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23 UNITED STATES DISTRICT COURT
24 NORTHERN DISTRICT OF CALIFORNIA
25 SAN FRANCISCO DIVISION

26 COUNTY OF SANTA CLARA,
27 Plaintiff,

28 v.

29 DONALD J. TRUMP, President of the
30 United States of America, JOHN F.
31 KELLY, in his official capacity as
32 Secretary of the United States Department
33 of Homeland Security, JEFFERSON B.
34 SESSIONS, in his official capacity as
35 Attorney General of the United States,
36 JOHN MICHAEL "MICK" MULVANEY,
37 in his official capacity as Director of the
38 Office of Management and Budget, and
39 DOES 1-50,

40 Defendants.

Case Nos. 17-cv-00574-WHO
17-cv-00485-WHO

**AMICUS BRIEF OF 48 CITIES AND
COUNTIES IN OPPOSITION TO
DEFENDANTS' MOTIONS TO
DISMISS**

Date: July 19, 2017
Time: 2:00 p.m.
Dept.: Courtroom 2
Judge: Hon. William H. Orrick

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CITY AND COUNTY OF SAN FRANCISCO,

Plaintiff,

v.

DONALD J. TRUMP, President of the United States, JOHN F. KELLY, Secretary of the United States Department of Homeland Security, JEFFERSON B. SESSIONS, Attorney General of the United States, DOES 1-100,

Defendants.

1 Amici represent 48 cities and counties from across the country, home to 26,843,083
2 residents. Certain Amici¹ submitted briefs in support of the nationwide preliminary injunction
3 sought by the County of Santa Clara and the City and County of San Francisco. *See* No. 17-cv-
4 00574-WHO Dkt. 61-1; No. 17-cv-00485-WHO, Dkt. 62-1. In those briefs, Amici argued that
5 the nationwide injunction was warranted for three reasons. First, Section 9 of President Trump’s
6 Executive Order 13768—which threatens to defund so-called “sanctuary jurisdictions”—is
7 unlawful on its face, and a nationwide injunction was necessary to protect other jurisdictions from
8 the uncertainty surrounding the Executive Order. Second, the County of Santa Clara and the City
9 and County of San Francisco are likely to succeed on the merits of their challenges, because the
10 Executive Order violates the Tenth Amendment and the procedural and substantive protections of
11 the Due Process Clause. Third, the public interest and the balancing of hardships strongly
12 favored granting a nationwide injunction, to prevent enforcement of an unconstitutional directive
13 while the cases are litigated. The Court granted the requests and entered a nationwide injunction
14 on April 25, 2017. *See* No. 17-cv-00574-WHO, Dkt. 98; No. 17-cv-00485-WHO, Dkt. 82.

15 On June 6 and 7, 2017, Defendants moved to dismiss both cases under Federal Rules of
16 Civil Procedure 12(b)(1) and 12(b)(6). *See* No. 17-cv-00485-WHO, Dkt. 111; No. 17-cv-00574-
17 WHO, Dkt. 115. Defendants’ assert that a May 22, 2017 Memorandum issued by Defendant
18 Sessions (the “AG Memorandum”) regarding the implementation of the Executive Order
19 “clarifies” certain portions of Section 9(a) of the Executive Order. *See* No. 17-cv-00485-WHO,
20 Dkt. 111 at 8; No. 17-cv-00574-WHO, Dkt. 115 at 8. Further, Defendants claim that, because
21 they “have taken no ‘enforcement action’” under Section 9(a) of the Executive Order, the County
22 of Santa Clara and the City and County of San Francisco lack standing to assert their challenges.
23 *Id.* at 10.

24 Amici oppose Defendants’ motions to dismiss for the same reasons set forth in their
25 earlier briefs in support of Plaintiffs’ motions for preliminary injunction. Nothing in the AG

26 ¹ Fourteen new Amici have joined since the filing of the Amicus briefs in support of the County
27 of Santa Clara’s and the City and County of San Francisco’s motions for preliminary injunction:
28 Chelsea, MA; Chula Vista, CA; Cincinnati, OH; Davis, CA; Gary, IN; Ithaca, NY; Lansing, MI;
Madison, WI; Morgan Hill, CA; New Haven, CT; Newark, NJ; Providence, RI; Tucson, AZ; and
Union City, NJ.

1 Memorandum, issued after this Court enjoined the Executive Order, changes the legal analysis or
2 cures the constitutional infirmities that made the preliminary injunction necessary. And nothing
3 in the AG Memorandum lessens the coercion local governments face as they await potential
4 enforcement of the Executive Order. The same risks Amici outlined in their briefs in support of
5 Plaintiffs’ motions for preliminary injunction—including that the Executive Order threatens to
6 undermine local law enforcement efforts by instilling fear in immigrant communities—persist. If
7 anything, the AG Memorandum has served to create additional confusion, thereby worsening the
8 coercive effect of the Executive Order.

9 Amici’s prior arguments apply with only greater force now, as the standard on a motion
10 for preliminary injunction—likelihood of success on the merits—is far more demanding than the
11 standard on a motion to dismiss—a plausible claim for relief. Amici therefore respectfully refer
12 the Court to their earlier briefs. Each argument contained therein supports a denial of
13 Defendants’ motions to dismiss.

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Dated: June 28, 2017

Respectfully submitted,

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By: /s/ Kelly M. Dermody

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