

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF HAWAI‘I**

STATE OF HAWAI‘I and ISMAIL  
ELSHIKH,

*Plaintiffs,*

v.

DONALD J. TRUMP, in his official capacity  
as President of the United States; U.S.  
DEPARTMENT OF HOMELAND  
SECURITY; JOHN F. KELLY, in his  
official capacity as Secretary of Homeland  
Security; U.S. DEPARTMENT OF STATE;  
REX TILLERSON, in his official capacity as  
Secretary of State; and the UNITED  
STATES OF AMERICA,

*Defendants.*

Civil No. 1:17-cv-00050  
(DKW/KSC)

**MEMORANDUM OF LAW IN  
SUPPORT OF MOTION**

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The States of New York, California, Connecticut, Delaware, Illinois, Iowa, Maine, Maryland, Massachusetts, New Mexico, Oregon, Rhode Island, Vermont, Virginia, and Washington, and the District of Columbia, respectfully request leave to file brief as amici curiae in support of Plaintiffs’ Motion to Enforce or, in the Alternative, to Modify Preliminary Injunction, filed July 7, 2017 (ECF No. 328). The proposed amicus brief is attached as Exhibit “1” to the Declaration of Barbara D. Underwood. Plaintiffs consent to the filing of the amicus brief. Defendants have

advised that they take no position on the motion for leave to file. Underwood Decl. ¶ 4.

Amici States have important proprietary, sovereign, and quasi-sovereign interests that are affected by the provisions of Executive Order No. 13,780, that are challenged in this lawsuit,<sup>1</sup> and by the preliminary injunction barring its enforcement in certain respects. This Court has already acknowledged the importance of these state interests by granting amici States leave to file an amicus brief in support of plaintiff's earlier motion to clarify (ECF Nos. 319, 320, 321). The amici States have also previously filed an amicus brief in this Court supporting Hawaii's Motion for a Temporary Restraining Order, *see* Brief of the State of Illinois et al. (ECF No. 154), and amicus briefs in the Supreme Court of the United States opposing a stay of this Court's injunction (Brief of Virginia et al., *Trump v. IRAP*, Nos. 16-A1190, 16A-1191 (Sup. Ct. June 21, 2017)), and opposing the petition for certiorari (Brief of New York et al., *Trump v. IRAP*, Nos. 16-A1190, 16A-1191 (Sup. Ct. June 21, 2017)). Now that the Supreme Court has stayed the injunction in part, amici States continue to have a strong interest in preserving so much of the injunction as the Supreme Court left undisturbed.

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<sup>1</sup> Executive Order No. 13,780, §§ 2(c), 6(a)-(b) (Mar. 6, 2017), 82 Fed. Reg. 13,209 (Mar. 9, 2017) ("EO-2").

Amici States raise no new arguments, but rather provide a broader perspective on the state interests at stake, already identified by Hawaii. The broad experience and perspective of the fifteen amici States and the District of Columbia will assist this Court in its consideration of the scope of its nationwide injunction as modified by the Supreme Court's partial stay. The defendants would not be prejudiced nor the proceedings delayed by granting this motion to file an amicus brief one day in advance of the date scheduled by the Court for defendants' response to plaintiffs' underlying motion (ECF No. 330). Thus, the amici States and the District of Columbia should have the opportunity to be heard on this important question.

This Court has broad discretion to grant a prospective amicus participation. *See Hoptowit v. Ray*, 682 F. 2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds*, *Sandin v. Connor*, 515 U.S. 472 (1995). In deciding whether to grant a motion for leave to file an amicus brief, a court should consider whether the brief "assist[s] in a case of general public interest" or "supplement[s] the efforts of counsel," among other factors. *Miller-Wohl Co., Inc. v. Comm'r of Labor & Indus. State of Mont.*, 694 F. 2d 203, 204 (9th Cir. 1982). "An amicus brief should normally be allowed" if the amicus "has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide." *Cnty. Ass'n for Restoration of Env't v. DeRuyter Bros. Dairy*, 54 F. Supp. 2d 974, 975 (E.D. Wash. 1999).

## CONCLUSION

For the foregoing reasons, the proposed amici States respectfully request that this Court grant its motion for leave to file the attached brief as amici curiae.

Dated: New York, NY  
July 10, 2017

Respectfully submitted,

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