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7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

10 CITY AND COUNTY OF SAN FRANCISCO,
11
12 Plaintiff,

13 v.

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

17 Defendants.

18
19 COUNTY OF SANTA CLARA,
20
21 Plaintiff,

22 v.

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

27 Defendants.
28

Case No. 3:17-CV-00485-WHO
Case No. 3:17-CV-00574-WHO

**PROPOSED BRIEF OF THE
NATIONAL CENTER FOR LESBIAN
RIGHTS, CENTRO LEGAL DE LA
RAZA, THE TRANSGENDER LAW
CENTER, AND EL/LA PARA
TRANSLATINAS AS AMICI
CURIAE IN SUPPORT OF THE
PLAINTIFFS' MOTIONS FOR
SUMMARY JUDGMENT**

Date: October 4, 2017
Time: 2:00 pm
Dept.: Courtroom 2, 17th Floor
Judge: Hon. William H. Orrick

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INTERESTS OF AMICI CURIAE

The National Center for Lesbian Rights (“NCLR”) and other *amici*¹ are direct-services and policy-advocacy organizations working on behalf of immigrant LGBT people and asylum seekers. *Amici* have a special understanding of the severe impact that the January 25, 2017 Executive Order, Enhancing Public Safety in the Interior of the United States, 82 Fed. Reg. 8799, 13,768 (the “Executive Order”), would have on immigrant LGBT people and their families by jeopardizing their access to agencies and services to protect public health and safety such as police and fire departments, healthcare facilities, discrimination enforcement agencies, and other social services.

ARGUMENT

Amici respectfully submit this brief to assist the Court in analyzing the irreparable harms that San Francisco and Santa Clara would face if the Executive Order is not permanently enjoined and if local jurisdictions are forced to abandon the “sanctuary policies” at issue in this case. Based on *amici*’s extensive work on behalf of LGBT immigrants, many of whom are asylum seekers, and the Bay Area’s status as a haven for LGBT people who suffer persecution around the globe, these communities would suffer irreparable harms related to public safety, public health, and the ability to combat discrimination and other forms of abuse. The policies at issue ensure that all community members, and most urgently those most prone to exploitation and abuse, can report crimes and discrimination, and access essential services. Without these protections, the Executive Order would force local jurisdictions to create a permanent underclass of people with reduced access to the police and public services. Such harms are not only irreparable, they are intolerable in communities like San Francisco and Santa Clara that are home to some of the largest immigrant and LGBT communities in the nation.

I. THE BAY AREA IS A HAVEN FOR LGBT IMMIGRANTS WHO SUFFER EXTREME PERSECUTION AND VIOLENCE AROUND THE WORLD

LGBT people around the world suffer extreme violence and persecution based on their sexual orientation or gender identity. As of 2011, more than eighty-five countries criminalized sexual conduct between consenting adults of the same sex. *Countries Where Homosexuality Is Criminalized*, The Council for Glob. Equal.,

¹ A full list of *Amici* appear at Appendix A.

1 <http://www.globalequality.org/component/content/article/166> (last visited Oct. 2, 2017). And even
2 in countries that do not expressly target LGBT people in their laws or policies, LGBT people
3 experience unspeakable violence and discrimination. This is especially true in countries from
4 which the United States sees the highest numbers of asylum seekers.²

5 In China, for example, gay people are subjected to harmful “therap[ies]” intended to “cure”
6 “homosexuality,” and textbooks depict “homosexuality as an illness.” Human Rights Watch,
7 *World Report 2017*, at 197 (2017),
8 https://www.hrw.org/sites/default/files/world_report_download/wr2017-web.pdf. No laws protect
9 people from discrimination based on sexual orientation or gender identity. *Id.* Domestic violence
10 laws do not include same-sex partnerships, leaving LGB people without legal recourse for violence
11 by family members and intimate partners. U.S. Dep’t of State, Bureau of Democracy, H.R. and
12 Lab., *China (Includes Tibet, Hong Kong, and Macau) 2016 Human Rights Report* 66 (2016),
13 <https://www.state.gov/documents/organization/265540.pdf>.

14 In Mexico, a 2010 survey found that 83.4% of LGBT Mexicans had faced discrimination
15 because of their “sexual preference.” See Transgender Law Ctr. & Cornell Univ. Law Sch. LGBT
16 Clinic, *Report on Human Rights Conditions of Transgender Women in Mexico* 14 (2016).
17 Transgender women in Mexico regularly experience harassment and hate crimes. In late 2011, a
18 group of men in Chihuahua kidnapped and dismembered two transgender women. *Id.* at 15.
19 Similarly, in June 2012, attackers dismembered the body of a transgender woman in Mexico City.
20 *Id.*

21 Central American countries are also exceedingly dangerous for LGBT people. In Honduras,
22 “sexual violence against LGBTI individuals forces them into ‘internal displacement’ or to flee the
23 country in search of international protection.” Human Rights Watch, *supra*, at 311. The murder
24 rate of LGBT people jumped to an average of 31 murders per year as of 2009. Duncan Tucker,
25 *Homophobia In Honduras: Growing Attacks on LGBT Activists*, Index on Censorship (Apr. 20,
26 2016), <https://www.indexoncensorship.org/2016/04/magazine-honduras-rainbow-warriors-the->

27 ² These countries are China, Venezuela, Mexico, Guatemala, El Salvador, Honduras, Ecuador,
28 India, Haiti, and Ukraine. *Asylum Office Workload, March 2016*, U.S. Citizenship & Imm. Servs.,
<https://www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/AffirmativeAsylumStatisticsMarch2016.pdf> (last visited Oct. 2, 2017).

1 dangers-of-being-an-lgbt-activist. In Guatemala, the police regularly extort LGBT people by
2 waiting outside clubs and bars to demand protection money to avoid jail. U.S. Dep’t of State,
3 Bureau of Democracy, H.R. and Lab., *Guatemala 2013 Human Rights Report* 22 (2013),
4 <https://www.state.gov/documents/organization/220657.pdf>. The Guatemala Public Ministry has
5 refused to investigate violence against gay men and lesbians. *See id.* at 23. In El Salvador, at least
6 11 people were murdered in 2016 because of their sexual orientation, and 52% of transgender
7 people suffered death threats or violence. U.S. Dep’t of State, Bureau of Democracy, H.R. and
8 Lab., *El Salvador 2016 Human Rights Report* 27–28 (2016),
9 <https://www.state.gov/documents/organization/265798.pdf>.

10 The trends of abuse and persecution against LGBT people in Eastern Europe, South and
11 Central Asia, and Russia are also alarming. In 2016, a group “savagely beat” patrons of a gay club
12 in Russia. U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., *Russia 2016 Human Rights*
13 *Report* 71 (2016), <https://www.state.gov/documents/organization/265678.pdf>. Police officers
14 systematically abuse and harass LGBT people. *Id.* In 2015, there were 21 documented cases of
15 abuse or harassment of LGBT individuals by Russian law enforcement. *Id.* Russian authorities
16 have also banned websites providing online support for the LGBT community. Human Rights
17 Watch, *supra*, at 498–99. In Pakistan, there have been dozens of threats and attacks against
18 transgender people. *Id.* at 473. A transgender activist in Pakistan was shot eight times and died
19 “while [hospital] staff debated whether to put her in the male or female ward.” *Id.* In Ukraine,
20 there is continued violence against the LGBT community. In 2016, an LGBT equality festival had
21 to be cancelled when attackers descended on the event. *Id.* at 624.

22 As a direct consequence of the widespread persecution of LGBT people across the globe,
23 LGBT people seek refuge in the United States, and in the San Francisco Bay Area in particular.
24 The immigrant population of the United States currently totals more than 43.2 million, or 13.4% of
25 the U.S. population. Gustavo Lopez & Jynnah Radford, *Facts on U.S. Immigrants, 2015*, Pew
26 Research Center (May 3, 2017), [http://www.pewhispanic.org/2017/05/03/facts-on-u-s-immigrants-](http://www.pewhispanic.org/2017/05/03/facts-on-u-s-immigrants-current-data)
27 [current-data](http://www.pewhispanic.org/2017/05/03/facts-on-u-s-immigrants-current-data). California is home to more than 10 million immigrants, with 27% of its population
28 being foreign born. *Immigrants in California*, Am. Immigration Council,

1 https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_california.pdf (last visited Oct. 2, 2017). Within California, the Bay Area³ is unique in that it is a haven for
 2 both LGBT people and immigrants. The Bay Area has the highest percentage of LGBT people in
 3 the country. Frank Newport & Gary J. Gates, *San Francisco Metro Area Ranks Highest in LGBT*
 4 *Percentage*, Gallup (Mar. 20, 2015), [http://www.gallup.com/poll/182051/san-francisco-metro-](http://www.gallup.com/poll/182051/san-francisco-metro-area-ranks-highest-lgbt-percentage.aspx)
 5 [area-ranks-highest-lgbt-percentage.aspx](http://www.gallup.com/poll/182051/san-francisco-metro-area-ranks-highest-lgbt-percentage.aspx).⁴ Immigrants constitute approximately 30% of the people
 6 in the San Francisco metropolitan area (including Oakland and Hayward)⁵ and 37% of the
 7 population of the Santa Clara, San Jose, and Sunnyvale metropolitan area, making the latter the
 8 metropolitan community with the second largest share of immigrants in the United States.⁶

9
 10 Given the millions of immigrants and LGBT people living in the Bay Area, this area of the
 11 country has a particular obligation to ensure the safety of LGBT immigrants, protect them from
 12 harm, and ensure that they can exercise their right to seek asylum or obtain immigration relief. An
 13 estimated 5% of U.S. asylum claims are based on persecution due to one's sexual orientation or
 14 gender identity. Org. for Refuge, Asylum & Migration, *Rainbow Bridges: A Community Guide to*
 15 *Rebuilding the Lives of LGBTI Refugees and Asylees* 6 (2012), [http://oramrefugee.org/wp-](http://oramrefugee.org/wp-content/uploads/2016/02/oram-rainbow-bridges-2012-web.pdf)
 16 [content/uploads/2016/02/oram-rainbow-bridges-2012-web.pdf](http://oramrefugee.org/wp-content/uploads/2016/02/oram-rainbow-bridges-2012-web.pdf).⁷ Courts have repeatedly afforded
 17 protection from deportation to LGBT immigrants in light of the persecution they face in their home
 18 countries. *See, e.g., Avendano-Hernandez v. Lynch*, 800 F.3d 1072, 1080–81 (9th Cir. 2015)
 19 (granting protection to a transgender woman and recognizing the “unique identities and
 20 vulnerabilities of transgender individuals . . . in evaluating a transgender applicant's . . . claim”);
 21 *Hernandez-Montiel v. INS*, 225 F.3d 1084, 1087 (9th Cir. 2000) (granting relief and finding that

22 ³ The San Francisco Bay Area has a population of more than 7 million people in nine counties,
 23 including Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano,
 24 and Sonoma. *See* Bay Area Census, <https://www.bayareacensus.ca.gov> (last visited Oct. 2, 2017).

24 ⁴ *See also* The Williams Inst., *The LGBT Divide in California* 3 (2015),
 25 <https://williamsinstitute.law.ucla.edu/wp-content/uploads/California-LGBT-Divide-Jan-2016.pdf>
 (explaining that San Francisco is known to be a “particularly supportive” environment for LGBT
 26 people).

26 ⁵ *U.S. Immigrant Population by Metropolitan Statistical Area (MSA), 2011-2015*, Migration Policy
 27 Inst., [http://www.migrationpolicy.org/programs/data-hub/charts/us-immigrant-population-](http://www.migrationpolicy.org/programs/data-hub/charts/us-immigrant-population-metropolitan-area)
 28 [metropolitan-area](http://www.migrationpolicy.org/programs/data-hub/charts/us-immigrant-population-metropolitan-area) (last visited Oct. 2, 2017).

27 ⁶ *Id.*

28 ⁷ The forms of protection-based relief other than asylum include withholding of removal under 8
 U.S.C. § 1231(b)(3) and protection under the Convention Against Torture and Other Cruel,
 Inhuman, or Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp.
 No. 51, at 197, U.N. Doc. A/RES/39/46 (Dec. 10, 1984).

1 sexual assaults against transgender women “undoubtedly constitute persecution”); *Pitcherskaia v.*
 2 *INS*, 118 F.3d 641, 645, 648 (9th Cir. 1997) (electric shock therapy to “cure” lesbian of her sexual
 3 orientation amounts to persecution); *Matter of Toboso-Alfonso*, 20 I. & N. Dec. 819, 822 (B.I.A.
 4 1990) (granting protection to a gay man from Cuba on account of his sexual orientation).

5 **II. THE PLAINTIFF COMMUNITIES WILL SUFFER IRREPARABLE HARMS IF**
 6 **THEY ARE FORCED TO ABANDON THEIR COMMUNITY FOCUSED**
 7 **POLICIES**

8 Due to its history as a refuge for LGBT immigrants, the Bay Area is home to numerous
 9 organizations, including *amici*, that provide valuable services and support to LGBT immigrant
 10 communities. *Amici* could not fulfill our missions if LGBT immigrants feared that their
 11 interactions with police, the courts, and other public officials could result in deportation. This is
 12 especially true since so many LGBT immigrants have suffered persecution in their home countries
 13 at the hands of law enforcement and without recourse to government protection, creating an
 14 increased fear of public officials.⁸ Moreover, the trauma that many LGBT immigrants have
 15 suffered necessitates that the community have access to essential public services. If local
 16 communities were forced to abandon their sanctuary policies, they would suffer irreparable harms
 17 related to public safety, public health, and the ability to combat discrimination, all of which are
 18 compelling state interests.

19 **A. Irreparable Harm Regarding Public Safety**

20 Despite seeking refuge in the U.S., there is no question that LGBT people, and LGBT
 21 immigrants in particular, remain targets for abuse in this country. LGBT undocumented people

22 ⁸ The federal government is well aware of the need to protect information about immigration status
 23 in a variety of contexts. The Department of Justice’s Office of Legal Counsel recognized nearly
 24 20 years ago the “important governmental interests” necessitating complete confidentiality of
 25 census information: confidentiality encourages the public to cooperate with census officials by
 26 “giv[ing] effective assurance to all persons . . . that the identity of the informant and the information
 27 furnished would be held in complete confidence.” *See Relationship Between Illegal Immigration*
 28 *Reform & Immigrant Responsibility Act of 1996 & Statutory Requirement for Confidentiality of*
Census Info., 23 Op. O.L.C. Supp. 10 (1999) (citation omitted); *see also Statement from U.S.*
Immigration and Customs Enforcement’s (ICE) Director Sarah R. Saldaña, U.S. Immigration &
 Customs Enf’t (Mar. 20, 2015), [https://www.ice.gov/news/releases/statement-us-immigration-and-](https://www.ice.gov/news/releases/statement-us-immigration-and-customs-enforcement-ice-director-saldana)
 customs-enforcement-ice-director-saldana (stating that when it comes to federal immigration law,
 “[t]he overriding objective is public safety,” that ICE must operate “in a way that upholds the
 trusted relationships local law enforcement need to build with and among their communities,” and
 that “[a]ny effort at federal legislation now to mandate state and local law enforcement’s
 compliance with ICE detainers will, in our view, be a highly counterproductive step and lead to
 more resistance and less cooperation in our overall efforts to promote public safety”).

1 simultaneously belong to three marginalized populations (as an ethnic minority, as an LGBT person
2 and as an undocumented person). As a result, they are at higher risk of encountering severe hate
3 violence and face significant institutional barriers and decreased access to services. Emily Waters
4 et al., Nat'l Coalition of Anti-Violence Programs, *Lesbian, Gay, Bisexual, Transgender, Queer and*
5 *HIV-Affected Hate Violence in 2016*, at 7–8 (2017), [http://avp.org/wp-](http://avp.org/wp-content/uploads/2017/06/NCAVP_2016HateViolence_REPORT.pdf)
6 [content/uploads/2017/06/NCAVP_2016HateViolence_REPORT.pdf](http://avp.org/wp-content/uploads/2017/06/NCAVP_2016HateViolence_REPORT.pdf); *see also* Eduardo Morales,
7 *Latino Lesbian, Gay, Bisexual, and Transgender Immigrants in the United States*, 7:2 J. LGBT
8 Issues Counseling 172 (2013). Although undocumented immigrants constitute less than 3% of the
9 LGBT population, they experience nearly 8% of the hate violence. Sharita Gruberg, *LGBT*
10 *Undocumented Immigrants Face an Increased Risk of Hate Violence*, Ctr. for Am. Progress (June
11 10, 2014), [https://www.americanprogress.org/issues/immigration/news/2014/06/10/91233/lgbt-](https://www.americanprogress.org/issues/immigration/news/2014/06/10/91233/lgbt-undocumented-immigrants-face-an-increased-risk-of-hate-violence)
12 [undocumented-immigrants-face-an-increased-risk-of-hate-violence](https://www.americanprogress.org/issues/immigration/news/2014/06/10/91233/lgbt-undocumented-immigrants-face-an-increased-risk-of-hate-violence). LGBT undocumented people
13 are also 3.4 times more likely to experience sexual violence and 3.5 times more likely to experience
14 physical violence than the general LGBT community. *Id.*

15 These recognized vulnerabilities of the immigrant community have led Congress to add
16 provisions to U.S. immigration law that are intended to protect public safety. Congress has added
17 provisions that enable survivors of domestic violence (VAWA relief, 8 U.S.C. §§ 1101(a)(51),
18 1229b(b)(2)(A)(i)), survivors of crimes (U-Visa, 8 U.S.C. § 1101(a)(15)(U)(i)), and survivors of
19 sexual assault or trafficking (T-Visa, 8 U.S.C. § 1101(a)(15)(T)(i)), for instance, to obtain
20 immigration relief. Indeed, several of these laws explicitly require cooperation with law
21 enforcement. *See, e.g.*, 8 U.S.C. §§ 1101(a)(15)(T)(i)(III), (U)(i)(III). Ironically, Congress has
22 thus legislated into U.S. immigration law the precise public safety issues the federal government
23 would have San Francisco and Santa Clara County abandon: sanctuary policies that prioritize
24 establishing trust with all segments of a community and that empower vulnerable community
25 members to report crimes in order to enhance overall public safety.

26 These “sanctuary city” policies are better described as “community focused” policies since
27 they prioritize overall public safety by establishing the trust of the entire community. They are
28 essentially “‘don’t ask’ policies with respect to [the immigration statuses of] witnesses, victims,

1 and low-level criminal arrests.” Bill Ong Hing, *Immigration Sanctuary Policies: Constitutional*
2 *and Representative of Good Policing and Good Public Policy*, 2 UC Irvine L. Rev. 247, 260
3 (2012). “The idea is that gaining the trust of all parts of the community is important to keeping
4 the entire community safe.” *Id.*

5 This is why the Plaintiff communities in this case support community focused policies—
6 such policies are essential to protect public safety, a compelling government interest. *See, e.g.,*
7 *Schall v. Martin*, 467 U.S. 253, 264 (1984) (noting that “[t]he ‘legitimate and compelling state
8 interest’ in protecting the community from crime cannot be doubted” (citation omitted)); *Fyock v.*
9 *City of Sunnyvale*, 25 F. Supp. 3d 1267, 1279 (N.D. Cal. 2014) (noting that “[p]ublic safety and
10 crime prevention are compelling government interests” (citing *U.S. v. Salerno*, 481 U.S. 739, 748–
11 50 (1987)), *aff’d sub nom. Fyock v. Sunnyvale*, 779 F.3d 991 (9th Cir. 2015). According to the
12 International Association of Chiefs of Police, “local police agencies depend on the cooperation of
13 immigrants, legal and [undocumented], in solving all sorts of crimes and in the maintenance of
14 public order. Without assurances that they will not be subject to an immigration investigation and
15 possible deportation, many immigrants with critical information would not come forward, even
16 when heinous crimes are committed against them or their families.” Lynn Tramonte, Immigration
17 Policy Ctr., *Debunking the Myth of “Sanctuary Cities”* 6 (2011),
18 [https://www.americanimmigrationcouncil.org/sites/default/files/research/Community_Policing_P](https://www.americanimmigrationcouncil.org/sites/default/files/research/Community_Policing_Policies_Protect_American_042611_update.pdf)
19 [olicies_Protect_American_042611_update.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/Community_Policing_Policies_Protect_American_042611_update.pdf). “The fear of deportation among immigrant
20 families is so intense that even legal residents and U.S. citizens can be afraid to contact law
21 enforcement unless they know it is ‘safe’ to do so.” *Id.* at 7. In Austin, Texas, “reports of armed
22 robberies grew by 20 percent, and over 150 serial criminals were arrested” as a direct result of
23 community focused policies. *Id.*

24 The case of Guatemalan immigrant Danny Sigui illustrates the need for such policies. Mr.
25 Sigui witnessed a murder in Rhode Island and provided key testimony that put the murderer behind
26 bars. *Id.* at 4. Because the state attorney general reported Mr. Sigui to federal authorities, however,
27 he was deported. When asked if he would have called 911 and testified had he known he could be
28 deported, he responded, “If I had known they would take my liberty, that they would take my

1 children away from me, that they would put me [in immigration detention], I would not do this.”
2 *Id.* (alteration in original). Experiences like Sigui’s demonstrate why these policies are so
3 important—they encourage individuals to act in the greater public interest. Indeed, if a portion of
4 the public is afraid to report crimes and testify, the police and DA simply cannot effectively
5 investigate and prosecute those crimes. According to police chiefs from the 64 largest police
6 departments in the United States and Canada, “[s]uch a divide between the local police and
7 immigrant groups would result in increased crime against immigrants and in the broader
8 community, create a class of silent victims and eliminate the potential for assistance from
9 immigrants in solving crimes or preventing future terroristic acts.” Major Cities Chiefs Ass’n,
10 *M.C.C. Immigration Committee Recommendations for Enforcement of Immigration Laws by Local*
11 *Police Agencies* 6 (2006),
12 https://www.majorcitieschiefs.com/pdf/news/MCC_Position_Statement.pdf. These statements
13 are also consistent with data showing that counties with community focused policies have on
14 average 35.5 fewer crimes committed per 10,000 people. See Tom K. Wong, *The Effects of*
15 *Sanctuary Policies on Crime and the Economy*, Ctr. for Am. Progress (Jan. 26 2017, 1:00 AM),
16 [https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-](https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy)
17 [sanctuary-policies-on-crime-and-the-economy](https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy).

18 In light of the compelling public safety interests involved in this case, San Francisco and
19 Santa Clara would suffer irreparable harm if they were forced to abandon community focused
20 policies. This fact is borne out by *amici*’s experience with our own clients. When NCLR’s client
21 Jose⁹ was a victim of kidnapping and rape in San Francisco, he felt safe calling the police and
22 seeking medical care at a San Francisco hospital. Similarly, NCLR’s client Liliana, a transgender
23 woman from Mexico, reported her boyfriend to the police after he subjected her to severe domestic
24 violence. She is now applying for a U-Visa. If Jose or Liliana had feared that the police or hospital
25 staff would report their immigration statuses to ICE, they would not have filed police reports or
26 sought critical medical assistance. The policies protect Jose and Liliana directly, while also
27 ensuring that their abusers do not threaten or harm other people.

28

⁹ *Amici* provide only first names in an effort to protect their clients’ privacy.

1 In short, many cities and counties, like San Francisco and Santa Clara, have determined
2 that using local law enforcement to enforce federal immigration law actually jeopardizes public
3 safety and puts the entire community at risk of harm. These communities will suffer irreparable
4 harm to public safety if they are forced to abandon these policies because of the Executive Order
5 at issue in this case. *Cf. City of Chicago v. Sessions*, No. cv-17-c-5720, 2017 WL 4081821, at *13
6 (N.D. Ill. Sept. 15, 2017) (holding that the “harm to [Chicago]’s relationship with the immigrant
7 community if it should accede to the conditions [in the Executive Order] is irreparable [and] cannot
8 be repaired through an award of money damages”).

9 **B. Irreparable Harms Regarding Public Health, Access to Essential Programs,
10 and the Ability to Combat Discrimination**

11 Community focused policies further ensure that immigrants feel safe reporting
12 discrimination, enrolling in schools and universities, and accessing essential services, such as
13 medical care. In Alabama, one state that passed an anti-sanctuary bill, “there was an immediate
14 drop in attendance in public schools serving the immigrant communities . . . and a child’s death
15 was reported when his parents delayed seeking medical treatment because they feared that hospital
16 officials would report them to ICE.” Elizabeth M. McCormick, *Federal Anti-Sanctuary Law: A
17 Failed Approach to Immigration Enforcement and A Poor Substitute for Real Reform*, 20 *Lewis
18 & Clark L. Rev.* 165, 199 (2016). Concerns about how these policies could jeopardize public
19 health have led medical associations and public health experts to take official positions against
20 them. The American College of Physicians, for instance, issued an immigration policy statement
21 explaining that “society has a public health interest in ensuring that all residents have access to
22 health care, particularly for communicable diseases, and that delayed treatment for both
23 communicable and noncommunicable diseases may be costly and can endanger the rest of the
24 population.” Am. Coll. Of Physicians, *Immigration Position Statement* (2017),
25 https://www.acponline.org/acp_policy/policies/immigration_position_statement_2017.pdf.
26 Similarly, the American Medical Association supports “protections that prohibit . . . law
27 enforcement agencies from utilizing information from medical records to pursue immigration
28 enforcement actions against patients who are undocumented.” Am. Med. Ass’n, *Patient and
Physician Rights Regarding Immigration Status H-315.966* (2017); *see also* Am. Nursing Ass’n,

1 *Nursing Beyond Borders: Access to Health Care for Documented and Undocumented Immigrants*
 2 *Living in the US 7–8* (2010) (advocating for comprehensive healthcare to control the spread of
 3 infectious diseases and lower systemic costs, benefiting the entire U.S.); Sonal S. Munsiff,
 4 *Communicable Disease and Immigration Fears*, 9 Am. Med. Ass’n J. Ethics 799, 803 (2007)
 5 (observing that since “[p]atients who fear and avoid treatment could infect many more people[,] it
 6 is in all of society’s interest to ensure that all patients with [tuberculosis] are fully and
 7 confidentially treated.”).

8 *Amici* have personally experienced the impact of community focused policies on public
 9 health. NCLR’s client Gustavo, for instance, is a 19-year-old with HIV who suffered extreme
 10 sexual abuse and violence in Mexico based on his sexuality. Because of San Francisco’s
 11 community focused policies, he has access to medical care and counseling, protecting his health
 12 as well as overall public health.¹⁰ Centro Legal de la Raza’s (Centro Legal) client Eduardo is a
 13 19-year-old bisexual man from El Salvador who is able to access Post-Exposure Prevention (PEP)
 14 treatment, a treatment to prevent infection with HIV. Without assurances that they would not be
 15 targeted by law enforcement because of their immigration status, these clients would likely forego
 16 the healthcare that protects their lives, as well as the general public.

17 Many LGBT immigrants, transgender women of color in particular, also face very high
 18 rates of discrimination in the U.S., including interpersonal crime and police abuse. *See generally*
 19 Sandy E. James et al., Nat’l Ctr. for Transgender Equal., *The Report of the 2015 U.S. Transgender*
 20 *Survey* (2016),
 21 [http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-](http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf)
 22 [%20FINAL%201.6.17.pdf](http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf); Christy Mallory et al., *Discrimination and Harassment by Law*
 23 *Enforcement Officers in the LGBT Community* (2015), [https://williamsinstitute.law.ucla.edu/wp-](https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Discrimination-and-Harassment-in-Law-Enforcement-March-2015.pdf)
 24 [content/uploads/LGBT-Discrimination-and-Harassment-in-Law-Enforcement-March-2015.pdf](https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Discrimination-and-Harassment-in-Law-Enforcement-March-2015.pdf);
 25 Emily Waters et al., Nat’l Coalition of Anti-Violence Programs, *Lesbian, Gay, Bisexual,*
 26 *Transgender, Queer, and HIV-Affected Hate Violence in 2015* (2016), <http://avp.org/wp->

27 ¹⁰ Viral suppression dramatically improves a person with HIV’s ability to thrive and decreases the
 28 chance of passing HIV on to others. Nat’l Inst. of Allergy and Infectious Diseases, *HIV Infection*
and AIDS: An Overview, U.S. Dep’t of Health & Human Servs. (Aug. 1, 2002),
<https://aidsinfo.nih.gov/news/105/hiv-infection-and-aids--an-overview>.

1 content/uploads/2017/04/ncavp_hvreport_2015_final.pdf. Community focused policies
2 encourage the reporting of instances of discrimination and abuse to the relevant authorities, which
3 advances the compelling government interest of eliminating discrimination. *See, e.g., New York*
4 *State Club Ass’n, Inc. v. City of New York*, 487 U.S. 1, 14 n.5 (1988) (recognizing the state’s
5 “compelling interest in combating invidious discrimination” (internal quotation marks omitted));
6 *Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984) (same).

7 When Centro Legal’s client Diego,¹¹ for instance, experienced severe discrimination at
8 work, he was unsure what to do. Co-workers were severely harassing him because he is
9 transgender, and his employer refused to pay him his wages. Because of San Francisco’s
10 community focused policies, Diego filed a wage claim with the California Division of Labor
11 Standards Enforcement and a discrimination claim with the Department of Fair Employment and
12 Housing. Without the security of knowing his claims did not put him at risk for deportations,
13 Diego would not have reported these unlawful behaviors, thereby emboldening his harassers and
14 employers to continue their illegal discrimination with impunity.

15 Community focused policies also ensure access to schools. *Plyler v. Doe*, 457 U.S. 202,
16 218–230 (1982) (holding that denying immigrant children access to public education violates equal
17 protection under the Fourteenth Amendment of the U.S. Constitution); *see also Hispanic Interest*
18 *Coal. of Ala. v. Governor of Ala.*, 691 F.3d 1236, 1247 (11th Cir. 2012) (noting that “an increased
19 likelihood of deportation or harassment upon enrollment in school significantly deters
20 undocumented children from enrolling in and attending school, in contravention of their rights
21 under *Plyler*”). Indeed, if it were not for community focused policies, Centro Legal’s client
22 Jocelyn may not have enrolled her six-year old daughter in school. Similarly, Eduardo and Jocelyn
23 may not have enrolled themselves in community college classes and a vocational training center.

24 Community focused policies thus play a critical role in protecting public health, ensuring
25 access to social and educational services, and combatting discrimination, all of which are
26 compelling government interests.

27
28

¹¹ This is a pseudonym for this client.

1

CONCLUSION

2 If the Plaintiff jurisdictions in this case are forced to abandon their community focused
3 policies, they will suffer irreparable harms to public safety, public health, and to the overall
4 functioning of those communities. It is essential that all members of our community be able to
5 report crimes and discrimination, and access services such as healthcare. Without these
6 protections, there would exist a permanent underclass of people with restricted access to the police
7 and public entities, who are constantly prone to exploitation and abuse. As San Francisco has
8 already made clear, community focused policies “promot[e] public trust and cooperation[,] . . .
9 keep our communities safe by making sure that all residents, regardless of immigration status, feel
10 comfortable calling the Police and Fire Departments during emergencies and cooperating with
11 City agencies during public safety situations . . . [and] help[] keep our communities healthy by
12 making sure that all residents, regardless of immigration status, feel comfortable accessing City
13 public health services and benefit programs.” Office of Civic Engagement & Immigrant Affairs,
14 *Sanctuary City Ordinance*, City & Cty. of San Francisco, <http://sfgov.org/oceia/sanctuary-city-ordinance-0> (last visited Oct. 2, 2017). Indeed, without these policies, entire criminal enterprises
15 could arise to prey on immigrants and exploit them in a variety of ways with little recourse for
16 their victims or effective means for local government to respond.

17
18 Accordingly, the National Center for Lesbian Rights, *et al.*, file this brief in support of
19 the Plaintiffs’ Motions for Summary Judgment.

20 Dated: October 4, 2017

Respectfully Submitted,

21 By: /s/ Amy Whelan

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APPENDIX A

1
2 The National Center for Lesbian Rights (NCLR) is a national legal non-profit organization
3 committed to advancing the civil and human rights of lesbians, gay, bisexual, and transgender
4 (LGBT) individuals and their families. Since 1994, NCLR's Immigration Project has provided free
5 legal assistance to thousands of LGBT immigrants nationwide through, among other services, direct
6 representation of LGBT immigrants in impact cases and individual asylum cases and advocacy for
7 immigration and asylum policy reform. NCLR has published papers on the topic of gender and
8 sexual orientation-based violence and discrimination, and has filed briefs both as *amicus* and as
9 counsel of record, regarding asylum claims based on rape, domestic violence, and other forms of
10 gender and sexual orientation-based persecution before various federal courts.

11
12 Centro Legal de la Raza ("Centro Legal") was founded in 1969 to provide culturally and
13 linguistically appropriate legal aid services to low-income residents of Oakland's Fruitvale District
14 and the greater Bay Area. Centro Legal's Immigration Program provides legal representation and
15 consultations to detained and non-detained immigrants, refugees, and asylum-seekers throughout
16 Northern California. Annually, Centro Legal de la Raza advises and/or represents hundreds of
17 individuals seeking relief before the immigration courts, Board of Immigration Appeals, and the
18 Court of Appeals. As Centro Legal represents and provides assistance to many asylum-seekers and
19 people seeking protection-based relief due to harm suffered or feared based on gender identity and
20 sexual orientation, it has a substantial interest in the present case.

21
22 Transgender Law Center (TLC) is the nation's largest organization dedicated to advancing the
23 rights of transgender and gender nonconforming people. TLC strives to change law, policy, and
24 attitudes so that all people can live safely, authentically, and free from discrimination regardless of
25 their gender identity or expression. TLC pursues a multidisciplinary approach to advocacy,
26 including impact litigation, policy advocacy, and a legal helpline that serves more than 1,500 people
27 each year. The work of TLC includes the Immigration Detention Project, which works to improve
28 conditions for transgender immigrants and improve their access to culturally competent legal
representation. Many transgender immigrants and their attorneys contact TLC for assistance

El/La Para TransLatinas (El/La) is an organization for transgender Latinas (TransLatinas) that works
to build collective vision and action to promote the survival of TransLatinas and improve their
quality of life in the San Francisco Bay Area. El/La Para TransLatinas provides individual case
management services, mental health counseling referrals, a food program, workshops, and
community networking activities. El/La also focuses on anti-violence work and seeks to promote
the overall safety and well-being of TransLatinas in the Bay Area.