

Nos. 17-17478 & 17-17480

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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CITY AND COUNTY OF SAN FRANCISCO

*Plaintiff/ Appellee,*

*v.*

DONALD J. TRUMP, PRESIDENT OF THE  
UNITED STATES, ET AL.,

*Defendants/ Appellants.*

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COUNTY OF SANTA CLARA

*Plaintiff/ Appellee,*

*v.*

DONALD J. TRUMP, PRESIDENT OF THE  
UNITED STATES, ET AL.,

*Defendants/ Appellants.*

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**AMICUS BRIEF OF SILICON VALLEY DE-BUG;  
SERVICES, IMMIGRANT RIGHTS, AND EDUCATION  
NETWORK; COMMUNITY LEGAL SERVICES IN EAST PALO  
ALTO; ASIAN LAW ALLIANCE; PANGEA LEGAL SERVICES;  
ET AL. IN SUPPORT OF PLAINTIFFS/APPELLEES AND  
SUPPORTING AFFIRMANCE**

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On Appeal from the United States District Court for  
the Northern District of California

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## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), Amici Curiae Silicon Valley De-Bug; Services, Immigrant Rights, and Education Network; Community Legal Services in East Palo Alto; Asian Law Alliance; Pangea Legal Services; Arab Resource and Organizing Center; Chinese for Affirmative Action; Chinese Progressive Association; Causa Justa::Just Cause; El/La Para TransLatinas; Faith in Action Bay Area; Jamestown Community Center; Interfaith Movement for Human Integrity; Justice & Diversity Center; La Raza Centro Legal; Legal Aid at Work; Mujeres Unidas y Activas; and PODER state that no subsidiaries or any corporation, and no publicly held corporation owns 10% or more of its stock.

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## INTEREST OF AMICI

Amici Silicon Valley De-Bug; Services, Immigrant Rights, and Education Network; Community Legal Services in East Palo Alto; Asian Law Alliance; Pangea Legal Services; Arab Resource and Organizing Center; Causa Justa::Just Cause; Chinese for Affirmative Action; Chinese Progressive Association; El/La Para Translatinas; Faith in Action Bay Area; Jamestown Community Center; Interfaith Movement for Human Integrity; Justice & Diversity Center; La Raza Centro Legal; Legal Aid at Work; Mujeres Unidas y Activas; and PODER (collectively, “Community Amici”)<sup>1</sup> are community-based organizations with hundreds of years of combined experience providing legal services, assistance, and advocacy on behalf of immigrant communities<sup>2</sup> in the County of Santa Clara (“Santa Clara”) and the City and County of San Francisco (“San Francisco”) (collectively, “the Counties”). Community Amici have advocated against local law enforcement involvement in immigration enforcement for many years. Community Amici have frequent, on-the-ground contact with the immigrant communities that have borne the brunt of the impact of Executive Order No. 13768, 82 Fed. Reg. 8799 (Jan. 25, 2017) (the “Executive Order”).

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<sup>1</sup> An alphabetical list and description of Community Amici is provided in the Addendum to this brief.

<sup>2</sup> The term “immigrant” in this brief refers to all noncitizens, including both undocumented individuals and those with legal immigration status.

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), Community Amici state that no counsel for the party authored this brief in whole or in part, and no party, party's counsel, or person or entity other than Amici and their counsel contributed money that was intended to fund the preparing or submitting of this brief.

Community Amici file this brief with the consent of both parties under Ninth Circuit Rule 29-2(a).

## INTRODUCTION

Community Amici submit this brief to provide a firsthand account of the destructive impact that Executive Order No. 13768, 82 Fed. Reg. 8799 (Jan. 25, 2017) (the “Executive Order”) has on immigrant communities in Santa Clara and San Francisco, which reflects the ways the Executive Order harms communities nationwide. These harms directly contradict Defendants’ characterization of the Executive Order as a symbolic document that merely serves as a command to follow what the law already allows or requires.

Amici support the arguments in the Counties’ Answering Briefs as to why Defendants’ characterization is wrong, as well as the other arguments in the Answering Briefs.

Amici submit this brief to make two additional points. First, the real-life experiences of immigrant communities in Santa Clara and San Francisco show how the Executive Order sows widespread fear of deportation throughout the Counties’ immigrant communities and undermines trust in local law enforcement. By seeking to force local law enforcement to engage in immigration enforcement, the Executive Order forces immigrants and their family members into a Hobson’s choice: either interact with local authorities in order to seek protection or report crimes and risk being subjected to immigration enforcement, or avoid contact with local authorities and face a potentially violent or dangerous situation.



Second, by forcing local police to be instruments of immigration enforcement, the Executive Order engenders racialized policing for communities of color, contrary to the Counties' commitments to preventing racial profiling. Community members' lived experience under prior programs that increased local police involvement in civil immigration enforcement shows the devastating impact that such involvement has on immigrant communities and communities of color. Racial profiling harms racial minorities and violates their equal protection rights by singling out individuals based on the color of their skin.

Given the significant harm inflicted by the Executive Order on immigrant communities, Community Amici ask the Court to affirm the district court's judgment in these consolidated cases.

## **BACKGROUND**

### **A. Santa Clara and San Francisco Typify Communities Throughout the United States Where the Lives of Immigrants and Citizens Are Intertwined on Multiple Levels.**

Santa Clara and San Francisco exemplify the diverse character of immigrant communities across the country. Santa Clara has the ninth largest immigrant population in the country.<sup>3</sup> San Francisco and San Jose (Santa Clara

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<sup>3</sup> Lena Graber & Nikki Marquez, Immigrant Legal Resource Center, *Searching for Sanctuary* 15 (2016), [https://www.ilrc.org/sites/default/files/resources/sanctuary\\_report\\_final\\_1-min.pdf](https://www.ilrc.org/sites/default/files/resources/sanctuary_report_final_1-min.pdf).

County's largest city) are among twenty metropolitan areas with the largest populations of undocumented residents.<sup>4</sup> In both Santa Clara and San Francisco, more than one-third of the entire population is foreign born.<sup>5</sup> Community members hail from all over the world, with approximately fifteen to twenty-five percent of the foreign-born population coming from Latin America and more than one-third coming from Asia.<sup>6</sup> More than half of Santa Clara County's residents speak a language other than English at home and approximately 44% of San Francisco's residents do as well.<sup>7</sup>

Like many other cities and counties with large immigrant populations, Santa Clara and San Francisco are "mixed-status" communities, in which the lives of immigrants and citizens are intertwined. Two-thirds of immigrants in Santa Clara live in mixed-status households, in which some family members are citizens and others are immigrants.<sup>8</sup> In San Francisco, more than 50% of all

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<sup>4</sup> Jeffrey Passel & D'Vera Cohn, *20 Metro Areas are Home to Six-in-Ten Unauthorized Immigrants in U.S.*, Pew Research Center (Feb. 9, 2017), <http://www.pewresearch.org/fact-tank/2017/02/09/us-metro-areas-unauthorized-immigrants>.

<sup>5</sup> U.S. Census Bureau, *Quick Facts, Santa Clara County, CA* (July 1, 2016), <https://www.census.gov/quickfacts/fact/table/santaclaracountycalifornia/PS T045216>; *id.*, *Quick Facts, San Francisco County, CA*, <https://www.census.gov/quickfacts/fact/table/sanfranciscocountycalifornia/PST045216>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Off. Immigr. Relations, Santa Clara Cnty., *Santa Clara County Immigrant*

children live with at least one foreign-born parent.<sup>9</sup> The demographics of Santa Clara and San Francisco mirror those of our country as a whole. Recent estimates indicate that 16.7 million people in the United States—including at least 5.9 million U.S. citizen children—live with at least one undocumented family member.<sup>10</sup>

**B. Community Amici’s Successful Advocacy Efforts Paved the Way for the Counties to Adopt Policies Separating Local Law Enforcement from Civil Immigration Enforcement.**

Santa Clara and San Francisco community members were instrumental in driving the Counties to adopt policies separating local law enforcement from civil immigration enforcement. The Executive Order threatens to erase the successes of these advocacy efforts.

From 2008 until 2014, ICE deployed a controversial immigration enforcement program known as Secure Communities, which enhanced partnerships between federal, state, and local enforcement agencies through the

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*Contributions,*

<https://www.sccgov.org/sites/oir/Documents/Immigrant%20Contributions%20Newsletter-FINAL%201-15-16.pdf>.

<sup>9</sup> *See, e.g.,* U. S. Cal., 2008-2010 Data Profile: San Francisco, [http://dornsife.usc.edu/assets/sites/731/docs/SANFRANCISCO\\_web.pdf](http://dornsife.usc.edu/assets/sites/731/docs/SANFRANCISCO_web.pdf).

<sup>10</sup> Zoya Gubernskaya & Joanna Dreby, *U.S. Immigration Policy and the Case for Family Unity*, 5 J. Migration & Hum. Sec. 417, 418 (2017); Silva Mathema, *Keeping Families Together: Why All Americans Should Care About What Happens to Unauthorized Immigrants*, Center for American Progress (Mar. 16, 2017), <http://dornsife.usc.edu/assets/sites/731/docs/KeepFamiliesTogether-brief.pdf>.

creation of integrated databases across levels of government to identify undocumented immigrants for removal.<sup>11</sup> If an arrested person’s fingerprint records matched a record indicating a potential immigration violation, ICE officials might issue a “detainer” against the person, which required local law enforcement agents to hold him so ICE officials could obtain custody of him.<sup>12</sup>

In response to ICE’s implementation of Secure Communities in San Francisco, several immigrant and civil rights groups, including some Community Amici, led efforts to pass the 2013 “Due Process for All” ordinance.<sup>13</sup> Hundreds of community members mobilized for Board of Supervisors meetings and a coalition of community groups advocated for an update to San Francisco’s ordinances. These updates are now contained in Chapters 12H and 12I of San Francisco’s Administrative Code.<sup>14</sup>

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<sup>11</sup> See, e.g., Cecilia Menjivar et al., *Immigration Enforcement, the Racialization of Legal Status, and Perceptions of the Police: Latinos in Chicago, Los Angeles, Houston, and Phoenix in Comparative Perspective*, 15 Du Bois Review: Social Science Research on Race (forthcoming Spring 2018).

<sup>12</sup> U.S. Immigr. & Customs Enforcement, *Secure Communities*, <https://www.ice.gov/secure-communities>; American Immigration Council, *Secure Communities: A Fact Sheet* (Nov. 2011), <https://www.americanimmigrationcouncil.org/research/secure-communities-fact-sheet>.

<sup>13</sup> See, e.g., FreeSF, *About Us*, <http://freesf.org/read-me> (last visited Feb. 7, 2018).

<sup>14</sup> S.F. Admin. Code §§ 12H, 12I.

Likewise, Santa Clara community members and civil rights organizations, including Amici SIREN and De-Bug, formed a coalition in order to urge Santa Clara to opt out of the Secure Communities program. This coalition persuaded the Santa Clara Board of Supervisors to affirm that “implementation of Secure Communities in Santa Clara County conflict[ed] with the County’s policy not to participate in the enforcement of federal immigration law.”<sup>15</sup> Santa Clara community groups, including Amici SIREN and De-Bug, continued their advocacy efforts in 2011 and ultimately pushed the Board of Supervisors to adopt Santa Clara County’s current detainer policy.<sup>16</sup>

When Santa Clara reconsidered its detainer policy in 2013, the community again turned out, writing numerous letters and attending the Board of Supervisors meeting to urge it to retain the policy.<sup>17</sup> As part of Community

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<sup>15</sup> News Release, Santa Clara Cnty., County of Santa Clara to Request to Opt Out of Secure Communities Program (Sept. 28, 2010), <https://www.sccgov.org/sites/opa/nr/Pages/County-of-Santa-Clara-to-Request-to-Opt-Out-of-Secure-Communities-Program.aspx>.

<sup>16</sup> See Appellee Cnty. Santa Clara Suppl. Excerpts R., ECF No. 40, Smith Decl. ¶ 5 [SER 180-81]; see also Tracey Kaplan, *On Crime Policy, Santa Clara County Takes a Cutting Edge—and Some Say Risky—Approach*, San Jose Mercury News (Nov. 5, 2011), <http://www.mercurynews.com/2011/11/05/on-crime-policy-santa-clara-county-takes-a-cutting-edge-some-say-risky-approach/> (listing community organizations that advocated for Santa Clara County’s detainer policy to the Board of Supervisors).

<sup>17</sup> See, e.g., Tracey Kaplan, *Jailed Illegal Immigrants: Santa Clara County Sticks with Lenient Policy*, San Jose Mercury News (Nov. 5, 2013), <https://www.mercurynews.com/2013/11/05/jailed-illegal-immigrants-santa-clara-county-sticks-with-lenient-policy>.

Amici's efforts to defend Santa Clara County's detainer policy in 2013, Amicus Silicon Valley De-Bug conducted a public opinion community survey of 519 people (69% of which were U.S. citizens) to measure the community's support for the detainer policy.<sup>18</sup> Eighty-eight percent of survey respondents agreed that Santa Clara should maintain the policy, and 90% agreed that the effort to promote trust between immigrant communities and law enforcement "is an important aspect of creating public safety *for all*."<sup>19</sup>

### **ARGUMENT**

As demonstrated by the lived experiences of Community Amici, by seeking to involve local police in immigration enforcement, the Executive Order has at least two negative effects on the Counties' immigrant communities. First, it instills fear in immigrant communities and diminishes trust in law enforcement. Second, it creates an environment in which the Counties' ability to prevent racialized policing is undermined and the danger of racial profiling that violates the Fourteenth Amendment is heightened.

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<sup>18</sup> Silicon Valley De-Bug, *The Trust Index* (Sept. 21, 2013), <http://archives.siliconvalleydebug.org/articles/2013/09/21/trustindex>.

<sup>19</sup> *Id.* (emphasis added).

**I. The Lived Experience of Immigrant Communities Demonstrates That the Executive Order Undermines Communities' Trust in Law Enforcement.**

Community Amici know first-hand that the Executive Order's directive to require cooperation between law enforcement and immigration enforcement hinders trust and causes immigrant communities to live in fear. As Amicus Silicon Valley De-Bug has explained when describing the threat of local police involvement in immigration enforcement: “[i]n our weekly meetings with families, in the hundreds of community presentations we’ve done, the fear is everywhere.”<sup>20</sup>

Numerous studies underscore that the use of local police to enforce federal civil immigration laws breaks community trust and instills widespread fear.<sup>21</sup> When immigrants distrust the police or fear that interacting with the

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<sup>20</sup> Charisse Domingo, Silicon Valley De-Bug, *Federal Judge Rules Against Trump's Executive Order to Defend "Sanctuary Cities"* (Apr. 27, 2017), <https://siliconvalleydebug.org/stories/community-shows-out>.

<sup>21</sup> See, e.g., Mai Thi Nguyen & Hannah Gill, *Interior Immigration Enforcement: The Impacts of Expanding Local Law Enforcement Authority*, 53 Urb. Stud. 302, 318 (2016) (finding that local police cooperation with ICE chilled immigrant willingness to contact the police and had an adverse effect on public safety); David S. Kirk et al., *The Paradox of Law Enforcement in Immigrant Communities: Does Tough Immigration Enforcement Undermine Public Safety?*, 641 Annals Am. Acad. Pol. & Soc. Sci. 79, 95 (2012) (“[D]raconian immigration laws . . . will likely undermine the very public safety that they were purportedly designed to protect.”); see also Andres F. Rengifo & Jennifer Fratello, *Perceptions of the Police by Immigrant Youth*, 13 Youth Violence & Juv. Just. 409, 423 (2015) (finding that more intense policing in immigrant neighborhoods decreased immigrant youths’ trust in police); Jana Sladkova et al. *Lowell Immigrant Communities in the*

police will put them or their loved ones at risk of deportation, they are less likely to report being a victim of a crime, to share information about a crime, and/or to come forward as a witness.<sup>22</sup> Lack of community cooperation makes it more difficult for police to solve crimes and increases the risk of individuals' victimization and exploitation.<sup>23</sup> Even the Department of Homeland Security—under a prior administration—recognized that the use of police to enforce federal immigration laws damages relationships with immigrant communities that can take years to establish, undermines law enforcement's ability to engage

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*Climate of Deportations*, 12 *Analyses of Soc. Issues & Pub. Pol'y* 78, 83 (2012)(finding that the biggest impact of ICE enforcement actions on a traditional immigrant city in the Northeast was “fear, closely intertwined with mistrust of anyone the immigrants believe may collaborate with ICE, such as the police, health care workers, or representatives of financial institutions.”).

<sup>22</sup> See, e.g., Doris Chu & Linda S.J. Hung, *Chinese Immigrants' Attitudes Toward the Police in San Francisco*, 33 *Policing: Int'l J. Police Strategies & Mgmt.*, 621, 623 (2010); ACLU of Georgia et al., *Prejudice, Policing, and Public Safety* 18 (2014), [http://www.law.nyu.edu/sites/default/files/upload\\_documents/Prejudice\\_Policing\\_Public%20Safety.pdf](http://www.law.nyu.edu/sites/default/files/upload_documents/Prejudice_Policing_Public%20Safety.pdf).

<sup>23</sup> See Appellee Cnty. Santa Clara Suppl. Excerpts R., ECF No. 40, Neusel Decl. ¶ 9 [SER 197-98]; see, e.g., Kelle Barrick, *Latino Confidence in the Police: The Role of Immigration Enforcement, Assimilation, and Immigration Status*, 12 *J. Ethnicity in Criminal Justice* 289, 303 (2014) (“When crimes are not regularly reported to the police, public safety may be undermined; absent fear of police intervention, victimization and exploitation by criminals may increase.”).



in community policing, and “negatively impact[s] public safety and possibly national security.”<sup>24</sup>

Immigrants of color—including many individuals whom Community Amici have assisted since the Executive Order was issued—are particularly wary of contacting police for fear that they, or their friends and family members, may come to ICE’s attention.<sup>25</sup> A national survey of Latinos, including U.S. citizens and immigrants, found that 35% of native-born Latino citizens worry about deportation for themselves or their loved ones.<sup>26</sup> Another study found that 45% of Latinos nationwide reported that fear of police investigating either their own immigration status or the status of people they know made them less likely to report a crime or voluntarily offer information about a crime.<sup>27</sup> Seventy percent of undocumented immigrants said that they are less likely to report a crime if they are the victims, and 28% of U.S. citizens who are Latino said that they would be less likely to report being the victim of

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<sup>24</sup> DHS Task Force on Secure Communities, Findings and Recommendations 24 (Sept. 2011), <https://www.dhs.gov/xlibrary/assets/hsac-task-force-on-secure-communities-findings-and-recommendations-report.pdf>.

<sup>25</sup> See, e.g., Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement* 5-6 (2013), [https://greatcities.uic.edu/wp-content/uploads/2014/05/Insecure\\_Communities\\_Report\\_FINAL.pdf](https://greatcities.uic.edu/wp-content/uploads/2014/05/Insecure_Communities_Report_FINAL.pdf).

<sup>26</sup> Mark Hugo Lopez & Susan Minushkin, *Hispanics See Their Situation in U.S. Deteriorating: Oppose Key Immigration Enforcement Measures*, Pew Hispanic Center (2008), <http://pewhispanic.org/reports/report.php?ReportID=93>.

<sup>27</sup> Theodore, *supra* n.25, at i.

a crime for fear that law enforcement officers will use the interaction as an opportunity to ask about the immigration status of people they know.<sup>28</sup> Latinas who experience domestic violence are less likely to report instances of domestic violence compared to other racial/ethnic groups.<sup>29</sup> And “negative encounters with police involving questions of immigration status and perceived unfair treatment” contributes to individuals’ social isolation.<sup>30</sup> Similar studies demonstrate that other immigrants of color share concerns similar to those of Latino immigrants.<sup>31</sup>

Community Amici fear that, unless the Court affirms the judgment in this case, community members’ worst fears about local police cooperating with law enforcement will become reality.

- Sofia has lived in San Francisco for fifteen years and is the mother of two U.S. citizen children. Sofia was granted asylum two years ago based on the years of abuse she suffered in Honduras. Sofia’s infant daughter was born with a heart condition that requires weekly doctor’s visits for monitoring. While Sofia trusts the doctors caring for her daughter, she is afraid that local police and immigration agents will snatch her when she goes to the hospital. She says, “I have nightmares

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<sup>28</sup> *Id.*

<sup>29</sup> David Becerra et al., *Policing Immigrants: Fear of Deportations and Perceptions of Law Enforcement and Criminal Justice*, 17 J. Social Work 715, 724 (2016).

<sup>30</sup> Nik Theodore & Robert Habans, *Policing Immigrant Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, 42 J. Ethnic & Migration Studies 970 (2016).

<sup>31</sup> *See, e.g.,* Chu & Hung, *supra* n.22.

that they will take me from my daughter and that she will die because she cannot see her doctors anymore.”<sup>32</sup>

- One community member in Santa Clara, a Deferred Action for Childhood Arrivals (DACA) recipient pregnant with her first child, is completing her probation for a minor offense. Even though she has diligently attended all of her probation appointments “she is nervous about meeting with her probation officer for fear of being turned into ICE.”<sup>33</sup>

The damaging effects of the Executive Order’s instruction that local law enforcement participate in civil immigration enforcement extends to even the youngest members of San Francisco and Santa Clara’s immigrant communities. Studies indicate that even just the threat of deportation causes substantial harm to the children of immigrants.<sup>34</sup> Young children with immigrant family members have reported fears of separation “even when their parents have never had any trouble with the law” and even if their parents were documented.<sup>35</sup> The threat of deportation leads to decreased use of Medicaid and other social programs among children due to the threat of deportation on immigrant parents,<sup>36</sup> decreased performance of children in school,<sup>37</sup> increased

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<sup>32</sup> See Centro Legal De La Raza, Sofia’s Story, <https://centrolegal.org/sofias-story/> (last visited Feb. 7, 2018). Redacted asylum affidavit of “Sofia” (a pseudonym), on file with authors. Unless publicly reported, pseudonyms are used throughout brief.

<sup>33</sup> Domingo, *supra* n.20.

<sup>34</sup> See, e.g., Gubernskaya & Dreby, *supra* n.10; Mathema, *supra* n.10.

<sup>35</sup> See Gubernskaya & Dreby, *supra* n.10, at 423.

<sup>36</sup> See Tara Watson, *Inside the Refrigerator: Immigration Enforcement and*

food insecurity,<sup>38</sup> and housing instability.<sup>39</sup>

Two sets of experiences of immigrants in San Francisco and Santa Clara illustrate the on-the-ground fear and distrust engendered by the Executive Order's instruction to enmesh local police in immigration enforcement. Under an earlier federal government program called "Secure Communities," the federal government requested counties, including San Francisco and Santa Clara, to participate in immigration enforcement. When this program was in effect—a state that the Executive Order seeks to return to—immigrants in Santa Clara and San Francisco stopped calling law enforcement even when they were victims or witnesses of crimes. Similarly, after the Trump Administration issued the Executive Order, immigrants in the Bay Area fleeing from natural disasters, such as the recent wildfires or floods, have not called emergency

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*Chilling Effects in Medicaid Participation*, 6 Am. Econ. J.: Econ. Pol'y 313 (2014).

<sup>37</sup> See Catalina Amuedo-Dorantes & Mary J. Lopez, *Falling Through the Cracks? Grade Retention and School Dropout Among Children of Likely Unauthorized Immigrants*, 105 Am. Econ. Rev. 598 (2015).

<sup>38</sup> See Stephanie Potochnick et al., *Local-Level Immigration Enforcement and Food Insecurity Risk among Hispanic Immigrant Families with Children: National-Level Evidence*, 19 J. Immigr. & Minority Health (2016).

<sup>39</sup> See Juan Pedroza, *On the Move? Hispanic Housing Instability in Hostile Immigration Contexts*, Annual Meeting of the Population Association of America (Chicago, IL) (April 2017) (on file with author) (finding deportation rates in metro areas in Texas and California to be strongly associated with higher rates of housing instability, and finding the relationship with housing instability to be present with Hispanic-headed households with non-citizen household members).

services for fear of deportation. San Francisco and Santa Clara immigrants have also avoided obtaining driver's licenses, reporting crimes, cooperating with police, and testifying in court, all of which have further endangered immigrants and U.S. citizens alike.

**A. San Francisco and Santa Clara's Prior Involvement With Secure Communities Illustrates How Local Cooperation With Immigration Enforcement Forces Community Members to Live in Fear.**

The previously operational Secure Communities program illustrates that the Executive Order's directive to involve local police in immigration enforcement has disastrous consequences.<sup>40</sup> In the Secure Communities program, ICE requested local law enforcement to detain immigrants after an arrest for up to forty-eight hours beyond when they would have otherwise been released. Within just four months of the program's activation in Santa Clara County, 523 people were arrested or booked into ICE custody and 241 people were deported.<sup>41</sup> Likewise, in San Francisco, almost 800 people were deported

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<sup>40</sup> See, e.g., Tracy Seipel, *Santa Clara County Supervisors Vote to Opt Out of Secure Communities Program*, San Jose Mercury News (Sept. 28, 2010), <http://www.mercurynews.com/2010/09/28/santa-clara-county-supervisors-vote-to-opt-out-of-secure-communities-program>.

<sup>41</sup> New Release: Santa Clara Cnty., County of Santa Clara Denied Opt-Out of Immigration Enforcement Program (Nov. 10, 2010), <https://www.sccgov.org/sites/opa/nr/Pages/County-of-Santa-Clara-Denied-Opt-Out-of-Immigration-Enforcement-Program.aspx>.

as a result of the program over the course of two years.<sup>42</sup> These statistics mirrored national trends. As of 2011, at least 156,000 people were deported under Secure Communities.<sup>43</sup>

When Secure Communities was in effect, immigrants—including many whom Community Amici serve in various capacities—avoided contact with the police to protect themselves and their loved ones from deportation. For example, Amicus SIREN observed how, soon after Secure Communities was introduced into Santa Clara, the organization “received an uptick of calls from immigrant residents who were victims of crime, yet fearful to contact law enforcement.”<sup>44</sup> In San Francisco, survivors of domestic violence who contacted the police seeking protection from abuse were instead detained and turned over to ICE. For example:

- Norma, a San Francisco resident who is the mother of a three-year-old U.S.-citizen boy, was a longtime victim of domestic

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<sup>42</sup> Cmty. United Against Violence, *San Francisco Says No to Controversial Federal Program Secure Communities*, Univision (July 24, 2013), <http://www.cuav.org/san-francisco-says-no-to-controversial-federal-program-secure-communities>.

<sup>43</sup> See Chris Strunk & Helga Leitner, *Redefining Secure Communities*, The Nation (Dec. 21, 2011), <https://www.thenation.com/article/redefining-secure-communities>.

<sup>44</sup> Albert Cobarrubias Justice Project, *Santa Clara County Ends Collaboration with ICE, Creates Local Protections Against Controversial “Secure Communities” Program* (Oct. 19, 2011), <https://acjusticeproject.org/2011/10/19/santa-clara-county-ends-collaboration-with-ice-creates-local-protections-against-controversial-secure-communities-program>.

violence at the hands of her partner. When she finally built up the courage to call the police in October 2010, the police arrested both Norma and her abuser and booked them into the San Francisco county jail. Shortly after, the police turned Norma over to ICE through Secure Communities. In Norma's words: "I had called the police to help me... I think it's unjust.... Even with a traffic ticket we can now be deported."<sup>45</sup>

- Sonia, another San Francisco resident, called the police because she was physically assaulted at home. Instead of helping her, the police detained Sonia and turned her over to ICE through Secure Communities. Recalling the incident, Sonia remembers yelling, "I didn't do anything!" But ICE placed her in detention and told her that she could not return home anymore.<sup>46</sup>

Given the large number of mixed-status households in Santa Clara and San Francisco, the distrust caused by Secure Communities caused particular harm to U.S. citizen children with immigrant parents. In the wake of Secure Communities, Amicus De-Bug collected the statements of children fearful of losing a parent to deportation or who had seen their parent deported.<sup>47</sup> One seven-year-old girl, in a letter to the Santa Clara County Board of Supervisors, begged them haltingly to "please not let ICE separate families. I will be sad

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<sup>45</sup> Lee Romney & Paloma Esquivel, *Noncriminals Swept Up in Federal Deportation Program*, L.A. Times (Apr. 25, 2011), <http://articles.latimes.com/2011/apr/25/local/la-me-secure-communities-20110425>.

<sup>46</sup> See Cmty. United Against Violence, *supra* n.42.

<sup>47</sup> Charisse Domingo, Silicon Valley De-Bug, *'Tis the Season: Children Affected by Deportation Write Letters to the Board of Supervisors* (Dec. 15, 2015), <http://archives.siliconvalleydebug.org/articles/2015/12/15/tis-season-to-kick-out-ice>.

about it.”<sup>48</sup> Another young woman, now 17, remembered her experience with her father when she was 11, in the middle of 5th grade. Because the rest of her family feared visiting the police station due to their immigration status, she was the only one who could see him after his arrest.<sup>49</sup>

Secure Communities adversely affected trust in law enforcement across the country, from San Francisco and Santa Clara to Arlington, Chicago, New York City, Boston, Los Angeles, and beyond.<sup>50</sup> Secure Communities discouraged immigrant victims of car accidents from waiting for the police to the detriment of their health and safety, deterred survivors of domestic violence from reporting crimes, discouraged witnesses from volunteering information about crimes, and forced immigrants into isolation due to fear of leaving their homes.<sup>51</sup> The Executive Order represents a return to this old regime, despite its demonstrable negative effect on public trust and safety.

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<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> See, e.g., Strunk & Leitner, *supra* n.43; Julia Preston & Steven Yaccino, *Obama Policy on Immigrants Is Challenged by Chicago*, N.Y. Times (July 10, 2012), <http://www.nytimes.com/2012/07/11/us/obama-policy-on-illegal-immigrants-is-challenged-by-chicago.html?ref=illegalimmigrants> (quoting Mayor Rahm Emanuel announcing an ordinance to bar detainers in Chicago).

<sup>51</sup> See Strunk & Leitner, *supra* n.43; see Theodore, *supra* n.25 at ii.



**B. The Executive Order Deters Bay Area Immigrants and Citizens From Accessing Police Protection and Emergency Services, Thereby Endangering Whole Communities.**

By pressuring local law enforcement to engage in immigration enforcement, the Executive Order instills fear in immigrant communities whom Community Amici serve throughout the San Francisco Bay Area and beyond in at least three ways: (1) fewer immigrants and citizens are willing to avail themselves of emergency services, even when their lives depend upon it; (2) fewer immigrants are applying for driver's licenses, which hinders traffic safety; and (3) fewer immigrant victims are willing to report the crimes committed against them, to bring lawsuits, or to testify in court, which increases immigrants' vulnerability for abuse.

Some immigrant families have not accessed emergency services even in the face of natural disasters, given the atmosphere of fear engendered by the Executive Order and the Trump Administration's other immigration policies. In October of 2017, several fires broke out in Napa, Sonoma, Mendocino, Yuba, and Solano counties, accounting for over forty deaths and more than 190,000 acres burned.<sup>52</sup> Numerous immigrants were forced to flee their Northern California homes in the middle of the night, but feared seeking

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<sup>52</sup> See Sydney Pereira, *California Fires: These are the Five Worst Blazes in the Last 80 Years*, Newsweek (Dec. 8, 2017), <http://www.newsweek.com/california-fires-these-are-five-worst-blazes-past-80-years-741776>.

refuge in emergency shelters out of concern that they may be turned over to ICE for deportation.<sup>53</sup>

- “The fires have been devastating for everyone in Sonoma County. Our undocumented community members and their families are not only dealing with losses of property and income, but from the fear that seeking help will lead to deportation....,” said Ana Lugo, president of the North Bay Organizing Project, based in Sonoma County.<sup>54</sup>
- The firestorm that sparked on October 8 forced thousands of Santa Rosa residents into emergency shelters. But many immigrants, spooked by rumors that Immigration and Customs Enforcement officers were prowling the area, avoided these sites. Dozens went west to Bodega Bay instead, where they slept in cars or camped out by the ocean. One disabled couple was still there 13 days later, according to an organizer from the Graton Day Labor Center.<sup>55</sup>

Earlier in 2017, a flood in San Jose (the largest city in Santa Clara County) necessitated the mandatory evacuation of entire neighborhoods,<sup>56</sup> and

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<sup>53</sup> Tony Bizjak, *Wine Country Fires Flush Undocumented Workers to Sonoma Coast, Fearful of Deportation*, Sacramento Bee (Oct. 12, 2017), <http://www.sacbee.com/news/state/california/fires/article178502386.html>.

<sup>54</sup> Press Release, Undocufund (Oct. 15, 2017), <http://undocufund.org/wp-content/uploads/2017/10/UndocuFund-Press-Release-10.15.17-FINAL.pdf>.

<sup>55</sup> Maddie Oatman, *Escaping a Wildfire and Fighting to Stay Here*, Mother Jones (Jan./Feb. 2018), <https://www.motherjones.com/environment/2017/11/sonoma-county-wildfire-tubbs-fire-undocufund-daca-dreamer>.

<sup>56</sup> Jennifer Wadsworth, *Flood in San Jose Prompts Evacuations, Rescue Missions*, San Jose Inside (Feb. 21, 2017), <http://www.sanjoseinside.com/2017/02/21/flooding-in-san-jose-prompts-evacuations-rescue-missions>.

some of the hardest hit communities included Latino and Vietnamese immigrants.<sup>57</sup> Despite the dangers, news accounts reported residents worrying that their immigrant neighbors, scared and not knowing where to turn, would be left without help.<sup>58</sup> Some victims reported to Amicus Silicon Valley De-Bug that they would not “go to emergency rescue shelters because they feared ICE agents coming in to take their families.”<sup>59</sup>

Community Amici fear that—under the regime created by the Executive Order and other Trump-era policies—fewer immigrants are willing to apply for driver’s licenses due to concerns about coming into contact with ICE.

Although California has a law, AB 60, that allows residents without Social Security numbers to obtain driver’s licenses, data from the Department of Motor Vehicles (DMV) shows “a steady decrease in AB 60 licenses issued since the program went into effect” in 2015.<sup>60</sup> Gina Gates, who runs free Spanish-

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<sup>57</sup> Paul Rogers, *San Jose Flood: Feds Refused to Fund Project that Would Have Saved Rock Springs Neighborhood*, San Jose Mercury News (Mar. 5, 2017), <http://www.mercurynews.com/2017/03/04/san-jose-flood-feds-refused-to-fund-project-that-would-have-saved-rock-springs-neighborhood>.

<sup>58</sup> See Robert Salonga, *After the Flood, San Jose Residents Get Sober Look at Homes*, East Bay Times (Feb. 22, 2017), <http://www.eastbaytimes.com/2017/02/22/evacuees-tell-stories-of-escape-from-san-jose-flood>.

<sup>59</sup> Domingo, *supra* n.20.

<sup>60</sup> See Virginia Fay, *Back Into the Shadows: Immigrants Retreat from Needed Services as Deportation Fears Loom*, KQED News, Peninsula Press (June 15, 2017), <https://ww2.kqed.org/news/2017/06/15/back-into-the-shadows-immigrants->

language driver’s education workshops for immigrants applying for AB 60 licenses in San Jose, attributes some of the decline to “increased fear and reluctance to apply for licenses since Trump’s campaign.”<sup>61</sup> According to Gates, many immigrants with whom she has interacted are worried that ICE may find and arrest them if they have given their addresses to the DMV to obtain licenses.<sup>62</sup> Some people are more hesitant to apply for licenses at all, whereas others are even considering moving.<sup>63</sup> This trend is particularly disconcerting because a recent study from Stanford University found that issuing licenses to undocumented immigrants decreases hit-and-run incidents and increases overall traffic safety.<sup>64</sup>

More broadly, immigrants’ fear of deportation under the shadow of the Executive Order prompts victims to refuse to report incidents of abuse, to drop civil or criminal cases, and to refuse to testify in court. In San Francisco, Latinos reported 18% fewer instances of spousal abuse in the first six months of 2017 as compared with 2016.<sup>65</sup> The reduction in reporting “was nearly triple

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retreat-from-needed-services-as-deportation-fears-loom.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> See Hans Lueders et al., *Providing Driver’s Licenses to Unauthorized Immigrants in California Improves Traffic Safety*, 14 Proceedings of the Nat’l Acad. of Sci. 4111 (2017), <http://www.pnas.org/content/114/16/4111.full.pdf>.

<sup>65</sup> James Queally, *Fearing Deportation, Many Domestic Violence Victims are*

the citywide decrease” in reporting.<sup>66</sup> This troubling trend is extending to other parts of the Bay Area and beyond.<sup>67</sup> A study conducted in April of 2017 by a coalition of national domestic violence and sexual assault organizations found that 78% of respondents—a group that includes both social and legal service providers from throughout the country—said that survivors had expressed concerns about contacting police due to fears that it would open them up to deportation.<sup>68</sup> Community Amici have even received reports of San Francisco immigrants fearful of filing complaints of misconduct against the San Francisco police due to concerns of retaliation on account of their immigration status.<sup>69</sup>

Unless the Court affirms the judgment below, Community Amici worry that immigrant’ fears about contacting the police or other emergency services will only increase.

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*Steering Clear of Police and Courts*, L.A. Times (Oct. 9, 2017), <http://www.latimes.com/local/lanow/la-me-ln-undocumented-crime-reporting-20171009-story.html>.

<sup>66</sup> *Id.*

<sup>67</sup> *See, e.g.,* Fay, *supra* n.60 (describing a steep decline in number of undocumented survivors of domestic violence in Hayward who are willing to request legal services, particularly if it involves any contact with the police).

<sup>68</sup> P.R. Lockhart, *Women are Now Living with Fear of Deportation if they Report Domestic Violence*, Mother Jones (May 25, 2017), <http://www.motherjones.com/politics/2017/05/immigrant-sexual-assault-domestic-violence-survivors-fear-enforcement-survey>.

<sup>69</sup> *See, e.g.,* CBS SF Bay Area, *Undocumented Immigrant Who Sued San Francisco Lives in Fear* (June 30, 2017), <http://sanfrancisco.cbslocal.com/2017/06/30/immigrant-who-sued-san-francisco-lives-in-fear>.

**II. The Executive Order Engenders Fear of Racialized Policing in the Santa Clara and San Francisco Communities.**

**A. Enmeshing Local Law Enforcement with Federal Immigration Directives Leads to Over-Policing of Communities of Color and Immigrant Communities.**

Community Amici are highly concerned about the potential for over-policing<sup>70</sup> and racial profiling<sup>71</sup> under the Executive Order, which commands local police to act as arms of Immigration and Customs Enforcement (ICE). Even before the Executive Order, communities of color in the Counties have long experienced over-policing. For example, data collected from 2014 about San Jose, California's police department shows that, at that time, Latinos comprised only one-third of the population, but they were subjected to 57% of all traffic stops.<sup>72</sup> Once stopped, "Latinos also were significantly more likely to

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<sup>70</sup> Community Amici define "over-policing" as intense police surveillance of communities.

<sup>71</sup> Racial profiling is "the practice of a law enforcement agent or agency relying, to any degree, on race, ethnicity, national origin, or religion in selecting which individual to subject to routine or spontaneous investigatory activities or in deciding the scope and substance of law enforcement activity following the initial investigatory procedure, except when there is trustworthy information ... that links a person of a particular race, ethnicity, national origin, or religion to an identified criminal incident or scheme." End Racial Profiling Act of 2010, H.R. 5748, 111th Congress (2010).

<sup>72</sup> Leigh Poitinger, *SJPD Data Show San Jose Cops Detained Greater Percentage of Blacks, Latinos*, San Jose Mercury News (May 9, 2015, updated Aug. 12, 2016), <https://www.mercurynews.com/2015/05/09/sjpd-data-show-san-jose-cops-detained-greater-percentage-of-blacks-latinos>.

be ordered out of their vehicles, frisked and have their cars searched.”<sup>73</sup> The data showed similar trends during pedestrian stops.<sup>74</sup>

By pressuring local police to carry out ICE’s commands, the Executive Order exacerbates racial profiling and over-policing. It is well-established that racial profiling increases when local law enforcement joins in ICE’s civil enforcement mission. Merging the mission of local law enforcement with federal immigration enforcement “heightens the incentives (and reduces the costs) of making stops where a state or local official believes the stop might reveal an immigration violator.”<sup>75</sup> While “[o]fficers may not intend to target motorists by race, . . . they inevitably do so because police often draw on implicit negative stereotypes about whom they regard with suspicion.”<sup>76</sup>

Community Amici have witnessed how expanded immigration enforcement in the past by local police has a particularly pernicious effect on Latinos, who are “disproportionately represented among those being apprehended, detained, and deported from the country when compared with

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<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> Jennifer Chacón, *Border Exceptionalism in the Era of Moving Borders*, 38 *Fordham Urb. L.J.* 129, 149 (2010).

<sup>76</sup> Armada Armenta, *Protect, Serve, and Deport: The Rise of Policing as Immigration Enforcement* 148 (U.C. Press, 2017).

their shares of the undocumented population.”<sup>77</sup> This is because police carrying out immigration functions rely “heavily on the racializing legal status that equates ‘Mexicanness’ or Latinos with ‘illegality.’”<sup>78</sup> This profiling has a “spillover effect”<sup>79</sup> that “reaches to a wide swath of the Latino population” beyond the undocumented, including individuals with friends or family members who are immigrants, bilingual speakers, and even those who engage in certain cultural practices.<sup>80</sup> One study of Latinos in the U.S., including U.S. citizens and immigrants alike, found that nearly one in ten Latino adults in the U.S. reported that they had been asked by police or other authorities about their immigration status in the prior year.<sup>81</sup> The Executive Order seeks to worsen these deplorable statistics by pressuring local police to act as immigration agents.

Community Amici’s prior experience with the Secure Communities program confirms that increased local involvement in immigration enforcement often leads to over-policing and risks of racial profiling,

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<sup>77</sup> Elizabeth Aranda & Elizabeth Vaquera, *Racism, the Immigration Enforcement Regime, and the Implications for Racial Inequality in the Lives of Undocumented Young Adults*, 1 *Sociology of Race and Ethnicity* 88, 94 (2015).

<sup>78</sup> Menjívar, *supra* n.11.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*; Mary Romero, *Racial Profiling and Immigration Law Enforcement: Rounding Up of Usual Suspects in the Latino Community*, 32 *Critical Sociology* 447, 451 (2006).

<sup>81</sup> Lopez & Minushkin, *supra* n.26.



particularly of Latino communities. A 2011 study revealed that although Latinos comprised only 77% of the undocumented population in the United States, they comprised 93% of the individuals arrested through Secure Communities.<sup>82</sup> Approximately 3,600 U.S. citizens were wrongly arrested through the program.<sup>83</sup> The ACLU reached a similar conclusion in 2014 when it studied Georgia’s experience with Secure Communities. After Secure Communities substantially increased local involvement with federal immigration enforcement in Georgia, ICE mistakenly issued 54 detainers against U.S. citizens—out of these, 48 involved U.S. citizens with a “dark or medium” complexion.<sup>84</sup>

Other federal initiatives aimed at increasing coordination between ICE officers and local law enforcement further support concerns that the Executive Order’s command to connect local police with immigration enforcement leads to over-policing and racial profiling. Under Section 287(g) of the Immigration and Nationality Act—enacted in 1996—certain state and local police officers

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<sup>82</sup> Aarti Kohli et al., *Secure Communities by the Numbers: An Analysis of Demographics and Due Process* 2 (2011), [https://www.law.berkeley.edu/files/Secure\\_Communities\\_by\\_the\\_Numbers.pdf](https://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf).

<sup>83</sup> *Id.*

<sup>84</sup> ACLU of Georgia, *supra* n.22, at 13.

may be deputized to enforce federal immigration law.<sup>85</sup> A 2011 Migration Policy Institute report found that the 287(g) program’s “lack of federal control over arresting officers open[ed] the door to racial profiling and pretextual arrests.”<sup>86</sup> In some areas with 287(g) agreements, “law enforcement agents changed their policing practices in ways that increasingly target Latina/o residents.”<sup>87</sup>

The jurisdiction that best illustrates the misuse of the 287(g) program is Maricopa County, Arizona, where Sheriff Joe Arpaio essentially converted the police department into a local branch of ICE. Over 2,200 lawsuits were filed against Sheriff Arpaio due to his misuse of the 287(g) program,<sup>88</sup> and the Department of Justice found, after a three-year investigation, that the Maricopa County Sheriff’s Office engaged in “a pattern or practice of unconstitutional

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<sup>85</sup> See Becerra et al., *supra* n.29, at 719; American Immigration Council, The 287(g) Program: An Overview (Mar. 15, 2017), <https://www.americanimmigrationcouncil.org/research/287g-program-immigration>.

<sup>86</sup> Randy Capps et al., *Delegation and Divergence: A Study of 287(g) State and Local Immigration Enforcement 2*, Migration Policy Institute (2011), <http://www.migrationpolicy.org/research/delegation-anddivergence-287g-state-and-local-immigration-enforcement>.

<sup>87</sup> See Chacón, *supra* n.75, at 148–49.

<sup>88</sup> *Id.*

conduct,” which included “[d]iscriminatory policing practices including unlawful stops, detentions and arrests of Latinos.”<sup>89</sup>

Immigrant communities’ prior experiences with the Secure Communities and Section 287(g) programs show that the Executive Order’s command to increase linkage between local police and federal immigration enforcement leads to an increase in profiling of individuals perceived to be immigrants.<sup>90</sup>

**B. Racial Profiling Causes Significant Psychological Harm and is Unconstitutional.**

Increased racial profiling—such as that stemming from increased local enforcement of immigration laws—causes psychological harm among the communities that Community Amici serve. The effects of being profiled are “consistent with models of traumatic stress,” and “a smaller proportion also fit the narrower criteria for PTSD or Acute Stress.”<sup>91</sup> Studies have found that programs such as 287(g) and Secure Communities have “resulted in a deep and enduring immobility [of immigrants], produced by a fear that works to socially and economically isolate immigrants from one another and from the larger

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<sup>89</sup> Off. Pub. Aff., U.S. Dep’t of Justice, *Department of Justice Releases Investigative Findings on the Maricopa County Sheriff’s Office* (2011), <https://www.justice.gov/opa/pr/departments-justice-releases-investigative-findings-maricopa-county-sheriff-s-office>.

<sup>90</sup> See, e.g., Amelia Fischer, *Secure Communities, Racial Profiling, and Suppression Law in Removal Proceedings*, 19 Tex. Hisp. J.L. & Pol’y 63, 76 (2013).

<sup>91</sup> See Robert T. Carter & Silvia L. Mazzula, *The Mental Health Effects of Racial Profiling*, 6 L. Enforcement Exec. Forum 111, 117 (2006).

society in ways that are ... traumatic and inhumane.”<sup>92</sup> The American Psychological Association has specifically recognized that racial profiling of undocumented youth “can lead to a number of negative emotional and behavioral outcomes including anxiety, fear, depression, anger, social isolation and lack of a sense of belonging.”<sup>93</sup> Families that live in communities along the U.S.-Mexican border exhibit post-traumatic stress disorder as a consequence of enforcement tactics such as “discretionary stops” that include ethnic profiling, as well as community and workplace raids.<sup>94</sup> In the long term, these traumatic events can lead not only to stress and anxiety, but also “increased risk of debilitating health and mental health.”<sup>95</sup>

Consider Guillermo, a father and grandfather of U.S. citizen children and a Santa Clara County resident, who believes ICE targeted him and fifteen other

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<sup>92</sup> See Angela Stuesse & Mathew Coleman, *Automobility, Immobility, Altermobility: Surviving and Resisting the Intensification of Immigrant Policing*, 26 *City & Soc’y* 51, 65 (2014); see also Cecilia Menjivar, & Leisy J. Abrego, *Legal Violence: Immigration Law and the Lives of Central American Immigrants*, 117 *Am. J. Soc.* 1380, 1414 (2012).

<sup>93</sup> Am. Psychol. Ass’n, *Undocumented Americans: What is it Like to Grow Up as an Undocumented Youth in America?*, <http://www.apa.org/topics/immigration/undocumented-video.aspx> (last visited Feb. 7, 2018).

<sup>94</sup> Cecilia Ayon, *Economic, Social, and Health Effects of Discrimination on Latino Immigrant Families* 13, Migration Policy Institute (2015), <https://www.migrationpolicy.org/research/economic-social-and-health-effects-discrimination-latino-immigrant-families>.

<sup>95</sup> *Id.*

day laborers for arrest because of their Latino ethnicity.<sup>96</sup> Guillermo recalls how “[his] family had no idea where [he] was” for an entire night, and how he returned to a car that had already been towed.<sup>97</sup> Despite the fact that the arrest and detention happened eight years ago, Guillermo explains that this “incident has marked [him and the others] for the rest of [their] lives.”<sup>98</sup>

Increased racial profiling is not only psychologically harmful, it also raises serious constitutional problems. In *Ortega-Melendres v. Arpaio*, a district court held that the “use of [apparent] Hispanic ancestry or race as a factor in forming reasonable suspicion that persons have violated . . . laws relating to immigration status violates the Equal Protection Clause of the Fourteenth Amendment.” 989 F. Supp. 2d 822, 899 (D. Ariz. 2013). Rejecting the defendant’s argument that people of Hispanic ancestry were statistically more likely to be immigration violators, the district court held that the practice of racial profiling was not narrowly tailored enough to survive strict scrutiny. *See id.* at 901-02, *aff’d on other grounds, Melendres v. Arpaio*, 784 F.3d 1254 (9th Cir. 2015).

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<sup>96</sup> Silicon Valley De-Bug, *#WhenICECame Video Series: He Would Grab My Hand to Make Me Sign* (Oct. 15, 2015), <http://archives.siliconvalleydebug.org/articles/2015/10/15/father-detained-for-seeking-work>.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

Community Amici fear that the Executive Order engenders racialized policing, causing community members both constitutional and psychological injury.

### CONCLUSION

Community Amici urge this Court to affirm the district court's grant of a nationwide permanent injunction on behalf of the Counties of Santa Clara and San Francisco.

Date: February 12, 2018

Respectfully submitted,  
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## CERTIFICATE OF COMPLIANCE

I certify that pursuant to Circuit Rule 29(c)(7) and Rule 32(a)(7)(A), the foregoing Amicus Brief is proportionately spaced, has a typeface of 14 points or more, and contains 6822 words.

Date: February 12, 2018

*/s/ Jayashri Srikantiah*

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### **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing, including an Addendum listing Amici, with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on February 12, 2018.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Date: February 12, 2018

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