANE
City Attorney, Salt Lake City Corp.
451 S. State Street, Suite 505A
P.O. Box 145478
Salt Lake City, UT 84114
Attorney for Salt Lake City

SONIA R. CARVALHO
City Attorney, City of Santa Ana
20 Civic Center Plaza, M29
P.O. Box 1988
Santa Ana, CA 92702
Attorney for City of Santa Ana

BRIAN DOYLE
City Attorney, City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attorney for City of Santa Clara

DANA MCRAE
County Counsel
701 Ocean Street, Room 505
Santa Cruz, CA 95060
Attorney for County of Santa Cruz

ANTHONY P. CONDOTTI
City Attorney, City of Santa Cruz
333 Church Street
Santa Cruz, CA 95060
Attorney for City of Santa Cruz

KELLEY BRENNAN
City Attorney, City of Santa Fe
P.O. Box 909
Santa Fe, NM 87501
For City of Santa Fe

LANE DILG
City Attorney, City of Santa Monica
1685 Main Street, Suite 310
Santa Monica, CA 90401
Attorney for City of Santa Monica

PETER S. HOLMES
Seattle City Attorney
701 Fifth Avenue, Suite 2050
Seattle, WA 98104
Attorney for City of Seattle

FRANCIS X. WRIGHT, JR.
City Solicitor, City of Somerville
93 Highland Avenue
Somerville, MA 02143
Attorney for City of Somerville

SHIRLEE ZANE
Chair, Board of Supervisors
County of Sonoma
575 Administration Drive, Room 100A
Santa Rosa, CA 95403
For County of Sonoma

DAVID A. ESCAMILLA
Travis County Attorney
SHERINE E. THOMAS
Assistant County Attorney
Travis County Attorney's Office
P.O. Box 1748
Austin, Texas 78767
Attorneys for Travis County

WALTER D. DENSON, ESQ.
Director of Law
319 East State Street
Trenton, NJ 08608
Attorney for City of Trenton

MIKE RANKIN
City Attorney, City of Tucson
255 W. Alameda Street, 7th Floor
Tucson, AZ 85726
Attorney for City of Tucson

KRYSTLE NOVA, ESQ.
Corporation Counsel
Scarinci Hollenbeck
1100 Valley Brook Avenue
Lyndhurst, NJ 07071
Attorney for City of Union City

MICHAEL JENKINS
City Attorney, City of West Hollywood
Jenkins & Hogin, LLP
1230 Rosecrans Avenue, Suite 110
Manhattan Beach, CA 90266
Attorney for City of West Hollywood

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure ("FRAP") 32(a)(7)(B) because this brief contains 4,122 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of FRAP 32(a)(5) and the type style requirements of FRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010 in Times New Roman type style, 14-point font.

Dated: February 12, 2018 Respectfully Submitted,

By: */s/ Kelly M. Dermody*

Elizabeth J. Cabraser
Kelly M. Dermody
Dean M. Harvey
Katherine C. Lubin
Michelle A. Lamy
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Telephone: 415.956.1000
Facsimile: 415.956.1008

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on February 12, 2018. All participants in this case are registered CM/ECF users, and will be served by the appellate CM/ECF system.

Dated: February 12, 2018

/s/ Kelly M. Dermody
Kelly M. Dermody