



DATE: May 15, 2018

CATEGORY: Consent

DEPT.: City Attorney's Office

TITLE: **Authorization to Participate as
Amicus Curiae in Federal Litigation
Challenging State Immigration
Enforcement Laws**

RECOMMENDATION

Authorize the City's participation in an *amicus curiae* brief to be filed in support of the State of California in a lawsuit filed by the United States government challenging State laws regarding immigration enforcement.

BACKGROUND

As a response to the Federal Administration's immigration policy, in 2017, the California Legislature passed three laws related to enforcement of immigration laws: AB 450, the Immigrant Worker Protection Act; AB 103, a detention statute that was part of an omnibus bill; and SB 54, the California Values Act. AB 103 expands State oversight of California's local detention facilities when people are held under contracts with United States Immigration and Customs Enforcement (ICE), including interviewing detainees to see if they were given due process and properly detained. AB 450 requires employers to seek a judicial warrant or subpoena from ICE before they allow ICE agents to enter a nonpublic part of a workplace or access employee records. SB 54 restricts how local law enforcement interacts with Federal immigration authorities. Specifically, State and local law enforcement are prohibited in a number of ways from facilitating the enforcement of Federal immigration law, including by inquiring into someone's immigration status or jailing an individual past their release date based on an ICE detainer request.

On March 6, 2018, the United States Department of Justice (DOJ) filed a legal action against the State of California seeking both declaratory and injunctive relief based upon the enactment and implementation of certain provisions of AB 450, AB 103, and SB 45. (*THE UNITED STATES OF AMERICA v. THE STATE OF CALIFORNIA, EDMUND GERALD BROWN JR., Governor of California, in his official capacity; and XAVIER BECERRA, Attorney General of California, in his official capacity*, U.S. District Court, Eastern District of California, Case No. 18-264). The lawsuit claims the State laws

violate the Supremacy Clause by obstructing the Federal government's ability to enforce immigration laws and by discriminating against the Federal government. The DOJ asserts these three laws "have the purpose and effect of making it more difficult for Federal immigration officers to carry out their responsibilities in California." At this stage, the DOJ is seeking a preliminary injunction to block the State from fully enforcing the laws until the case is resolved. This litigation is likely to be ongoing for some time, perhaps years. The case will likely be appealed to the 9th U.S. Circuit Court of Appeals and possibly the U.S. Supreme Court. The State is opposing the request for a preliminary injunction, arguing that these three laws are a valid constitutional exercise of local police power necessary to protect its undocumented residents.

ANALYSIS

The City of Oakland and the Counties of Los Angeles and Santa Clara are filing an *amicus curiae* brief on behalf of cities and counties who have taken steps to improve public health and safety in their communities by encouraging immigrant communities to interact with local government employees. The purpose of the brief is to express support of the State legislation. The intent of these friend-of-the-court briefs is to advise the court of the impact the court's decision will have on cities and counties. These briefs supplement the briefs of the parties, and there is no cost to join an *amicus* brief.

One of the main points the *amicus* brief makes is reaffirming policy reasons for allowing local governments to have discretion to develop policies that respond to the specific law enforcement/public safety needs of their communities, including limiting detainer compliance and other ICE interactions. Additionally, the brief explains the social consequences of reversal of the California laws, including consequences to health access and child welfare, and importance of preserving local governments' ability to carry out their safety net function. A number of jurisdictions have signed onto the *amicus* brief including the cities of Davis, Sacramento, and West Hollywood, and the Counties of Alameda, Sonoma, and Santa Cruz. Several other jurisdictions are taking the item to their boards or councils in the coming week and anticipate receiving approval, including the cities of San Jose and San Diego and the County of Marin.

The City previously signed on to participate in the *amicus* brief filed in *County of Santa Clara v. Donald J. Trump*, U.S. District Court, Northern District of California, Case No. 3:17-cv-00574-WHO, in which the County is seeking a nationwide injunction against President Trump's Executive Order threatening to withhold funds from sanctuary jurisdictions. In light of the City's participation in this brief, as well as the Mountain View Police Department's General Order and the City's participation in a countywide

policy regarding immigration violation enforcement with similar intent, staff is presenting this request to the City Council to participate in the *amicus* brief that is being filed on behalf of cities and counties in this case.

FISCAL IMPACT – There is no cost to participate in the *amicus* brief.

ALTERNATIVES

1. Do not authorize the City's participation in the *amicus curiae* brief in the pending litigation.
2. Provide other direction.

PUBLIC NOTICING – Agenda posting.

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