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8
9 **UNITED STATE DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11
12 J.T., through her father and guardian SAMER
TAWASHA; L.R., through her mother and guardian
13 GWEN LEE; C.L., through her mother and guardian
NAOMI LOPEZ; S.H., through his mother and
14 guardian SUZANNE SCHAEFER; and JACK
BRUNDAGE; ON BEHALF OF THEMSELVES
15 AND ALL OTHERS SIMILARLY SITUATED,

16 *Plaintiffs,*

17 v.

18 CITY AND COUNTY OF SAN FRANCISCO,
19 WILLIAM SCOTT, THOMAS HARVEY, MATT
SULLIVAN, and DOES 1-100,

20 *Defendants.*
21

Case No. 23-cv-06524-LJC

**ADMINISTRATIVE MOTION FOR
LEAVE TO FILE BRIEF OF
AMICUS CURIAE AMERICAN
CIVIL LIBERTIES UNION OF
NORTHERN CALIFORNIA**

Date: June 4, 2026

Time: 3:00 p.m.

Courtroom: G, 15th Floor

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

The American Civil Liberties Union of Northern California (“ACLU”), by their undersigned counsel, seek leave to file the attached proposed brief as amicus curiae in the above captioned action. The ACLU respectfully urges the Court to deny Defendants’ motion for summary judgment. In preparation for the submission of this proposed brief, the ACLU conferred by email with counsel for each party about this Motion. Plaintiffs stated that they do not oppose the Motion and consent to submission of an amicus brief. Defendants indicated that they intend to oppose the Motion.

INTRODUCTION¹

This case concerns interconnected rights under the First Amendment and the Fourth Amendment. When law enforcement officers arrested a group of children and young adults under a “group probable cause” theory, they violated the Fourth Amendment’s mandate that probable cause be assessed on an individual level. While there is no longer an independent First Amendment claim at issue in this case, such an infringement of Fourth Amendment protections intrudes upon the First Amendment’s protections for free association and assembly. The ACLU submits the proposed brief, attached hereto, to highlight the need for a jury to consider the constitutional rights at stake.

IDENTITIES AND INTERESTS OF AMICUS CURIAE

The ACLU of Northern California is one of 54 local affiliates of the national American Civil Liberties Union, a non-profit, non-partisan civil liberties organization with more than 1.6 million members. As an affiliate long committed to protecting constitutional and civil rights, the ACLU has a vested interest in defending the right to free speech, free assembly, and free association against criminalization and overreach by law enforcement. The ACLU has appeared in numerous cases concerning these issues, both as direct counsel and as amicus curiae. *See, e.g., Ellutzi v. The Regents of the University of California*, No. 24CV023532 (counsel); *Newsom v. Trump*, No. 25-3727, 2025 WL 4664165 (9th Cir. Sep. 9, 2025) (amicus); *Stanford Daily Publishing Corp. v. Marco Rubio*, No. 25-cv-06618-NW, 2026 WL 125241 (N.D. Cal. Jan. 16, 2026) (amicus); *Martinez v. City of Fresno*, No. 1:22-CV-00307-DAD-SAB, 2022 WL 1645549 (E.D. Cal. May, 24, 2022) (counsel); *Counterman v.*

¹ The ACLU hereby certifies that no person or entity, other than amicus curiae, their members, or their counsel, made a monetary contribution to the preparation or submission of this brief or authored this brief in whole or in part.

1 *Colorado*, 143 S. Ct. 2106 (2023) (amicus); *People v. Smolkin*, 49 Cal. App. 5th 183 (2020), *review*
2 *granted and transferred*, No. S258769 (Cal. 2019) (amicus in support of request for review); *Elonis v.*
3 *United States*, 575 U.S. 723 (2015) (amicus); *Virginia v. Black*, 538 U.S. 343 (2003) (counsel); *Watts v.*
4 *United States*, 394 U.S. 705 (1969) (amicus).

5 ANALYSIS

6 **I. A district court has broad discretion to consider amicus support and leave to file tends** 7 **to be liberally granted.**

8 A district court has “broad discretion” to consider amicus support and accept briefs that are
9 “helpful” in analyzing the facts or law. *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *overruled*
10 *on other grounds*; *Sandin v. Conner*, 515 U.S. 472 (1995). In exercising this discretion, courts in
11 California have employed “great liberality in permitting amicus briefs.” *Becerra v. U. S. Dep’t of the*
12 *Interior*, 381 F. Supp. 3d 1153, 1164 (N.D. Cal. 2019) (cleaned up). The “classic role” of an amicus
13 includes “assisting in a case of general public interest” and “supplementing the efforts of counsel.”
14 *Miller-Wohl Co. v. Comm’r of Lab. & Indus. State of Mont.*, 694 F.2d 203, 204 (9th Cir. 1982). There
15 are no strict prerequisites that must be established to qualify for amicus status; a proposed amicus “must
16 merely make a showing that [its] participation is useful or otherwise desirable to the court.” *Woodfin*
17 *Suite Hotels, LLC v. City of Emeryville*, No. C 06-1254 SBA, 2007 WL 81911, at *3 (N.D. Cal. Jan. 9,
18 2007) (cleaned up); *see also* Fed. R. App. P. 29(a)(3) (motion for leave to file must state movant’s
19 interest, the reason why an amicus brief is desirable, and why the matters asserted are relevant to the
20 disposition of the case).

21 **II. The proposed amicus curiae brief will assist the Court’s review.**

22 Given the interests of the ACLU and its work on First Amendment rights and criminal justice
23 issues, it is uniquely positioned to explain the historical interplay between the First and Fourth
24 Amendments implicated in the instant case. The Fourth Amendment’s mandate that probable cause be
25 assessed individually is all the more critical when it safeguards against incursions into the rights of free
26 association and assembly as protected by the First Amendment.

27 Although there is no longer an independent First Amendment claim in this case, the proposed
28 brief provides helpful analysis on the associational rights it protects, thus animating why Plaintiffs’

1 Fourth Amendment claims deserve exacting scrutiny, and ultimately, deliberation by a jury. When law
2 enforcement engages in mass arrests under an assumption of “guilt by association,” it threatens these
3 fundamental rights. Furthermore, the ACLU has conducted a survey of the case law on mass arrests, and
4 provides the Court with what it hopes to be a helpful framework for assessing the legality of group
5 probable cause applications. The ACLU presents these arguments, informed by its own relevant
6 experiences and mindful of the liberty interests at stake.

7 **CONCLUSION**

8 For the foregoing reasons, the ACLU respectfully asks that the Court grant this administrative
9 motion for leave to file the attached amicus brief.

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12 Dated: May 12, 2026

Respectfully submitted,

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14 ACLU FOUNDATION OF
NORTHERN CALIFORNIA, INC.

15
16 /s/ Emily Zhu

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