

Appeal Nos. 17-17478 / 17-17480

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CITY AND COUNTY OF SAN FRANCISCO,
COUNTY OF SANTA CLARA,**

Plaintiffs/Appellees,

vs.

**DONALD J. TRUMP, PRESIDENT OF THE
UNITED STATES ET. AL,**

Defendants/Appellants.

On Appeal From the United States District Court
for the Northern District of California
The Honorable William H. Orrick Presiding
(Case No. 3:17-cv-00485-WHO)
(Case No. 3:17-cv-00574-WHO)

**BRIEF OF RELIGIOUS ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT
OF PLAINTIFFS/APPELLEES**

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Other Authorities	
Adam Andrejewski, <i>Federal Funding of America’s Sanctuary Cities</i> , OPEN THE BOOKS OVERSIGHT REPORT (Feb. 2017), https://www.openthebooks.com/assets/1/7/Oversight_FederalFundi ngofAmericasSanctuaryCities.pdf (last visited Feb. 9, 2018).....	13 fn. 16
Brooke A. Lewis, <i>HPD Chief Announces Decrease in Hispanics Reporting Rape and Violent Crimes Compared to Last Year</i> , HOUSTON CHRONICLE (Apr. 6, 2017), http://www.chron.com/news/houston-texas/houston/article/HPD- chief-announces-decrease-in-Hispanics-11053829.php (last visited Feb. 9, 2018)	10 fn. 10
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<i>Community Development Block Grant Disaster Recovery Program</i> , HUD EXCHANGE, https://www.hudexchange.info/programs/cdbg- dr/ (last visited Feb. 9, 2018)	16 fn. 19
Elizabeth Renter, <i>You’ve Got Medicaid – Why Can’t You See the Doctor?</i> , U.S. NEWS & WORLD REPORT (May 26, 2015), http://health.usnews.com/health-news/health- insurance/articles/2015/05/26/youve-got-medicaid-why-cant-you- see-the-doctor (last visited Feb. 9, 2018).....	15 fn. 18

Enforcement Immigration Law: The Role of State, Tribal and Local Law Enforcement, INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, <http://www.theiacp.org/portals/0/pdfs/publications/immigrationenforcementconf.pdf> (last visited Feb. 9, 2018) 10 fn. 8

Executive Order 13,678*passim*

Federal Rule of Appellate Procedure
 29..... 2 fn. 1
 29(a) 2 fn. 1
 32(a)(7)(c)21

James Queally, *Latinos are Reporting Fewer Sexual Assaults Amid a Climate of Fear in Immigrant Communities, LAPD Says*, L.A. TIMES (Mar. 21, 2017), <http://www.latimes.com/local/lanow/la-me-ln-immigrant-crime-reporting-drops-20170321-story.html> (last visited Feb. 9, 2018) 10 fn. 9

Joseph Serna, *Trump Administration Cites California Law Enforcement for Failing to Cooperate in Deportation Crackdown*, L.A. TIMES (Mar. 20, 2017), <http://www.latimes.com/local/lanow/la-me-ln-ice-detainer-request-list-20170320-story.html> (last visited Feb. 9, 2018) 5 fn. 2

Julian Aguilar, *Houston Mayor: Residents Shouldn't Let "Sanctuary Cities" Law Deter Rescue Efforts*, THE TEXAS TRIBUNE (Aug. 28, 2017), <https://www.texastribune.org/2017/08/28/houston-mayor-turner-says-put-sb4-shelf-during-rescue-efforts/> (last visited Feb. 9, 2018) 11 fn. 11

Kriston Capps, *Endangered HUD Funds Will Drive the Hurricane Recovery*, CITY LAB (Sep. 11, 2017), https://www.citylab.com/equity/2017/09/endangered-hud-funds-will-drive-the-hurricane-recovery/539373/?utm_source=nl_link1_091117&silverid=MzEwMTkxMTUyNTU1S0 (last visited Feb. 9, 2018) 16 fn. 19

Mark Chaves and Alison J. Eagle, *Congregations and Social Services: An Update from the Third Wave of the National Congregations Study*, Religions 2016, 7, 55; doi:10.3390/rel7050055 12 fn. 13, 12 fn. 14

Octavio Blanco, *Sanctuary Cities Risk Billions in Defiance of Trump* (Nov. 19, 2016), CNN, <http://money.cnn.com/2016/11/19/news/economy/sanctuary-cities-trump-funding/> (last visited Feb. 9, 2018) 14 fn. 17

Tara Smith, *American Cities Large and Small are Forming Their Own Wall Against Trump*, DEADSTATE (Jan. 27, 1017), <http://deadstate.org/american-cities-large-and-small-are-forming-their-own-wall-against-trump/> (last visited Feb. 9, 2018)..... 8 fn. 5

Testimony of Tom Manger, Chief of Police, President of the Major Cities Chiefs Association on Behalf of Montgomery County Police Department and Major Cities Chiefs Association Before the Judicial Committee, Chairman Grassley, Presiding, United States Senate, Hearing: Oversight of the Administration’s Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims, MAJOR CITIES CHIEFS ASSOCIATION at 2 (July 21, 2015 10:00 am), <https://www.judiciary.senate.gov/imo/media/doc/07-21-15%20Manger%20Testimony.pdf> (last visited Feb. 9, 2018)..... 9 fn. 6

Thad Austin, M. Div., *Giving to Religion: Highlights of the 2016 Giving USA Report*, LILLY FAMILY SCHOOL OF PHILANTHROPY, INDIANA UNIVERSITY-PURDUE UNIVERSITY, INDIANAPOLIS, <https://philanthropy.iupui.edu/news-events/insights-newsletter/2016-issues/june-2016-issue2.html> (last visited Feb 9, 2018) 12 fn. 12

Trump Administration Says New Orleans ‘Uncooperative’ with Immigration Detainers; Landrieu Responds, WGNO WEB DESK (Mar. 21, 2017), <http://wgno.com/2017/03/21/trump-administration-says-new-orleans-uncooperative-with-immigration-detainers-landrieu-responds/> (last visited Feb. 9, 2018)..... 8 fn. 4

U.S. Mayors, Police Chiefs Concerned with Sanctuary Cities Executive Order, U.S. CONFERENCE OF MAYORS AND MAJOR CITIES CHIEFS ASSOCIATION (Jan. 25, 2017), https://www.majorcitieschiefs.com/pdf/news/mcca_mayors_pr_on_eo_12517.pdf (last visited Feb. 9, 2018) 9 fn. 7

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amici curiae* state that no *amicus* has a parent corporation and that no publicly held corporation owns 10% or more of the stock of any *amicus*.

Dated: February 12, 2018

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INTERESTS OF *AMICI CURIAE*

Proposed *amici* are religious organizations, congregations, and churches. A list with descriptions of proposed *amici* is attached as Appendix A.¹ *Amici* minister to and provide support services to communities throughout the United States. *Amici* have an interest in this litigation because the congregations and communities served by *amici* include immigrants and persons who rely on federally funded assistance programs, both groups of which will be harmed if Executive Order 13,768 (the “Executive Order”) does not remain permanently enjoined. Moreover, a brief on behalf of *amici* is desirable because their experiences shed light on the nature of the harms at issue in this case. Namely, the faiths of *amici* dictate that they care for those in need in their communities, including by operating food banks, and providing emergency funds, housing, and shelter services. The ability of *amici* to administer services to immigrant communities is put in jeopardy when immigrants are too fearful to engage in public

¹*Amici Curiae* file this brief pursuant to Federal Rule of Appellate Procedure 29 and Ninth Circuit Rule 29-2. All parties have consented to the filing of this *Amici Curiae* brief. Under U.S. Court of Appeal Ninth Circuit Rule 29-2, given that all parties consent to the participation of *Amici Curiae*, no motion for leave to file this brief is necessary.

Further, pursuant to Federal Rule of Appellate Procedure 29(a), *Amici Curiae* state that no counsel for any party has authored this brief in whole or in part; no party or a party’s counsel has contributed money that was intended to fund preparing or submitting this brief; no person—other than the *Amici Curiae* or its counsel—contributed money that was intended to fund preparing or submitting this brief.

activities. Moreover, the federal funding cuts threatened under the Executive Order would create an increase in need that *amici*'s organizations would be incapable of alleviating. These considerations are relevant to the Court's determination of whether to uphold the district court's grant of summary judgment and a permanent injunction.

INTRODUCTION

Amici represent a diverse group of religious organizations and speak on behalf of the millions of Americans to whom such religious organizations minister or offer services, and with whom they share a common faith. *Amici* are united in their belief that Executive Order 13,768 (the "Executive Order") is immoral and will harm their communities. The Executive Order puts cities and counties in an untenable position: they either sacrifice policies that create welcoming communities and promote public safety or risk devastating funding cuts that would harm those in need and threaten public safety. Because *amici* minister to and care for communities throughout the United States, they provide a unique perspective on the irreparable harm the Executive Order will inflict if it does not remain permanently enjoined, as well as the public interest that will be served through the issuance of a permanent injunction. *Amici* therefore offer to the Court their experiences and beliefs in urging that the Court uphold the district court's grant of summary judgment and permanent injunction against the Executive Order.

ARGUMENT

I. THE EXECUTIVE ORDER HARMS THOSE MOST IN NEED

The world's major faiths emphasize helping those in need:

Judaism teaches: “Defend the weak and the fatherless; uphold the cause of the poor and the oppressed. Rescue the weak and the needy; deliver them from the hand of the wicked.” Psalm 82:3-4. “If there is a poor man among your brothers in any of the towns of the land that the LORD your God is giving you, do not be hardhearted or tightfisted toward your poor brother.” Deuteronomy 15:4-7.

Christianity teaches: “When he had finished washing their feet, he put on his clothes and returned to his place. ‘Do you understand what I have done for you?’ he asked them. ‘You call me Teacher and Lord, and rightly so, for that is what I am. Now that I, your Lord and Teacher, have washed your feet, you also should wash one another’s feet.’” John 13:12-14. “You shall love your neighbor as yourself.” Leviticus 19:18.

Islam instructs: “(The righteous are those) who feed the poor, the orphan and the captive for the love of God, saying: We feed you for the sake of God Alone; we seek from you neither reward nor thanks.” Qur’an, 76:8-9. “None of you believes until he loves for his brother what he loves for himself.” Hadith 13.

Under the Executive Order, those most in need—the weak, the poor, the oppressed, the orphans—will bear the weight of cuts in federal funding if cities and counties refuse to be coerced into leaving their immigrant brothers and sisters isolated and subject to crime and exploitation. And if cities and counties buckle to the coercion, immigrants will suffer.

A. Communities Will Be Harmed if Localities Are Forced to Abandon So-Called Sanctuary Laws and Policies

1. *Amici* Have Observed the Fear the Executive Order Has Created Among Immigrant Communities

Claiming that it will enhance public safety, the Executive Order disqualifies so-called “sanctuary jurisdictions”² from receiving federal funds. But the Executive Order will have the opposite effect—public safety, particularly the safety of immigrants—will be compromised, not enhanced, under the order. Namely, the effect of the Executive Order is a society where immigrants live in fear of contact with police because it means the risk of deportation, and they suffer disproportionately as a result. Such an outcome deeply offends the beliefs of *amici*. *Amicus* Southwest Conference of the United Church of Christ warns against creating communities wherein people are afraid to go to the police and thus render criminals unaccountable for their behaviors, which promotes communities wherein violence rather than peace reigns. The faith practiced by *Amicus* Valley Unitarian Universalist Congregation calls us to reach out to those in pain, yet the Executive

² The Executive Order provides no definition for “sanctuary jurisdictions.” However, public statements from the Administration suggest that the Administration intends at least to target cities and counties that decline to hold detainees under ICE detainers beyond the date they would otherwise be released. See Joseph Serna, *Trump Administration Cites California Law Enforcement for Failing to Cooperate in Deportation Crackdown*, L.A. TIMES (Mar. 20, 2017), <http://www.latimes.com/local/lanow/la-me-ln-ice-detainer-request-list-20170320-story.html> (last visited Feb. 9, 2018).

Order would force domestic violence victims to make the unconscionable choice between deportation and personal safety. Lives would likely be lost.

Because immigrants are valued members of the congregations of *amici*, as well as members of the populations that *amici* serve, *amici* have seen firsthand how fear of deportation has manifested in the wake of the Executive Order and know that it goes beyond an avoidance of the police. For example, *amicus* Good Shepherd United Church of Christ of the Santa Cruz Valley observed a significant drop in the number of people coming to its food bank immediately after the Executive Order issued. Church leaders report that the people whom they still serve have explained that their friends and/or families are too scared to venture out of their homes—even at the risk of going hungry. This has happened even though Good Shepherd United Church of Christ has no affiliation with law enforcement and despite police in the area promising communities that they will not comply with ICE detainer requests.

The Executive Order is forcing immigrants to retreat from civic life entirely, so they cannot avail themselves of medical or social services—even at their times of greatest need. To this point, *amicus* Southwest Conference of the United Church of Christ includes congregations with homeless and undocumented youth members. Many of these young people live in complete terror at the prospect that their information or their loved ones' information will fall into the hands of ICE.

Church officials report the story of a young woman who injured herself on a flight of stairs and refused to go to a hospital or urgent care for fear that her personal information might be transmitted to ICE, thereby exposing her or her family members to deportation. Such is the depth of the fear that the Executive Order has instilled, and the harm that it has and will continue to inflict on our communities absent a permanent injunction.

The Administration's attempt to minimize the impact of the Executive Order through public statements and its post-litigation Memorandum—indicating that the Executive Order may not be enforced to its full extent—is no solace to immigrant communities. There remains a significant amount of fear in the communities *amici* serve. These communities cannot and are not required to rely on forbearance and voluntary cessation by the Administration, trusting that it will refrain from conduct under its own interpretation of the law.³ The Administration's actions are no comfort to the most vulnerable and those unsophisticated in legal matters.

2. The Experiences and Concerns of *Amici* Are Echoed by Local Leaders and Law Enforcement

Amici believe that the fear and harm that they have observed are not unique to their organizations. Indeed, local leaders throughout the country have explained

³ City and County of San Francisco's Answering Brief, U.S. Ct. of App. for the Ninth Cir. Case Nos 17-17478 & 17-17480, Dkt. No. 35, p 23.

that the safety and well-being of communities is the purpose of the laws and policies targeted by the Executive Order. As the mayor of New Orleans explained:

First and foremost, the NOPD does now and will continue to follow federal laws and focus on arresting people who commit crime, regardless of their immigration status The NOPD’s policy on immigration complies with federal law and makes New Orleans safer because individuals are more likely to report crime, and victims and witnesses can testify without fear of being questioned about their immigration status. That’s why the NOPD will continue to focus on arresting those who commit violent crimes, not enforcing civil immigration laws.⁴

Similarly, the Mayor of San Jose explained that “our police chief is the best person to decide how to use the scarce resources we have. It’s not simply an ideological decision.”⁵

The law enforcement community—those best positioned to know how to reduce crime and promote public safety—agree that the maintenance of trust between police and the communities they serve is paramount for building safe and healthy communities. As the President of the Major Cities Chiefs Association

⁴ *Trump Administration Says New Orleans ‘Uncooperative’ with Immigration Detainers; Landrieu Responds*, WGNO WEB DESK (Mar. 21, 2017), <http://wgno.com/2017/03/21/trump-administration-says-new-orleans-uncooperative-with-immigration-detainers-landrieu-responds/> (last visited Feb. 9, 2018).

⁵ Tara Smith, *American Cities Large and Small are Forming Their Own Wall Against Trump*, DEADSTATE (Jan. 27, 2017), <http://deadstate.org/american-cities-large-and-small-are-forming-their-own-wall-against-trump/> (last visited Feb. 9, 2018).

(which represents police executives for the largest cities in the United States and Canada) explained during testimony to the United States Senate:

To do our job we must have the trust and respect of the communities we serve. We fail if the public fears their police and will not come forward when we need them. Whether we seek to stop child predators, drug dealers, rapists or robbers—we need the full cooperation of victims and witnesses. Cooperation is not forthcoming from persons who see their police as immigration agents. When immigrants come to view their local police and sheriffs with distrust because they fear deportation, it creates conditions that encourage criminals to prey upon victims and witnesses alike.⁶

In response to the Executive Order, the United States Conference of Mayors and the Major Cities Chiefs Association issued a joint position statement:

Cities that aim to build trusting and supportive relations with immigrant communities should not be punished because this is essential to reducing crime and helping victims We must be able to continue to protect the safety of all of our residents while ensuring that local law enforcement is focused on community policing.⁷

⁶ Testimony of Tom Manger, Chief of Police, President of the Major Cities Chiefs Association on Behalf of Montgomery County Police Department and Major Cities Chiefs Association Before the Judicial Committee, Chairman Grassley, Presiding, United States Senate, Hearing: Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims, MAJOR CITIES CHIEFS ASSOCIATION at 2 (July 21, 2015 10:00 am), <https://www.judiciary.senate.gov/imo/media/doc/07-21-15%20Manger%20Testimony.pdf> (last visited Feb. 9, 2018).

⁷ *U.S. Mayors, Police Chiefs Concerned with Sanctuary Cities Executive Order*, U.S. CONFERENCE OF MAYORS AND MAJOR CITIES CHIEFS ASSOCIATION

Similarly, a report by the International Association of Chiefs of Police warned of a “chilling effect” in immigrant communities if local police cooperated with federal deportation efforts, such that those communities would be less willing to cooperate with the police in solving crimes, even if the crimes were committed against their own family members.⁸

Available evidence bears out the concerns expressed by law enforcement officials and local leaders. In the wake of the Executive Order, the Los Angeles Police Chief reports that police reports of sexual assault and domestic violence among Latino constituents have plummeted.⁹ The Police Chief of Houston reported a similar trend.¹⁰ Without question, victims of domestic violence are some of the most vulnerable and needy individuals in our society, particularly

(Jan. 25, 2017), https://www.majorcitieschiefs.com/pdf/news/mcca_mayors_pr_on_eo_12517.pdf (last visited Feb. 9, 2018).

⁸ *Enforcement Immigration Law: The Role of State, Tribal and Local Law Enforcement*, INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, <http://www.theiacp.org/portals/0/pdfs/publications/immigrationenforcementconf.pdf> (last visited Feb. 9, 2018).

⁹ James Queally, *Latinos are Reporting Fewer Sexual Assaults Amid a Climate of Fear in Immigrant Communities, LAPD Says*, L.A. TIMES (Mar. 21, 2017), <http://www.latimes.com/local/lanow/la-me-ln-immigrant-crime-reporting-drops-20170321-story.html> (last visited Feb. 9, 2018).

¹⁰ Brooke A. Lewis, *HPD Chief Announces Decrease in Hispanics Reporting Rape and Violent Crimes Compared to Last Year*, HOUSTON CHRONICLE (Apr. 6, 2017), <http://www.chron.com/news/houston-texas/houston/article/HPD-chief-announces-decrease-in-Hispanics-11053829.php> (last visited Feb. 9, 2018).

immigrant victims, who may be without a strong support network and may toil in the shadows of society. If these victims cannot turn to the police because of fears of deportation, they are left to fend for themselves, often alone. While *amici* minister and provide services to such individuals, who are neighbors in their communities, their role is limited; *amici* cannot replace the police, who are uniquely empowered to stop the violent and abusive conduct perpetrated against these most vulnerable of victims.

The fear that the Executive Order manifests is so severe as to cause immigrants to avoid assistance even in the face of immediate and severe peril. In the wake of the devastation caused by Hurricane Harvey, which hit Houston last August, immigrants who needed temporary shelter or assistance at food banks were so fearful that they would be met by immigration agents that the mayor of Houston felt compelled to make a public statement urging people not to risk their lives by avoiding help.¹¹ *Amici*, who, like many religious organizations in this country, administer disaster relief services, cannot help those who are too afraid to come forward.

¹¹ Though this occurred in the context of the State of Texas' immigration enforcement law, SB 4, the impact of the Executive Order on these communities and rescue efforts would undoubtedly be similar, if not worse. Julian Aguilar, *Houston Mayor: Residents Shouldn't Let "Sanctuary Cities" Law Deter Rescue Efforts*, THE TEXAS TRIBUNE (Aug. 28, 2017), <https://www.texastribune.org/2017/08/28/houston-mayor-turner-says-put-sb4-shelf-during-rescue-efforts/> (last visited Feb. 9, 2018).

B. Absent an Injunction, Localities that Maintain So-Called Sanctuary Laws and Policies Will Lose Federal Funding, Resulting in Harm to Their Communities

1. People of Faith Prioritize Caring for Those in Need, But Their Efforts Cannot Make Up for the Funding Shortfall the Executive Order Will Create

Charitable giving is a hallmark of many religious faiths. These acts may come in the form of a tithe or other financial acts of charity, as well as the direct administration of aid to those in need. Indeed, religious giving in the United States represents the largest portion of charitable giving in the country,¹² and in turn the vast majority of congregations and religious organizations in the United States engage in some sort of social or human services, community development, or other projects to help people outside of their congregations.¹³ The services that religious congregations in this country provide are vital, with food assistance as the most common type of aid administered, followed by health programs and housing and shelter services.¹⁴

¹² Thad Austin, M. Div., *Giving to Religion: Highlights of the 2016 Giving USA Report*, LILLY FAMILY SCHOOL OF PHILANTHROPY, INDIANA UNIVERSITY-PURDUE UNIVERSITY, INDIANAPOLIS, <https://philanthropy.iupui.edu/news-events/insights-newsletter/2016-issues/june-2016-issue2.html> (last visited Feb 9, 2018).

¹³ Mark Chaves and Alison J. Eagle, *Congregations and Social Services: An Update from the Third Wave of the National Congregations Study, Religions 2016*, 7, 55; doi:10.3390/rel7050055 at 4.

¹⁴ *Id.*

Religious charities already face enormous pressure to care for those in need. Because the Executive Order threatens to deprive cities and counties with sanctuary laws and policies of *all* federal funds, the increase in need that the Executive Order will create due to cuts in federal funding absent a permanent injunction will go far beyond what religious organizations are able to provide. Indeed, San Francisco and Santa Clara County rely on federal funding for services that provide critical safety nets to their most vulnerable residents, including safety-net healthcare for indigent and underserved patients, social services that protect families living in poverty, children, disabled residents and the elderly, and behavioral health services.¹⁵ Religious and other charitable organizations could not begin to replace such a wide range of crucial services if federal funding is cut. The situation is equally grim in cities and counties across the country. One report anticipates that the Executive Order could lead to a loss of almost \$27 billion to cities across the nation.¹⁶ New York City alone estimates that it stands to lose \$10.4 billion in federal funds, among the largest recipients of which are the

¹⁵ Second Amended Complaint for Declaratory and Injunctive Relief ¶¶ 105-16, *City of San Francisco v. Trump*, No. 3:17-cv-00485-WHO (N.D. Cal. May 23, 2017), Dkt. No. 105; Complaint for Declaratory and Injunctive Relief ¶¶ 27-40, *Cnty. of Santa Clara v. Trump*, No. 5:17-cv-00574-WHO (N.D. Cal. Feb. 3, 2017), Dkt. No. 1.

¹⁶ Adam Andrejewski, *Federal Funding of America's Sanctuary Cities*, OPEN THE BOOKS OVERSIGHT REPORT (Feb. 2017), https://www.openthebooks.com/assets/1/7/Oversight_FederalFundingofAmericasSanctuaryCities.pdf (last visited Feb. 9, 2018).

Department of Social Services, the New York City Housing Authority, and the Administration for Children's Services.¹⁷

Amicus Southwest Conference of the United Church of Christ observes that no matter how zealously *amici* and other religious organizations work to care for those who need compassion and assistance, it is simply impossible for religious groups to do so without government assistance. The generosity of people of faith cannot fill the gap between people's needs and the limit of government assistance—there is already too much slack to pick up. *Amicus* Valley Unitarian Universalist Congregation makes great efforts to care for its community members through meal and housing programs for its homeless neighbors, but acknowledges that it is impossible for congregations and other non-profits to provide for all the needs of the most vulnerable among us. Its budget cannot accommodate the entirety of the current need, much less the expanded need that will emerge if the Executive Order does not remain permanently enjoined.

Amici Sisters of St. Francis of Clinton, Iowa minister in a number of locales and expect that the needs within those communities will increase significantly if federal funding is cut. Similarly, *amicus* Alliance of Baptists, whose ministries operate food banks, shelters for the homeless, domestic services, and emergency

¹⁷ Octavio Blanco, *Sanctuary Cities Risk Billions in Defiance of Trump* (Nov. 19, 2016), CNN, <http://money.cnn.com/2016/11/19/news/economy/sanctuary-cities-trump-funding/> (last visited Feb. 9, 2018).

funds, worries about the ability of faith-based organizations to provide adequate care to the people who may lose access to critical services under the Executive Order when funding is cut. They acknowledge that even if all the churches and faith communities in the country worked together, they could not provide the food, shelter, and services necessary to help those in need. Religious communities yearn for public policies and governmental programs that benefit the common good—that help *all* communities thrive and flourish with adequate resources and access to the basic means of life.

Because the Executive Order makes no distinction between the types of federal funds under threat, it encompasses even funds provided to local governments through entitlements, including Medicare or Medicaid reimbursements. Because public hospitals provide a critical safety net for the uninsured, cuts to their funding would be especially devastating. Many Medicaid patients already report difficulty finding providers,¹⁸ so cutting off Medicaid and Medicare reimbursements to public hospitals in the cities and counties in the Executive Order’s crosshairs will push an already critical public health issue to its breaking point, and harm millions of Americans in the process. *Amici* work hand

¹⁸ Elizabeth Renter, *You’ve Got Medicaid – Why Can’t You See the Doctor?*, U.S. NEWS & WORLD REPORT (May 26, 2015), <http://health.usnews.com/health-news/health-insurance/articles/2015/05/26/youve-got-medicaid-why-cant-you-see-the-doctor> (last visited Feb. 9, 2018).

in hand with hospitals, charities, and agencies that provide this critical safety net, and believe that such an outcome is morally repugnant because it harms those most in need. As *amici* Sisters of St. Francis of Clinton, Iowa remind us, the basic moral test for a society is how its most vulnerable members are faring. The Executive Order fails this fundamental test and causes tremendous suffering in the process.

The threatened cuts could extend as far as depriving localities of aid in the face of devastating natural disasters. To wit, among the federal funds that have been allocated for relief efforts following the recent string of unprecedented natural disasters is \$7.4 billion in federal grants that are awarded to cities, counties, and states for their disaster recovery efforts.¹⁹ To the extent that a city or county with such a need were deprived of federal grants due to the Executive Order, the suffering experienced by thousands of blameless victims who already endured incalculable losses would be exacerbated.

Amicus Trinity Missions believes that withholding local funding is just another example of punishing the poor for no justifiable reason whatsoever. It hits

¹⁹ Kriston Capps, *Endangered HUD Funds Will Drive the Hurricane Recovery*, CITY LAB (Sep. 11, 2017), https://www.citylab.com/equity/2017/09/endangered-hud-funds-will-drive-the-hurricane-recovery/539373/?utm_source=nl_link1_091117&silverid=MzEwMTkxMTUyNTU1S0 (last visited Feb. 9, 2018); *Community Development Block Grant Disaster Recovery Program*, HUD EXCHANGE, <https://www.hudexchange.info/programs/cdbg-dr/> (last visited Feb. 9, 2018).

communities that are trying to work on building bridges with the immigrant community—through withholding funding—and destroys the bridges one brick at a time. *Amicus* Southwest Conference of the United Church of Christ decries that the Executive Order uses the most vulnerable among us as pawns to achieve the Administration’s goals. As *amicus* Alliance of Baptists explains, when local communities take action to address issues of justice, equality, and inclusion within their communities, they should receive support and praise, not scorn. *Amicus* Valley Unitarian Universalist Congregation agrees that it is deeply callous and cynical to yoke funds used to care for, among others, sick and poor children, in order to force compliance with an order that the community deems harmful to its residents. But this is precisely what the Executive Order does.

2. *Amici* and Other Religious Charities Rely on Flow-Through Grants that Are Subject to the Executive Order

What is more, many of the charitable organizations run or supported by *amici* and religious organizations across the United States are dependent on federal funds that flow through their cities or counties. For example, *amicus* Good Shepherd United Church of Christ in Sahuarita, Arizona, receives community development grants that flow from the federal government to Pima County to Good Shepherd United Church of Christ’s charitable missions, which provide lifesaving assistance to border communities, including its “BackPack Program,”

which provides food packages to children. That program relies on federal funds for almost half of its budget. In 2013 and 2014, the church's food bank received federal pass-through county grants of the same type to purchase walk-in cold storage for its food bank, allowing it to serve hundreds of people each week, something that it would otherwise be unable to do. Neither feeding those who are hungry nor their progress from poverty to self-sufficiency can occur if funding is cut. The Church would have to turn away people who are hungry and those needing support for positive life changes, offending its core religious mission.

II. THE PUBLIC INTEREST FAVORS GRANTING A PERMANENT INJUNCTION

The public interest strongly weighs in favor of upholding the district court's permanent injunction against the Executive Order. The Executive Order, if it does not remain permanently enjoined, will injure the very fabric of communities by impeding the ability of cities and counties to care for their residents. *Amicus* Trinity Missions believes that when fear keeps people from making police reports, it slowly destroys the strength of the larger community/family, rendering the community less trusting and less safe. *See also City of El Cenizo v. Texas*, 264 F. Supp. 3d 744, 812 (W.D. Tex. 2017) (finding overwhelming evidence that Texas Senate Bill 4, which prohibits cities in Texas from adopting so-called sanctuary policies "will erode public trust and make many communities and neighborhoods less safe") (order granting preliminary injunction).

Amici Sisters of St. Francis of Clinton, Iowa, follow a doctrine called Catholic Social Teaching, which states that the measure of an institution is whether it threatens or enhances the life and dignity of the human person. By this measure, the Executive Order threatens to do great damage to the country's cities and counties and to greatly harm the larger public interest.

It is evident through the experiences of *amici* and those they serve that the mere threat of the Executive Order is creating fear and anxiety which is harming communities throughout the nation. The Order's implementation would be all the more damaging. The public interest weighs in favor of upholding the permanent injunction of an Order which injures not only through its implementation, but as much by the threat thereof.

CONCLUSION

If the district court's grant of a permanent injunction against the Executive Order is not upheld, serious and irreparable harm to communities throughout the United States is assured. Those localities that are forced to abandon so-called sanctuary laws and policies because of threats of a loss of federal funds will do so at the expense of the safety and well-being of their immigrant residents. And those localities subject to the draconian funding cuts that the Executive Order threatens will be unable to fund critical services for those most in need in their communities. *Amici* therefore condemn the Executive Order in the strongest terms for the harm

that it has and will continue to inflict upon communities across the United States if the district court's permanent injunction is not upheld.

Respectfully submitted,

Dated: February 12, 2018

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**CERTIFICATE OF COMPLIANCE PURSUANT TO
FED. R. APP. P. 32(G)(1)**

I certify that pursuant to Federal Rule of Appellate Procedure 32(g)(1), this brief is proportionally spaced, has a typeface of 14 point or more, and contains 4,404 words.

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CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2018, I filed and served the foregoing with the Clerk of the Court by causing a copy to be electronically filed via the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

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Appeals No. 17-17478 / 17-17480

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CITY AND COUNTY OF SAN FRANCISCO,
COUNTY OF SANTA CLARA,**

Plaintiffs/Appellees,

vs.

**DONALD J. TRUMP, PRESIDENT OF THE
UNITED STATES ET. AL,**

Defendants/Appellants.

On Appeal From the United States District Court
for the Northern District of California
The Honorable William H. Orrick Presiding
(Case No. 3:17-cv-00485-WHO)
(Case No. 3:17-cv-00574-WHO)

**BRIEF OF RELIGIOUS ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT
OF PLAINTIFFS/APPELLEES**

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Appendix A

APPENDIX A

Alliance of Baptists is a faith community comprised of male and female laity and clergy, people of diverse sexual orientations, gender identities, theological beliefs, and ministry practices. Alliance of Baptists is composed of Christians knit together by love for one another and God, combining progressive inquiry, contemplative prayer and prophetic action to bring about justice and healing in a changing world.

Disciples Home Missions is the coordinating ministry of the Christian Church (Disciples of Christ) in the area of congregational program and mission in North America, and is committed to equipping disciples for Christ and connecting people to the life-changing love of God.

Good Shepherd United Church of Christ in Sahuarita, Arizona is located 35 miles from the Mexican border. It is committed to providing humanitarian assistance to refugees and immigrants who are suffering and dying within miles of the Church. It operates the Sahuarita Food Bank, which provides food and other services to children and families in need – currently to over 850 people per week. This is all part of the Church's profound and lasting commitment to follow in the footsteps of Jesus in pursuing justice and providing support to the least of us.

National Council of Jewish Women (NCJW) is a grassroots organization of 90,000 volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms. NCJW's Resolutions state that the Council resolves to work for “Comprehensive, humane, and equitable immigration, refugee, asylum, and naturalization laws, policies, and practices that facilitate and expedite legal status and a path to citizenship for more individuals.”

National Justice for Our Neighbors is a United Methodist Immigration Ministry that advocates for immigration laws that are just, humane, and righteous.

North Carolina Council of Churches is a statewide ecumenical organization promoting Christian unity and working towards a more just society. The Council enables denominations, congregations, and people of faith to individually and collectively impact the state of North Carolina on issues such as economic justice and development, human well-being, equality, compassion, and peace, following the example and mission of Jesus Christ.

Northern California Nevada Conference of the United Church of Christ is the regional body that provides support and services to 119 local churches and clergy in northern California and western, northern Nevada. The Conference exists

to support, unite, and nurture the local churches and ministry settings in its territory.

Sisters of St. Francis of Clinton, Iowa is a Catholic religious order. As followers of Jesus Christ, they endeavor to carry out His teachings. They believe that all people are related as sisters and brothers and believe in the common good and promoting the welfare of all, especially those who are the most vulnerable among us.

Southwest Conference of the United Church of Christ is the regional body that provides support and services to 47 member congregations and over 300 clergy (active, specialized and retired) within Arizona, New Mexico and El Paso, Texas. More than 6000 members provide these ministries and its members include migrants, undocumented permanent residents, refugees, lesbian, gay, bisexual and transgender persons, police officers, Border Patrol Agents, and Immigration and Customs Enforcement agents.

Trinity Missions, Missionary Servants of the Most Holy Trinity was founded in 1920 and is a congregation of Catholic priests and Brothers who work in the United States and Latin America with the poor and abandoned, including recent immigrants.

T'ruah: The Rabbinic Call for Human Rights brings together rabbis and cantors from all streams of Judaism, together with all members of the Jewish

community, to act on the Jewish imperative to respect and advance the human rights of all people.


Unitarian Universalist Association (UUA) is the central organization for the Unitarian Universalist religious movement in the United States. The UUA's 1000+ member congregations are committed to Seven Principles that include the worth of each person, the need for justice and compassion, and the right to choose one's own beliefs. Its congregations and faith communities promote these principles through regular worship, learning and personal growth, shared connection and care, social justice action and service, celebration of life's transitions, and much more.

Unitarian Universalist Service Committee was founded in 1939 and is a nonsectarian human rights organization powered by grassroots collaboration. UUSC works anywhere rights are threatened – by natural disasters, armed conflicts, genocide, forced migration, and systematic injustice.

Valley Unitarian Universalist Congregation is a 350-member congregation with a focused and sustained interest in social justice. The congregation has immigrant members, friends, and loved ones.

CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2018, I filed and served the foregoing with the Clerk of the Court by causing a copy to be electronically filed via the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

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