

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JOAQUIN ORELLANA CASTANEDA,
et al.,

Plaintiffs-Petitioners,

v.

COUNTY OF SUFFOLK, et al.,

Defendants-Respondents.

Case No. 2:17-cv-04267-RRM-ARL

**MEMORANDUM IN SUPPORT OF CONSENT MOTION FOR LEAVE TO FILE
BRIEF AMICUS CURIAE ON BEHALF OF STATE OF NEW YORK**

Amicus curiae the New York State Attorney General (the “State”) respectfully seeks leave to file the proposed amicus brief attached to this motion as Exhibit A, in order to respond to contentions regarding New York law and the scope of authority of state law enforcement officers in defendants’ recent renewed motion to dismiss (ECF No. 78-8) and the statement of interest the United States filed in support of that motion (ECF No. 80).

This Court previously granted the State leave to participate in this case as an amicus, and plaintiffs and defendants consent to the filing of this proposed amicus brief.

The State’s proposed amicus brief addresses a central legal issue being disputed by the parties: whether state and local officers in New York may arrest and detain a person based solely on a federal notice stating that the person has committed a civil immigration violation, and a request to detain that person, commonly known as an “ICE detainer.” For the reasons set forth in the proposed brief, such an arrest is not authorized under state or federal law, and defendants and the United States misunderstand state law and the scope of authority of state law enforcement

officers in arguing otherwise. The State therefore seeks an opportunity to respond to defendants' and the United States' erroneous legal contentions.

When the defendants in this action originally moved to dismiss plaintiffs' operative complaint, this Court granted the State's motion for leave to file an amicus brief responding to the legal contentions defendants and the United States presented at that time, and permitted the State's participation in oral argument that had been scheduled on the motion to dismiss. Minute Order (Oct. 24, 2018); Minute Order (Nov. 15, 2018). The Court thereafter postponed argument at the parties' request, in order to facilitate settlement discussions. Minute Order (Dec. 10, 2018); Minute Order (Jan. 29, 2018). After the settlement discussions were unsuccessful, defendants filed the renewed motion to dismiss now pending before the Court. The State thus now requests to file an amicus brief responsive to the renewed motion and the statement of interest the United States filed in support of that motion.

Although the Federal Rules of Civil Procedure provide no standard for the filing of amicus briefs in district court, federal appellate courts recognize the value of States' participation as amici in general, permitting States to file amicus briefs as of right. *See* Sup. Ct. R. 37.4; Fed. R. App. P. 29(a)(2). Moreover, district courts in this Circuit grant leave to file an amicus brief if the brief will help protect interests of the amicus that will be affected by the case before the court, *see, e.g., Automobile Club of N.Y., Inc. v. Port Auth. of N.Y. & N.J.*, No. 11-cv-6746, 2011 WL 5865296, at *2 (S.D.N.Y. Nov. 22, 2011), or if the amicus brief will "assist[] the court by, inter alia, providing a point of view that may not be available from the parties," *e.g., McBeth v. Gabrielli Truck Sales, Ltd.*, 768 F. Supp. 2d 392, 394 (E.D.N.Y. 2011); *see also Russell v. Board of Plumbing Exam'rs of Cty. of Westchester*, 74 F. Supp. 2d 349, 351 (S.D.N.Y. 1999), *aff'd*, 1 F. App'x 38 (2d Cir. 2001) (summary order). The State's proposed amicus brief will do both.

The State's proposed amicus brief will help protect the State's strong interests in ensuring proper interpretation of the state law it is charged to enforce, and defending the rights of New Yorkers. In addition, the proposed amicus brief will assist the Court by setting forth important detail regarding state constitutional, statutory, and common law that has not been presented by the parties.

For all the foregoing reasons, the State's consent motion for leave to file the attached amicus brief should be granted.

Dated this 24th day of April, 2020.

Respectfully submitted,

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