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

16 CITY AND COUNTY OF SAN  
FRANCISCO,

17 Plaintiff,

18 v.

19 DONALD J. TRUMP, President of the United  
20 States, UNITED STATES OF AMERICA,  
JOHN F. KELLY, Secretary of United States  
21 Department of Homeland Security,  
JEFFERSON B. SESSIONS, Attorney  
22 General of the United States, DOES 1-100,

23 Defendants.

Case No. 3:17-cv-00485-WHO

**MOTION OF NONPROFIT ASSOCIATIONS  
FOR LEAVE TO FILE BRIEF AS AMICI  
CURIAE IN SUPPORT OF PLAINTIFF'S  
MOTION FOR PRELIMINARY INJUNCTION**

Date: April 14, 2017  
Time: 2:00 p.m.  
Dept. Courtroom 2  
Judge: Hon. William H. Orrick

Date Filed: January 31, 2017

Trial Date: Not Yet Set

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT pursuant to the Court's Order on March 21, 2017 (Dkt. 31),  
3 the nonprofit associations listed below (collectively "*amici*"), respectfully move the Court for leave  
4 to file the accompanying brief of *amici curiae*. The brief supports Plaintiff's Motion for Preliminary  
5 Injunction. The proposed brief is appended as Exhibit 1 to this motion.

6 **I. LEGAL STANDARD**

7 District courts have discretion to permit third parties to participate in an action as *amici curiae*,  
8 and such discretion is generally exercised liberally, as "[t]here are no strict prerequisites that must be  
9 established prior to qualifying for amicus status." *Woodfin Suite Hotels, LLC v. City of Emeryville*, No.  
10 C 06-1254 SBA, 2007 WL 81911, at \*3 (N.D. Cal. Jan. 9, 2007) (quoting *In re Roxford Foods Litig.*, 790  
11 F. Supp. 987, 997 (E.D. Cal. 1991)). A third party must merely "make a showing that [its] participation  
12 is useful or otherwise desirable to the court." *Id.* The Court set out specific guidelines for parties  
13 seeking leave to file an *amicus* brief in this case, which include setting forth a description of the  
14 movants' interests, and the reasons why an *amicus* brief is desirable and relevant to the disposition of the  
15 issues. (Dkt. 31.) The nonprofit associations filing this motion offer a unique and important perspective  
16 on the issues before the Court, and for the reasons stated below, request leave to file a brief as *amici*  
17 *curiae*.

18 **II. IDENTITY OF PROPOSED AMICI AND STATEMENT OF INTEREST**

19 Proposed *amici* are associations of community-based nonprofit organizations in the health  
20 and human services sector. Members of the *amici* associations provide a range of services including  
21 homelessness intervention, nutrition support, emergency assistance, senior services, medical care,  
22 mental health care, support for survivors of domestic violence, and support for at-risk youth. *Amici*  
23 and their members rely on federal funds passed through to them by local governments, local  
24 government funding, and private funding, all of which is placed in jeopardy by the Executive Order  
25 at issue in this case. Proposed *amici* submit this motion and accompanying brief to emphasize the  
26 severe and harmful impact of the Executive Order on their member organizations, their members'  
27 programs, and the communities their members serve.

28

1 Proposed *amici* include the following associations of nonprofit organizations:

2 API Council of San Francisco

3 California Association of Nonprofits

4 Coalition of Agencies Serving the Elderly

5 Council of Community Housing Organizations

6 HIV/AIDS Provider Network

7 Homeless Emergency Service Providers Association

8 Long Term Care Coordinating Council

9 San Francisco Human Services Network

10 San Francisco Interfaith Council

11 San Francisco Latino Parity and Equity Coalition

12 San Francisco Mental Health Contractors Association

13 Silicon Valley Council of Nonprofits; and

14 Supportive Housing Providers Network.

15 Descriptions of proposed *amici* are attached hereto as Appendix A.

16 **III. AMICI’S BRIEF IS DESIRABLE AND RELEVANT TO THE DISPOSITION OF THE ISSUES BEFORE**  
17 **THE COURT.**

18 On January 25, 2017, the President of the United States signed an Executive Order that  
19 empowers the federal government to withhold federal funds from jurisdictions deemed “sanctuary”  
20 jurisdictions. Exec. Order 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017) (the “Executive Order”). The  
21 Executive Order has created a cloud of financial uncertainty so overwhelming that it has impaired  
22 local governments’ and proposed *amici*’s ability to budget. Plaintiff City and County of San  
23 Francisco filed a motion for a nationwide preliminary injunction on March 8, 2017, seeking to  
24 prohibit Defendants from enforcing Section 9(a) of the Executive Order and 8 U.S.C. Section 1373,  
25 and in the alternative, from “taking any action under the Executive Order to declare San Francisco a  
26 ‘sanctuary jurisdiction’ that is ineligible for federal funds.” (Dkt. 21 at 1.) Proposed *amici* share an  
27 interest with the Plaintiff in ensuring continued and consistent availability of public funds to provide  
28 essential health and human services.

1 The brief of proposed *amici* is desirable because it will assist the Court by providing  
2 important information about the harmful impact of the Executive Order on nonprofit organizations  
3 and their clients. The Executive Order threatens both nonprofits and the communities they serve.  
4 Nonprofits rely on federal funds passed through to them by San Francisco and other local  
5 governments. That funding is now in jeopardy, and nonprofits now face the untenable situation of  
6 having to cut vital services just when the demand for those services will be on the rise. This is not  
7 harmful only to the nonprofit organizations themselves, but also to those in the community who  
8 depend on the services the nonprofits provide, and who are at risk of losing life-sustaining and life-  
9 saving services. The brief of proposed *amici* addresses the current harms that nonprofits are  
10 experiencing and the immediate steps they are taking to cope with the uncertainty and chaos  
11 surrounding the availability of funds due to the Executive Order.

12 Proposed *amici* also provide unique and critical insight into the effects of the Executive  
13 Order on the community, including the fear of accessing services it has already caused among many  
14 in the immigrant community. The brief of proposed *amici* provides the Court with specific examples  
15 of the Executive Order's effect on underserved members of the community, such as the immigrant,  
16 elderly, and homeless populations. Proposed *amici*'s member organizations are the sole source of  
17 protection and hope for many of their constituents, and are deeply concerned about their ability to  
18 provide life-saving and essential services to the most vulnerable members of the community in light  
19 of the Executive Order. The effects of the Executive Order on the community are relevant to the  
20 disposition of the Motion for Preliminary Injunction, and proposed *amici*, as associations of  
21 nonprofit organizations that have direct contact every day with the most vulnerable members of our  
22 society, are well-positioned to provide a unique perspective to this Court.

#### 23 **IV. CONCLUSION**

24 Proposed *amici* have a concrete interest in the outcome of this case. Their brief presents the  
25 important perspective of nonprofit organizations that work with underserved members of the  
26 community directly affected by the Executive Order. This perspective is both desirable and relevant

27 ///

28 ///

1 to the disposition of the issues before the Court. For these reasons, proposed *amici* respectfully  
2 request that the Court grant their Motion for Leave to File a Brief as *Amici Curiae* in Support of  
3 Plaintiff City and County of San Francisco’s Motion for Preliminary Injunction.

4 Dated: March 29, 2017

COOLEY LLP &  
LAW FOUNDATION OF SILICON VALLEY

5  
6  
7 */s/ Maureen P. Alger*

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21 JOHN F. KELLY, Secretary of United States  
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22 JEFFERSON B. SESSIONS, Attorney  
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23 Defendants.  
24

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**BRIEF OF NONPROFIT ASSOCIATIONS AS  
25 AMICI CURIAE IN SUPPORT OF  
26 PLAINTIFF'S MOTION FOR PRELIMINARY  
27 INJUNCTION**

Date: April 14, 2017  
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Dept. Courtroom 2  
Judge: Hon. William H. Orrick

Date Filed: January 31, 2017

Trial Date: Not Yet Set

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Page**

- I. SUMMARY OF ARGUMENT & INTEREST OF *AMICI CURIAE*..... 1
- II. ARGUMENT..... 2
  - A. LEGAL CONTEXT ..... 2
  - B. THE EXECUTIVE ORDER CAUSES IRREPARABLE HARM TO  
NONPROFIT ORGANIZATIONS AND THOSE THEY SERVE BECAUSE  
OF THE SUBSTANTIAL BUDGETARY UNCERTAINTY IT CREATES..... 2
    - 1. NONPROFITS RELY ON FEDERAL AND LOCAL FUNDING  
THAT IS NOW IN JEOPARDY ..... 3
    - 2. NONPROFITS ARE CONSIDERING CUTTING SERVICES DUE  
TO THE SEVERE BUDGET UNCERTAINTY CAUSED BY THE  
EXECUTIVE ORDER..... 5
    - 3. NONPROFITS WILL FACE MORE DEMAND FOR THEIR  
SERVICES AND FOR NEW SERVICES AS GOVERNMENT  
SERVICES ARE CUT..... 7
  - C. THE EXECUTIVE ORDER CAUSES FEAR IN THE COMMUNITY  
ABOUT ACCESSING PUBLIC SERVICES, WHICH HARMS THE  
PUBLIC INTEREST ..... 8
- III. CONCLUSION..... 12

**TABLE OF AUTHORITIES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
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14  
15  
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**Page**

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Nos. 94-7569 MRP, 1998 WL 141325 (C.D. Cal. Mar. 13, 1998).....9

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**TABLE OF AUTHORITIES**  
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1  
2  
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5  
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7  
8  
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10  
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**Page**

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PHILANTHROPY (Jan. 4, 2017).....7

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1 **I. SUMMARY OF ARGUMENT & INTEREST OF *AMICI CURIAE***

2 On January 25, 2017, the President of the United States signed an Executive Order that  
3 empowers the federal government to withhold federal funds from jurisdictions that are deemed  
4 “sanctuary” jurisdictions. Exec. Order 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017) (the “Executive  
5 Order”).<sup>1</sup> The uncertainty created by the Executive Order causes real and imminent harm to  
6 nonprofits serving the communities the Order may affect, and to the communities. *Amici* are  
7 associations of community-based nonprofit organizations in the health and human services sector  
8 that are uniquely situated to articulate the Executive Order’s harm to nonprofit organizations and the  
9 community.<sup>2</sup>

10 The Executive Order is causing extreme financial uncertainty for *amici*’s members and other  
11 nonprofit organizations. Many nonprofits depend on federal funding that states, counties, and  
12 municipalities receive and pass through to them to provide services. With that funding in question,  
13 nonprofits have to alter their budget planning processes and spend time and resources on  
14 contingency planning. Organizations face the prospect of cutting vital services, at the very time that  
15 demand for services will be increasing due to cuts to county and municipal services. Nonprofits are  
16 not only feeling the effects of the Executive Order on their own planning and programming, but also  
17 seeing negative effects on the vulnerable community members they serve, who are expressing fear  
18 and anxiety about accessing both government and nonprofit services. The community at large  
19 suffers irreparable harm when some members of the community cannot access important health and  
20 safety resources. The immediate harms to both the nonprofits and the communities they serve

21 \_\_\_\_\_  
22 <sup>1</sup> The Executive Order does not clearly define what a “sanctuary” jurisdiction is, so communities are  
23 left to guess whether their jurisdictions will be designated as such (although at a minimum, the Order  
24 applies to jurisdictions that do not comply with 8 U.S.C. § 1373, which requires local jurisdictions to  
25 detain individuals beyond their incarceration periods for immigration enforcement).

26 <sup>2</sup> *Amici curiae* include thirteen nonprofit associations: API Council of San Francisco, California  
27 Association of Nonprofits, Coalition of Agencies Serving the Elderly, Council of Community  
28 Housing Organizations, HIV/AIDS Provider Network, Homeless Emergency Service Providers  
Association, Long Term Care Coordinating Council, San Francisco Human Services Network, San  
Francisco Interfaith Council, San Francisco Latino Parity and Equity Coalition, San Francisco  
Mental Health Contractors Association, Silicon Valley Council of Nonprofits, and Supportive  
Housing Providers Network. The San Francisco *amici* associations include as members a substantial  
number of the nearly 300 nonprofits that contract with the City to provide services. Descriptions of  
*amici* are provided in Appendix A.

1 warrant a nationwide preliminary injunction, to prevent further harm to the public interest while the  
 2 legality of the Executive Order is adjudicated.

3 **II. ARGUMENT**

4 **A. Legal Context**

5 To secure a preliminary injunction, a plaintiff must establish that (1) it “is likely to succeed  
 6 on the merits;” (2) it “is likely to suffer irreparable harm in the absence of preliminary relief;”  
 7 (3) “the balance of equities tips in [its] favor;” and (4) “an injunction is in the public interest.”  
 8 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). *Amici* present information on the  
 9 nature of the irreparable harms at issue and the reasons an injunction serves the public interest.

10 Nonprofits are already suffering irreparable harm due to extreme financial uncertainty caused  
 11 by expected loss of multiple funding streams. And the community members they serve are afraid to  
 12 access services and afraid of losing essential services upon which they rely. Uncertainty, itself, can  
 13 constitute irreparable harm. *See Angotti v. Rexam, Inc.*, No. C 05-5264 CW, 2006 WL 1646135, at  
 14 \*3, \*15-16 (N.D. Cal. June 14, 2006) (granting injunction where retirees faced “the irreparable harm  
 15 of anxiety” after benefits were threatened, when they believed they would receive certain lifetime  
 16 benefits and therefore did not budget for supplemental expenses); *see also California Ass’n of*  
 17 *Health Care Facilities v. Dep’t of Health Servs.*, No. Civ. S-90-1086 RAR GGH, 1990 WL 282598,  
 18 at \*1 (E.D. Cal. Oct. 1, 1990) (finding that “inadequate and untimely assurances about the levels of  
 19 [federal] payment currently in effect” created a “possibility” that health facilities providing services  
 20 to Medicaid beneficiaries “will suffer immediate and irreparable harm”). Neither nonprofits nor  
 21 community members should be subjected to such harms while waiting for the court to resolve legal  
 22 challenges to the Executive Order. *See Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2342  
 23 (2014) (“[W]here threatened action by government is concerned,” a plaintiff need not “expose  
 24 himself to liability before bringing suit to challenge the basis for the threat.” (citation omitted)).

25 **B. The Executive Order Causes Irreparable Harm to Nonprofit Organizations and**  
 26 **Those They Serve Because of the Substantial Budgetary Uncertainty It Creates.**

27 Nonprofit organizations in the health and human services sector provide crucial services to  
 28 the most vulnerable members of the community, distinct from those services provided by the

1 government. Nonprofits are often located in the communities they serve, hire people who live in  
 2 those communities, and enjoy a special level of trust. Their employees often have particular  
 3 expertise (such as language ability) and cultural understanding that aids their ability to develop  
 4 strong relationships with community members. *See, e.g.,* San Francisco Human Services Network,  
 5 *A Comprehensive Profile of San Francisco's Nonprofit Human Service Providers*, SAN FRANCISCO  
 6 URBAN INST. 10-11 (2002), [http://www.sfhsn.org/downloads/documents/survey/hsn\\_iss\\_sur\\_report\\_](http://www.sfhsn.org/downloads/documents/survey/hsn_iss_sur_report_04-18-02.pdf)  
 7 [04-18-02.pdf](http://www.sfhsn.org/downloads/documents/survey/hsn_iss_sur_report_04-18-02.pdf). As a result, nonprofits across the country play a critical role in their communities, and  
 8 provide an essential safety net for many who do not otherwise have access to vital services.

9 Many nonprofits rely on government funding to support their life-saving and life-sustaining  
 10 services. They are concerned that, as a result of the Executive Order, federal funding passed through  
 11 county and municipal governments will disappear<sup>3</sup>; that direct county and municipal funding will  
 12 need to be reallocated to other areas to cover the shortfall from the loss of federal funding; and that  
 13 their ability to raise funds from private sources (many of which match government funding sources)  
 14 will also be reduced.<sup>4</sup> As a result of this severe budgetary uncertainty, nonprofit organizations are  
 15 now developing contingency plans and considering cutting services that are desperately needed in  
 16 the communities they serve, right when those services are needed most.

17 **1. Nonprofits rely on federal and local funding that is now in jeopardy.**

18 Most nonprofits are funded with a blend of government, foundation, and other private  
 19 funding streams, with about a third of total revenue coming from government contracts. *Toward*  
 20 *Common Sense Contracting*, NAT'L COUNCIL OF NONPROFITS, 5 (2014),  
 21 [https://www.councilofnonprofits.org/sites/default/files/documents/toward-common-sense-](https://www.councilofnonprofits.org/sites/default/files/documents/toward-common-sense-contracting-what-taxpayers-deserve.pdf)  
 22 [contracting-what-taxpayers-deserve.pdf](https://www.councilofnonprofits.org/sites/default/files/documents/toward-common-sense-contracting-what-taxpayers-deserve.pdf). Those government sources may be federal, state, or local  
 23 governments, or a combination thereof. *2015 State of the Nonprofit Sector Survey*, NONPROFIT  
 24

25 <sup>3</sup> The government argues that the Executive Order threatens “federal grants” only, not *all* federal  
 26 funding. (Dkt. 35 at 8.) However, because “federal grants” is undefined and vague in the context of  
 27 the Order, nonprofits must make difficult decisions about downsizing programs, services, and staff.

28 <sup>4</sup> Counsel for *amici* have interviewed and received information from the associations of nonprofit  
 organizations that are filing this brief. Information throughout the brief that relates to the  
 associations and their members was obtained through these interviews and requests for information.

1 FINANCE FUND, 12 (May 2015), [http://www.nonprofitfinancefund.org/sites/default/files/docs/2015/2015survey\\_natl\\_full\\_results.pdf](http://www.nonprofitfinancefund.org/sites/default/files/docs/2015/2015survey_natl_full_results.pdf). Federal funding is often provided to  
2 counties or other local governments for particular purposes, and then “passed through” to nonprofits  
3 to actually provide the services. The City and County of San Francisco (“San Francisco” or the  
4 “City”) paid \$654.3 million to nonprofits in the 2015-2016 fiscal year, including federal pass-  
5 through dollars and direct City funding. City and County of San Francisco, Office of the Controller,  
6 SFOpenBook, <http://openbook.sfgov.org/> (last visited Mar. 21, 2017) (report for vendor payments to  
7 nonprofits in fiscal year 2015-16). The contracts with nonprofits vary in size, with some over \$20  
8 million, and cover social services, behavioral health services, housing programs, and more. *See id.*

9  
10 The interrelation of nonprofit and government budgets means that a determination that a  
11 state, county, or city is a “sanctuary” jurisdiction (and will therefore lose federal funding pursuant to  
12 the Executive Order) will be devastating for the many nonprofits that rely on funding from those  
13 jurisdictions. Nonprofits will lose federal funding for their programs that is passed through those  
14 jurisdictions. Then, “sanctuary” jurisdictions will necessarily need to reallocate money to cover  
15 essential services, likely resulting in additional cuts to nonprofit funding streams from those  
16 jurisdictions’ general funds. To the extent that many nonprofits are funded by other cities or  
17 counties that may also be designated “sanctuary” jurisdictions, the Executive Order places even  
18 larger portions of their budgets at risk.

19 The San Francisco nonprofit community will feel these losses acutely. The City formulated  
20 its 2016-2017 budget based on the expectation that it would receive \$1.2 billion in federal funds.  
21 City of San Francisco, Office of the Controller, *FY 2016-17 Six-Month Budget Status Report*, at 6,  
22 [http://sfcontroller.org/sites/default/files/Documents/Budget/FY%202016-17%206-](http://sfcontroller.org/sites/default/files/Documents/Budget/FY%202016-17%206-Month%20Report.pdf)  
23 [Month%20Report.pdf](http://sfcontroller.org/sites/default/files/Documents/Budget/FY%202016-17%206-Month%20Report.pdf). The vast majority of these funds support programs in San Francisco’s  
24 Human Services Agency and Department of Public Health. (Declaration of City and County of San  
25 Francisco Controller Ben Rosenfield, Dkt. 22, ¶ 10.) If the City loses access to federal funds, it will  
26 have to make “drastic service cuts.” (*Id.* ¶¶ 36-37.) Indeed, the financial uncertainty caused by the  
27 Executive Order is *already* forcing the City to consider reducing its general fund expenditures.  
28

1 (Declaration of Mayor’s Budget Director for the City and County of San Francisco Melissa  
2 Whitehouse, Dkt. 23, ¶¶ 10-11 (“Whitehouse Decl.”).)

3 If federal funding is cut, nonprofits will not be able to simply recoup the budgetary shortfall  
4 using contributions from private sources such as foundations. Foundation grants account for less  
5 than two percent of nonprofit revenue. *Toward Common Sense Contracting*, NAT’L COUNCIL OF  
6 NONPROFITS at 5. Moreover, foundations have their own missions and funding priorities, which may  
7 not coincide with filling the gaps created by government funding cuts. *Id.* at 6. Many nonprofits  
8 already rely on private funding, including but not limited to foundation grants, to supplement limited  
9 government funding for particular programs. *Id.* at 14. If government funding for particular  
10 programs is lost, the private funding for those programs may dry up as well, especially if the private  
11 component alone is not sufficient to keep the programs afloat.

12 The possibility of losing federal, county, municipal, and some private funding simultaneously  
13 in the near future is causing extreme budget uncertainty and harm to nonprofits immediately, as they  
14 scramble to ascertain the extent of the possible effect on their organizations, develop contingency  
15 plans, consider freezing hiring, and take other measures to plan for the likelihood of decreased  
16 funding. These stresses on already understaffed and under-resourced organizations impact their  
17 ability to fulfill their missions even before any cuts are made.

18 **2. Nonprofits are considering cutting services due to the severe budget**  
19 **uncertainty caused by the Executive Order.**

20 Uncertainty, itself, can harm nonprofit organizations and inhibit their ability to provide  
21 necessary programming. Most nonprofits already operate with tight budget constraints and strain to  
22 meet community needs. In fact, most nonprofits have no more than three months of operating funds  
23 in the bank. *Id.* at 5. Organizations in jurisdictions that may be deemed “sanctuary” jurisdictions  
24 now face severe budget uncertainty because of the scope of the funding threatened by the Executive  
25 Order. They must immediately curtail development of new programs and services and begin  
26 deciding how they will cut existing programs if the Order is implemented.

27 Even delayed funding can have a significant effect on nonprofits, given their tight budgets.  
28 When government funding is late (no less eliminated, as the Executive Order threatens), “many

1 nonprofits are forced to divert efforts away from their missions as they scramble to . . . pay their  
2 employees, rent and utilities, and other operating costs by raising funds from other sources such as  
3 private donations or bridge loans, or by taking extraordinary actions like curtailing operations and  
4 laying off employees.” *A Dozen Common Sense Solutions to Government-Nonprofit Contracting*  
5 *Problems*, NAT’L COUNCIL OF NONPROFITS (Dec. 5, 2013), [https://www.councilofnonprofits.org/](https://www.councilofnonprofits.org/sites/default/files/documents/white-paper-common-sense-solutions.pdf)  
6 [sites/default/files/documents/white-paper-common-sense-solutions.pdf](https://www.councilofnonprofits.org/sites/default/files/documents/white-paper-common-sense-solutions.pdf). The impact of the potential  
7 loss of federal funds can be likened to the impact of the economic downturn in late 2008 and early  
8 2009, when nonprofits likewise lost significant funding. A survey of nonprofits found that 57% had  
9 to reduce services, 45% enacted a salary freeze, 37% enacted a hiring freeze, and 30% made layoffs.  
10 Chuck McLean & Carol Brouwer, *The Effect of the Economy on the Nonprofit Sector: October*  
11 *2008–February 2009*, GUIDESTAR, 9 (2009),  
12 <https://www.guidestar.org/ViewCmsFile.aspx?ContentID=3909>.

13 Nonprofits are already feeling the effects of the financial uncertainty caused by the Executive  
14 Order. Organizations with a fiscal year ending on June 30 face the prospect of reducing staff and  
15 services in the near future due to the threat of San Francisco losing federal funding. For instance,  
16 GLIDE, an organization that provides batterers’ intervention programs, victims’ recovery programs,  
17 food security programs, and HIV and Hepatitis C prevention programs, has already created a task  
18 force to examine how the proposed cuts would affect its programs. That group concluded that  
19 several of GLIDE’s programs may have to close if the City loses federal funding. GLIDE’s food  
20 security programs are particularly vulnerable, as GLIDE receives significant resources from the  
21 federally-funded San Francisco Food Bank. As a result, if the federal government withholds federal  
22 funds from San Francisco, GLIDE’s efforts to combat hunger and the spread of infectious disease  
23 will be impaired.

24 Similarly, nonprofit mental health service providers will have to make drastic cuts if  
25 government funding is cut—including cutting programs and staff. One such organization, Citywide  
26 Case Management Programs, serves mentally ill adults on their release from hospitals and jails. If  
27 San Francisco’s federal funding is cut, Citywide will be forced to stop providing or drastically  
28 reduce services to these high-risk clients. Programs offered by Conard House, which provides

1 supportive housing and services to adults with mental health disabilities, will also be in jeopardy—  
2 both because of reduced government funding for its programs and because it relies on government  
3 funding to demonstrate to potential private donors the program’s long-term viability. Providers are  
4 concerned that programmatic cuts will result in more homeless people—especially those with mental  
5 illness—on the streets. Federal funding cuts also imperil programs providing HIV/AIDS prevention  
6 services—leading to an increase in health care costs and potential increase in HIV/AIDS  
7 transmission.

8 Operating under these concerns, nonprofits have already been forced to take time away from  
9 realizing their missions to create contingency plans due to the uncertainty caused by the Executive  
10 Order. Budgetary uncertainty itself is impairing the ability of these organizations to fulfill their  
11 missions to provide vital services to the neediest members of their communities.

12 **3. Nonprofits will face more demand for their services and for new services**  
13 **as government services are cut.**

14 At the same time that nonprofits are planning for possible service cuts due to the likelihood  
15 of lost funding, they are anticipating increased demand for these services. History has shown that  
16 when government funds are cut, the needs of the community increase. But if nonprofit organizations  
17 themselves lose funding, they will not be able to step in to fill those new gaps in services, and the  
18 most vulnerable members of their communities will be without the assistance they need.

19 These pressures and demands are not speculative. “[R]educing government budgets doesn’t  
20 lower the number of people in need of social services; it just adds more pressures on nonprofits to  
21 keep up with ever-growing demands.” Tim Delaney & David L. Thompson, *Nonprofits Need to*  
22 *Stand Together to Push for Smart Public Policies*, CHRON. OF PHILANTHROPY (Jan. 4, 2017),  
23 <https://www.philanthropy.com/article/Opinion-Nonprofits-Need-to/238802>. Government funding  
24 cuts result in more people who need nonprofit services, but less funding for the nonprofits to deliver  
25 those services. Emily Navarro, *Government Funding for Charities: When It Declines, the Charities*  
26 *Lose Twice*, CHARITY NAVIGATOR (May 1, 2005), [https://www.charitynavigator.org/index.cfm?bay](https://www.charitynavigator.org/index.cfm?bay=content.view&cpid=281)  
27 [=content.view&cpid=281](https://www.charitynavigator.org/index.cfm?bay=content.view&cpid=281). This increased demand is difficult, if not impossible, for nonprofits to  
28 meet without additional resources. When government nutrition programs are cut, “people still need



1 to eat, so they're running to the food banks, they're running to any nonprofit that distributes food or  
 2 resources. At the same time, the nonprofits have not increased their supply." John Brothers,  
 3 *Nonprofits Begin Coping with Government Shutdown*, NONPROFIT QUARTERLY (Oct. 2, 2013),  
 4 <https://nonprofitquarterly.org/2013/10/02/nonprofits-begin-coping-with-government-shutdown>.

5 If San Francisco loses federal funding, it would "likely be forced to cut social service safety  
 6 net programs such as senior meal programs, services for low-income children, violence prevention  
 7 services and programs for domestic violence survivors," among other programs for vulnerable  
 8 members of the community. (Whitehouse Decl. at ¶ 17.) San Francisco nonprofits will be unable to  
 9 meet the increased need generated by these cuts. GLIDE, for example, is already struggling to  
 10 figure out how it would meet the increased need if federal funding to San Francisco is cut.  
 11 Historically, GLIDE has struggled to cope with increased need when the City cannot provide  
 12 necessary services. In the recession of 2008-2010, despite increased need in the community, GLIDE  
 13 was forced to cap the number of hot meals it served to contain the rising food costs for the program.  
 14 If San Francisco loses federal funding and GLIDE loses its City-provided pass-through funds, it will  
 15 have to close some of the very programs that could have helped those turned away by the City.  
 16 Other organizations that provide vital services in these areas are concerned they, too, will be unable  
 17 to meet the increased need. These anticipated budgetary pressures, simultaneous with the threat of  
 18 the loss of major funding streams, are creating a precarious situation for nonprofits.

19 **C. The Executive Order Causes Fear in the Community About Accessing Public**  
 20 **Services, Which Harms the Public Interest.**

21 The fear the Executive Order has caused in the community endangers public health and  
 22 safety because it provides a disincentive for vulnerable community members to access programs and  
 23 services that contribute to individual and public health and well-being (such as medical and mental  
 24 health clinics, senior and child nutrition programs, education, services for those with disabilities, and  
 25 support for survivors of domestic violence or trauma). In light of the Executive Order, some  
 26 immigrants are afraid to seek services from governmental entities and even from nonprofit  
 27 organizations. This reluctance to access crucial services puts these individuals at risk and also  
 28 causes harm to the community at large. A preliminary injunction would prevent further harm while

1 the legality of the Executive Order is adjudicated and thus would be in the public interest.

2 Experience demonstrates that increased immigration enforcement causes anxiety in the  
3 immigrant community, leading in turn to reduction in utilization of healthcare programs and other  
4 vital services. For example, in 1994, California passed Proposition 187, which required some  
5 service providers, including medical professionals, to report individuals suspected of being  
6 undocumented. California Proposition 187 §§ 6-8 (1994) (found unconstitutional by a federal  
7 district court); *League of United Latin Am. Citizens v. Wilson*, Nos. 94-7569 MRP, 1998 WL  
8 141325, at \*1 (C.D. Cal. Mar. 13, 1998). Studies have found that Proposition 187 had at least a  
9 temporary deterrent effect on use of health care services, and that “lack of documentation—and the  
10 fear associated with it—is a powerful deterrent to people obtaining care they believe they need.”  
11 Marc L. Berk & Claudia L. Schur, *The Effect of Fear on Access to Care Among Undocumented*  
12 *Latino Immigrants*, 3 J. IMMIGR. HEALTH 151, 155 (2001). Community reaction to Arizona Senate  
13 Bill 1070 (2010) is also instructive. SB 1070 affirmatively allowed law enforcement to demand  
14 proof of immigration status. Ariz. Rev. Stat. Ann. § 11-1051 (2010). Researchers found that “the  
15 enactment of Arizona’s SB 1070 was associated with decreases in the utilization of public assistance  
16 and routine, preventive health care.” Russell B. Toomey et al., *Impact of Arizona’s SB 1070*  
17 *Immigration Law on Utilization of Health Care and Public Assistance Among Mexican-Origin*  
18 *Adolescent Mothers and Their Mother Figures*, 104 Am. J. Pub. Health S1, S31 (2014).

19 In the wake of the Executive Order, there is similar evidence of anxiety leading to  
20 immigrants declining to utilize public services. In a recent survey of twenty nonprofits serving  
21 immigrants around the country, seventeen reported “legally eligible families declining to enroll or  
22 even unenrolling from programs including SNAP, Medicaid, the Children’s Health Insurance  
23 Program, free school lunches, and the Women, Infants, and Children program.” Annie Lowrey,  
24 *Trump’s Anti-Immigrant Policies Are Scaring Eligible Families Away from the Safety Net*, THE  
25 ATLANTIC (Mar. 24, 2017), [https://www.theatlantic.com/business/archive/2017/03/trump-safety-net-](https://www.theatlantic.com/business/archive/2017/03/trump-safety-net-latino-families/520779/?utm_source=nl-atlantic-weekly-032417)  
26 [latino-families/520779/?utm\\_source=nl-atlantic-weekly-032417](https://www.theatlantic.com/business/archive/2017/03/trump-safety-net-latino-families/520779/?utm_source=nl-atlantic-weekly-032417). Members of the California  
27 Association of Nonprofits (a statewide membership organization for nonprofits across a range of  
28 sectors) likewise report that many nonprofit clients are declining to seek health care due to fear since

1 the election. One member organization actually shut down for a couple of months because so many  
2 of its clients were scared to be in public and to access services.

3 Mayor Ed Lee of San Francisco held a press conference in January 2017 to address anxiety in  
4 the community, affirming that San Francisco would “not allow its immigrant residents ‘to live in  
5 fear’” and would continue to observe the City’s sanctuary city policy. Emily Green and Kevin  
6 Fagan, *SF Mayor Lee Stands Up to Trump, Says City Remains a Sanctuary*, SAN FRANCISCO  
7 CHRONICLE (Jan. 25, 2017), [http://www.sfchronicle.com/bayarea/article/SF-Mayor-Lee-stands-up-](http://www.sfchronicle.com/bayarea/article/SF-Mayor-Lee-stands-up-to-Trump-says-city-10883956.php?t=044af31a8e&cmpid=premartcl)  
8 [to-Trump-says-city-10883956.php?t=044af31a8e&cmpid=premartcl](http://www.sfchronicle.com/bayarea/article/SF-Mayor-Lee-stands-up-to-Trump-says-city-10883956.php?t=044af31a8e&cmpid=premartcl). Despite these assurances,  
9 though, anxiety in immigrant communities in and around San Francisco remains high. Peter Walsh,  
10 a San Francisco Police Commander, notes that “SFPD is noticing a reluctance to talk to law  
11 enforcement and fear and confusion surrounding SFPD’s relationship with the United States  
12 Immigration and Customs Enforcement.” (Declaration of Peter Walsh, Dkt. 25, ¶ 8.)

13 Many of the *amici* organizations are receiving inquiries from immigrant clients about  
14 whether it is safe to access public services. The fear is not limited to those who are undocumented—  
15 queries are also coming from clients with valid immigration status. *Amicus* organization San  
16 Francisco Mental Health Contractors Association has received reports from its members that  
17 undocumented clients are avoiding seeking medical care, going to the emergency room, and  
18 contacting the police (even to report crimes) because of concerns of deportation. Likewise, a  
19 member organization of *amicus* Silicon Valley Council of Nonprofits that serves domestic violence  
20 survivors reports that more clients are avoiding law enforcement and court appearances. The  
21 problem is compounded because many immigrant families are “mixed status”—they include some  
22 family members who are documented (including U.S. citizens), and some who are not. Many  
23 documented members of mixed-status families fear disclosing any information about the household  
24 and accessing services, regardless of their own valid immigration status.

25 The anxiety in the community goes beyond fear of accessing government services. Many  
26 clients are not aware of which programs and services are run by governmental agencies and which  
27 are run by independent nonprofits. As a result, some clients have expressed anxiety about sharing  
28 personal information and accessing services even at nonprofit organizations. After receiving

1 multiple inquiries, one member organization felt compelled to post signs onsite to reassure clients  
2 that their organization does not report the legal status of clients to the government. The need to take  
3 such steps in light of the Executive Order adds to the burdens placed on nonprofits, discussed above.  
4 Efforts to inform the community about the safety of accessing public and nonprofit services cost  
5 time and money, taking away from activities more closely related to the nonprofits' missions.

6 When individuals are too scared of immigration consequences to seek essential services, the  
7 risks for individual and public safety increase. Indeed, low-income immigrants targeted by  
8 immigration enforcement measures are among the most vulnerable in the population. *See* Toomey at  
9 S30-S31. In many jurisdictions, policies not to ask individuals about immigration status have had  
10 the stated purpose of encouraging *victims* of crimes such as domestic violence to seek assistance—  
11 and they have been successful. Bill Ong Hing, *Immigration Sanctuary Policies: Constitutional and*  
12 *Representative of Good Policing and Good Public Policy*, 2 UC Irvine L. Rev. 247, 254-55 (2012).  
13 The community as a whole is safer when violent crimes are reported and the criminals apprehended.  
14 *See id.* at 304.

15 There are similar risks to individual and public health due to anxiety about accessing  
16 healthcare. Individuals may not seek preventive care, vital prescriptions, or care for acute conditions  
17 until they experience an emergency. Indeed, in Arizona, researchers found that some of the most  
18 vulnerable members of the community, adolescent mothers, were the most likely to refrain from  
19 seeking preventive care for themselves and their children as a result of SB 1070. Toomey at S30-  
20 S31. This finding is alarming because preventive care, including immunizations, is critical for  
21 public health. *Id.* at S32. Keeping up with preventive care also decreases emergency room visits,  
22 lowering health care costs for communities. *See, e.g.,* Barbara Starfield et al., *Contribution of*  
23 *Primary Care to Health Systems and Health*, 83(3) MILBANK QUARTERLY 457, 473 (2005).

24 This concern is exemplified by the experience of *amicus* HIV/AIDS Provider Network's  
25 members—many immigrant clients of its member organizations fled horrendous persecution in their  
26 home countries due to HIV+ status or sexual orientation. These clients are often reluctant to seek  
27 medical care for fear of being deported back to dangerous situations, and additional anxiety around  
28 being deported can lead to avoidance of treatment and prevention services. This avoidance poses

1 obvious risks not only to individual health but to public health. The health of the community as a  
 2 whole is at risk from the spread of disease when a significant portion of the community cannot  
 3 access either preventive services or treatment. *See* Kristen Underhill, *Paying for Prevention:  
 4 Challenges to Health Insurance Coverage for Biomedical HIV Prevention in the United States*, 38(4)  
 5 *Am. J. Law Med.* 607, 611-13 (2012).

6 In communities around the country like San Francisco that have significant immigrant  
 7 populations, the uncertainty caused by the Executive Order affects a large segment of the  
 8 community, and the community as a whole. Current levels of anxiety endanger the progress that the  
 9 community has made over time toward encouraging public health through access to health and  
 10 nutrition services. A preliminary injunction blocking the implementation of the Executive Order  
 11 will prevent irreparable harm to the *amici*'s member organizations, to the clients those organizations  
 12 serve, and to the community, and is in the public interest.

### 13 III. CONCLUSION

14 On behalf of their member organizations, their clients and the communities they serve, *amici*  
 15 *curiae* urge this Court to grant a nationwide preliminary injunction and prevent further harm and  
 16 damage to the public interest while the status of the Executive Order is adjudicated.

17 Dated: March 29, 2017

18 COOLEY LLP &  
 19 LAW FOUNDATION OF SILICON VALLEY

20 \_\_\_\_\_  
 21 /s/ Maureen P. Alger

22 MAUREEN P. ALGER  
 23 KYRA KAZANTZIS  
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Attorneys for *Amici Curiae*

# **APPENDIX A**

## APPENDIX A

**API Council of San Francisco** is a 40-member city-wide coalition that advocates for equitable policies and resources on behalf of Asian Pacific Islander communities. The Council has successfully advocated for significant increases in funding to sustain core services in the areas of housing, health, and human services. The Council also coordinates efforts to engage and build its constituency's base of power and civic engagement. A list of API Council's members can be found at <https://www.apicouncil.org/about-us/our-members/>.

**California Association of Nonprofits** (CalNonprofits) is a statewide association with more than 10,000 members that serves as the voice for California's nonprofit community. Its members include nonprofits of all sizes and missions, from churches to organizations that help children with disabilities, to symphonies, research centers, and animal shelters. CalNonprofits does research, provides educational programs, works to ensure a favorable economic and regulatory climate for nonprofits, and provides health insurance for 16,000 nonprofit employees.

**Coalition of Agencies Serving the Elderly** (CASE) is a professional organization of agencies committed to protecting and enhancing services to older adults and adults with disabilities in San Francisco. CASE collaborates with policymakers and government bodies to ensure effective public policies and adequate funding so that vulnerable senior and disabled residents continue to live safely and thrive. A list of CASE's members can be found at <http://sfseniors.org/membership>.

**Council of Community Housing Organizations** (CCHO) has been the voice of the affordable housing movement in San Francisco since 1978. CCHO fights for funding and policies that shape urban development and empower low-income and working-class communities. As a nonprofit coalition of 25 community- and faith-based housing developers and tenant advocates, CCHO crafts actionable public policy and supports resident leadership to create long-term change. A list of CCHO's members can be found at <http://www.sfccho.org/members/>.

**HIV/AIDS Provider Network** (HAPN) is a coalition of 27 community-based agencies that serve people living with or at risk of HIV/AIDS in San Francisco. HAPN advocates for funding for HIV care and prevention services, and works with the City to coordinate and expand the delivery of HIV services. The services provided by the organizations in the Network include primary medical care, mental health care, home-delivered meals, benefits counseling, and housing.

**Homeless Emergency Service Providers Association** (HESPA) represents the collective voice of 26 nonprofit organizations working to provide emergency homeless services, and advocates for policies that address the issue of homelessness in San Francisco. HESPA has developed proposals to ensure safe and dignified emergency services, secure funding to continue services from federal grants, prevent homelessness, and create exits out of homelessness.

**Long Term Care Coordinating Council** (LTCCC) is an advisory body to the Mayor's Office, comprised of 40 members representing community agencies, San Francisco city departments, and consumers. The LTCCC makes policy recommendations related to improving access to long

term care and supportive services for San Francisco residents through the coordination of care in community and institutional settings and among service sectors. More information and a list of members can be found at <http://www.ltccsf.org/>.

**San Francisco Human Services Network (HSN)** is an association of 80 community-based nonprofit agencies dedicated to addressing issues critical to the health and human services sector in San Francisco. HSN provides a unique contribution to the City by educating service providers, elected officials, policymakers, and the community on how policy decisions affect San Francisco's comprehensive array of social and health programs. A list of HSN's members can be found at [http://www.sfhsn.org/members\\_members.htm](http://www.sfhsn.org/members_members.htm).

**San Francisco Interfaith Council (SFIC)** serves as "convener" of the CEOs of fifteen major faith-based social service agencies to provide a forum to address issues of common concern. SFIC promotes the agencies' collective impact and advocates on their behalf to increase the visibility of the economic challenges faced by nonprofits and their clients. A list of participating agencies can be found at <http://www.sfinterfaithcouncil.org/social-service-agencies>.

**San Francisco Latino Parity and Equity Coalition (SFLPEC)** is a broad-based, citywide coalition working to ensure that Latinos/as who live or work in San Francisco are being justly represented and provided with the resources they need to reach their full potential. The coalition was established to ensure the city's budget promotes investments that empower Latino/a communities, and reduces inequities for San Francisco's Latino/a residents. SFLPEC also enhances and strengthens social services in the midst of the region's affordable housing crisis.

**San Francisco Mental Health Contractors Association** includes more than a dozen nonprofits that together provide over 60% of the outpatient mental health services for San Francisco's children, families, transitional aged youth, adults, and seniors. These services are critical to the prevention of psychiatric hospitalizations, incarcerations, and family dissolution.

**Silicon Valley Council of Nonprofits (SVCN)** brings together nonprofits in Santa Clara County to help maximize their influence and contributions. The Council works with a network of 200 member health and human service agencies that provide a wide array of services to the community, including domestic violence intervention, support for at-risk youth, emergency assistance, food access, senior nutrition and wellness, early childhood and family strengthening services, housing, homeless intervention, and health care services throughout the county. A list of SVCN's members can be found at <http://www.svcn.org/current-members>.

**Supportive Housing Providers Network (SHPN)** is a network of direct service providers, resident leaders, and property managers that seeks to inform, enhance, and respond to policy, systems, and funding issues directly impacting permanent supportive housing in San Francisco. SHPN collaborates with San Francisco's Department of Homelessness & Supportive Housing, Human Services Agency, Department of Public Health, Mayor's Office of Housing and other funders to enrich the quantity, quality, and sustainability of supportive housing across San Francisco.



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11 Attorneys for *Amici Curiae*

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

16 CITY AND COUNTY OF SAN  
FRANCISCO,

17 Plaintiff,

18 v.

19 DONALD J. TRUMP, President of the United  
20 States, UNITED STATES OF AMERICA,  
JOHN F. KELLY, Secretary of United States  
21 Department of Homeland Security,  
JEFFERSON B. SESSIONS, Attorney  
22 General of the United States, DOES 1-100,

23 Defendants.

Case No. 3:17-cv-00485-WHO

**[PROPOSED] ORDER GRANTING  
NONPROFIT ASSOCIATIONS' MOTION  
FOR LEAVE TO FILE BRIEF AS *AMICI  
CURIAE***

Date: April 14, 2017  
Time: 2:00 p.m.  
Dept. Courtroom 2  
Judge: Hon. William H. Orrick

Date Filed: January 31, 2017

Trial Date: Not Yet Set

1 The Court, having read and considered Nonprofit Associations’ Motion for Leave to File  
2 Brief as *Amici Curiae*, finds that *amici*’s participation in the above-captioned matter (**IS /IS NOT**)  
3 relevant and desirable to the Court’s disposition of the issues.

4 Accordingly, the Court hereby (**GRANTS / DENIES**) *amici* Nonprofit Associations’ Motion  
5 for Leave to File Brief as *Amici Curiae*.

6

7 **IT IS SO ORDERED.**

8

9 Dated:

\_\_\_\_\_  
HONORABLE WILLIAM H. ORRICK  
UNITED STATES DISTRICT JUDGE

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