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

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

Case No. 17-cv-00574 WHO

**BRIEF OF AMICUS CURIAE SOUTHERN
 POVERTY LAW CENTER AND OTHER
 AMICI IN SUPPORT OF COUNTY OF
 SANTA CLARA AND CITY AND COUNTY
 OF SAN FRANCISCO'S MOTIONS FOR
 PRELIMINARY INJUNCTION**

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1 **INTRODUCTION**

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

11 Plaintiffs Santa Clara County (“Santa Clara”) and the City and County of San Francisco
12 (“San Francisco”), in separate lawsuits, have challenged the constitutionality of the Executive
13 Order. The Southern Poverty Law Center (“SPLC”) and other *amici*¹ submit this amicus brief in
14 support of Santa Clara and San Francisco, not to supplement the legal arguments that Santa Clara
15 and San Francisco have made but to inform the Court of what has happened in the South and
16 other parts of the country, where many local governments *voluntarily* comply with the kind of
17 ICE civil detainer requests² to which the Executive Order seeks to *force* Santa Clara, San

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

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

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

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

16 ARGUMENT

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

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

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

26
 27 ³ See generally AMERICAN IMMIGRATION COUNCIL, THE CRIMINALIZATION OF IMMIGRATION IN
 28 THE UNITED STATES (July 2015) available at: [https://www.americanimmigrationcouncil.org/
 research/criminalization-immigration-united-states](https://www.americanimmigrationcouncil.org/research/criminalization-immigration-united-states) (last visited Mar. 21, 2017).

1 profiling to decide whom to target and how to treat those individuals. For instance, local law
 2 enforcement officials may stop Latinos⁴ for purported traffic violations as a pretext for
 3 investigating their immigration paperwork or status. A study of arrest data in Davidson County,
 4 Tenn. shows that the arrest rates for Hispanic defendants driving without a license more than
 5 doubled in the year after the county entered a 287(g) agreement to enforce immigration law.⁵ In
 6 Irving, Texas, following the police department's agreement to partner with ICE, arrest data reveal
 7 an "immediate" and "dramatic" increase in "discretionary arrests of Hispanics for petty offenses –
 8 particularly minor traffic offenses" consistent with "racial profiling of Hispanics in order to filter
 9 them through the [federal immigration enforcement program's] screening system."⁶ Similar
 10 conclusions resulted from analysis of data on individuals arrested nationwide under the "Secure
 11 Communities" program that sends the fingerprints of individuals arrested by local law
 12 enforcement to the Department of Homeland Security.⁷ These data showed that Latinos were
 13 93% of individuals arrested through Secure Communities although they are only 77% of the
 14 undocumented population.⁸

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

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

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

24 ⁶ TREVOR GARDNER II AND AARTI KOHLI, THE C.A.P. EFFECT: RACIAL PROFILING IN THE ICE
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26 ⁷ AMERICAN IMMIGRATION COUNCIL, SECURE COMMUNITIES: A FACT SHEET, *available at*
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 27 visited Mar. 20, 2017).

28 ⁸ AARTI KOHLI, PETER L. MARKOWITZ & LISA CHAVEZ, SECURE COMMUNITIES BY THE NUMBERS:
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https://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf.

1 VI of the Civil Rights Act of 1964, which bars law enforcement agencies that receive federal
 2 funds from discriminating on the basis of race, color, or national origin. Beyond their
 3 unconstitutionality, these pretextual stops are also a waste of local police resources and taxpayer
 4 dollars.⁹

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

12 Police racial profiling of people of color is nothing new, but ICE's willingness to deport
 13 immigrants wrongfully seized complicates and magnifies the problem. A study of ICE arrests in
 14 Georgia pursuant to immigration detainers revealed a dramatic increase in enforcement against
 15 immigrants of color facilitated by a growing collaboration between local law enforcement and
 16 ICE. The number of detainers issued in Georgia increased by at least 17,169% between FY 2007
 17 and June FY 2013.¹² In FY 2007, 66.7% of individuals subject to ICE detainers were defined by

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 19 ⁹ See, e.g., MAI THI NGUYEN & HANNAH GILL, THE 287(G) PROGRAM: THE COSTS AND
 20 CONSEQUENCES OF LOCAL IMMIGRATION ENFORCEMENT IN NORTH CAROLINA COMMUNITIES 33
 21 (Feb. 2010) available at https://isa.unc.edu/files/2012/06/287g_report_final.pdf (finding that the
 first year of operating the 287(g) program in Mecklenburg County, North Carolina., cost \$5.3
 million, and the first year of operation in Alamance County, North Carolina, cost taxpayers \$4.8
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22 ¹⁰ NIK THEODORE, INSECURE COMMUNITIES: LATINO PERCEPTIONS OF POLICE INVOLVEMENT IN
 23 IMMIGRATION ENFORCEMENT at 16 (May 2013) (hereafter INSECURE COMMUNITIES) available at
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24 ¹¹ See, e.g., INSECURE COMMUNITIES at 5-6; see also *U.S. v. East Haven*, No. 12-1652 (D. Conn.
 25 filed Nov. 20, 2012) (complaint and settlement agreement arising from East Haven Police
 Department engaging discriminatory policing against Latinos, including by targeting Latinos for
 26 discriminatory traffic enforcement, treating Latino drivers more harshly than non-Latino drivers
 after a traffic stop, and by contacting ICE agents to investigate the immigration status of Latino
 drivers.)

27 ¹² ACLU OF GEORGIA, GEORGIA LATINO ALLIANCE FOR HUMAN RIGHTS, NATIONAL DAY
 LABORER ORGANIZING NETWORK & IMMIGRANT RIGHTS CLINIC AT NYU LAW SCHOOL,
 28 PREJUDICE, POLICING, AND PUBLIC SAFETY: THE IMPACT OF IMMIGRATION HYPER-ENFORCEMENT
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1 ICE as having dark or medium complexion. In FY 2013 (through June 2013), 96.4% of
 2 individuals subject to ICE detainers were defined by ICE as having dark or medium
 3 complexion.¹³

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

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

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

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

27 _____
 28 upload_documents/Prejudice_Policing_Public%20Safety.pdf.

¹³ *Id.* at 14.

1 immigration status or that of people they know.¹⁴

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

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

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

¹⁵ See, e.g., INSECURE COMMUNITIES at 6.

¹⁶ *Id.*

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

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

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

6 The story of Oscar and Jessica Ramirez²⁰ illustrates what happens when local police
7 engage in immigration enforcement, leaving broken trust between the police and the immigrant
8 communities they are supposed to serve. Jessica Ramirez is an undocumented immigrant who
9 was born in Guatemala and has lived in the United States for a dozen years, since she was twelve.
10 Oscar Ramirez is an undocumented immigrant who was born in Mexico. Oscar and Jessica
11 Ramirez and their four children (all of whom are U.S. citizens) live in an area of Alabama where
12 the local police have been eagerly acting as federal immigration agents.

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

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

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

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

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

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

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

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

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

21 The Ramirez family's situation provides only one illustration of the consequences of
22 eroding trust between local police and the communities they serve. That lack of trust undermines
23 effective law enforcement, wastes community resources, and creates serious problems out of
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27 company's requirement that they wear and pay for the cost of ankle monitors. See Michael E.
28 Miller, "This company is making millions from America's broken immigration system,"
WASHINGTON POST (Mar. 9, 2017), available at https://www.washingtonpost.com/local/this-company-is-making-millions-from-americas-broken-immigration-system/2017/03/08/43abce9e-f881-11e6-be05-1a3817ac21a5_story.html?utm_term=.1befd42af7f2.

1 issues that could have been resolved with appropriate early intervention.²²

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

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

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

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

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

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

https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/UnderSiege.pdf

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 CONCLUSION

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

23 Dated: March 22, 2017

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Latin American Legal Defense and
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LatinoJustice PRLDEF,
National Employment Law Project,
National Immigration Law Center,
New Orleans Workers' Center for Racial
Justice,
Northwest Forest Worker Center,
Refugee and Immigrant Center for
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Safe Horizon,
Southeast Immigrant Rights Network,
St. Louis Workers Education Society,
Tennessee Immigrant and Refugee Rights
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The undersigned hereby attests that all signatories hereto, together with their respective clients on whose behalf this filing is submitted, concur in the contents of the within BRIEF OF *AMICUS CURIAE* SOUTHERN POVERTY LAW CENTER AND OTHER *AMICI* IN SUPPORT OF COUNTY OF SANTA CLARA AND CITY AND COUNTY OF SAN FRANCISCO'S MOTIONS FOR PRELIMINARY INJUNCTION and have authorized this filing.

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