

*Appeal Nos. 17-17478 and 17-17480*

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE  
NINTH CIRCUIT

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CITY AND COUNTY OF SAN FRANCISCO,

*Appellant,*

v.

DONALD J. TRUMP, et al.,

*Respondents.*

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COUNTY OF SANTA CLARA,

*Appellant,*

v.

DONALD J. TRUMP, et al.,

*Respondents.*

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**On Appeal from the  
United States District Court, Northern District of California  
Hon. William H. Orrick  
Case Nos. 17-cv-00485-WHO and 17-cv-00574-WHO**

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**BRIEF OF *AMICI CURIAE* TECHNOLOGY COMPANIES**

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## CORPORATE DISCLOSURE STATEMENT

*Amici Curiae* submit their corporate disclosure statements, as required by Fed. R. App. P. 26.1 and 29(c), in Appendix B.

Dated: February 12, 2018

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## **INTEREST OF AMICI CURIAE**

*Amici Curiae* are forty-nine technology companies located throughout the United States. A complete list of *Amici Curiae* is attached to this brief as Appendix A.<sup>1</sup>

## **INTRODUCTION**

*Amici Curiae* Technology Companies urge this Court to uphold the District Court's Order permanently enjoining enforcement of Section 9(a) of Executive Order 13,678 on a nationwide basis.

Executive Order 13,678 (hereafter, the "Executive Order" or "Order") represents an impermissible bid by the president to exceed his constitutional powers and punish communities whose local governments choose – consistent with their rightful role in our federal system – to decline conscription into a scheme of immigration law enforcement that threatens to undermine public safety and up-end community stability. *Amici* and the communities in which they are embedded have benefited from the open values, the diverse and inclusive culture, the lawful and welcoming immigration practices, and the supportive local governments that were jeopardized by a hastily imposed and unconstitutional Executive Order.

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<sup>1</sup> Pursuant to Local Rule 27(a), counsel for *amici* certify that counsel for the other parties have consented to the filing of this brief. *Amici* state that no party's counsel authored this brief in whole or in part, and that no person other than *amici* or its counsel contributed money that was intended to fund preparing or submitting the brief. See Fed. R. App. 29(a)(4)(E).

In addition to the perils the Executive Order poses to local public order and to the values that have been critical to the prosperity of *amici* across the country, the Executive Order threatens the ability of American technology companies to recruit talented employees on a global scale and to compete with technology companies abroad. These are undermined so long as the Order remains as a threat to so-called “sanctuary jurisdictions,” regardless of whether the federal government actively attempts to enforce the Order or passively relies on its draconian threats to pressure local governments into compliance. The District Court’s permanent injunction was therefore necessary to prevent the Order from inflicting real, immediate, and lasting damage on *amici* and their communities.

The Executive Order purports to vest the U.S. Attorney General and the Secretary of Homeland Security with discretion to designate certain state, county or local government entities as “sanctuary jurisdictions,” and to withhold all federal grants from such jurisdictions. The District Court correctly determined that the directive is unconstitutionally vague, in part because it does not define term “sanctuary jurisdiction.” ER at 28.

Absent a reasonably discernable definition, no one can say with assurance which government entities across the country would be deemed “sanctuary jurisdictions.” But the Executive Order’s vague reference to jurisdictions with a “statute, policy, or practice” that purportedly “prevents or hinders the enforcement

of federal law” potentially sweeps many within its ambit – and most particularly those jurisdictions which have determined that joining in the federal efforts to expel enormous numbers of alleged undocumented immigrants would undermine effective law enforcement.

While the reach of the Executive Order is vague in important ways, plainly, it seeks to raise the specter of significant punishment directed at such communities in order to intimidate them into submission.

The Order’s attempt to commandeer state and local governments and turn them into agents of the federal government’s deportation program – and the punishment mandated for jurisdictions that resist – threaten *amici* in three ways.

First, the conduct that the Order unconstitutionally seeks to compel is antithetical to the values, practices and culture of Silicon Valley, the Bay Area, and technology hubs across the country. Silicon Valley has become the technological innovation capital of the world because of the talents, drive, and ingenuity of people from all over the world. Diversity, openness, and tolerance are among our greatest strengths, and our effort to more fully realize these values is fundamental to who we are. The protective policies of San Francisco and Santa Clara seek to affirm those values as well as maintain public safety. The Executive Order therefore demands in substance that Plaintiffs abandon those values in favor of hostile values that have no place in our innovative communities. This attack on the

values of our companies and communities is likely to injure our economic as well as our moral well-being.

Second, looking beyond Silicon Valley and the Bay area, the vast majority of technological hubs in America are in jurisdictions that might well be designated as “sanctuary jurisdictions” and deprived of federal funding. The Executive Order has, overnight, thrown these tech hubs into financial limbo, uncertain whether they will have the means to provide basic government services to their local communities – either because the federal government will require them to divert local resources in the service of federal government priorities or because the federal government will withhold all federal funding should they decline to do so. By its mere existence, consequently, the Executive Order has rendered America’s centers of technological innovation less attractive places to live, work, and do business, undermining the competitiveness of American business.

The Constitution constrains federal authority to rescind funding to states, *inter alia*, to avoid precisely this type of uncertainty. In disregarding these limitations, the Executive Order effectively and immediately transformed the communities hosting America’s major concentrations of technological energy and talent into jurisdictions whose technological infrastructure, educational and social systems, and most vulnerable citizens, were all at risk from governmental failure.

Third, the Executive Order makes residents of jurisdictions targeted by its threats less safe. State and local officials have a clearer insight into the criminal law threats and issues facing their constituents, and how best to address them, than does the federal government. Notwithstanding, the Executive Order seeks to override their seasoned judgments regarding the tenor of their policies toward their communities and to re-direct their resources towards enforcement of federal immigration law. While this makes all residents less safe, the Executive Order's sting is particularly sharp for immigrant communities, including those members who are lawfully in the United States.

In disregarding long-established constitutional principles in the name of immigration law enforcement, the Executive Order endorses and promotes anti-immigrant bias and fosters the pernicious and unfounded notion that immigrants pose a grave threat. The hostility promoted by this idea impacts lawful as well as undocumented immigrants, and runs contrary to the values of *amici* and of America.

## **ARGUMENT**

### **I. THE ORDER UNLAWFULLY SEEKS TO COMPEL CONDUCT ANTITHETICAL TO THE VALUES OF INNOVATIVE COMPANIES AND THEIR COMMUNITIES.**

Few Americans regularly go a day without using technology developed at least in part by an American immigrant. We benefit from the contributions of immigrants to the American technological sector when we search the Internet

(Google was co-founded by Sergei Brin, a refugee from the Soviet Union), when we use computers employing microchips (microchips were developed by Intel co-founder Andrew Grove, a refugee from Hungary), and when we plug in our cellphones (rechargeable batteries were developed by Samar Basu, immigrant from India), to give just a few examples.

This is nothing new: from the telephone in 1875 (Alexander Graham Bell, Scotland) to the blender in 1932 (Stephen Poplawski, Poland), to the ATM machine in 1963 (Luther George Simjian, Turkey), immigrants have consistently pushed technology forward with their ingenuity, drive, and desire to give back to America.

Recognizing the immense importance of immigrants and their talents to the development of technology, Silicon Valley has long aspired to be a place where people of all backgrounds and origins are welcome and encouraged make their mark. Silicon Valley seeks to be a place where the ability to build something from the ground up matters more than pedigree or family name, a place where raw talent from all corners of the Earth is unleashed. In the words of Google CEO Sundar Pichai, “We are able to build products for everyone because we attract talent from

around the world. Immigration is a strength for this industry and our country – it’s one of our defining characteristics.”<sup>2</sup>

Technology companies bring talented employees to the United States through such lawful means as the H1-B program, so their lawfully-present employees are not literally targeted by the Order. But the Order’s effects go beyond targeting individuals to targeting the values that enable the technology industry to thrive. Silicon Valley cannot be a place of inclusiveness and equality if its local government leaders are compelled to act as agents of ICE in the federal government’s deportation program, if fear, disruption and suspicion of “the Other” become government policy. And when millions who have lived amongst us for many years are demonized and targeted for expulsion, those who look like “them,” whether lawful immigrants or citizens of similar ancestry, also find themselves suspect and targeted by bigotry.

Silicon Valley, and its sister innovative communities across the nation, cannot be places where talented people of all origins thrive if citizens and lawful residents are afraid for their basic safety and well-being because of such discrimination and enmity. Yet these consequences have already accompanied the campaign against those who are undocumented, and inevitably will continue to do

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<sup>2</sup> Walt Mossberg, *Immigration Builds America’s Tech Dominance*, Recode (Feb. 1, 2017), available at <http://www.recode.net/2017/2/1/14466978/mossberg-immigration-innovation-tech>.

so. People from different backgrounds cannot come together to develop the world's most sophisticated products, making our companies and communities more prosperous, and our lives more productive and secure, if they are forced to police one another's immigration status, and if many among them are made frightened and unwelcome.

Santa Clara County, San Francisco, and the other "sanctuary jurisdictions" have adopted policies that reflect the priorities of their residents – including *amici* – and reflect the belief that immigration makes us stronger, smarter, and better.<sup>3</sup> The conduct that the Executive Order seeks to compel – engagement in bias-promoting immigration enforcement – is antithetical to those values.

## **II. THE ORDER UNDERMINES THE ABILITY OF AMERICAN COMPANIES TO COMPETE GLOBALLY.**

In light of the enormous contributions of immigrants, American technology companies recognize we can remain competitive only by recruiting the best employees from around the world. The Executive Order undermines our ability to do so.

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<sup>3</sup> For convenience we use the term "sanctuary jurisdiction" or cognates from time to time; because the term is vague, *amici* do not thereby intend to concede that any particular entity is a "sanctuary jurisdiction" within the meaning of the Order.

**A. The Order Threatens to Cripple Nearly Every Major American Innovation Hub.**

**1. Most Centers of American Innovation are at Risk of Being Designated as “Sanctuary Jurisdictions.”**

In enjoining the Executive Order, the District Court concluded that Section 9(a) is impermissibly vague. ER at 28. The Court noted that “because the Executive Order does not clearly define ‘sanctuary jurisdictions,’ the conduct that will subject a jurisdiction to defunding under the Executive Order is not fully outlined.” *Id.* This ambiguity not only “creates huge potential for arbitrary and discriminatory enforcement,” but also “make[s] it impossible for jurisdictions to determine how to modify their conduct, if at all, to avoid the Order’s penalties.” *Id.*

In light of these ambiguities, *amici* have no way of knowing with reasonable confidence which of the localities in which they work are likely to lose federal funding, no way to plan for or avoid such potential losses in their communities, and no confidence that a community once so labeled can ever escape the harmful designation. This level of uncertainty alone represents a substantial business hindrance.

Looking to the statements of the Trump administration since the Executive Order was issued, as well as conventional understanding of how the term “sanctuary city” is commonly used, nearly every major hub for technology in the

United States faces a high risk of being so designated. Attorney General Sessions has repeatedly named not only San Francisco, but also Portland, Chicago, and New York as cities that would be targeted under the Executive Order. Request for Judicial Notice Exhibit F, Dkt. 161-6, at 3.<sup>4</sup> The administration has also made clear that it views a jurisdiction's failure to honor ICE detainer requests as grounds for defunding under the Executive Order. *Id.* at 4. By this standard, according to records published by the Department of Homeland Security, Austin, Portland, Denver, Boston, New York, Chicago and Seattle (among others) would also all face defunding. Request for Judicial Notice Exhibit O, Dkt. 161-15, at 3-22. Indeed, in testimony to Congress, acting ICE Director Thomas Homan estimated that at least *100 to 150 jurisdictions* would be labeled as sanctuary jurisdictions for purposes of the Executive Order, while acknowledging that no one knew the exact number for certain because the standards were still (allegedly) being developed. *See* Dkt. 161-13 at 34.

These cities contain remarkable concentrations of technological talent and knowledge, thanks in part to the eagerness of the best minds to work there, no matter what their country of birth. There is, moreover, a well-known synergy

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<sup>4</sup> All citations to the Request for Judicial Notice and accompanying exhibits are to the County of Santa Clara's Request for Judicial Notice filed in support of its Motion for Summary Judgment, Docket No. 161 in Case Number 17-cv-00574-WHO, and the exhibits submitted therewith.

between technological advances by one enterprise, in one tech center, and further advances made by other entrepreneurs in other cities. For that reason, harm to the culture and corresponding growth of technology in any of our cities tends to impede progress everywhere.

Many of these other jurisdictions have separately filed lawsuits or joined the present case as *amici* to protect their federal funding. But currently the District Court's injunction is all that stands between these many hubs of innovation and the potential for financial ruin or impairment.

**2. The Executive Order Undermines the Ability of *Amici* to Recruit Employees to “Sanctuary Jurisdictions.”**

To compete in a global marketplace for exceptionally talented employees, companies must be able to offer an opportunity to live in fully functional communities – communities that are at the very least welcoming. Talented potential employees have threshold requirements without which they would not seriously consider relocating to American tech communities: reliable law-enforcement and safety services; accessible, high-quality public schools; and decent community infrastructure are a few among such baseline requirements.

The District Court's detailed findings confirmed the extent to which the loss of all federal funds would devastate the Plaintiff jurisdictions' capacity to satisfy such baseline requirements. Thirty-five percent of Santa Clara County's revenues, for example, are from federal and federally dependent funds. ER at 12. More than

12 percent of San Francisco's budget comes from federal funds. *Id.* at 13. The loss of federal funding would force both jurisdictions to drastically cut social services and support for basic infrastructure. ER at 17-19. Hospitals would close, public health agencies would cease to function, and thousands of public employees would be laid off. *Id.*

The potential inability of a sanctuary jurisdiction to provide a social safety net for its most vulnerable members due to the loss of federal funding is itself deeply troubling. But it would be a mistake to believe that only the vulnerable would be affected by such cuts, and that businesses like *amici*'s could continue to prosper. The impact of a loss of funding of the magnitude threatened by the Executive Order would be to diminish the kinds of basic public functions without which potential employees will not move to a city: without federal funding Santa Clara would lose two-thirds of its resources for such emergency services as earthquake and terrorism response. ER at 13. San Francisco would be forced to decimate its corps of firefighters, police officers, and paramedics, and to make "severe cuts" to its MUNI transportation system. ER at 18-19. These cuts would impact city residents of all economic and social backgrounds, and significantly undermine the ability of *amici* to maintain prosperous and secure businesses amongst such disarray.

While the record below focuses on the impact of slashing federal funding on San Francisco and Santa Clara, many technological hubs would obviously face equally dire financial harm: Los Angeles County reportedly stands to lose \$582 million in federal grants, and Seattle and Denver, \$72.7 and \$39 million respectively.<sup>5</sup> Chicago's 2016 budget reflected anticipated payments of \$1.48 *billion* from the federal government.<sup>6</sup>

Under the Order, impacted jurisdictions would face a choice between protecting their most vulnerable residents and preserving services and infrastructure that support economic activity.

Defendants contend that Plaintiffs' motions are not ripe because no jurisdictions have yet been designated as sanctuary jurisdictions and stripped of funding. But the *threat* of the loss of federal grants and of the concomitant collapse of local services itself deters potential employees from moving to these cities. If a financially sound city can be thrown into chaos at any time by a discretionary and arbitrary decision of the Attorney General, with no articulated mechanism for

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<sup>5</sup> Rory Carroll, Robin Respaut & Andy Sullivan, *Top 10 Sanctuary Cities Face Roughly \$2.27 Billion in Cuts by Trump Policy*, Reuters (Jan. 26, 2017), available at <http://www.reuters.com/article/us-usa-trump-sanctuarycities-idUSKBN1592V9>.

<sup>6</sup> Lydia O'Neil, *Sanctuary Cities 2017: How Much Money DO They Receive From the Federal Government?*, Int'l Bus. Times (Jan. 25, 2017), available at <http://www.ibtimes.com/sanctuary-cities-2017-how-much-money-do-they-receive-federalgovernment-248146>.

review, based on no clearly defined standards or rules, people with options will not relocate to that city.

America's tech sector is overwhelmingly concentrated in cities now at risk under the Executive Order, and this risk undermines the competitiveness of American technology companies as well as the stability of their communities. This in turn threatens the larger well-being of the American economy: the technology sector accounts for more than seven percent of the United States' gross domestic product and over eleven percent of the national private sector payroll.<sup>7</sup> Any blow to American technology companies is bound to reverberate through other American industries.

**B. The Order Makes American Cities Less Safe.**

Talented employees will also shun cities in which they feel unwelcome and unsafe. The Executive Order undermines the safety of so-called sanctuary cities, and with that the ability of American technology companies to attract employees.

**1. The Order Seeks to Override the Reasoned Judgment of Potential Sanctuary Jurisdictions Regarding the Policies That Contribute to Public Safety.**

Plaintiffs, in their respective complaints below, observed that their policies against participating in federal immigration enforcement were specifically

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<sup>7</sup> *Cyberstates 2016: The Definitive State-by-State Analysis of the U.S. Tech Industry*, Computing Tech. Industry Ass'n (Mar. 1, 2016).

designed to enhance the public safety of citizens and non-citizens alike. *See* ER at 154-56; 207. These policies reflect manifestly reasonable judgments: When local law enforcement officers are perceived as *de facto* agents of ICE, many crime victims and witnesses are hesitant to engage with the legal system. Crimes therefore go unreported and unsolved, and in those cases that are reported, witnesses are reluctant to appear and testify against dangerous criminals.

These dangers are not theoretical; they are already being felt across the country and pose a growing danger to public safety. The effect of the supposed “anti-sanctuary” policy embodied in the Order is actually to create a kind of “sanctuary” for criminals, who may come to feel they can prey on undocumented people with impunity. It is happening already.

In April 2017, Houston Police Chief Art Acevedo noted that although sexual assault reports had increased eight percent in the non-Hispanic population over the prior year, reporting by Hispanic victims had *decreased by forty-two percent*.<sup>8</sup> “When you see this type of data,” Chief Acevedo pointed out, “and what looks like the beginnings of people not reporting violent crime, we should all be concerned.” *See id.* As Chief Acevedo points out, “a person [who] rapes or violently attacks or

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<sup>8</sup> Allison Lee, *Is ‘Sanctuary City’ Talk Really Having A Chilling Effect In Houston?*, Houston Pub. Media (May 2, 2017), available at <https://www.houstonpublicmedia.org/articles/news/2017/05/01/198284/is-sanctuary-city-talk-really-having-a-chilling-effect-in-houston/>.

robs an undocumented immigrant is somebody [who] is [also] going to harm a natural-born citizen or lawful resident.” *Id.*

Houston is part of a larger national trend. In Denver, crime reports among non-Latino residents increased by 3.6 percent in the first three months of 2017 over the prior year, while crime reporting by Latinos decreased by twelve percent.<sup>9</sup> In Los Angeles, reports of sexual assault among Latino residents dropped 25% in the first quarter of 2017 relative to the prior year, and reports of domestic violence were down 10%.<sup>10</sup> Meanwhile in Philadelphia, while reports of crimes by non-Latinos declined by 1%, crime reports by Latinos fell 4.3%.<sup>11</sup> Manifestly, the public interest in having victims report crimes to law enforcement is ill-served by the current climate of fear and mistrust.

The best use of ICE resources must be left to the determination of federal authorities. But local counties and cities – consistent with their place in our

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<sup>9</sup> Rob Arthur, *Latinos In Three Cities Are Reporting Fewer Crimes Since Trump Took Office*, FiveThirtyEight (May 18, 2017), available at <https://fivethirtyeight.com/features/latinos-report-fewer-crimes-in-three-cities-amid-fears-of-deportation/>.

<sup>10</sup> James Queally, *Latinos are reporting fewer sexual assaults amid a climate of fear in immigrant communities, LAPD says*, L.A. Times (Mar. 21, 2017), available at <http://www.latimes.com/local/lanow/la-me-ln-immigrant-crime-reporting-drops-20170321-story.html>.

<sup>11</sup> Rob Arthur, *Latinos In Three Cities Are Reporting Fewer Crimes Since Trump Took Office*, FiveThirtyEight (May 18, 2017), available at <https://fivethirtyeight.com/features/latinos-report-fewer-crimes-in-three-cities-amid-fears-of-deportation/>.

constitutional scheme and with the limits on federal authority<sup>12</sup> – must remain free to make their own judgments, to allot their own public safety resources as they choose, and to decline participation in immigration enforcement when they determine that public safety compels abstention from cooptation.

**2. The Executive Order Fosters Anti-Immigrant Sentiment and Makes All Immigrants – Including Lawful Immigrants – Less Safe.**

On its face, the Executive Order concerns an enforcement scheme targeting only non-citizens removable from the United States. But history shows that when nativist impulses come to the fore, and those who appear “foreign” become suspect, the impact is never so constrained. Whatever the intent behind the Order, once national origin and ancestry are treated as legitimate bases for suspicion, all immigrants – and those thought to look like them – pay the price.

The case of Srinivas Kuchibholta represents a tragic example of the unconfined nature of the anti-immigrant bias that has recently been engendered. In February 2017, Mr. Kuchibholta – a technical engineer for Garmin Ltd. – was shot

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<sup>12</sup> *Printz v. United States*, 521 U.S. 898, 925 (1997) (“[T]he Federal Government may not compel the States to implement, by legislation or executive action, federal regulatory programs.”).

and killed in Kansas by a man who refused to believe that Kuchibholta was in the United States lawfully.<sup>13</sup>

Like many in the technology industry, Kuchibholta first came to the United States on a student visa and subsequently stayed on an H-1 visa, based on his exceptional engineering talent.<sup>14</sup> Mr. Kuchibholta's entire presence in the United States had therefore been lawful. Yet the man who would later shoot Mr. Kuchibholta approached him first asked whether he was in the country lawfully, and refusing to believe Mr. Kuchibholta's lawful status, slew him. *Id.*

While known acts of physical violence against technology workers appear to be few, reports of demeaning challenges regarding immigration status are disturbingly common and rising. From refusing service in restaurants until documentation is provided,<sup>15</sup> to stopping individuals on the bus or the street and asking for proof of lawful status,<sup>16</sup> private citizens are increasingly attempting to

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<sup>13</sup> Audra Burch, *He Became a Hate Crime Victim, She Became a Widow*, N.Y. Times (July 8, 2017), available at <https://www.nytimes.com/2017/07/08/us/he-became-a-hate-crime-victim-she-became-a-widow.html>.

<sup>14</sup> Rick Montgomery and Ian Cummings, *Arcs of Two Lives Intersect in Tragedy at Austins Bar in Olathe*, Kansas City Star (Mar. 12, 2017), available at <http://www.kansascity.com/news/local/crime/article137871003.html>.

<sup>15</sup> See Cleve Wootson, *A California Waiter Refused to Serve 4 Latina Customers Until He Saw Proof of Residency*, Wash. Post (Mar. 19, 2017), available at <https://www.washingtonpost.com/news/post-nation/wp/2017/03/19/a-california-waiter-refused-to-serve-4-latina-women-until-he-saw-proof-of-residency/>.

<sup>16</sup> See Erika Butler, *Bel Air Police detain woman walking, question her immigration status*, Baltimore Sun (Jan. 27, 2017), available at <http://www.baltimoresun.com/news/maryland/harford/aegis/ph-ag-immigration->

police others' immigration status – an activity that is generally both baseless and inappropriate.

Many Americans cannot imagine an existence in which we are asked to prove our legal status every time we eat out, ride public transit, or walk our pets. If such degrading treatment – encouraged by the anti-immigrant bias manifested by the Executive Order – continues, technology companies will face growing difficulty in attracting talented workers to the United States.

Again, it is already happening: Between 2006 and 2016, for example, American universities experienced ten consecutive years of enrollment expansion among international students.<sup>17</sup> In 2017, however, more than forty percent of universities surveyed experienced a drop in applications from foreign students.<sup>18</sup> At the University of California at Berkeley, where applications from international

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0127-20170126-story.html; *see also* Amber Ferguson, 'Are you here illegally?': Probe underway into video of transit officer checking rider's immigration status, Wash. Post (May 22, 2017), available at [https://www.washingtonpost.com/news/morning-mix/wp/2017/05/22/are-you-here-illegally-minneapolis-probes-video-of-transit-officer-checking-riders-immigration-status/?utm\\_term=.3d010d089a3f](https://www.washingtonpost.com/news/morning-mix/wp/2017/05/22/are-you-here-illegally-minneapolis-probes-video-of-transit-officer-checking-riders-immigration-status/?utm_term=.3d010d089a3f).

<sup>17</sup> Valerie Strauss, *Why U.S. colleges and universities are worried about a drop in international student applications*, Wash. Post (July 13, 2017), available at [https://www.washingtonpost.com/news/answer-sheet/wp/2017/07/13/why-u-s-colleges-and-universities-are-so-worried-about-a-drop-in-international-student-applications/?utm\\_term=.0e9695d948ac](https://www.washingtonpost.com/news/answer-sheet/wp/2017/07/13/why-u-s-colleges-and-universities-are-so-worried-about-a-drop-in-international-student-applications/?utm_term=.0e9695d948ac).

<sup>18</sup> *See* Aria Bendix, *A Pause in International Students?*, Atlantic (Mar. 13, 2017), available at <https://www.theatlantic.com/education/archive/2017/03/a-pause-in-international-students/519435/>.

applicants had grown by an average of 21% per year for a decade, the number of international applicants declined in 2017.<sup>19</sup>

International students who might be accepted at a school like Berkeley are among the most talented students from their respective countries. Their decisions not to study at American institutions represents a significant loss to these institutions and to the American attendees of these schools, who benefit from their class including the brightest minds possible.

The declining interest from international students is particularly alarming for *amici*. First, many talented technology workers initially come to the United States on student visas and subsequently obtain H1-B visas that allow them to stay and work in the United States, based on their exceptional talent. If exceptional, talented individuals do not enter the country as students, then there is no initial point of contact through which *amici* can identify and connect with these unique talents.

Decreasing interest among the most talented students abroad is likely to coincide with decreasing interest among talented workers, as well. *Amici* cannot compete on a global level if we are unable to recruit and retain the brightest minds from around the world. An environment in which immigrants fear for their

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<sup>19</sup> See Hamed Aleaziz and Nanette Asimov, *UC sees 1st drop in international applicants in more than decade*, S.F. Chronicle (Apr. 1, 2017), available at <http://www.sfchronicle.com/bayarea/article/UC-sees-1st-drop-in-international-applicants-in-11043891.php>.

physical safety and are treated as second class citizens prevents *amici* from doing so. The Executive Order promotes precisely such a hostile environment.

### **CONCLUSION**

The Executive Order embodies values at odds with those of American society, and particularly antithetical to the values, culture and practices of the technology industry in the Bay Area and nationally, and of the communities in which the tech industry is embedded. The Executive Order also defies constitutional standards and imperils the safety, efficacy and well-being of the technology industry and of communities that seek to encourage openness, tolerance, and inclusiveness. *Amici* therefore urge the Court to uphold the District Court's Order permanently enjoining enforcement of the Executive Order on a nationwide basis.

Dated: February 12, 2018

FENWICK & WEST LLP

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Attorneys for *Amici Curiae* Technology  
Companies

## ATTESTATION

All signatories have consented to the filing of this document.

Dated: February 12, 2018

FENWICK & WEST LLP

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**CERTIFICATE OF COMPLIANCE  
PURSUANT TO NINTH CIRCUIT RULE 29(a)(5) and  
FEDERAL RULE OF APPELLATE PROCEDURE 32(a)(7)**

I certify that pursuant to Ninth Circuit Rule 29(a)(5) and Federal Rule of Appellate Procedure 32(a)(7), the attached Brief of *Amici Curiae* Technology Companies is proportionately spaced, has a typeface of 14 points, and contains 4,432 words including footnotes.

Dated: February 12, 2018

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## CERTIFICATE OF SERVICE

I hereby certify that on this 12<sup>th</sup> day of February 2018, I filed the foregoing Brief of Technology Companies as *Amici Curiae* in Support of Appellees via the CM/ECF system and served the foregoing via the CM/ECF system on all counsel who are registered CM/ECF users.

Dated: February 12, 2018

FENWICK & WEST LLP

By: /s/ Kathryn J. Fritz

Kathryn J. Fritz (CSB No. 148200)  
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**APPENDIX A**

**LIST OF *AMICI CURIAE***

1. Airbnb, Inc.
2. AltSchool
3. Ampush Media, Inc.
4. AppNexus Inc.
5. Asana, Inc. \*
6. Atlassian Corp. Plc \*
7. Azavea Inc.
8. Brandwatch LLC
9. Braze (formerly Appboy)
10. CareZone Inc.
11. Castlight Health
12. Checkr, Inc.
13. Chegg, Inc.
14. Cloudera, Inc.
15. Color Genomics, Inc.
16. CREDO Mobile, Inc.
17. EquityZen Inc.
18. Eventbrite, Inc.
19. Expa
20. GitHub, Inc.
21. IDEO

22. Indiegogo, Inc. \*
23. Knotel
24. Life On Air, Inc. (Houseparty)
25. Linden Research, Inc. d/b/a Linden Lab
26. Lytro, Inc.
27. Mapbox, Inc.
28. Marin Software Incorporated
29. Minted, LLC
30. MongoDB, Inc.
31. Motivate International Inc.
32. MPOWERD Inc.
33. NIO U.S.
34. Paradigm Strategy Inc.
35. Patreon, Inc.
36. PayPal Holdings, Inc. \*
37. Postmates Inc.
38. Quantcast Corp.
39. Redfin Corporation
40. Square Panda Inc.
41. SugarCRM
42. Swee10, Inc. d/b/a Sweeten
43. SurveyMonkey Inc.
44. Textio Inc.

45. Turo Inc.
46. Upwork Inc.
47. Work & Co
48. Zendesk, Inc. \*
49. ZenPayroll, Inc. d/b/a Gusto

\*Denotes *amici* represented by Robert M. Lieber of Lieber Lawyers LLP, rather than Fenwick & West LLP.

## APPENDIX B

### CORPORATE DISCLOSURES FOR *AMICI CURIAE*

1. Airbnb, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.
2. AltSchool has no parent corporation and no publicly held corporation owns 10% or more of its stock.
3. Ampush Media, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.
4. AppNexus Inc. has no parent corporation and the following publicly held corporations own 10% or more of its stock: Microsoft Corporation and WPP Luxembourg Gamma Three S.à r.l.
5. Asana, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.
6. Atlassian Corp. Plc has no parent corporation and no publicly held corporation owns 10% or more of its stock.
7. Azavea Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.
8. Brandwatch LLC is a subsidiary of Runtime Collective Limited (d/b/a Brandwatch) and no publicly held corporation owns 10% or more of its stock.
9. Braze (formerly Appboy) has no parent corporation and no publicly

held corporation owns 10% or more of its stock.

10. CareZone Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

11. Castlight Health has no parent corporation and no publicly held corporation owns 10% or more of its stock.

12. Checkr, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

13. Chegg, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

14. Cloudera, Inc. has no parent corporation and the following publicly held corporations own 10% or more of its stock: BlackRock, Inc. and Intel Corporation.

15. Color Genomics, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

16. CREDO Mobile, Inc. is a subsidiary of Working Assets, Inc. No publicly held corporation owns 10% or more of its stock.

17. EquityZen Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

18. Eventbrite, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

19. Expa has no parent corporation and no publicly held corporation owns 10% or more of its stock.

20. GitHub, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

21. IDEO is a majority-owned subsidiary of KYU Investments, Inc. Hakuhodo DY Holdings Inc., a publicly traded company, owns 10% or more of the stock in KYU Investments, Inc.

22. Indiegogo, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

23. Knotel has no parent corporation and no publicly held corporation owns 10% or more of its stock.

24. Life On Air, Inc. (Houseparty) has no parent corporation and no publicly held corporation owns 10% or more of its stock.

25. Linden Research, Inc. d/b/a Linden Lab has no parent corporation and no publicly held corporation owns 10% or more of its stock.

26. Lytro, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

27. Mapbox, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

28. Marin Software Incorporated has no parent corporation and no publicly held corporation owns 10% or more of its stock.
29. Minted, LLC is a wholly-owned subsidiary of Minted, Inc. and no publicly held corporation owns 10% or more of its stock.
30. MongoDB, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.
31. Motivate International Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.
32. MPOWERD Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.
33. NIO U.S. is a wholly-owned subsidiary of NIO Limited, a Hong Kong company, which is a wholly-owned subsidiary of NIO Inc., a Cayman company. No publicly held corporation owns 10% or more of its stock.
34. Paradigm Strategy Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.
35. Patreon, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.
36. PayPal Holdings, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

37. Postmates Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

38. Quantcast Corp. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

39. Redfin Corporation has no parent corporation and no publicly held corporation owns 10% or more of its stock.

40. Square Panda Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

41. SugarCRM has no parent corporation and no publicly held corporation owns 10% or more of its stock.

42. SurveyMonkey Inc. is a subsidiary of SVMK Inc. and no publicly held corporation owns 10% or more of its stock.

43. Swee10, Inc. d/b/a Sweeten has no parent corporation and no publicly held corporation owns 10% or more of its stock.

44. Textio, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

45. Turo Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

46. Upwork Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

47. Work & Co has no parent corporation and no publicly held corporation owns 10% or more of its stock.

48. Zendesk, Inc. has no parent corporation and the following publicly held corporation owns 10% or more of its stock: BlackRock, Inc.

49. ZenPayroll, Inc. d/b/a Gusto has no parent corporation and no publicly held corporation owns 10% or more of its stock.