

Nos. 17-17478, 17-17480

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

CITY AND COUNTY OF SAN FRANCISCO,
Plaintiff-Appellee,

v.

DONALD J. TRUMP, President of the United States, et al.,
Defendants-Appellants.

COUNTY OF SANTA CLARA,
Plaintiff-Appellee,

v.

DONALD J. TRUMP, President of the United States, et al.,
Defendants-Appellants.

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

**BRIEF OF HEALTH AND HUMAN SERVICES NONPROFITS AND
NONPROFIT ASSOCIATIONS AS *AMICI CURIAE*
IN SUPPORT OF APPELLEES, AND FOR AFFIRMANCE**

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STATEMENT OF CORPORATE DISCLOSURE

Pursuant to Federal Rule of Appellate Procedure 26.1, *amici curiae* Abode Services, API Council of San Francisco, Asian Americans for Community Involvement, California Association of Nonprofits, Caminar, Catholic Charities of Santa Clara County, Coalition of Agencies Serving the Elderly, Community Solutions, Council of Community Housing Organizations, Destination: Home, Fresh Lifelines for Youth, HealthRIGHT 360, The Health Trust, HIV/AIDS Provider Network, Homeless Emergency Service Providers Association, LifeMoves, Long Term Care Coordinating Council, San Francisco Human Services Network, San Francisco Interfaith Council, San Francisco Latino Parity and Equity Coalition, San Francisco Mental Health Contractors Association, Second Harvest Food Bank of Santa Clara and San Mateo Counties, Silicon Valley Council of Nonprofits, Silicon Valley Independent Living Center, Supportive Housing Providers Network, West Valley Community Services, Yu-Ai Kai Japanese American Community Senior Service, and YWCA Silicon Valley, by and through undersigned counsel, state that they are nonprofit organizations and associations of nonprofit organizations and therefore are not publicly held corporations that issue stock, nor do they have parent corporations.

INTEREST OF *AMICI CURIAE*¹

On January 25, 2017, the President of the United States signed an Executive Order that purported to empower the federal government to withhold federal funds from jurisdictions deemed “sanctuary” jurisdictions. Exec. Order No. 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017) (the “Executive Order”).² Before the district court enjoined its enforcement, the uncertainty created by the Executive Order caused real and imminent harm to both the nonprofits serving the communities the Order affected and the communities themselves. Some of these harms were mitigated by the injunctions issued by the district court, but others will continue until this litigation has been resolved. *Amici* are community-based nonprofit organizations

¹ The parties have consented to the filing of this amicus brief, and *amici* file this brief pursuant to that authority. See Fed. R. App. P. 29(a)(2). No party’s counsel authored this brief in whole or in part, no party or party’s counsel contributed money intended to fund preparation or submission of this brief, and no person other than *amici* and their counsel contributed money intended to fund preparation or submission of this brief. See Fed. R. App. P. 29(a)(4)(E).

² The Executive Order did not define what a “sanctuary” jurisdiction is, so communities are left to guess whether their jurisdictions might be designated as such (although at a minimum, if reinstated, the Order would apply to jurisdictions that do not comply with 8 U.S.C. § 1373). The Attorney General did release a memorandum that set forth a “plan of enforcement,” but, as the district court recognized, that plan did not provide a “legal determination” of the meaning of the term “sanctuary jurisdiction.” (ER 41-42.) And, in any event, that “plan of enforcement” is nothing more than an “illusory promise” that the DOJ can revoke at any time. (ER 44-45.)

and associations of community-based nonprofit organizations in the health and human services sector that are uniquely situated to articulate these harms.³

Nonprofits in the health and human services sector are part of the safety net that supports at-risk individuals and communities. Many of these nonprofit organizations rely on federal funding that states, counties, and municipalities receive and pass through to them to provide crucial services—funding that is put at risk by the Executive Order. Moreover, these nonprofits are deeply connected with the communities they serve. They have directly observed the effects the Executive Order has had on individuals in their communities, and on their communities as a whole.

³ *Amici curiae* include thirteen nonprofit associations (API Council of San Francisco, California Association of Nonprofits, Coalition of Agencies Serving the Elderly, Council of Community Housing Organizations, HIV/AIDS Provider Network, Homeless Emergency Service Providers Association, Long Term Care Coordinating Council, San Francisco Human Services Network, San Francisco Interfaith Council, San Francisco Latino Parity and Equity Coalition, San Francisco Mental Health Contractors Association, Silicon Valley Council of Nonprofits, and Supportive Housing Providers Network) and fifteen individual nonprofit organizations (Abode Services, Asian Americans for Community Involvement, Caminar, Catholic Charities of Santa Clara County, Community Solutions, Destination: Home, Fresh Lifelines for Youth, HealthRIGHT 360, The Health Trust, LifeMoves, Second Harvest Food Bank of Santa Clara and San Mateo Counties, Silicon Valley Independent Living Center, West Valley Community Services, Yu-Ai Kai Japanese American Community Senior Service, and YWCA Silicon Valley) based in Santa Clara County and the City and County of San Francisco (“San Francisco” or the “City”). Descriptions of *amici* are provided in Appendix A.

SUMMARY OF ARGUMENT

The Executive Order harms the health and human services nonprofits and associations of nonprofits that are signers to this brief, the communities they serve, and the public interest in many ways. Most significantly, (1) the Executive Order, if not enjoined, would cause extreme financial uncertainty and financial harm to nonprofits, thus limiting their ability to provide crucial services; and (2) the Executive Order contributes to a climate of fear that causes immigrants to avoid public services, harming both individuals and the broader public interest.

In early 2017, the Executive Order caused extreme financial uncertainty for *amici* and other nonprofit organizations. When the Executive Order called federal funding to “sanctuary jurisdictions” into question, nonprofits had to alter their budget planning processes and spend time and resources on contingency planning. Organizations faced the prospect of cutting vital services at the very time that demand for services would be expected to increase due to cuts to county and municipal services. If the district court’s order enjoining the Executive Order is not affirmed, the threat to nonprofits’ funding—and the corresponding cuts to crucial services in response to that threat—will return.

Compounding these problems, in the past year, many immigrants have avoided necessary medical treatment and refused to contact law enforcement to report crimes, even when they were victims of sexual or domestic abuse, because of

fear of immigration enforcement. When some community members cannot access necessary services, public health and safety suffers.

If the district court's injunction is not affirmed, nonprofits and the communities they serve will again face these harms. Consequently, the injunction serves the public interest by protecting communities from the harms posed by the unlawful Executive Order.

ARGUMENT

I. Legal Context

“According to well-established principles of equity, a plaintiff seeking a permanent injunction must satisfy a four-factor test before a court may grant such relief. A plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.” *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006). *Amici* present information on the nature of the irreparable harms at issue and the reasons an injunction serves the public interest.

II. The Executive Order Caused Irreparable Harm to Nonprofit Organizations and Those They Serve by Creating Substantial Budgetary Uncertainty.

Nonprofit organizations in the health and human services sector provide crucial services to the most vulnerable members of the community, distinct from those services provided by the government. Nonprofits are often located in the communities they serve, hire people who live in those communities, and enjoy a special level of trust. Their employees often have particular expertise (such as language ability) and cultural understanding that aids their ability to develop strong relationships with community members. *See, e.g., San Francisco Human Services Network, A Comprehensive Profile of San Francisco's Nonprofit Human Service Providers*, San Francisco Urban Inst., at 10-11 (2002).⁴ As a result, nonprofits across the country play a critical role in their communities, and provide an essential safety net for many who do not otherwise have access to vital services.

Many nonprofits rely on government funding to support their life-saving and life-sustaining services. After the President signed the Executive Order, nonprofits had to deal with the likelihood that federal funding passed through county and municipal governments would disappear;⁵ that direct county and municipal funding

⁴ Available at http://www.sfhsn.org/downloads/documents/survey/hsn_iss_sur_report_04-18-02.pdf.

⁵ As the district court recognized, both San Francisco and Santa Clara County face a “concrete risk of losing funds” if the Executive Order is enforced. (ER 17.)

would be reallocated to cover the shortfall from the loss of federal funding; and that their ability to raise funds from private sources (many of which match government funding sources) could be reduced.⁶ As a result of this severe budgetary uncertainty affecting multiple revenue streams, nonprofit organizations were forced to develop contingency plans and consider cutting crucial services precisely when those services would likely be needed the most. Such financial uncertainty, itself, can constitute irreparable harm. *See California Ass'n of Health Care Facilities v. Dep't of Health Servs.*, No. Civ. S-90-1086 RAR GGH, 1990 WL 282598, at *1 (E.D. Cal. Oct. 1, 1990) (finding that “inadequate and untimely assurances about the levels of [federal] payment currently in effect” created a “possibility” that health facilities providing services to Medicaid beneficiaries “will suffer immediate and irreparable harm”). If the district court’s injunction is not affirmed, nonprofits will face further uncertainty and additional irreparable harm when they are again forced to contemplate cutting staffing and services desperately needed in the communities they serve.

⁶ Counsel for *amici* have interviewed and received information from the nonprofit organizations and associations that are signing this brief. Information throughout the brief that relates to the organizations and associations was obtained through these interviews and associated requests for information.

A. Nonprofits Rely on Federal and Local Funding That Is in Jeopardy.

Most public charities are funded with a blend of government, foundation, and other private funding streams, with about a third of total revenue coming from government grants and contracts. *Toward Common Sense Contracting*, Nat'l Council of Nonprofits, at 5 (2014).⁷ Those government sources may be federal, state, or local governments, or a combination thereof. *2015 State of the Nonprofit Sector Survey*, Nonprofit Finance Fund, at 13 (May 2015).⁸ Federal funding is often provided to counties or other local governments for particular purposes, and then “passed through” to nonprofits to actually provide the services. For instance, San Francisco paid \$796.6 million to nonprofits in the 2016-2017 fiscal year, including federal pass-through dollars and direct City funding. City and County of San Francisco, Office of the Controller, SF OpenBook.⁹ The contracts with nonprofits varied in size, with some nonprofits receiving nearly \$50 million, and cover social services, behavioral health services, housing programs, and more. *See id.* Similarly,

⁷ Available at

<https://www.councilofnonprofits.org/sites/default/files/documents/toward-common-sense-contracting-what-taxpayers-deserve.pdf>.

⁸ Available at

https://www.nonprofitfinancefund.org/sites/default/files/nff/docs/2015-survey_natl_summary.pdf.

⁹ Available at <http://openbook.sfgov.org/> (report for vendor payments to nonprofits).

a 2013 study of Santa Clara County nonprofit contracts found that nonprofits received almost \$270 million from the County (including federal pass-through dollars). *2013 Nonprofit Funding and Organizational Trends Report*, Silicon Valley Council of Nonprofits, at 1 (2013).¹⁰ For fiscal year 2016-2017, Santa Clara County designated \$80 million directly from its own General Fund for contracts with nonprofits (not including pass-through dollars). County of Santa Clara Executive's Office of Budget and Analysis, *Fiscal Year 2016-2017 Adopted Budget*, 374-80.¹¹

The interrelation of nonprofit and government budgets means that a determination that a state, county, or city is a "sanctuary" jurisdiction (and will therefore lose federal funding pursuant to the Executive Order) would be devastating for the many nonprofits that rely on funding from those jurisdictions. Nonprofits would likely lose federal funding for their programs that is passed through those jurisdictions.¹² Then, "sanctuary" jurisdictions would necessarily need to reallocate money to cover essential services, likely resulting in additional cuts to nonprofit

¹⁰ Available at <http://www.svcn.org/nonprofit-resources> (Nonprofit Resources, SVCN Funding Trends).

¹¹ Available at https://www.sccgov.org/sites/scc/gov/Documents/FY-16-17-Adopted-Budget-v3_web.pdf.

¹² Although the DOJ argued below that, pursuant to the Attorney General's memorandum, most of this funding is not at issue, the district court recognized that the Executive Order, by its terms, implicates all federal funding and that the Attorney General's interpretation is not binding. (ER 6-7.)

funding streams from those jurisdictions' general funds. To the extent that many nonprofits are funded by multiple cities or counties that may be designated "sanctuary" jurisdictions, the Executive Order places even larger portions of their budgets at risk.

San Francisco's budget situation is illustrative. The City formulated its 2016-2017 budget based on the expectation that it would receive \$1.2 billion in federal funds. City of San Francisco, Office of the Controller, *FY 2016-17 Six-Month Budget Status Report*, at 6.¹³ The vast majority of these funds support programs in San Francisco's Human Services Agency and Department of Public Health. (City and County of San Francisco SER 49, ¶ 11.) If the City lost access to federal funds, it would have been forced to make "drastic service cuts." (*Id.* at 57, ¶ 52.) Indeed, as soon as the Executive Order was promulgated, the financial uncertainty forced the City to *immediately* consider reducing its general fund expenditures. (*Id.* at 271-72, ¶¶ 6-9.)

If federal funding is cut, and local funding is consequently impacted, nonprofits will not be able to simply recoup the budgetary shortfall using contributions from private sources such as foundations. Foundation grants account

¹³ Available at <http://sfcontroller.org/sites/default/files/Documents/Budget/FY%202016-17%206-Month%20Report.pdf>.

for less than two percent of nonprofit revenue. *Toward Common Sense Contracting*, Nat'l Council of Nonprofits, at 5. Moreover, foundations have their own missions and funding priorities, which may not coincide with filling the gaps created by government funding cuts. *Id.* at 5-6. Many nonprofits already rely on private funding, including but not limited to foundation grants, to supplement limited government funding for particular programs. *Id.* at 13-14. If government funding for particular programs is lost, the private funding for those programs may dry up as well, especially if the private component alone is not sufficient to keep the programs afloat.

In early 2017, the possibility of losing federal, county, municipal, and some private funding simultaneously caused extreme budget uncertainty and harm to nonprofits. Organizations were forced to scramble to ascertain the extent of the possible effect on their organizations, develop contingency plans, consider freezing hiring, and take other measures to plan for the possibility of significantly decreased funding. Nonprofits will be faced with the same predicament if the district court's order is not affirmed, and these stresses on already understaffed and under-resourced organizations will impact their ability to fulfill their missions.

B. The Severe Budgetary Uncertainty Caused by the Executive Order Forced Nonprofits to Face Cutting Services.

Uncertainty, itself, can harm nonprofit organizations and inhibit their ability to provide necessary programming. Most nonprofits operate with tight budget

constraints and strain to meet community needs. In fact, most nonprofits have no more than three months of operating funds in the bank. *Id.* at 5. Consequently, even delayed funding can have a significant effect on nonprofits, forcing them to “divert efforts away from their missions as they scramble to . . . pay their employees, rent and utilities, and other operating costs by raising funds from other sources such as private donations or bridge loans, or by taking extraordinary actions like curtailing operations and laying off employees.” *A Dozen Common Sense Solutions to Government-Nonprofit Contracting Problems*, Nat’l Council of Nonprofits, at 11 (Dec. 5, 2013).¹⁴ The impact of the potential loss of federal funds can be likened to the impact of the economic downturn in late 2008 and early 2009, when nonprofits likewise lost significant funding. A survey of nonprofits found that 57% had to reduce services, 45% enacted a salary freeze, 37% enacted a hiring freeze, and 30% made layoffs. Chuck McLean & Carol Brouwer, *The Effect of the Economy on the Nonprofit Sector: October 2008–February 2009*, GuideStar, at 9 (2009).¹⁵

When the President signed the Executive Order in January 2017, nonprofit organizations were forced immediately to curtail development of new programs and

¹⁴ Available at <https://www.councilofnonprofits.org/sites/default/files/documents/white-paper-common-sense-solutions.pdf>.

¹⁵ Available at <https://www.guidestar.org/ViewCmsFile.aspx?ContentID=3909>.

services, and to contemplate cuts to existing programs to remain solvent. Bay Area organizations that provide a wide variety of health and human services, including many *amici* and their member organizations, were forced to consider significant cuts. Organizations that offer food security programs were hit particularly hard. For example, GLIDE, a member organization of *amicus* San Francisco Human Services Network that provides batterers' intervention programs, victims' recovery programs, food security programs, and HIV and Hepatitis C prevention programs, created a task force to examine how the proposed cuts would affect its programs. That group concluded that several of GLIDE's programs might have to close if the City lost federal funding. GLIDE's food security programs were (and are) particularly vulnerable, because GLIDE receives significant resources from the federally-funded San Francisco Food Bank. As a result, if the federal government withholds federal funds from San Francisco, GLIDE's efforts to combat hunger and the spread of infectious disease would be seriously impaired. If Santa Clara County loses federal funding, Catholic Charities of Santa Clara County will likewise lose its funding for the provision of essential services to nearly 14,000 low-income and vulnerable seniors and families, including daily hot meals for seniors, health and safety checks in nursing homes, behavioral health services, and therapeutic services to help families and children reunite.

Programs that fight homelessness also would be forced to scale back. LifeMoves, a Santa Clara nonprofit that provides services and shelters for the homeless, struggled to plan for Fiscal Year 2016-17 due to the threat of Santa Clara County losing federal funding. If LifeMoves were to lose federal funding received through the county or significant county funding, it would likely be forced to close one or more of its four shelters in San Jose, California, and lay off staff. Because all homeless shelters in the County already operate at capacity, residents of closed shelters would have no option but to return to the streets and the dangers of homelessness. Loss of federal “pass-through” funding would likewise force Abode Services to stop providing rental assistance to hundreds of formerly homeless households and cause Silicon Valley Independent Living Center to shut down critical housing workshops throughout Santa Clara County.

Similarly, nonprofit mental health service providers would have to make drastic cuts if government funding were cut—including cutting programs and staff. For example, Citywide Case Management Programs, a member organization of *amicus* San Francisco Mental Health Contractors Association, serves mentally ill adults on their release from hospitals and jails. If San Francisco’s federal funding were cut, Citywide would be forced to stop providing or to drastically reduce services to these high-risk clients. Programs offered by Conard House, a member of *amicus* Council of Community Housing Organizations that provides supportive

housing and services to adults with mental health disabilities, would also be placed in jeopardy—both because of reduced government funding for its programs and because Conard House relies on government funding to demonstrate to potential private donors the program’s long-term viability. Federal funding cuts also imperil programs providing HIV/AIDS prevention services, which could lead to increased health care costs and potential increase in HIV/AIDS transmission in the community.

The uncertainty caused by the Executive Order forced nonprofits to take time away from realizing their missions to create contingency plans for the possible loss of federal funding, and to contemplate cutting back or even completely closing certain programs. Budgetary uncertainty itself impaired the ability of these organizations to fulfill their missions to provide vital services to the neediest members of their communities. These harms will return and expand if this Court does not affirm the district court’s injunction.

C. Nonprofits Will Experience More Demand for Their Services and for New Services if Government Services Are Cut.

At the same time that nonprofits were planning for possible service cuts due to the likelihood of lost funding, they anticipated increased demand for these services due to simultaneous cuts in government services. History has shown that when government funds are cut, the needs of the community increase. But if nonprofit organizations themselves lose funding at the same time, they will not be

able to step in to fill those new gaps in services, and the most vulnerable members of their communities will be without the assistance they need.

These pressures and demands are not speculative. “[R]educing government budgets doesn’t lower the number of people in need of social services; it just adds more pressures on nonprofits to keep up with ever-growing demands.” Tim Delaney & David L. Thompson, *Nonprofits Need to Stand Together to Push for Smart Public Policies*, *Chron. of Philanthropy* (Jan. 4, 2017).¹⁶ Government funding cuts result in more people who need nonprofit services, but less funding for the nonprofits to deliver those services. Emily Navarro, *Government Funding for Charities: When It Declines, the Charities Lose Twice*, *Charity Navigator* (May 1, 2005).¹⁷ This increased demand is difficult, if not impossible, for nonprofits to meet without additional resources.

In early 2017, San Francisco concluded that if it lost federal funding, it would “likely be forced to cut social service safety net programs such as senior meal programs, services for low-income children, violence prevention services and programs for domestic violence survivors,” among other programs for vulnerable

¹⁶ Available at <https://www.philanthropy.com/article/Opinion-Nonprofits-Need-to/238802>.

¹⁷ Available at <https://www.charitynavigator.org/index.cfm?bay=content.view&cpid=281>.

members of the community. (City and County of San Francisco SER 273-74, ¶ 15.) San Francisco nonprofits would not be able to meet the increased need generated by these cuts. GLIDE, for example, struggled to develop a plan for meeting the increased need it anticipated if federal funding to San Francisco were cut. Historically, GLIDE has struggled to cope with increased need when the City cannot provide necessary services. During the 2008-2010 recession, despite increased need in the community, GLIDE was forced to cap the number of hot meals it served to contain rising food costs. If San Francisco loses federal funding and GLIDE loses its City-provided pass-through funds, it will have to close some of the very programs that could have helped those turned away by the City.

A similar situation unfolded in Santa Clara County in early 2017. Second Harvest Food Bank of Santa Clara and San Mateo Counties struggled to determine how to meet the anticipated increased need if federal funding to Santa Clara County were cut. Federal nutrition programs administered through the County, such as SNAP (CalFresh), WIC, and Senior Nutrition, provide nearly two and a half times as much food to local residents as the Food Bank. If these programs were cut, Second Harvest would not be able to fill the gap in food distribution for hungry families and children. Other organizations that provide vital services in these areas are concerned they, too, would be unable to meet the increased need. If the Executive Order is not permanently enjoined, many health and human services

nonprofits will again face the prospect of having to meet increased need with diminished resources, and many of the most vulnerable members of the community will lose access to essential services.

III. The Executive Order Caused Fear in the Community about Accessing Public Services, Which Harms the Public Interest.

The harms *amici* have observed are not limited to the potential loss of funding and services. In a political climate increasingly hostile to immigrants, intensified by the Executive Order, many in the immigrant community are fearful of deportation and afraid to access services. If the Executive Order is enforced, these fears will only increase, and even fewer immigrants will utilize crucial public services. That situation endangers public health and safety.

A. Many Immigrants Are Afraid to Access Healthcare and Other Services and Attend School.

In the wake of Trump administration policies—including the Executive Order and increased immigration enforcement activity—there is evidence that many undocumented immigrants are avoiding healthcare services, refraining from reporting crimes, and even staying home from school.

Many undocumented immigrants avoid visiting hospitals or clinics when they are afraid they will be exposed to deportation, which can lead to negative health outcomes. *See generally* Russell B. Toomey et al., *Impact of Arizona's SB 1070 Immigration Law on Utilization of Health Care and Public Assistance Among Mexican-Origin Adolescent Mothers and Their Mother Figures*, 104 Am. J. Pub.

Health S1, S31-S33 (2014) (Arizona’s enactment of legislation that allowed law enforcement to demand proof of immigration status was “associated with decreases in the utilization of public assistance and routine, preventive health care”). For example, undocumented adolescent mothers may not access necessary health care, which can lead to a wide range of detrimental outcomes. *See id.* at S32-33.

Anecdotal evidence of behavior over the past year demonstrates that such avoidance behavior has increased. As the CEO of one nonprofit organization observed, “[w]hat we’re finding and hearing from all over the country is a huge concern around whether or not seeking routine care and preventative care as well as care for their children, who may be documented, is going to put those families in jeopardy of deportation. . . . What we heard was a real significant uptick in no-show rates.” Stephanie Kuo, *Undocumented Immigrants Putting ‘Health On Hold’ Out Of Fear, Anxiety In Uncertain Times*, Houston Public Media (Sept. 15, 2017) (quoting Karen Mountain, CEO of the Migrant Clinicians Network).¹⁸ One undocumented immigrant woman even stopped accessing and receiving cancer treatments because she was terrified of being identified and detained if she continued using health services. Virginia Fay, *Back Into the Shadows: Immigrants Retreat*

¹⁸ Available at

<https://www.houstonpublicmedia.org/articles/news/2017/09/15/237573/undocumented-immigrants-putting-health-on-hold-out-of-fear-anxiety-in-uncertain-times/>.

From Needed Services as Deportation Fears Loom, KQED News (June 15, 2017) (“*Back Into the Shadows*”).¹⁹

After the promulgation of the Executive Order, many *amici* observed similar fears from immigrant clients about accessing necessary medical care. San Francisco Mental Health Contractors Association, for instance, has received reports from its members that undocumented clients are avoiding going to the emergency room or seeking other medical care because of concerns of deportation.

Fear of information sharing between the police and immigration authorities can also cause undocumented immigrants to be reluctant to report crime. Susana Martinez & Sheila Neville, *Help for Undocumented Victims of Crime*, 44 Clearinghouse Rev. 129, 129 (2010). This knowledge has caused police departments across the nation worry about how the increasingly fearful climate will affect their relationships with immigrant communities and their ability to solve crimes. As one police captain explained, undocumented immigrants “will see law enforcement and the justice system as something that is now less accessible . . . and potentially threatening . . . because they’re concerned that the federal government will somehow get that information and use it to deport them.” Fay, *Back Into the Shadows*. In fact, police in many major cities observed significantly decreased reporting of sexual and

¹⁹ Available at <https://ww2.kqed.org/news/2017/06/15/back-into-the-shadows-immigrants-retreat-from-needed-services-as-deportation-fears-loom/>.

domestic violence by Latina women during the first few months of 2017, compared to the same time period in 2016. *Id.* (sharp downturn in Houston, Los Angeles, and San Francisco); *see also* Jennifer Medina, *Too Scared to Report Sexual Abuse. The Fear: Deportation*, N.Y. Times (Apr. 30, 2017) (decreased reporting in Colorado, Maryland and New York cities).²⁰ Advocates report that many undocumented domestic violence survivors are too afraid of contact with police to seek life-saving restraining orders, report violence, or seek U visas.²¹ Fay, *Back Into the Shadows*. They further note that undocumented survivors are even afraid to stay at shelters, and if they do come in, they often leave after a few days. *Id.* A member organization of *amicus* Silicon Valley Council of Nonprofits that serves domestic violence survivors confirmed that because of the climate of fear, more clients are avoiding law enforcement and court appearances. Similarly, *amicus* San Francisco Mental Health Contractors Association has received reports that clients are refusing to contact the police (even to report crimes) because they are afraid of the immigration consequences.

²⁰ Available at <https://www.nytimes.com/2017/04/30/us/immigrants-deportation-sexual-abuse.html>.

²¹ U nonimmigrant status is a form of immigration relief available to survivors of certain crimes, including domestic violence, who assist in the prosecution of the crime. *See* 8 U.S.C. § 1101(a)(15)(U).

Fear in the community has also led to increased absenteeism among immigrant students of all ages in schools in the Bay Area and across the nation. A recent news report detailed truancy concerns related to these fears in three school districts served by a number of *amici*. Damian Trujillo, *Truancy spikes in South Bay as ICE makes enforcement sweeps: DA*, NBC Bay Area (Feb. 5, 2018).²² In New York, officials have noted an uptick in high school students dropping out due to fear of deportation, and school officials from New York to New Mexico have been preparing for “increased anxiety and absenteeism among students of immigrant families.” Mark Keierleber, *Trump’s immigration crackdown is traumatizing a generation of children*, The Guardian (Aug. 23, 2017).²³ Educators have also observed that some students are having increased difficulty concentrating in the classroom as a result of recent anti-immigration policies. Carolyn Jones, *Immigration crackdown taking heavy toll on California students*, San Jose Mercury News (Oct. 5, 2017) (“*Immigration crackdown taking heavy toll*”);²⁴ see also Dara Lind, *What happens to a family when they have equal rights, and then lose them?*,

²² Available at <https://www.nbcbayarea.com/news/local/Truancy-Spikes-in-South-Bay-as-ICE-Makes-Enforcement-Sweeps-472847543.html>.

²³ Available at <https://www.theguardian.com/us-news/2017/aug/23/us-immigration-children-schools-trump>.

²⁴ Available at <http://www.mercurynews.com/2017/10/05/immigration-crackdown-taking-heavy-toll-on-california-students/?platform=hootsuite>.

Vox (Dec. 14, 2017) (reporting that elementary school students are coming to the office administrator “wracked with sudden anxiety that their parents won’t be there when they come home”).²⁵ Some immigrant parents have even expressed fear of sending their children to school, in case “they’re taken in an ICE raid during the day and their children have no one to return home to.” Fay, *Back Into the Shadows*.

Immigrant families are also reluctant to access other social services due to fear of deportation. Social scientists have pointed out that “anti-immigrant sentiment and increased deportation activity has had a long history of causing eligible families to drop out and shy away” from safety net programs. Annie Lowrey, *Trump’s anti-immigrant policies are scaring families away from the safety net*, *The Atlantic* (Mar. 24, 2017) (“*Trump’s anti-immigrant policies*”).²⁶ In many cases, families eligible for these vital programs have mixed immigration status—for example, “undocumented parents with children with birthright citizenship.”²⁷ *Id.* Eligible mixed-status families are declining to enroll in, or are even un-enrolling from programs such as the Supplemental Nutrition Assistance Program (“SNAP”) and

²⁵ Available at <https://www.vox.com/policy-and-politics/2017/12/14/16752114/daca-children-us-citizens>.

²⁶ Available at https://www.theatlantic.com/business/archive/2017/03/trump-safety-net-latino-families/520779/?utm_source=nl-atlantic-weekly-032417.

²⁷ Mixed immigration status families are increasingly common—nearly six million citizen children live in such households. *Id.*

Women, Infants, and Children (“WIC”), out of fear that enrollment will put undocumented family members at risk of deportation. Lowrey, *Trump’s anti-immigrant policies*. Eligible families are withdrawing from other anti-poverty programs as well. *Id.* For instance, Eisner Health, a health care provider, compared monthly enrollment averages from December 2016 through February 2017 with data from 2016, and reported a 20% drop in food stamp enrollment, a 54% drop in Medicaid enrollment among children, and an 82% drop in enrollment in a local health program. *Id.* Re-enrollment in these programs has declined by 40%. *Id.* The community’s avoidance of these crucial services will likely result in “long-term consequences on the health, nutrition, and school performance of the youngest members of these families,” many of whom are U.S. citizens. *Id.* In the Bay Area, *amicus* Second Harvest Food Bank of Santa Clara and San Mateo Counties has observed the similar trends, noting that fearful immigrants have discontinued participation in food security programs.

The Executive Order contributed to this climate of fear. After President Trump signed the Executive Order, public officials in Santa Clara and San Francisco were forced to publicly address the anxiety in their communities. In January 2017, for example, former San Francisco Mayor Ed Lee held a press conference where he affirmed that the City would “not allow its immigrant residents ‘to live in fear’” and would continue to observe the City’s sanctuary city policy. Emily Green & Kevin

Fagan, *SF Mayor Lee Stands Up to Trump, Says City Remains a Sanctuary*, San Francisco Chronicle (Jan. 25, 2017).²⁸ In March, Santa Clara law enforcement leaders held a similar press conference amid severe community anxiety, Robert Salonga, *'Not our role': Santa Clara County cops reaffirm they won't be deportation force*, San Jose Mercury News (Mar. 14, 2017),²⁹ and the Mayor of San Jose issued a press release reassuring city residents that they should not be afraid to call the police, regardless of their immigration status, *Mayor Liccardo issues statement on immigration raids in Southern California*, KTVU (Feb. 10, 2017).³⁰ If the permanent injunction is overturned and the Executive Order is enforced, these anxieties will be compounded. Immigrants, afraid that local officials may share their information with the federal government, will have yet another reason to avoid accessing necessary services.

²⁸ Available at <http://www.sfchronicle.com/bayarea/article/SF-Mayor-Lee-stands-up-to-Trump-says-city-10883956.php?t=044af31a8e&cmpid=premartcl>.

²⁹ Available at <http://www.mercurynews.com/2017/03/14/santa-clara-county-law-enforcement-reaffirms-immigrant-protections/>.

³⁰ Available at <http://www.ktvu.com/news/mayor-liccardo-issues-statement-on-immigration-raids-in-southern-california>.

B. When Immigrants Are Afraid to Access Services, Public Health, Safety, and Community Economic Interests Are Negatively Impacted.

When individuals are too scared to seek essential services for fear of deportation, the risks for individual and public health and safety increase significantly. Consequently, the “administration’s actions and directives ostensibly target the 11 million unauthorized immigrants who live in the United States, but they *will also harm millions of American citizens all across the country who live and work beside these immigrants every day.*” Lowrey, *Trump’s anti-immigrant policies* (emphasis added).

Considerable risks to individual and public health are associated with the community’s anxiety about accessing healthcare. When individuals do not seek preventive care (including vaccines), fill vital prescriptions, or care for acute conditions until they experience an emergency, both the risk of public health crises and the price of health care can rise. “Placing barriers to accessing regular health care for undocumented immigrants threaten[s] community resilience because those with pre-existing health conditions are more vulnerable to suffer severe effects from a disease outbreak or public health emergency.” Julianne Zuber, *Healthcare for the Undocumented: Solving a Public Health Crisis in the U.S.*, 28 J. Contemp. Health L. & Policy 350, 370 (2012). “Ultimately, keeping undocumented immigrants from getting necessary health care is bad for everyone. . . . Health care is more expensive

when people can't get it until they're very sick. And lack of health care increases the risk of chronic illness.” Anna North, *DACA helped some immigrants finally get health care. Now they could lose it*, Vox (Sept. 28, 2017).³¹ Moreover, anxiety and fear of the consequences of being undocumented, including deportation and lack of future access to health care, can lead to acute mental health concerns. See David Becerra, *et al.*, *Fear vs. Facts: Examining the Economic Impact of Undocumented Immigrants in the U.S.*, 39 J. Soc. & Soc. Welfare 111, 118-19 (2012); Leisy J. Abrego, *Legal Consciousness of Undocumented Latinos: Fear and Stigma as Barriers to Claims-Making for First- and 1.5-Generation Immigrants*, 45 Law & Soc’y Rev. 337, 341 (2011) (noting risk of chronic anxiety for undocumented immigrants).

When crime is underreported because victims and witnesses are afraid to approach law enforcement, the public’s safety is also put at risk. See Martinez, *Help for Undocumented Victims of Crime*, at 129-30; Bill Ong Hing, *Immigration Sanctuary Policies: Constitutional and Representative of Good Policing and Good Public Policy*, 2 UC Irvine L. Rev. 247, 303 (2012) (noting that the entire community is safer when the immigrant community trusts law enforcement). “When the community and law enforcement are not engaged, we miss opportunities to interrupt

³¹ Available at <https://www.vox.com/identities/2017/9/28/16351866/daca-health-care-reproductive-health-undocumented-immigrants>.

current and future violence. As a result, everyone’s public safety is put at risk.” Debra J. Robbin, *When Undocumented Immigrants Don’t Report Crime, We All Suffer*, WBUR (Sept. 22, 2017).³²

The anxieties caused by the Executive Order contribute to these harms by further limiting immigrants’ use of public health, safety, educational, and social services. The results are harmful to the public interest.

CONCLUSION

On behalf of their member organizations, their clients and the communities they serve, *amici curiae* urge this Court to affirm the district court’s order granting a permanent injunction to prevent further harm and damage to the public interest.

Dated: February 12, 2018

COOLEY LLP

By: /s/ Maureen P. Alger

Maureen P. Alger

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³² Available at <http://www.wbur.org/cognoscenti/2017/09/22/undocumented-immigrants-report-crimes-debra-j-robbin>.

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of NINTH CIRCUIT RULE 32-1 and FED. R. APP. P. 29(a)(5) because the brief contains 6995 words, including Appendix A and excluding the parts of the brief exempted by FED. R. APP. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type-style requirements of FED. R. APP. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Times New Roman in Microsoft Word 2016 in Times New Roman, size 14.

Dated: February 12, 2018

COOLEY LLP

By: /s/ Maureen P. Alger
Maureen P. Alger

Attorneys for Amici Curiae

CERTIFICATE OF SERVICE

I, Heather Hunt, hereby certify pursuant to NINTH CIRCUIT RULE 25-5(f) that I electronically filed the foregoing **BRIEF OF AMICI CURIAE** 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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APPENDIX A

The following is a complete list of the 28 *amici*:

Abode Services is a nonprofit agency re-housing homeless people in the Bay Area. Abode offers programs and services in three main areas: emergency shelter and crisis support services; subsidized housing; and supportive services, to help people remain stably housed and live as independently as possible.

API Council of San Francisco is a 40-member city-wide coalition that advocates for equitable policies and resources on behalf of Asian Pacific Islander communities, particularly in the areas of housing, health, and human services. API Council's members are listed at <https://www.apicouncil.org/about-us/our-members/>.

Asian Americans for Community Involvement (AACI) is a community-based organization focused on the Asian community. Its mission is to improve the health, mental health, and well-being of individuals, families, and the Asian community. Most of AACI's clients are from low income, immigrant, and/or refugee families.

California Association of Nonprofits (CalNonprofits) is a statewide association with more than 10,000 members that serves as the voice for California's nonprofit community. CalNonprofits does research, provides educational programs, and works to ensure a favorable economic and regulatory climate for nonprofits.

Caminar is a community-based agency whose mission is to build strong, safe, and self-sufficient families and communities through a range of mental health and substance abuse treatment and education programs for adults, families, and children. Caminar focuses on providing services to low-income and MediCal-eligible clients.

Catholic Charities of Santa Clara County provides a range of social services for individuals and families in need, especially those living in poverty. The organization annually serves 40,000 people of all cultures and beliefs in Santa Clara County.

Coalition of Agencies Serving the Elderly (CASE) is a professional organization of agencies committed to protecting and enhancing policy and services affecting older adults and adults with disabilities in San Francisco. CASE's members are listed at <http://sfseniors.org/membership>.

Community Solutions is a nonprofit human services agency serving Santa Clara and San Benito Counties. The organization's programs provide services to help

children, families, and individuals overcome mental health issues, substance abuse, trauma, severe family dysfunction, sexual and domestic violence, and human trafficking.

Council of Community Housing Organizations (CCHO) fights for funding and policies that shape urban development and empower low-income and working-class communities. CCHO's members are listed at <http://www.sfccho.org/members/>.

Destination: Home, a program of The Health Trust, is a public-private partnership whose mission is ending homelessness in Santa Clara County. Destination: Home focuses on transforming the system and creating new housing opportunities for the homeless, and facilitates Santa Clara County's Community Plan to End Homelessness.

Fresh Lifelines for Youth (FLY) is dedicated to breaking the cycle of violence, crime, and incarceration of teens. FLY works with Bay Area youth, ages fourteen to eighteen, who are in the juvenile justice system or at risk of entering the system. Over 80% of FLY's clients are minority youth.

HealthRIGHT 360 provides compassionate, integrated healthcare including primary care, mental health care, substance use disorder treatment, and re-entry services. The organization provides care to over 38,000 individuals a year through more than 70 programs in thirteen California counties including Santa Clara and San Francisco.

The Health Trust engages in public policy, makes grants, and provides direct services to members of Silicon Valley's most vulnerable communities. The Trust focuses its work on food access, housing, chronic disease management, health care access, early childhood development, and oral health.

HIV/AIDS Provider Network is a coalition of 27 community-based agencies that serve people living with or at risk of HIV/AIDS in San Francisco. The services provided by the organizations in the Network include primary medical care, mental health care, home-delivered meals, benefits counseling, and housing.

Homeless Emergency Service Providers Association (HESPA) represents 26 nonprofit organizations that provide emergency homeless services and advocates for policies that address homelessness in San Francisco. HESPA has developed proposals to ensure emergency services, secure funding to continue services from federal grants, and prevent homelessness.

LifeMoves helps homeless families and individuals return to stable housing and self-sufficiency by providing a network of shelters comprised of seventeen facilities with a total of 700 beds. LiveMoves offers a broad range of services to clients, including mental and behavioral health services, housing and job search support, and financial literacy and education programs.

Long Term Care Coordinating Council (LTCCC) is an advisory body to the Mayor's Office, comprised of 40 members representing community agencies, San Francisco city departments, and consumers. The LTCCC makes policy recommendations related to improving access to long term care and supportive services for San Francisco residents. More information and a list of members can be found at <http://www.ltccsf.org/>.

San Francisco Human Services Network (HSN) is an association of 80 community-based nonprofit agencies dedicated to addressing issues critical to the health and human services sector in San Francisco. HSN's members are listed at http://www.sfhsn.org/members_members.htm.

San Francisco Interfaith Council (SFIC) serves as "convener" of the CEOs of fifteen major faith-based social service agencies. SFIC promotes the agencies' collective impact and advocates on their behalf to increase the visibility of the economic challenges faced by nonprofits and their clients. Participating agencies are listed at <http://www.sfinterfaithcouncil.org/social-service-agencies>.

San Francisco Latino Parity and Equity Coalition (SFLPEC) is a citywide coalition working to ensure that Latinos/as who live or work in San Francisco are being justly represented and provided with the resources they need to reach their full potential. SFLPEC enhances and strengthens social services in the midst of the region's affordable housing crisis.

San Francisco Mental Health Contractors Association includes more than a dozen nonprofits that together provide over 60% of the outpatient mental health services for San Francisco's children, families, transitional aged youth, adults, and seniors.

Second Harvest Food Bank of Santa Clara and San Mateo Counties has a mission to ensure that anyone who needs a healthy meal receives one. The Food Bank distributes nutritious food through a network of more than 320 nonprofit partners at more than 850 sites, feeding over 250,000 people every month.

Silicon Valley Council of Nonprofits (SVCN) brings together nonprofits in Santa Clara County to maximize their influence and contributions. SVCN works with 200 member health and human service agencies that provide a wide array of services. SVCN's members are listed at <http://www.svcn.org/current-members>.

Silicon Valley Independent Living Center promotes independent living and full inclusion for people with disabilities in Santa Clara County by offering a free services, including individual and community advocacy, information and referral, peer support groups, housing search assistance, personal assistance referral services, and independent living skills training.

Supportive Housing Providers Network is a network of direct service providers, resident leaders, and property managers that seeks to inform, enhance, and respond to policy, systems, and funding issues directly impacting permanent supportive housing in San Francisco.

West Valley Community Services has been providing safety net services to low income and homeless individuals and families in the West Valley region of Santa Clara County for over forty years. West Valley Community Services offers a food pantry, affordable housing, emergency financial assistance, financial coaching, family support, case management, and referral services.

Yu-Ai Kai Japanese American Community Senior Service promotes healthy aging, successful independent living for all seniors while embracing Japanese American traditions. Yu-Ai Kai provides an array of social services programs, wellness programs, nutrition programs, social activities, and community events.

YWCA Silicon Valley is dedicated to eliminating racism, empowering women, and promoting peace, justice, freedom, and dignity for all. It provides affordable childcare, STEM enrichment programs for girls, and counseling, supportive housing, and other supportive services for survivors of domestic violence, sexual assault, and human trafficking.