

1 Megan D. Lin, SBN # 298267
2 Laura K. Clinton, WSBA #29846
3 Colleen M. Melody, WSBA #42275
4 Kristin Beneski, WSBA #45478
5 Assistant Attorneys General
6 Office of the Attorney General
7 800 Fifth Avenue, Suite 2000
8 Seattle, WA 98104
9 (206) 464-5342

10 *Attorneys for Amicus Curiae State of Washington*

The Honorable Jon S. Tigar

11
12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 East Bay Sanctuary Covenant; Al Otro
15 Lado; Innovation Law Lab; and Central
16 American Resource Center in Los
17 Angeles,

18 *Plaintiffs,*

19 v.

20 Donald J. Trump, President of the United
21 States, in his official capacity; Matthew
22 G. Whitaker, Acting *Attorney General*, in
23 his official capacity; U.S. Department of
24 Justice; James McHenry, Director of the
25 Executive Office for Immigration
26 Review, in his official capacity; the
Executive Office for Immigration
Review; Kirstjen M. Nielsen, Secretary of
Homeland Security, in her official
capacity; U.S. Department of Homeland
Security; Lee Francis Cissna, Director of
the U.S. Citizenship and Immigration
Services, in his official capacity; U.S.
Citizenship and Immigration Services;
Kevin K. McAleenan, Commissioner of

Case No. 3:18-cv-06810

AGREED MOTION OF THE
STATES OF WASHINGTON,
MASSACHUSETTS, NEW YORK,
AND CALIFORNIA FOR LEAVE
TO FILE AN AMICUS CURIAE
BRIEF ON SHORTENED TIME

Hearing Date: November 19, 2018,
9:30AM

U.S. Customs and Border Protection, in
 his official capacity; U.S. Customs and
 Border Protection; Ronald D. Vitiello,
 Acting Director of Immigration and
 Customs Enforcement, in his official
 capacity; Immigration and Customs
 Enforcement,
Defendants.

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT the States of Washington, Massachusetts, New York,
 and California (the States), pursuant to Local Rule 7-1, respectfully request expedited leave to
 file a brief as amici curiae in the above captioned case in support of Plaintiffs' request for a TRO.
 A copy of the proposed amicus brief, which addresses limited issues, is attached as **Exhibit A**
 to this motion. Counsel for the parties have consented to this filing.

The States understand that the Government's response to the Motion for TRO is due
 Thursday, November 15, 2018 and Plaintiffs' Reply is to be filed on November 16, 2018, with
 the hearing to follow on Monday, November 19, 2018. To give the Court and the parties time
 before the hearing to consider the States' position, the States respectfully request that this Court
 allow the States to file this proposed amicus brief on November 14, 2018.

Counsel for the defendants has confirmed that defendants have no objection to the
 Court's consideration of this motion on shortened time and to the submission of an amicus brief,
 provided that is fewer than ten pages and filed by 6:00 p.m. on November 14, 2018.

I. LEGAL STANDARD

District courts have wide discretion in granting leave to participate as amici curiae.
Hoptowit v. Ray, 682 F.2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds by Sandin*
v. Conner, 515 U.S. 472 (1995). While there is no specific rule on when such leave is proper,

1 this discretion is liberally applied when the legal issues in a case “have potential ramifications
 2 beyond the parties directly involved.” *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355
 3 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005). Indeed, the “classic role” of amicus curiae is filled in
 4 cases that involve the general public interest, including the interpretation and status of the law.
 5 *Funbus Systems, Inc. v. State of Cal. Pub. Utils. Comm’n*, 801 F.2d 1120, 1125 (9th Cir. 1986)
 6 (referencing *Miller-Wohl Co. v. Comm’r of Labor & Indus.*, 694 F.2d 203, 204 (9th Cir.
 7 1982)).

8
 9 An amicus curiae brief should “normally be allowed” where “the amicus has unique
 10 information or perspective that can help the court beyond the help that the lawyers for the
 11 parties are able to provide.” *Cnty. Ass’n for Restoration of the Env’t (CARE) v. DeRuyter Bros.*
 12 *Dairy*, 54 F. Supp. 2d 974, 975 (E.D. Wash. 1999). Amici curiae fulfill the role by submitting
 13 briefing designed to assist in cases of general public interest, supplement the efforts of counsel,
 14 and draw the court’s attention to law that might otherwise escape consideration. *Id.*

15
 16 In addition, expedited consideration of this motion is appropriate because the
 17 November 19 hearing date was only set yesterday. The States promptly reached out to the
 18 parties and obtained their consent to file this motion for leave to file their amicus brief.
 19 Expedited consideration will not affect the hearing date as the States propose to file their
 20 amicus brief regarding the TRO today. *See generally* L.R. 6-3.

21 22 **II. STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE**

23 The current case involves allegations that the Acting Attorney General and Secretary of
 24 Homeland Security improperly issued an Interim Final Rule that will radically reduce the number
 25 of migrants eligible to apply for asylum, in violation of the APA and both domestic and
 26

1 international immigration law. See “Aliens Subject to a Bar on Entry under Certain Presidential
2 Proclamations; Procedures for Protection Claims,” *available at*
3 https://www.regulations.gov/document?D=EOIR_FRDOC_0001-0039. The ramifications of
4 this action go well beyond the parties to the case and are matters of general public interest. As a
5 result, the States are well-positioned to file a brief as amici curiae.
6

7 The States have particular insights to share because they will suffer concrete harms if the
8 Interim Rule is allowed to go into effect. The States invest their own resources every year to
9 provide education, health care, and other services to immigrant families, including asylum
10 seekers, like all families that reside within our borders. The States also deliver specific services
11 to immigrant families that settle in our jurisdictions. For example, the Office of Refugee and
12 Immigrant Assistance (ORIA) is part of the State of Washington’s Department of Social and
13 Health Services (DSHS). ORIA coordinates services for asylum grantees, refugees, and other
14 immigrants through contracts with more than 60 different organizations across the state to offer 11
15 distinct programs and services.
16

17 Where migrants experience additional trauma and uncertainty in the processing of their
18 asylum claims, the States – through their child welfare services, social and health services, courts,
19 and public schools – will have a significant role in assisting immigrants and their relatives in the
20 United States who will suffer the harms inflicted by the reversal of asylum policy and attendant
21 delay.
22

23 In addition, each State has a strong interest in ensuring that federal agencies comply with
24 the APA and refrain from engaging in arbitrary and capricious decision-making. The States and
25 their residents depend on a stable and predictable federal regulatory environment. The States’
26

1 public policies in favor of open government, transparency, and the Rule of Law are all impacted
2 when federal agencies fail to comply with procedures intended to allow public input on important
3 government regulation.

4 **III. AMICI CURIAE’S EXPERTISE WILL BENEFIT THE COURT**

5 The amici States have “unique information” and a “perspective that can help the [C]ourt”
6 by demonstrating the broad implications flowing from promulgation of the Rule. *Sonoma Falls*
7 *Developers, LLC v. Nev. Gold & Casinos, Inc.*, 272 F. Supp. 2d 919, 925 (N.D. Cal. 2003). The
8 ramifications of this case directly affect the States, which are negatively impacted when federal
9 agencies engage in questionable rulemaking practices that purport to enact sweeping policy
10 changes without providing the public with the opportunity to review and comment. The
11 temporary restraining order sought by plaintiffs in this case allows for appropriate scrutiny of
12 these regulatory actions.

13 It is especially important for the Court to consider the States’ view that the regulatory
14 instability and administrative whim embodied by the Interim Rule imperils future immigrants
15 with legitimate asylum claims who will settle within the States. Illegal removal of these families
16 and children under the Rule would not only harm them, but the Amicus States in which they
17 reside.

18 Accordingly, Washington, Massachusetts, New York, and California respectfully submit
19 that the amicus brief will assist the Court in providing this additional perspective and request
20 that the Court grant the motion for leave to file an amicus brief.

1 **IV. CONCLUSION**

2 For the foregoing reasons, the amici States respectfully request this Court's leave to file
3 the attached proposed amicus curiae brief on November 14, 2018.
4

5 Respectfully submitted this 14th day of November, 2018.
6

7 ROBERT W. FERGUSON
8 Washington State Attorney General

9 /s/ Megan D. Lin

10 MEGAN D. LIN, SNB # 298267
11 COLLEEN M. MELODY, WSBA #42275
12 Civil Rights Division Chief
13 LAURA K. CLINTON, WSBA #29846
14 KRISTIN BENESKI, WSBA #45478
15 Assistant Attorneys General
16 Office of the Attorney General
17 800 Fifth Avenue, Suite 2000
18 Seattle, WA 98104
19 Tel: (206) 464-5342
20 MeganL@atg.wa.gov
21 ColleenM1@atg.wa.gov
22 LauraC5@atg.wa.gov
23 KristinB1@atg.wa.gov
24 Attorneys for the State of Washington
25
26

18 MAURA HEALEY
19 Attorney General for Massachusetts

20 /s/ Genevieve Nadeau

21 GENEVIEVE C. NADEAU
22 Chief, Civil Rights Division
23 Office of the Attorney General
24 One Ashburton Place
25 Boston, MA 02108
26 Tel: (617) 727-2200
Genevieve.Nadeau@state.ma.us
Attorneys for the Commonwealth of Massachusetts

1 BARBARA D. UNDERWOOD
2 Attorney General of New York

3 /s/ Lourdes Rosado
4 LOURDES ROSADO, Civil Rights Bureau Chief
5 ANISHA DASGUPTA, Deputy Solicitor General
6 Civil Rights Bureau
7 Office of the New York State Attorney General
8 28 Liberty Street
9 New York, NY 10005
10 (212) 416-8252
11 lourdes.rosado@ag.ny.gov
12 anisha.dasgupta@ag.ny.gov
13 Attorneys for the State of New York
14

15 XAVIER BECERRA
16 Attorney General of California
17

18 /s/ James F. Zahradka II
19 JAMES F. ZAHRADKA II
20 Deputy Attorney General
21 MICHAEL L. NEWMAN
22 Senior Assistant Attorney General
23 Civil Rights Enforcement Section
24 California Department of Justice
25 1515 Clay Street, Suite 2000
26 Oakland, CA 94612
Tel: (510) 879-1247
James.Zahradka@doj.ca.gov
Attorneys for the State of California