

XAVIER BECERRA
 Attorney General of California
 MICHAEL NEWMAN
 Senior Assistant Attorney General
 CHRISTINE CHUANG
 Senior Deputy Attorney General
 JAMES F. ZAHRADKA II (SBN 196822)
 VILMA PALMA-SOLANA
 SHUBHRA SHIVPURI
 Deputy Attorneys General
 1515 Clay Street, 20th Floor
 Oakland, CA 94612-0550
 Telephone: (510) 879-1247
 E-mail: James.Zahradka@doj.ca.gov
Attorneys for the State of California

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

**East Bay Sanctuary Covenant, Al Otro Lado,
 Innovation Law Lab, and Central American
 Resource Center in Los Angeles,**

Plaintiffs,

v.

**Donald J. Trump, President of the United
 States, in his official capacity; Matthew G.
 Whitaker, Acting Attorney General, in his
 official capacity; U.S. Department of Justice;
 James McHenry, Director of the Executive
 Office for Immigration 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 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.

Case No. 3:18-cv-06810-JST

**MOTION OF THE STATES OF
 CALIFORNIA, WASHINGTON,
 MASSACHUSETTS, NEW YORK,
 CONNECTICUT, HAWAII, ILLINOIS,
 MARYLAND, MINNESOTA, NEW
 JERSEY, OREGON, VERMONT, AND
 THE DISTRICT OF COLUMBIA FOR
 LEAVE TO FILE BRIEF AS AMICUS
 CURIAE IN SUPPORT OF PLAINTIFFS'
 MOTION FOR PRELIMINARY
 INJUNCTION**

1 The States respectfully request leave to file a brief as amicus curiae in support of
 2 plaintiffs' motion for preliminary injunction. A copy of the proposed brief is attached hereto as
 3 Exhibit 1. Plaintiffs consent to the States' request; defendants stated they would not oppose the
 4 brief if it were half of the length of the parties' principal briefs. However, the proposed brief
 5 exceeds that length.

6 **IDENTITY OF AMICI STATES AND STATEMENT OF INTEREST**

7 The States are California, Washington, Massachusetts, New York, Connecticut, Hawaii,
 8 Illinois, Maryland, Minnesota, New Jersey, Oregon, Vermont, and the District of Columbia. The
 9 Department of Homeland Security's (DHS) Interim Final Rule: Aliens Subject to a Bar on Entry
 10 under Certain Presidential Proclamations; Procedures for Protection Claims (the Rule), 83 Fed.
 11 Reg. 55934 will cause considerable harm to a range of the States' interests.

12 The States invest significant resources to provide education, health care, and other
 13 services to immigrants residing within their borders, including asylum-seekers and asylees, in
 14 order to appropriately transition them into life in our States. Further, the States have a strong
 15 interest in ensuring that their interests and the interests of their residents are considered when
 16 important proposed agency actions are proposed, and in ensuring that federal agencies refrain
 17 from rulemaking that violates the law and Constitution.

18 Specifically, the States argue that the Rule by design forces asylum seekers to ports of
 19 entry; combined with federal government's existing policy of denying many individuals access to
 20 this channel, a continuous bottleneck will be created outside the border. Asylum seekers will
 21 suffer unnecessary harm and may be re-traumatized by having to wait months in inhumane border
 22 conditions. The States also demonstrate that they, their local jurisdictions, and non-governmental
 23 organizations will be responsible for addressing the additional harm that asylum-seekers will
 24 suffer as a result of the Rule, which will require devotion of state resources. Moreover, the States
 25 have allotted public funds to ensure that immigrants have access to counsel for their asylum
 26 claims, and the changes made by the Rule will significantly frustrate the ability of legal aid
 27 groups to represent asylum-seekers. Finally, current residents of the States will suffer distress
 28 over the uncertainty of their asylum-seeking relatives languishing at the border.

1 The proposed brief presents an important and unique perspective to the Court, is relevant
 2 to the disposition of the issues in this case, and will assist the Court in understanding the impact
 3 of DHS's Interim Final Rule on the public interest as demonstrated by the significant harms that
 4 Amici States will suffer without the preliminary relief that plaintiffs seek. The Amici States have
 5 complied with the Court's instructions in its November 27, 2018 scheduling order (ECF 50) in
 6 drafting their proposed brief.

7 **ARGUMENT**

8 District courts have broad discretion to permit third parties to participate in cases as amici
 9 curiae. *See, e.g., Inst. of Med. Educ., Inc. v. W. Ass'n of Sch. & Colleges*, 2013 WL 6672443, at
 10 *3 n.1 (N.D. Cal. Dec. 18, 2013) (citing *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982)).
 11 Courts exercise this discretion liberally; "there are no strict prerequisites that must be established
 12 prior to qualifying for amicus status." *In re Roxford Foods Litigation*, 790 F. Supp. 987, 997
 13 (E.D. Cal. 1991).

14 Federal appellate courts expressly recognize the inherent value of States' contributions to
 15 the determination of legal issues through amicus briefs, allowing States to file them as of right.
 16 *See* Sup. Ct. R. 37.4 (2017) ("[n]o motion for leave to file an *amicus curiae* brief is necessary if
 17 the brief is presented . . . on behalf of a State . . . when submitted by its Attorney General"); Fed.
 18 R. App. P. 29(a)(2) ("[A] state may file an amicus-curiae brief without the consent of the parties
 19 or leave of court."). Although this Court does not have a similar rule, leave to file the Amici
 20 States' attached brief is appropriate under general principles regarding amicus briefs.

21 Courts have accepted amicus briefs from non-parties where the legal issues "have
 22 potential ramifications beyond the parties directly involved or if the amicus has unique
 23 information or perspective that can help the court beyond the help that the lawyers for the parties
 24 are able to provide." *Sonoma Falls Developers, LLC v. Nevada Gold & Casinos, Inc.*, 272 F.
 25 Supp. 2d 919, 925 (N.D. Cal. 2003) (internal quotation marks omitted). Such factors support the
 26 filing here.

CONCLUSION

For the foregoing reasons, Amici States respectfully request that the Court grant leave to file the attached amicus curiae brief in support of plaintiffs' motion for preliminary injunction.

Dated: December 5, 2018

Respectfully Submitted,

XAVIER BECERRA
Attorney General of California
MICHAEL L. NEWMAN
Senior Assistant Attorney General
CHRISTINE CHUANG
Supervising Deputy Attorney General

s/ James F. Zahradka II
JAMES F. ZAHRADKA
VILMA PALMA-SOLANA
SHUBHRA SHIVPURI
Deputy Attorneys General
Attorneys for the State of California