

EXHIBIT 1

1 JAMIE S. GORELICK
jamie.gorelick@wilmerhale.com
2 CATHERINE M.A. CARROLL
catherine.carroll@wilmerhale.com
3 CLAIRE M. BERGERON
claire.bergeron@wilmerhale.com
4 SHEILA E. MENZ
sheila.menz@wilmerhale.com
5 WILMER CUTLER PICKERING
HALE AND DORR LLP
6 1875 Pennsylvania Avenue, NW
7 Washington, D.C. 20006
Telephone: (202) 663-6500
8 Facsimile: (202) 663-6363

9 *Attorneys for Amici Curiae*

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

12 CITY AND COUNTY OF SAN FRANCISCO,
13 Plaintiff,

14 v.

15 DONALD J. TRUMP, President of the United States,
16 UNITED STATES OF AMERICA, JOHN F.
17 KELLY, Secretary of United States Department of
Homeland Security, JEFFERSON B. SESSIONS,
18 Attorney General of the United States, DOES 1-100,
19 Defendants.

20 COUNTY OF SANTA CLARA,
21 Plaintiff,

22 v.

23 DONALD J. TRUMP, President of the United States
of America, JOHN F. KELLY, in his official capacity
24 as Secretary of the United States Department of
Homeland Security, JEFFERSON B. SESSIONS, in
25 his official capacity as Attorney General of the United
States, JOHN MICHAEL "MICK" MULVANEY, in
his official capacity as Director of the Office of
26 Management and Budget, and DOES 1-50,
27 Defendants.

Case No. 3:17-cv-00485-WHO

Case No. 3:17-cv-00574-WHO

**PROPOSED BRIEF FOR TAHIRIH
JUSTICE CENTER, ET AL. AS AMICI
CURIAE IN SUPPORT OF
PLAINTIFFS' MOTIONS FOR
PRELIMINARY INJUNCTIONS**

Judge: Hon. William H. Orrick

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	Page
INTERESTS OF AMICI CURIAE.....	1
SUMMARY OF ARGUMENT	1
ARGUMENT	2
I. The Executive Order Makes Immigrant Women Who Are Victims Of Gender-Based Violence Less Safe.....	2
II. The Executive Order Makes San Francisco, Santa Clara, And Other Jurisdictions Less Safe.....	7
III. The Executive Order Contravenes The Intent Of Federal Immigration Law By Deterring Immigrant Women From Accessing Legal Protection	8
1. Violence Against Women Act	9
2. Trafficking Victims Protection Act	10
CONCLUSION.....	11

TABLE OF AUTHORITIES

Page(s)

CASES

1

2

3 *Arizona Dream Act Coalition v. Brewer*, 757 F.3d 1053 (9th Cir. 2014).....6

4

5 *City and Cnty of San Francisco v. Trump, et al.*

6 No. 3:17-cv-00485 (N.D. Cal. Jan. 31, 2017).....2, 4, 5, 7

7 *County of Santa Clara v. Trump, et al.*

8 No. 3:17-cv-00574 (N.D. Cal. Feb. 3, 2017)2, 4, 5, 7

9 *Pennhurst State School & Hospital v. Halderman*, 451 U.S. 1 (1981).....11

10 *Plyler v. Doe*, 457 U.S. 202 (1982).....6

11 *Youngstown Sheet & Tube Company v. Sawyer*, 343 U.S. 579 (1952)11

STATUTES, RULES, AND REGULATIONS

12

13

14 8 U.S.C. § 101(a)(15).....10

15 S.F. Admin. Code §§ 12H, 12I2

16 Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, §§ 107, 1501-13, 114 Stat.

17 1464-15482, 4, 9, 10, 11

18 Violence Against Women Act of 1994, Pub. L. No. 103-322, §§ 40701-40703,

19 108 Stat. 17962, 4, 9, 10

OTHER AUTHORITIES

20 Executive Order, No. 13,768, 82 Fed. Reg. 8799 (Jan, 25, 2017)..... *passim*

21 159 Cong. Rec. 22 (Feb. 12, 2013).....9

22 159 Cong. Rec. 29 (Feb. 28, 2013).....9

23 103rd Cong., 1st Sess., H. Rep. 103-3959

24 Andrea Noble, *Donald Trump, Police Union at Odds Over ‘Sanctuary Cities’ Funding*, Wash.

25 Times (Nov. 22, 2016).....8

26 David Lisak and Paul Miller, *Repeat Rape and Multiple Offending Among Undetected Rapists*

27 VIOLENCE & VICTIMS, Vol. 17, No. 1 (Feb. 2002)8

28

1 James Queally, *Latinos Are Reporting Fewer Sexual Assaults Amid a Climate of Fear in*
Immigrant Communities, LAPD Says, L.A. Times (Mar. 21, 2017)7

2
 3 Joint Statement, *U.S. Mayors, Police Chiefs Concerned With Sanctuary Cities Executive Order*
 (Jan. 25, 2017).....8

4 Katie Mettler, *‘This is Really Unprecedented’: ICE Detains Woman Seeking*
 5 *Domestic Abuse Protection at Texas Courthouse*, Wash. Post (Feb. 16, 2017)6

6 Liz Robbins, *Police Fear Trump Immigration Orders May Handcuff Effort to Fight Gangs*, N.Y.
 7 Times (Feb. 22, 2017).....7, 8

8 Mai Thi Nguyen and Hannah Gill, *Interior Immigration Enforcement: The Impacts of Expanding*
Local Law Enforcement Authority, 53 Urb. Stud. J. 302 (2015)7

9 Major County Sheriffs’ Association and Major City Chiefs Association, *Letter Opposing S. 2146*
 10 (Oct. 20, 2015)2, 8

11 Mark Joseph Stern, *Bad for Undocumented Immigrants, a Gift to Domestic Abusers*, Slate.com
 12 (Mar. 8, 2017)6

13 Michael Runner, et al., *Intimate Partner Violence in Immigrant and Refugee Communities:*
 14 *Challenges, Promising Practices, and Recommendations*, Family Violence Prevention
 Fund (Mar. 2009)2, 3

15 Nicholas Kulish, Caitlin Dickerson, and Ron Nixon, *U.S. Immigration Agents Discover New*
 16 *Freedom to Deport Under Trump*, N.Y. Times (Feb. 25, 2017)6

17 Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration*
 18 *Enforcement* (May 2013)2, 5, 7

19 No Mas Staff, *New Study of Domestic Violence and Sexual Assault in the U.S. Latin@*
 20 *Community Reveals Barriers to Reporting and High Willingness to Intervene to Help*
 21 *Survivors* (Apr. 21, 2015)3

22 Nora Caplan-Bricker, *I Wish I’d Never Called the Police*, Slate.com (Mar. 19, 2017)6,7

23 Orde F. Kittrie, *Federalism, Deportation, and Crime Victims Afraid to Call the Police*, 91 Iowa
 L. Rev. 1449 (2006).....5

24 Pamela Constable, *For Immigrant Women, Domestic Violence Creates a Double Shadow*, Wash.
 25 Post (Dec. 2, 2013).....3

26 PRI’s The World, *Some Immigrant Women, Victims of Domestic Violence, Afraid to Seek Help*
 (Mar. 21, 2013)3

27 Scott D. Rhodes, et al., *The Impact of Local Immigration Enforcement Policies on the Health of*
 28 *Immigrant Hispanics/Latinos in the United States*, 105(2) Am. J. Pub. Health 329 (Feb.
 2015).....5

1 The Guardian, *Undocumented Woman Arrested After Seeking Protection Prepares for Possible*
Indictment (Mar. 2, 2017)6

2 The Superior Court of California, County of Santa Clara, “*Domestic Violence Restraining*
3 *Order*,” <http://bit.ly/2nOfVCJ>3

4 Tom K. Wong, *The Effects of Sanctuary Policies on Crime and the Economy*, Center for
5 American Progress (Jan. 26, 2017)7

6 Tyler Kingkade, *Trump Deportation Vow Is Scaring Domestic Abuse Victims From Coming*
7 *Forward*, BuzzFeed News (Mar. 16, 2017).....6

8 U.S. Dep’t. of Justice, Office of Violence Against Women, *2016 Biennial Report to Congress*
9 (2016).....11

10 Washington State Institute for Public Policy, *Recidivism Trends of Domestic Violence Offenders*
11 *in Washington State* (Aug. 2013).....8

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

INTERESTS OF AMICI CURIAE

1 The Tahirih Justice Center (“Tahirih”) is the largest multi-city direct services and policy
2 advocacy organization specializing in assisting immigrant women and girls who survive gender-
3 based violence, including human trafficking, forced labor, domestic violence, rape and sexual
4 assault, and female genital cutting/mutilation. Tahirih serves clients at four local offices, including
5 in San Francisco, and to date, has provided free legal assistance to more than 20,000 individuals.
6 The additional amici, Asian Law Alliance, Asian Pacific Institute on Gender-Based Violence,
7 ASISTA, Casa de Esperanza, Dolores Street Community Services, Immigration Center for Women
8 & Children, Maitri, and Pangea Legal Services, include immigration service providers that serve
9 immigrant women survivors of gender-based crimes in San Francisco and Santa Clara County, as
10 well as national policy organizations that advocate for legal and other protections for survivors of
11 gender-based crimes in the United States.¹ Amici have a special understanding of the direct and
12 severe impact that the Administration’s January 25, 2017 Executive Order, Enhancing Public Safety
13 in the Interior of the United States, No. 13,768, 82 Fed. Reg. 8799 (the “Executive Order”), will
14 have on immigrant survivors by limiting their access to protection from and treatment for the effects
15 of gender-based violence.

SUMMARY OF ARGUMENT

16 Amici respectfully submit this brief to assist the Court in analyzing the community benefits
17 of so-called “sanctuary” laws and policies in San Francisco, Santa Clara, and nationwide, and the
18 harms to those communities and to the public interest that are occurring as a result of the Executive
19 Order. Based on amici’s extensive work with survivors of gender-based violence, amici believe the
20 Executive Order is already having and will continue to have a severely detrimental effect on
21 immigrant survivors for three reasons.
22

23 *First*, the Executive Order makes immigrant women and girls who are survivors of gender-
24 based violence less safe by deterring them from accessing vital emergency services and protection
25 from abuse. For many immigrant survivors, the first step in obtaining protection from gender-based
26 violence involves reaching out to local law-enforcement officers or emergency medical-services
27 providers. Under laws respecting the separate functions of federal agencies and local governments,
28

¹ Amici’s full names and addresses appear at Appendix 1.

1 immigrant survivors have been able to seek these life-saving services without fear that doing so will
 2 place them at risk of deportation.² The Executive Order has already chilled the willingness of
 3 immigrant survivors to seek these services and is forcing San Francisco, Santa Clara, and other
 4 jurisdictions nationwide to make budgetary and policy decisions that could result in a loss of critical
 5 funding for victims' services or require them to alter their laws and policies in a manner that
 6 discourages women in abusive environments from seeking help.³

7 *Second*, by deterring immigrant women from reporting gender-based violence and accessing
 8 critical services, the Executive Order makes the broader communities of San Francisco, Santa Clara,
 9 and similarly situated jurisdictions less safe. Under the Executive Order, these jurisdictions face an
 10 impossible choice between losing billions of dollars in federal funding or altering policies that
 11 victims' advocates, law-enforcement officers, and local officials all view as critical to ensuring
 12 public safety and prosecuting criminal activity.⁴

13 *Finally*, the Executive Order prevents immigrant survivors of gender-based violence from
 14 accessing legal protections available to them under the Violence Against Women Act and the
 15 Trafficking Victims Protection Act. In this regard, the Executive Order contravenes Congress's
 16 intent in enacting measures to protect immigrant survivors of gender-based violence and encourage
 17 them to report abuse.

18 ARGUMENT

19 **I. The Executive Order Makes Immigrant Women Who Are Victims Of Gender-Based 20 Violence Less Safe**

21 Of the many women in the United States who are raped or physically assaulted by an
 22 intimate partner each year, "immigrant and refugee women are especially vulnerable."⁵ Immigrant

23 ² First Amended Complaint for Declaratory and Injunctive Relief at ¶ 3, *City of San Francisco v.*
 24 *Trump*, No. 3:17-cv-00485 (N.D. Cal. Feb. 27, 2017) ("San Francisco FAC"), Dkt. 20; Complaint
 for Declaratory and Injunctive Relief at ¶¶ 56-57, *Cty. of Santa Clara v. Trump*, No. 3:17-cv-00574
 (N.D. Cal. Feb. 3, 2017), Dkt. 1 ("Santa Clara Complaint").

25 ³ See S.F. Admin. Code §§ 12H, 12I.

26 ⁴ See Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in*
 27 *Immigration Enforcement* (May 2013), <http://bit.ly/1Adp6RD>; Letter from the Major Cities Chiefs
 and Major County Sheriffs' Associations Opposing S. 2146 (Oct. 19, 2015), <http://bit.ly/1RnPg7g>;
 San Francisco FAC at ¶ 33; Santa Clara Complaint at ¶ 58.

28 ⁵ Michael Runner, et al., *Intimate Partner Violence in Immigrant and Refugee Communities: Challenges, Promising Practices, and Recommendations* at 11, Family Violence Prevention Fund (Mar. 2009), <http://bit.ly/1WrvmtD>.

1 women face unique obstacles in seeking protection from gender-based violence, including language
2 barriers, lack of familiarity with social services and law-enforcement systems, and fear of the police
3 based on past experiences with law enforcement in their countries of origin.⁶ Survivors of gender-
4 based violence may also fear that contacting authorities to report abuse will put the survivor or a
5 family member at risk for deportation.⁷ For example, in a 2015 survey of 800 Latinos and Latinas
6 nationwide, 41 percent of respondents cited fear of deportation as the number-one barrier preventing
7 Latino and Latina victims of domestic violence from seeking help.⁸ Indeed, many abusers are well
8 aware of this and therefore use a victim's immigration status against her, threatening to contact
9 immigration authorities and report the victim if she discloses abuse.⁹ While this tool of exploitation
10 and control is especially prominent when the abuser is a U.S. citizen or legal resident and the victim
11 is undocumented, an abuser may also use the threat of deportation to control a victim who actually
12 holds lawful status. An abuser will often isolate a victim, actively try to prevent her from learning
13 that she does have lawful immigration status, and capitalize on her false belief that her status is
14 within his control.¹⁰

15 To combat these barriers, San Francisco, Santa Clara, and other jurisdictions nationwide have
16 enacted policies designed to allow survivors of gender-based violence to seek protection from local
17 agencies without fear that those agencies are acting as an arm of the federal immigration authorities.
18 These policies enable survivors to access immediate, short-term protections, such as emergency
19 medical care, as well as longer-term benefits, such as restraining orders.¹¹ Moreover, because
20

21 ⁶ *Id.* at 4-5.

22 ⁷ Pamela Constable, *For Immigrant Women, Domestic Violence Creates a Double Shadow*, Wash.
Post (Dec. 2, 2013), <http://wapo.st/2ntxYkC>.

23 ⁸ *New Study of Domestic Violence and Sexual Assault in the U.S. Latin@ Community Reveals*
Barriers to Reporting and High Willingness to Intervene to Help Survivors, No Mas (Apr. 21, 2015),
24 <http://bit.ly/1OHQ7NV>.

25 ⁹ Runner, *Intimate Partner Violence* at 4; PRI's The World, *Some Immigrant Women, Victims of*
Domestic Violence, Afraid to Seek Help (Mar. 21, 2013), <http://bit.ly/2n4Dbi0> (quoting Sister
26 Rosemary Welsh, Executive Director of Casa de Misericordia in Laredo, Texas, as follows: "One of
27 the many ways men would keep [immigrant women] in a domestic violence situation was saying that
'I am a U.S. citizen' or 'I am a legal permanent resident, and you call the police, they will deport you
and I will stay with the kids. ...'").

28 ¹⁰ See Runner, *Intimate Partner Violence* at 12.

¹¹ See The Superior Court of California, County of Santa Clara, "Domestic Violence Restraining
Orders," <http://bit.ly/2nOfVCJ>.

1 federal law provides immigration protection to survivors of domestic violence, reaching out to law
 2 enforcement can enable a survivor to learn that she might qualify for immigration status or relief
 3 from deportation. *See infra*, Part III. Examples drawn from amici’s clients illustrate this in practice:

- 4 • “P” was living in Gibraltar where she met and married a U.S. citizen. After they had a
 5 son together, P’s husband convinced her to sell her home, quit her job, and move with
 6 him to the United States. Over time, P’s husband grew verbally and physically abusive.
 7 On one occasion, he intentionally crashed the couple’s car as he was driving with P and
 8 their baby. The abuse escalated, culminating in an incident in which P’s husband
 9 screamed at her, strangled her, and scratched her face and eye. P did not immediately
 10 call the police, fearing violent retaliation from her husband. Finally, after P’s husband
 11 threw her and their child out of the house during a snowstorm, P’s friend encouraged her
 12 to call the police, and after doing so, P was able to get a protective order. According to P,
 13 she never would have reported the abuse if she thought there was a chance that she would
 14 be detained, deported, and separated from her son, who has autism and requires ongoing
 15 special care. Through assistance from Tahiri, P obtained lawful permanent residence in
 16 2015 based on a Violence Against Women Act “self-petition,” and she is eligible for
 17 citizenship next year. Her son is thriving now that he is not regularly witnessing
 18 domestic violence.
- 19 • “O,” a client of Pangea Legal Services, is from Mexico. Her husband beat her, raped her,
 20 and forced her to work in dangerous conditions. O fled to the United States for
 21 safety. She had four U.S. citizen children after moving to California. But the father of her
 22 three youngest children also was abusive and violent. O did not report the abuse for
 23 several years out of fear that the police would return her to Mexico. However, with the
 24 help of her neighbors, O was reassured that she could share her story with the police, and
 25 she ultimately agreed to speak with a police officer about her abuser’s behavior. As a
 26 result, O has a work permit and pending applications for asylum and a U visa as a victim
 27 of crime. She and her four U.S. citizen children are now living in safety.

28 The Executive Order drastically alters the current landscape by forcing San Francisco, Santa
 Clara, and similar jurisdictions to choose either to forgo billions of dollars in essential federal
 funding or to change their policies.¹² Either choice would have severely negative consequences for
 survivors of gender-based violence.

If San Francisco and Santa Clara choose to maintain their policies, they could lose funding
 necessary to support protective services and treatment for all survivors of gender-based violence,
 including U.S. citizens. San Francisco, for example, has already identified “services for women that
 are domestic violence survivors” as a category of programming that could be cut if it loses federal
 funding. *Id.* at 143. It also anticipates a loss of approximately \$800 million dollars for public
 hospitals and clinics. *Id.* at ¶¶ 123-126. Likewise, in Santa Clara, the loss of federal funding could
 result in a seventy percent reduction in the annual budget of a medical center providing women’s

¹² San Francisco FAC at ¶ 4; Santa Clara Complaint at ¶ 27.

1 health and emergency services to the indigent. Santa Clara Complaint at ¶¶ 29-30. Both
 2 jurisdictions believe that they will have to significantly adjust their budgets in the very near term to
 3 account for the potential loss of federal funding.¹³

4 On the other hand, if San Francisco and Santa Clara were coerced into changing their so-
 5 called “sanctuary” laws and policies, the results would be equally devastating. Studies show that
 6 when local officials enforce federal immigration law, immigrants are deterred from contacting local
 7 officials—be it in an emergency room or by dialing 911—out of fear that doing so will result in
 8 detention or deportation. One study from North Carolina illustrates the stark impact of such a policy
 9 on women and children’s health: As a result of state and federal immigration enforcement
 10 agreements, Hispanic/Latina mothers in North Carolina sought prenatal care later and received
 11 poorer quality care compared to non-Hispanic/Latina mothers.¹⁴ The study noted that “participants
 12 reported profound mistrust of health services, avoiding health services, and sacrificing their health
 13 and the health of their family members.”¹⁵

14 A survey of 2,000 Latinos in the Chicago, Houston, Los Angeles, and Phoenix areas in 2012
 15 similarly found that “increased involvement of the police in immigration enforcement has
 16 significantly heightened the fears many Latinos have of the police, contributing to their social
 17 isolation and exacerbating their mistrust of law enforcement authorities.”¹⁶ Forty-five percent of all
 18 those surveyed, and seventy percent of the undocumented immigrants surveyed, reported that as a
 19 result of increased cooperation between the police and immigration authorities, they were less likely
 20 to contact law enforcement if they were victims of a crime.¹⁷ That chilling effect, which impedes the
 21 ability of immigrant women to access the justice system and hold their abusers accountable, has
 22 serious ramifications for public safety and also raises due-process and equal-protection concerns.

23
 24 ¹³ County of Santa Clara’s Motion for Preliminary Injunction (“Santa Clara PI”) at 23, No. 3:17-cv-
 25 00574 (N.D. Cal. Feb. 23, 2017), Dkt. 26; City and County of San Francisco’s Notice of Motion and
 26 Motion for Preliminary Injunction; Memorandum of Points and Authorities in Support Thereof
 27 (“San Francisco PI”) at 2, No. 3:17-cv-00485 (N.D. Cal. Mar. 8, 2017), Dkt. 21.

28 ¹⁴ Scott D. Rhodes, et al., *The Impact of Local Immigration Enforcement Policies on the Health of
 Immigrant Hispanics/Latinos in the United States*, 105(2) Am. J. Pub. Health 329 (Feb. 2015)

¹⁵ *Id.*

¹⁶ Theodore, *Insecure Communities* at 1.

¹⁷ *Id.*; see also Orde F. Kittrie, *Federalism, Deportation, and Crime Victims Afraid to Call the
 Police*, 91 Iowa L. Rev. 1449, 1451 (2006).

1 See *Plyler v. Doe*, 457 U.S. 202, 226 (1982); *Arizona Dream Act Coalition v. Brewer*, 757 F.3d
2 1053, 1065 (9th Cir. 2014).

3 This is not an abstract fear. Less than three weeks after the Administration issued the
4 Executive Order, and amidst widespread reports of escalating immigration enforcement activity,
5 U.S. Immigration and Customs Enforcement (“ICE”) agents arrested an immigrant woman at a
6 courthouse in El Paso, Texas, where she had gone to seek an order of protection from her abuser.¹⁸
7 According to media reports, federal agents later justified the timing and location of this arrest by
8 noting that because the woman was “residing at the Center Against Sexual and Family Violence, and
9 not at [her] residence, it was determined that the best opportunity to locate [the woman] would be
10 after the hearing [on an order of protection].”¹⁹ Separately, in Denver, Colorado, City Attorney
11 Kristin Bronson reported that since the issuance of the Executive Order, four domestic-violence
12 victims have informed her office that they no longer wish to pursue charges against their abusers out
13 of fear that doing so will place them at risk of deportation.²⁰ The district attorney in Travis County,
14 Texas, similarly reported that at least one domestic-violence case there recently stalled because the
15 victim declined to press charges out of fear of deportation.²¹ At the same time, staff at domestic-
16 violence shelters and clinics operating in communities with large undocumented populations are
17 reporting a “large drop in the number of women coming in for services,” indicating that
18 undocumented victims “aren’t taking the next steps to escape abusers, such as pressing charges or
19 moving into shelters.”²²

20 As recently as this week, reports indicate that immigrant survivors of gender-based violence
21 across the country—from Oakland, to Boston, to Tucson—are living in fear as a result of the

22
23 ¹⁸ Katie Mettler, *‘This is Really Unprecedented’: ICE Detains Woman Seeking Domestic Abuse*
24 *Protection at Texas Courthouse*, Wash. Post (Feb. 16, 2017), <http://wapo.st/2nfpmOf>; see also
25 Nicholas Kulish, Caitlin Dickerson, and Ron Nixon, *U.S. Immigration Agents Discover New*
26 *Freedom to Deport Under Trump*, N.Y. Times (Feb. 25, 2017), <http://nyti.ms/2mie63i>.

27 ¹⁹ *Undocumented Woman Arrested After Seeking Protection Prepares for Possible Indictment*, The
28 Guardian (Mar. 2, 2017), <http://bit.ly/2mL34kh>.

²⁰ Mark Joseph Stern, *Bad for Undocumented Immigrants, a Gift to Domestic Abusers*, Slate.com
(Mar. 8, 2017), <http://slate.me/2mZlJvS>.

²¹ Nora Caplan-Bricker, *I Wish I’d Never Called the Police*, Slate.com (Mar. 19, 2017),
<http://slate.me/2mYrYgC>.

²² Tyler Kingkade, *Trump Deportation Vow Is Scaring Domestic Abuse Victims From Coming Forward*, BuzzFeed News (Mar. 16, 2017), <http://bzfd.it/2nNRX9L>.

1 Administration’s pledge to deport as many undocumented immigrants as possible, which could
 2 “sweep up victims of domestic violence, putting them on a fast track to deportation before they can
 3 seek legal status ... or justice through the legal system.”²³ In Los Angeles, police Chief Charlie
 4 Beck said that his city is already seeing evidence of this chilling effect: Reports of sexual assault
 5 have dropped by 25 percent and domestic violence by 10 percent among the Latino population since
 6 the beginning of the year.²⁴

7 **II. The Executive Order Makes San Francisco, Santa Clara, And Other Jurisdictions Less 8 Safe**

9 By chilling the willingness of immigrant women to report gender-based violence, the
 10 Executive Order jeopardizes the safety not only of immigrant women themselves, but also of their
 11 broader communities. Fostering trust between the police and immigrants is essential to ensuring
 12 community safety and is the basis for the Santa Clara and San Francisco policies.²⁵ For example,
 13 one study of an Alamance County, North Carolina, policy encouraging local police officers to assist
 14 in enforcing immigration laws found that after the policy took effect, immigrant interviewees were
 15 reluctant to leave their homes or drive, for fear of encountering the police.²⁶ When asked about
 16 crime-reporting practices, “the majority of Hispanic interviewees stated that they would hesitate
 17 before reporting crime to authorities out of fear that a friend, neighbor, or family member might be
 18 placed in danger of deportation.”²⁷ Another recent report concluded that there are, on average, 35.5
 19 fewer crimes committed per 10,000 people in so-called “sanctuary” counties than there are in non-
 20 sanctuary counties.²⁸ For this reason, major policing groups, including the Major Cities Chiefs

21 ²³ Caplan-Bricker, *I Wish I’d Never Called the Police*.

22 ²⁴ James Queally, *Latinos Are Reporting Fewer Sexual Assaults Amid a Climate of Fear in
 Immigrant Communities, LAPD Says*, L.A. Times (Mar. 21, 2017), <http://lat.ms/2nPwdva>.

23 ²⁵ See, e.g., Theodore, *Insecure Communities* at 2-3; Santa Clara PI at 16; San Francisco PI at 3; see
 24 also Liz Robbins, *Police Fear Trump Immigration Orders May Handcuff Effort to Fight Gangs*,
 N.Y. Times at 1, 2 (Feb. 22, 2017) (quoting Suffolk County Police Commissioner as explaining
 25 “[t]he last thing I want is a fearful community. Whether its fear of criminals or fear of law
 enforcement. We solve crimes based on people coming to us. It’s that simple.”),
<http://nyti.ms/2mVplOt>.

26 ²⁶ Mai Thi Nguyen and Hannah Gill, *Interior Immigration Enforcement: The Impacts of Expanding
 Local Law Enforcement Authority*, 53 Urb. Stud. J. 302, 14 (2015)
 27 https://planning.unc.edu/people/faculty/mainguyen/InteriorImmigrationEnforcement_UrbanStud2015Nguyen0042098014563029.pdf.

28 ²⁷ *Id.* at 15.

²⁸ Tom K. Wong, *The Effects of Sanctuary Policies on Crime and the Economy*, 2, Center for
 American Progress (Jan. 26, 2017), <http://ampr.gs/2kxOchX>.

1 Association (“MCCA”), Major County Sheriffs Association, International Association of Chiefs of
 2 Police, and National Fraternal Order of Police have opposed efforts to defund so-called “sanctuary”
 3 jurisdictions.²⁹ As the MCCA noted in response to the issuance of the Executive Order: “[c]ities that
 4 aim to build trusting and supportive relations with immigrant communities should not be punished
 5 because this is essential to reducing crime and helping victims.”³⁰

6 When domestic violence goes unreported, entire communities are put at risk. Studies show
 7 that the rates of recidivism for domestic-violence offenders may be higher than for other crimes, and
 8 that perpetrators of sexual violence may go on to commit other violent acts.³¹ By deterring
 9 immigrant women from reporting gender-based violence, therefore, the Executive Order has
 10 especially troubling implications for local community safety: It will hinder local law-enforcement
 11 efforts to apprehend perpetrators and prevent future crimes.

12 Furthermore, the Executive Order places San Francisco, Santa Clara, and other jurisdictions
 13 at immediate risk of losing critical funding used for public safety initiatives. Santa Clara anticipates,
 14 for example, that the loss of federal dollars will force the County to roll back “juvenile justice,
 15 security, intelligence initiatives, and multifaceted crime prevention.” Santa Clara Complaint at ¶ 34.
 16 And San Francisco believes the loss of funding would have “severe public health and public safety
 17 impacts,” including significant reductions in the size of the city’s police force. *See* San Francisco
 18 FAC at ¶ 143.

19 **III. The Executive Order Contravenes The Intent Of Federal Immigration Law By** 20 **Deterring Immigrant Women From Accessing Legal Protection**

21 Finally, by deterring immigrant survivors of gender-based violence from accessing
 22 protections specifically designed for them under federal immigration laws, the Executive Order

23 ²⁹ Letter from the Major County Sheriffs’ Association and Major City Chiefs Association Opposing
 24 S. 2146 (Oct. 20, 2015), <http://bit.ly/1RnPg7g>; Robbins, *Police Fear Trump Immigration Orders*
 25 *May Handcuff Effort to Fight Gangs* (quoting a statement by the International Association of Chiefs
 of Police); Andrea Noble, *Donald Trump, Police Union at Odds Over ‘Sanctuary Cities’ Funding*,
 Wash. Times (Nov. 22, 2016), <http://bit.ly/2nfrzJt> (citing National Fraternal Order of Police former
 Executive Director James Pasco).

26 ³⁰ Joint Statement, *U.S. Mayors, Police Chiefs Concerned With Sanctuary Cities Executive Order*
 27 (Jan. 25, 2017), <http://bit.ly/2n9zjf6>.

28 ³¹ *See Recidivism Trends of Domestic Violence Offenders in Washington State* (Aug. 2013),
 Washington State Institute for Public Policy, <http://bit.ly/2nG4RL4>; David Lisak and Paul Miller,
Repeat Rape and Multiple Offending Among Undetected Rapists, VIOLENCE & VICTIMS, Vol. 17
 , No. 1, 73-84 (Feb. 2002), <http://bit.ly/1txSnPZ>.

1 directly contravenes congressional intent. Congress has long recognized that immigrant women are
2 uniquely vulnerable to abuse because abusers often withhold immigration status as a means of
3 exploitation. To ensure that immigrant women feel safe reporting crimes to the local police,
4 Congress has enacted multiple laws that provide assistance and protection to immigrant survivors of
5 gender-based violence, sexual assault, and human trafficking. Two laws in particular—the Violence
6 Against Women Act of 1994 (“VAWA”), Pub. L. No. 103-322, § 40701-40703, 108 Stat. 1796, and
7 the Trafficking Victims Protection Act of 2000 (“TVPA”), Pub. L. No. 106-386, §§ 107, 1501-13,
8 114 Stat. 1464-1548—are designed to encourage noncitizen women to seek out emergency services,
9 report crimes, and cooperate with local law enforcement without fear that they will be turned over to
10 federal immigration authorities. Both statutes, and their subsequent reauthorizations, have enjoyed
11 long-standing and widespread bipartisan support in Congress.³²

12 Absent a nationwide injunction, the Executive Order undercuts the important protections of
13 these laws. By coercing local safety officers into enforcing federal immigration laws, the Order
14 deters the very reporting and cooperation those Acts sought to engender. It puts survivors at risk of
15 deportation simply for seeking protection from their abusers—precisely the outcome Congress
16 sought to prevent.

17 **1. Violence Against Women Act**

18 In passing VAWA, Congress acknowledged that “[m]any immigrant women live trapped and
19 isolated in violent homes, afraid to turn to anyone for help. They fear both continued abuse if they
20 stay with their batterers and deportation if they attempt to leave.” 103rd Cong., 1st Sess., H. Rep.
21 103-395 at 25. For some, deportation may involve additional trauma such as forced separation from
22 children. One purpose of VAWA, therefore, was to “permit[] battered immigrant women to leave
23 their batterers without fearing deportation.” *Id.*

24 VAWA fulfilled this purpose in two important ways. First, it prevented U.S. Citizen
25 (“USC”) and Lawful Permanent Resident (“LPR”) abusers from exploiting their spouses’ lack of
26 immigration status. An immigrant married to a USC or an LPR often depends on her spouse to
27

28 ³² The most recent reauthorization of VAWA, which included TVPA reauthorization, passed the Senate by a vote of 78-22 and the House of Representatives by a vote of 286-138. *See* 159 Cong. Rec. 29, H800 (Feb. 28, 2013); 159 Cong. Rec. 22, S616 (Feb. 12, 2013).

1 petition for lawful permanent residence on her behalf. Before VAWA, this provided a very effective
2 tool that USC or LPR abusers could use to deter their victims from reporting abuse. VAWA,
3 however, allowed immigrant survivors of domestic violence and sexual assault to “self-petition” for
4 lawful permanent residence on behalf of themselves and their children without the knowledge or
5 involvement of an abusive USC or LPR spouse or family member. *See* Pub. L. No. 103-322 §
6 40701. Second, it permitted certain survivors who were already in immigration proceedings to seek
7 cancellation of removal, effectively shielding them from deportation. *See* Pub. L. No. 103-322 §
8 40703.

9 **2. Trafficking Victims Protection Act**

10 In 2000, Congress strengthened VAWA’s protections for immigrant women with the passage
11 of TVPA. Pub. L. No. 106-386. This law not only improved access to VAWA’s existing forms of
12 relief, but also established two additional visa classifications for noncitizens: the “U” visa for
13 immigrant victims of violent crime, 8 U.S.C. § 101(a)(15)(U), and the “T” visa for immigrant
14 victims of severe forms of human trafficking, 8 U.S.C. § 101(a)(15)(T). Moreover, TVPA expanded
15 access to services for noncitizen survivors of gender-based violence and sexual assault and enhanced
16 funding opportunities for local law enforcement to respond to their unique needs. Pub. L. No. 106-
17 386 § 1512.

18 Like VAWA, these provisions were designed “to remove immigration laws as a barrier that
19 kept battered immigrant women and children locked in abusive relationships.” *Id.* at § 1502(a)(1).
20 To that end, TVPA fosters and relies on greater collaboration between law enforcement and
21 immigrant victims of crimes. The purpose of these protections, as expressly stated in the statutory
22 text, is to “strengthen the ability of law enforcement agencies to detect, investigate, and prosecute
23 cases of domestic violence, sexual assault, trafficking of aliens, and other crimes”; to “encourage
24 law enforcement officials to better serve immigrant crime victims and to prosecute crimes
25 committed against aliens”; and to “facilitate the reporting of crimes to law enforcement officials by
26 trafficked, exploited, victimized, and abused aliens who are not in lawful immigration status.” *Id.* at
27 § 1513(a)(2)(A)-(B).

28 Congress thus recognized that local law enforcement succeeds in protecting public health and
safety when all members of the community are willing to come forward and cooperate with

1 authorities.³³ It also affirmed that these protections were “in keeping with the humanitarian interests
2 of the United States.” *Id.* § 1513(a)(2)(A). Unless enjoined, the Executive Order will continue to
3 result in immigration enforcement actions that flout Congress’s express purpose in enacting VAWA
4 and TVPA. *Cf. Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637-38 (1952) (Jackson, J.,
5 concurring) (“When the President takes measures incompatible with the expressed or implied will of
6 Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional
7 powers minus any constitutional powers of Congress over the matter.”); *Pennhurst State Sch. &
8 Hosp. v. Halderman*, 451 U.S. 1, 24 (1981) (“Congress must express clearly its intent to impose
9 conditions on the grant of federal funds so that the States can knowingly decide whether or not to
10 accept those funds”).

11 The Executive Order places San Francisco, Santa Clara, and similarly situated jurisdictions
12 across the country in an impossible catch-22: Either reject the federal government’s demands and
13 risk losing the billions of dollars in federal funding they use to keep communities safe, or comply
14 with the Executive Order and risk eroding the community trust and access to justice necessary to
15 keep their communities safe. Unless enjoined, the Executive Order leaves crime victims, local
16 communities, and all Americans less safe.

17 CONCLUSION

18 The Court should grant the Plaintiffs’ requested relief.
19
20
21
22
23
24
25

26 ³³ As the United States Department of Justice noted in a February 2017 report to Congress, “[f]ear of
27 deportation is a tremendous concern for some immigrant victims of domestic/sexual violence, and
28 can result in victims not calling the police for help. ... The VAWA self-petition and the U and T
visas are remedies available to immigrant and refugee victims of domestic/sexual violence and other
crimes to assist them in obtaining safety and escaping their abusers.” U.S. Dep’t. of Justice, Office
of Violence Against Women, *2016 Biennial Report to Congress*, 46, <http://bit.ly/2niRIXv>.

1 Dated: March 22, 2017

Respectfully submitted,

2 /s/ JAMIE S. GORELICK
3 JAMIE S. GORELICK
4 jamie.gorelick@wilmerhale.com
5 CATHERINE M.A. CARROLL
6 catherine.carroll@wilmerhale.com
7 CLAIRE M. BERGERON
8 claire.bergeron@wilmerhale.com
9 SHEILA E. MENZ
10 sheila.menz@wilmerhale.com
11 WILMER CUTLER PICKERING
12 HALE AND DORR LLP
13 1875 Pennsylvania Avenue, NW
14 Washington, D.C. 20006
15 Telephone: (202) 663-6500
16 Facsimile: (202) 663-6363
17
18
19
20
21
22
23
24
25
26
27
28

APPENDIX

LIST OF AMICI CURIAE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TAHIRIH JUSTICE CENTER
881 SNEATH LANE
SUITE 115
SAN BRUNO, CA 94066

ASIAN LAW ALLIANCE
991 WEST HEDDING STREET
SUITE 202
SAN JOSE, CA 95126

ASIAN PACIFIC INSTITUTE ON GENDER-BASED VIOLENCE
500 12TH STREET
SUITE 330
OAKLAND, CA 94607

ASISTA
P.O. BOX 12
SUFFIELD, CT 06078

CASA DE ESPERANZA
P.O. BOX 40115
ST. PAUL, MN 55104

DOLORES STREET COMMUNITY SERVICES
938 VALENCIA STREET
SAN FRANCISCO, CA 94110

IMMIGRATION CENTER FOR WOMEN AND CHILDREN
634 SOUTH SPRING STREET
SUITE 727
LOS ANGELES, CA 90014

MAITRI
P.O. BOX 697
SANTA CLARA, CA 95052

PANGEA LEGAL SERVICES
350 SANSOME STREET
SUITE 650
SAN FRANCISCO, CA 94104