

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

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CITY AND COUNTY OF SAN FRANCISCO,  
*Plaintiff-Appellee,*

v.

DONALD J. TRUMP, President of the United States; JEFFERSON B. SESSIONS III,  
Attorney General of the United States; ELAINE C. DUKE;  
UNITED STATES OF AMERICA,  
*Defendants-Appellants.*

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COUNTY OF SANTA CLARA,  
*Plaintiff-Appellee,*

v.

DONALD J. TRUMP, President of the United States; JEFFERSON B. SESSIONS III,  
Attorney General of the United States; KIRSTJEN NIELSEN, Secretary of Homeland  
Security; ELAINE C. DUKE; MICK MULVANEY, Director, OMB;  
UNITED STATES OF AMERICA,  
*Defendants-Appellants.*

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On Appeal from the United States District Court for the Northern District of  
California, Nos. 3:17-cv-00485, 3:17-cv-00574 (Orrick, J.)

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**BRIEF FOR TAHIRIH JUSTICE CENTER, ASIAN LAW ALLIANCE,  
ASISTA IMMIGRATION ASSISTANCE, IMMIGRATION CENTER FOR  
WOMEN AND CHILDREN, DOLORES STREET COMMUNITY  
SERVICES, CASA DE ESPERANZA, ASIAN PACIFIC INSTITUTE ON  
GENDER-BASED VIOLENCE, AND MAITRI AS AMICI CURIAE IN  
SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE**

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## **CORPORATE DISCLOSURE STATEMENT**

Amici curiae Tahirih Justice Center, Asian Law Alliance, Asian Pacific Institute on Gender-Based Violence, ASISTA Immigration Assistance, Casa de Esperanza, Dolores Street Community Services, Immigration Center for Women & Children, and Maitri have no parent corporations. Amici are direct-services and policy-advocacy organizations and have no publicly traded shares or securities.

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**OTHER AUTHORITIES**

Caplan-Bricker, Nora, “ <i>I Wish I’d Never Called the Police,</i> ” Slate.com (Mar. 19, 2017), <a href="http://slate.me/2mYrYgC">http://slate.me/2mYrYgC</a> .....	13
Constable, Pamela, <i>For Immigrant Women, Domestic Violence Creates a Double Shadow</i> , Wash. Post, Dec. 2, 2013, <a href="http://wapo.st/2ntxYkC">http://wapo.st/2ntxYkC</a> .....	6
County of Santa Clara, County Executive’s Office of Immigrant Relations, <i>General Statement of Values for County Staff</i> , <a href="https://www.sccgov.org/sites/oir/Documents/oir-gnrl-statement.pdf">https://www.sccgov.org/sites/oir/Documents/oir-gnrl- statement.pdf</a> (last visited Feb. 12, 2018).....	7

Dart, Tom, *Undocumented Woman Arrested After Seeking Protection Prepares for Possible Indictment*, *The Guardian*, Mar. 2, 2017, <http://bit.ly/2mL34kh>..... 12

Executive Order, *Enhancing Public Safety in the Interior of the United States*, No. 13,768, 82 Fed. Reg. 8,799 (Jan. 25, 2017) .....4

Fay, Virginia, *Back Into the Shadows: Immigrants Retreat From Needed Services as Deportation Fears Loom*, Peninsula Press, June 12, 2017, <http://peninsulapress.com/2017/06/12/back-into-the-shadows/> ..... 11

Joint Statement, *U.S. Mayors, Police Chiefs Concerned With Sanctuary Cities Executive Order* (Jan. 25, 2017), <http://bit.ly/2n9zjf6> ..... 16

Kingkade, Tyler, *Trump Deportation Vow Is Scaring Domestic Abuse Victims From Coming Forward*, *Buzzfeed News* (Mar. 16, 2017), <http://bzfd.it/2nNRX9L> ..... 13

Kittrie, Orde F., *Federalism, Deportation, and Crime Victims Afraid to Call the Police*, 91 *Iowa L. Rev.* 1449 (2006) ..... 11

Kulish, Nicholas, et al., *U.S. Immigration Agents Discover New Freedom to Deport Under Trump*, *N.Y. Times*, Feb. 25, 2017, <http://nyti.ms/2mie63i>..... 12

Letter from the Major County Sheriffs’ Association and Major City Chiefs Association Opposing S. 2146 (Oct. 20, 2015), <http://bit.ly/1RnPg7g>; ..... 14

Mettler, Katie, *‘This is Really Unprecedented’: ICE Detains Woman Seeking Domestic Abuse Protection at Texas Courthouse*, *Wash. Post*, Feb. 16, 2017, <http://wapo.st/2nfpmOf> ..... 12

Nguyen, Mai Thi & Hannah Gill, *Interior Immigration Enforcement: The Impacts of Expanding Local Law Enforcement Authority*, *Urb. Stud. J. Ltd.* (2015), <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.723.2367&rep=rep1&type=pdf>..... 15

Noble, Andrea, *Donald Trump, Police Union at Odds Over ‘Sanctuary Cities’ Funding*, Wash. Times, Nov. 22, 2016, <http://bit.ly/2nfrzJt> .....16

Press Release, *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), <http://bit.ly/1OHQ7NV> .....5

PRI’s The World, *Some Immigrant Women, Victims of Domestic Violence, Afraid to Seek Help* (Mar. 21, 2013), <http://bit.ly/2n4Dbi0> .....6

Queally, James, *Fearing Deportation, Many Domestic Violence Victims Are Steering Clear of Police and Courts*, L.A. Times, Oct. 9, 2017, <http://www.latimes.com/local/lanow/la-me-ln-undocumented-crime-reporting-20171009-story.html> .....10, 11, 14

Rhodes, Scott D., et al., *The Impact of Local Immigration Enforcement Policies on the Health of Immigrant Hispanics/Latinos in the United States*, 105 Am. J. Pub. Health 329 (2015), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4318326/pdf/AJPH.2014.302218.pdf> .....10

Robbins, Liz, *Police Fear Trump Immigration Orders May Handcuff Effort to Fight Gangs*, N.Y. Times, Feb. 22, 2017, <http://nyti.ms/2mVplOt> .....15, 16

Runner, Michael, et al., Family Violence Prevention Fund, *Intimate Partner Violence in Immigrant and Refugee Communities: Challenges, Promising Practices, and Recommendations* (Mar. 2009), <http://bit.ly/1WrvmtD> .....5, 6, 7

Stern, Mark Joseph, *Bad for Undocumented Immigrants, a Gift to Domestic Abusers*, Slate.com (Mar. 8, 2017), <http://slate.me/2mZIJvS> .....13

Tahirih Justice Center, *Nationwide Survey: A Window into the Challenges Immigrant Women and Girls Face in the United States and the Policy Solutions to Address Them* (Jan. 31, 2018), <http://www.tahirih.org/wp-content/uploads/2018/01/Tahirih-Justice-Center-Survey-Report-1.31.18-1.pdf> .....12

The Superior Court of California, County of Santa Clara, *Domestic Violence Restraining Orders*, <http://bit.ly/2nOfVCJ> (last visited Feb. 12, 2018) .....7

Theodore, Nik, University of Illinois at Chicago, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement* (May 2013), [https://greatcities.uic.edu/wp-content/uploads/2014/05/Insecure\\_Communities\\_Report\\_FINAL.pdf](https://greatcities.uic.edu/wp-content/uploads/2014/05/Insecure_Communities_Report_FINAL.pdf) .....11, 15

Washington State Institute for Public Policy, *Recidivism Trends of Domestic Violence Offenders in Washington State* (Aug. 2013), <http://bit.ly/2nG4RL4> ..... 14

Wong, Tom K., Center for American Progress, *The Effects of Sanctuary Policies on Crime and the Economy* (Jan. 26, 2017), <http://ampr.gs/2kxOcHX> .....15

## STATEMENT OF AMICI'S IDENTITY AND INTEREST<sup>1</sup>

Amici curiae are direct-services and policy-advocacy organizations that represent the interests of women who are victims of gender-based violence. Amici have an abiding interest in ensuring that no government policy impinges upon the ability of women, including immigrant women, to seek reprieve from gender-based violence.

The Tahirih Justice Center (“Tahirih”) is the largest multi-city direct-services and policy-advocacy organization in the United States specializing in assisting immigrant women and girls who survive gender-based violence, including human trafficking, forced labor, domestic violence, rape and sexual assault, and female genital cutting/mutilation. Tahirih serves clients at five offices, including in San Francisco, and has provided free legal assistance to more than 20,000 individuals.

The Asian Law Alliance (“ALA”), founded in 1977, provides direct legal services in the areas of immigration law, domestic violence, and rape and sexual assault. ALA serves clients in the San Francisco Bay Area with an office located in San Jose, California. Each year, ALA provides direct legal services to 2,500 clients.

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<sup>1</sup> All parties have consented to the filing of this brief. No party or party’s counsel authored this brief in whole or in part. No party, party’s counsel, or any person other than amici curiae, their members, or their counsel contributed money to fund the preparation or submission of this brief.



ASISTA Immigration Assistance (“ASISTA”) trains and provides technical support to local law-enforcement officials, judges, attorneys, legal service providers, and advocacy organizations that support women who are victims of domestic violence and sexual assault. ASISTA worked with Congress to create and expand routes to secure immigration status for survivors of domestic violence, sexual assault, and other crimes, which were incorporated in the 1994 Violence Against Women Act and its progeny. ASISTA serves as a liaison with Department of Homeland Security (“DHS”) personnel charged with implementing these laws, most notably Citizenship and Immigration Services, Immigration and Customs Enforcement, and DHS’s Office for Civil Rights and Civil Liberties.

The Immigration Center for Women and Children (“ICWC”) is a non-profit legal organization that strives to provide security and stability for children who are abused, abandoned, or neglected and for immigrants who are victims of domestic violence, sexual assault and other violent crimes. ICWC provides legal services to immigrants who are victims of crimes. Through its offices in Los Angeles, San Francisco, San Diego, and Oakland, ICWC has served more than 30,000 people.

Dolores Street Community Services strives to improve individuals’ lives and effect social change through advocacy and community-organizing efforts. Dolores Street Community Services’ Deportation Defense & Legal Advocacy Program specializes in deportation defense before the San Francisco Immigration Court, the

Board of Immigration Appeals, and the Ninth Circuit Court of Appeals. Many of Dolores Street's clients are survivors of torture and persecution, including survivors of gender-based violence.

Casa de Esperanza provides emergency shelter for women and children experiencing domestic violence and runs the National Latin@ Network for Healthy Families and Communities, which is a national institute focused on research, training and technical assistance, and policy advocacy focused on addressing and preventing domestic violence in Latino and immigrant communities.

The Asian Pacific Institute on Gender-Based Violence (formerly, Asian & Pacific Islander Institute on Domestic Violence) is a national resource center on domestic violence, sexual violence, trafficking, and other forms of gender-based violence in Asian and Pacific Islander communities. The Institute serves a national network of advocates and community-based service programs that work with Asian and Pacific Islander survivors, and provides leading analysis on critical issues facing victims of gender-based violence in the Asian and Pacific Islander immigrant communities. The Institute leads by promoting culturally relevant intervention and prevention, expert consultation, technical assistance, and training, and by conducting and disseminating critical research to inform public policy.

Maitri is a nonprofit organization based in the San Francisco Bay Area that provides free and confidential services to families from South Asia facing domestic

violence, emotional abuse, cultural alienation, human trafficking or family conflict. Since 1991, Maitri has empowered more than 4,000 individuals through its crisis hotline, legal advocacy, immigration assistance, and transitional housing program.

Amici have a special understanding of the direct and severe impact that Executive Order No. 13,768, *Enhancing Public Safety in the Interior of the United States*, 82 Fed. Reg. 8,799 (Jan. 25, 2017), has already had, and continues to have, on immigrant survivors by limiting their access to protection from and treatment for the effects of gender-based violence.

### **INTRODUCTION AND SUMMARY OF ARGUMENT**

Executive Order No. 13,768, *Enhancing Public Safety in the Interior of the United States*, 82 Fed. Reg. 8,799 (Jan. 25, 2017) (the “Executive Order” or “Order”) has a dangerous chilling effect on immigrant women who are victims of gender-based violence. It deters women from seeking necessary emergency medical services and help from local law enforcement and from pursuing relief under federal statutes intended to protect survivors of gender-based violence. Contrary to the purported aims of the Executive Order, these harmful effects make local communities less safe.

As organizations that provide direct assistance to immigrant women, many of whom are survivors of gender-based violence, amici believe the Executive Order in fact imposes the harmful legal effects the district court identified. And

the government’s argument on appeal—that the Executive Order should be narrowly construed to provide for nothing more than what is already permitted by statute—offers little comfort. The dangerous consequences of the Executive Order for the women that amici serve are already apparent. Regardless of whether its purpose was to expand executive authority beyond previous limits, the Executive Order itself has produced a significant chilling effect with real consequences for immigrant women who are survivors of gender-based violence. The district court’s decision correctly reflects that reality and should be affirmed.

## ARGUMENT

### **I. THE EXECUTIVE ORDER HAS A SIGNIFICANT CHILLING EFFECT THAT ENDANGERS THE LIVES OF IMMIGRANT WOMEN WHO ARE SURVIVORS OF GENDER-BASED VIOLENCE**

Of the many women in the United States who are raped or physically assaulted by an intimate partner each year, “immigrant and refugee women are especially vulnerable.”<sup>2</sup> Immigrant women face unique obstacles in seeking protection from gender-based violence, including language barriers, lack of familiarity with social services and law-enforcement systems, and fear of the police based on experiences with law enforcement in their countries of origin.<sup>3</sup>

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<sup>2</sup> Runner, et al., Family Violence Prevention Fund, *Intimate Partner Violence in Immigrant and Refugee Communities: Challenges, Promising Practices, and Recommendations* 11 (Mar. 2009), <http://bit.ly/1WrvmtD>.

<sup>3</sup> *Id.* at 4-5.

Survivors of gender-based violence may also fear that contacting authorities to report abuse will put the survivor or a family member at risk of deportation.<sup>4</sup> In a 2015 survey of 800 Latinos and Latinas nationwide, 41 percent of respondents cited fear of deportation as the number-one barrier preventing Latino and Latina victims of domestic violence from seeking help.<sup>5</sup>

Many abusers are well aware of this chilling effect and deliberately use a victim's immigration status against her, threatening to contact immigration authorities and report the victim if she discloses abuse.<sup>6</sup> While this tool of exploitation and control is especially prominent when the victim is undocumented, an abuser may also use the threat of deportation to control a victim who actually holds lawful status. An abuser may isolate the victim to prevent her from learning

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<sup>4</sup> Constable, *For Immigrant Women, Domestic Violence Creates a Double Shadow*, Wash. Post, Dec. 2, 2013, <http://wapo.st/2ntxYkC>.

<sup>5</sup> Press Release, *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), <http://bit.ly/1OHQ7NV>.

<sup>6</sup> Runner, *supra* n.2, 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 Rosemary Welsh, Executive Director of Casa de Misericordia in Laredo, Texas, as follows: "One of 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[.]'").

that she does have lawful immigration status and thereby capitalize on her belief that her status is within his control.<sup>7</sup>

To combat these barriers, San Francisco, Santa Clara County, and other jurisdictions have enacted policies designed to allow survivors of gender-based violence to seek help from local agencies without fear that those agencies will act as an arm of the federal immigration authorities. In San Francisco, local law forbids the use of city funds “to assist in the enforcement of Federal immigration law.”<sup>8</sup> And in Santa Clara, policies have been implemented that “significantly curtail the degree to which County staff participate in federal immigration enforcement efforts.” Santa Clara Br. 8.<sup>9</sup> These policies ensure that survivors can safely access immediate protections and emergency medical care, as well as longer-term benefits, such as restraining orders, without fear of immigration consequences.<sup>10</sup> And taking those steps, once a survivor feels secure in doing so,

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<sup>7</sup> See *Runner*, *supra* n.2, at 12.

<sup>8</sup> See San Francisco Admin. Code §§ 12H.1-12H.2 (declaring San Francisco a “City and County of Refuge” and disallowing the use of city funds or resources “to assist in the enforcement of Federal immigration law”).

<sup>9</sup> County of Santa Clara, County Executive’s Office of Immigrant Relations, *General Statement of Values for County Staff*, <https://www.sccgov.org/sites/oir/Documents/oir-gnrl-statement.pdf> (last visited Feb. 12, 2018) (“The County is not doing the work of federal immigration enforcement agencies or collaborating with them.”).

<sup>10</sup> See The Superior Court of California, County of Santa Clara, *Domestic Violence Restraining Orders*, <http://bit.ly/2nOfVCJ> (last visited Feb. 12, 2018).

may help her to learn about federal legal protections specifically designed to protect immigrant survivors of domestic violence. *See infra*, Part III.

The example of one of Tahirih's clients is illustrative: "P" was living in Gibraltar when she met and married a U.S. citizen. After they had a son together, P's husband convinced her to sell her home, quit her job, and move with him to the United States. Over time, P's husband grew verbally and physically abusive. On one occasion, he intentionally crashed the couple's car as he was driving with P and their baby. The abuse escalated, culminating in an incident in which P's husband screamed at her, strangled her, and scratched her face and eye. P did not immediately call the police, fearing violent retaliation from her husband. Finally, after P's husband threw her and their child out of the house during a snowstorm, P's friend encouraged her to call the police, and after doing so, P was able to get a protective order. According to P, she never would have reported the abuse if she thought there were a chance that she would be detained, deported, or separated from her son, who has autism and requires ongoing special care. Through assistance from Tahirih, P obtained lawful permanent residence in 2015 based on a federal Violence Against Women Act "self-petition," and she is eligible for citizenship next year. Her son is thriving now that he is not regularly witnessing domestic violence.

As the district court properly concluded, the Executive Order drastically alters the current landscape that enabled P to secure help by forcing San Francisco, Santa Clara, and similar jurisdictions to choose either to change their policies or to forgo billions of dollars in essential federal funding. *See County of Santa Clara v. Trump and City and County of San Francisco v. Trump*, Nos. 17-cv-00574, 17-cv-00485, 2017 WL 5569835, at \*2 (N.D. Cal. Nov. 20, 2017). Either choice would have severely negative consequences for survivors of gender-based violence.

If San Francisco and Santa Clara sacrifice federal funding to preserve their policies that protect immigrant survivors, they would end up with fewer resources to provide services for all survivors of gender-based violence, including U.S. citizens. San Francisco 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. San Francisco Am. Compl. ¶ 143. It also anticipates a loss of approximately \$800 million dollars for public hospitals and clinics. *Id.* ¶¶ 123-127. 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 health services and trauma and emergency services to the indigent. Santa Clara Compl. ¶¶ 29-30.

On the other hand, if San Francisco and Santa Clara were coerced into abandoning their community trust policies to avoid losing critical funding, the



results would be equally devastating. It is well documented that when local officials engage in federal immigration enforcement, immigrants are deterred from seeking help from local officials—be it in an emergency room or by dialing 911—out of fear that doing so will result in detention or deportation. One study illustrates the stark impact such a policy has had in North Carolina on women’s and children’s health: In jurisdictions where state and federal authorities in North Carolina have entered into immigration enforcement agreements with federal authorities, Hispanic/Latina mothers sought prenatal care later than non-Hispanic/Latina mothers.<sup>11</sup> The study noted that “participants reported profound mistrust of health services, avoiding health services, and sacrificing their health and the health of their family members.”<sup>12</sup>

In California, there has been a precipitous drop in the number of Latino and Latina residents reporting domestic violence since the Executive Order was issued.<sup>13</sup> In the first months of 2017 alone, San Francisco reported an eighteen-

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<sup>11</sup> Rhodes et al., *The Impact of Local Immigration Enforcement Policies on the Health of Immigrant Hispanics/Latinos in the United States*, 105 Am. J. Pub. Health 329 (Feb. 2015).

<sup>12</sup> *Id.*

<sup>13</sup> Queally, *Fearing Deportation, Many Domestic Violence Victims Are Steering Clear of Police and Courts*, L.A. Times, Oct. 9, 2017, <http://www.latimes.com/local/lanow/la-me-ln-undocumented-crime-reporting-2017-1009-story.html>; *see also id.* (noting that “[i]n San Francisco, the reporting decline among Latinos was nearly triple the citywide decrease”).

percent decline in the number of spousal-abuse reports.<sup>14</sup> Beyond law enforcement, many immigrants are disengaging from all critical services. For example, as one report explains, many immigrant families are keeping their children home from school and others have ceased seeking treatment for chronic illnesses from local clinics for fear of ICE raids.<sup>15</sup>

Even before the Executive Order, a survey of 2,000 Latinos in the Chicago, Houston, Los Angeles, and Phoenix areas in 2012 similarly found that “increased involvement of the police in immigration enforcement ha[d] significantly heightened the fears many Latinos have of the police, contributing to their social isolation and exacerbating their mistrust of law enforcement authorities.”<sup>16</sup> Forty-five percent of all those surveyed, and seventy percent of the undocumented immigrants surveyed, reported that, as a result of increased cooperation between the police and immigration authorities, they were less likely to contact law-enforcement authorities if they were victims of crime.<sup>17</sup> As one study concludes, “[t]he overall chilling effect on women is woven throughout many aspects of their

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<sup>14</sup> *Id.*

<sup>15</sup> Fay, *Back Into the Shadows: Immigrants Retreat From Needed Services as Deportation Fears Loom*, Peninsula Press, June 12, 2017, <http://peninsulapress.com/2017/06/12/back-into-the-shadows/>.

<sup>16</sup> Theodore, Univ. of Ill. at Chi., *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement* 1 (May 2013).

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

lives—some are even afraid to seek health insurance for U.S. Citizen children or enroll them in school.”<sup>18</sup>

This is not an abstract fear. Less than three weeks after President Trump issued the Executive Order, ICE agents arrested an immigrant woman at a courthouse in El Paso, Texas, where she had gone to seek an order of protection against her abuser.<sup>19</sup> According to media reports, federal agents later justified the timing and location of this arrest by noting that because the woman was “residing at the Center Against Sexual and Family Violence, and not at [her] residence, it was determined that the best opportunity to locate [the woman] would be after the hearing [on an order of protection].”<sup>20</sup> Separately, in Denver, Colorado, City Attorney Kristin Bronson reported that since the issuance of the Executive Order, four domestic-violence victims have informed her office that they no longer wish to pursue charges against their abusers out of fear that doing so will place them at

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<sup>18</sup> Tahirih Justice Center, *Nationwide Survey: A Window into the Challenges Immigrant Women and Girls Face in the United States and the Policy Solutions to Address Them* 8 (Jan. 31, 2018), <http://www.tahirih.org/wp-content/uploads/2018/01/Tahirih-Justice-Center-Survey-Report-1.31.18-1.pdf>.

<sup>19</sup> Mettler, ‘*This is Really Unprecedented*’: ICE Detains Woman Seeking Domestic Abuse Protection at Texas Courthouse, Wash. Post, Feb. 16, 2017, <http://wapo.st/2nfpmOf>; see also Kulish et al., *U.S. Immigration Agents Discover New Freedom to Deport Under Trump*, N.Y. Times, Feb. 25, 2017, <http://nyti.ms/2mie63i>.

<sup>20</sup> Dart, *Undocumented Woman Arrested After Seeking Protection Prepares for Possible Indictment*, The Guardian, Mar. 2, 2017, <http://bit.ly/2mL34kh>.

risk for deportation.<sup>21</sup> The district attorney in Travis County, Texas, similarly reported that at least one domestic-violence case there recently stalled because the victim declined to press charges out of fear of deportation.<sup>22</sup> At the same time, staff at domestic-violence shelters and clinics operating in communities with large undocumented populations have reported a “large drop in the number of women coming in for services,” indicating that undocumented victims “aren’t taking the next steps to escape abusers, such as pressing charges or moving into shelters.”<sup>23</sup> Under the Executive Order, “victims of domestic violence” thus live in fear that seeking protection from gender-based violence could “put[] them on a fast track to deportation before they can seek legal status ... or justice through the legal system.”<sup>24</sup>

## **II. THE EXECUTIVE ORDER MAKES SAN FRANCISCO, SANTA CLARA, AND OTHER JURISDICTIONS LESS SAFE**

Beyond these consequences for immigrant women themselves, the Executive Order has had serious ramifications for public safety. Most directly, the Executive Order places San Francisco, Santa Clara, and other jurisdictions at immediate risk

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<sup>21</sup> Stern, *Bad for Undocumented Immigrants, a Gift to Domestic Abusers*, Slate.com (Mar. 8, 2017), <http://slate.me/2mZIJvS>.

<sup>22</sup> Caplan-Bricker, “*I Wish I’d Never Called the Police*,” Slate.com (Mar. 19, 2017), <http://slate.me/2mYrYgC>.

<sup>23</sup> Kingkade, *Trump Deportation Vow Is Scaring Domestic Abuse Victims From Coming Forward*, BuzzFeed News (Mar. 16, 2017), <http://bzfd.it/2nNRX9L>.

<sup>24</sup> Caplan-Bricker, *supra* n.22.

of losing critical funding used for public-safety initiatives. Santa Clara anticipates, for example, that the loss of federal dollars will force the County to roll back “juvenile justice, security, intelligence initiatives, and multifaceted crime prevention.” Santa Clara Compl. ¶ 34. And in San Francisco, the loss of funding would have “severe public health and public safety impacts,” including significant reductions in the size of the city’s police force. *See* San Francisco FAC ¶ 143.

Moreover, by deterring immigrant women from reporting gender-based violence, the Executive Order jeopardizes the safety not only of immigrant women themselves, but also of their broader communities. When domestic violence goes unreported, entire communities are put at risk. Studies show that the rates of recidivism for domestic-violence offenders may be higher than for other crimes, and that perpetrators of sexual violence may go on to commit other violent acts.<sup>25</sup> By reducing reporting of gender-based violence, the Executive Order hinders local law-enforcement efforts to apprehend those perpetrators and prevent future crimes.

“Some [California] police officials and advocates now say immigrants without legal status ... may become targets for other crimes because of their reluctance to contact law enforcement.”<sup>26</sup> Fostering trust between the police and

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<sup>25</sup> *See* Washington State Institute for Public Policy, *Recidivism Trends of Domestic Violence Offenders in Washington State* (Aug. 2013), <http://bit.ly/2nG4RL4>.

<sup>26</sup> Queally, *supra* n.13.

immigrants is essential to ensuring community safety; indeed, that was the goal that motivated the adoption of the Santa Clara and San Francisco policies.<sup>27</sup> For example, one study of an Alamance County, North Carolina, policy encouraging local police officers to assist in enforcing immigration laws found that after the policy took effect, immigrant interviewees were reluctant to leave their homes or drive for fear of encountering the police.<sup>28</sup> When asked about crime-reporting practices, “the majority of Hispanic interviewees stated that they would hesitate before reporting crime to authorities out of fear that a friend, neighbor, or family member might be placed in danger of deportation.”<sup>29</sup> Another recent report concluded that, on average, 35.5 fewer crimes are committed per 10,000 people in so-called “sanctuary” counties than non-“sanctuary” counties.<sup>30</sup> For this reason, major policing groups, including the Major Cities Chiefs Association (“MCCA”), Major County Sheriffs Association, International Association of Chiefs of Police,

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<sup>27</sup> See, e.g., Theodore, *supra* n.16, at 2-3; Santa Clara PI 16; San Francisco PI 3; see also Robbins, *Police Fear Trump Immigration Orders May Handcuff Effort to Fight Gangs* 1, 2, N.Y. Times, Feb. 22, 2017 (quoting Suffolk County Police Commissioner as explaining “[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>.

<sup>28</sup> Nguyen & Gill, *Interior Immigration Enforcement: The Impacts of Expanding Local Law Enforcement Authority* 14, Urb. Stud. J. Ltd. (2015), <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.723.2367&rep=rep1&type=pdf>.

<sup>29</sup> *Id.* at 15.

<sup>30</sup> Wong, Center for American Progress, *The Effects of Sanctuary Policies on Crime and the Economy* 2 (Jan. 26, 2017), <http://ampr.gs/2kxOchX>.

and National Fraternal Order of Police have opposed efforts to defund so-called “sanctuary” jurisdictions.<sup>31</sup> As the MCCA noted in response to the issuance of the Executive Order, “[c]ities that aim to build trusting and supportive relations with immigrant communities should not be punished because this is essential to reducing crime and helping victims.”<sup>32</sup>

### **III. THE EXECUTIVE ORDER CONTRAVENES THE INTENT OF MULTIPLE FEDERAL STATUTES**

The district court has already concluded that the Executive Order rests on the President’s power “at its lowest ebb” because “Congress has repeatedly declined to broadly condition federal funds or grants on compliance with Section 1373 or other federal immigration laws.” *County of Santa Clara*, 2017 WL 5569835, at \*12; *see also Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637 (1952) (Jackson, J., concurring). But there is a further basis for that conclusion: the inherent conflict between the Executive Order and congressional intent to provide legal relief for immigrant survivors of gender-based violence, as expressed in the Violence Against Women Act of 1994 (“VAWA”), Pub. L. No.

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<sup>31</sup> Letter from the Major County Sheriffs’ Association and Major City Chiefs Association Opposing S. 2146 (Oct. 20, 2015), <http://bit.ly/1RnPg7g>; Robbins, *supra* n.27 (quoting a statement by the International Association of Chiefs of Police); 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).

<sup>32</sup> Joint Statement, *U.S. Mayors, Police Chiefs Concerned With Sanctuary Cities Executive Order* (Jan. 25, 2017), <http://bit.ly/2n9zjf6>.

103-322, tit. IV, §§ 40701-40703, 108 Stat. 1796, 1902, 1953-1955, and the Trafficking Victims Protection Act of 2000 (“TVPA”), Pub. L. No. 106-386, §§ 107, 1501-1513, 114 Stat. 1464, 1474-1480, 1518-1537.

Congress has long recognized that immigrant women are uniquely vulnerable to abuse because their abusers can exploit their immigration status as a means of manipulation and control. To ensure that immigrant women feel safe reporting crimes to local police, Congress has enacted multiple laws that provide assistance and protection to immigrant survivors of gender-based violence, sexual assault, and human trafficking. VAWA and TVPA were designed to encourage survivors to seek out emergency services, report crimes, and cooperate with local law enforcement in investigations and prosecutions without fear of being turned over to federal immigration authorities. Both statutes, and their subsequent reauthorizations, have enjoyed long-standing and widespread bipartisan support in Congress.<sup>33</sup>

Absent a nationwide injunction, the Executive Order undercuts the important protections of these laws. By coercing local safety officers into assuming the role of federal immigration agents, the Order deters the very reporting and law-

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<sup>33</sup> 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. H705, H800 (daily ed. Feb. 28, 2013); 159 Cong. Rec. S597, S616 (daily ed. Feb. 12, 2013).



enforcement cooperation that those Acts sought to engender, and it puts survivors at risk of deportation simply for seeking protection from their abusers—precisely the outcome Congress sought to prevent.

**A. Violence Against Women Act**

In passing VAWA, Congress acknowledged that “[m]any immigrant women live trapped and isolated in violent homes, afraid to turn to anyone for help. They fear both continued abuse if they stay with their batterers and deportation if they attempt to leave.” H.R. Rep. No. 103-395, at 26 (1993). For some, deportation may involve additional trauma such as forced separation from children. One purpose of VAWA, therefore, was to “permit[] battered immigrant women to leave their batterers without fearing deportation.” *Id.* at 25.

VAWA fulfilled this purpose in two important ways. First, it prevented abusers who are U.S. citizens or lawful permanent residents from exploiting their spouses’ lack of immigration status. An immigrant married to a citizen or lawful permanent resident often depends on her spouse to petition for lawful permanent residence on her behalf. Before VAWA, this provided a highly effective tool for abusers to deter their victims from reporting abuse. VAWA, however, allowed immigrant survivors of domestic violence and sexual assault to “self-petition” for lawful permanent residence on behalf of themselves and their children without the knowledge or involvement of an abusive spouse or family member. *See* Pub. L.

No. 103-322 § 40701, 108 Stat. at 1953-1955. Second, VAWA permitted certain survivors who were already in immigration proceedings to seek cancellation of removal, effectively shielding them from deportation. *See id.* § 40703, 108 Stat. at 1955. The Executive Order hinders those mechanisms and contravenes the intent underlying them.

### **B. Trafficking Victims Protection Act**

In 2000, Congress strengthened VAWA's protections for immigrant women with the passage of TVPA. Pub. L. No. 106-386, 114 Stat. 1464. This law not only improved access to VAWA's existing forms of relief, but also established two additional visa classifications for noncitizens: the "U" visa for immigrant victims of violent crime, 8 U.S.C. § 101(a)(15)(U), and the "T" visa for immigrant victims of severe forms of human trafficking, 8 U.S.C. § 101(a)(15)(T). In addition, TVPA expanded access to services for noncitizen survivors of gender-based violence and sexual assault and enhanced funding opportunities for local law enforcement to respond to their unique needs. Pub. L. No. 106-386 § 1512, 114 Stat. at 1533.

Like VAWA, these provisions were designed "to remove immigration laws as a barrier that kept battered immigrant women and children locked in abusive relationships." Pub. L. No. 106-386 § 1502(a)(1), 114 Stat. at 1518. To that end, the TVPA fosters and relies on greater collaboration between law enforcement and

immigrant victims of crimes. The purpose of these protections, as stated in the statutory text, is to “strengthen the ability of law-enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes”; to “encourage law enforcement officials to better serve immigrant crime victims and to prosecute crimes committed against aliens”; and to “facilitate the reporting of crimes to law-enforcement officials by trafficked, exploited, victimized, and abused aliens who are not in lawful immigration status.” *Id.* § 1513(a)(2)(A)-(B), 114 Stat. at 1533-1534.

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 authorities. It also affirmed that these protections were “in keeping with the humanitarian interests of the United States.” Pub. L. No. 106-386 § 1513(a)(2)(A), 114 Stat. at 1533-1534. If the injunction is lifted, the Executive Order will result in immigration enforcement actions that flout Congress’s purpose in enacting VAWA and TVPA.

## CONCLUSION

The district court's judgment should be affirmed.

Respectfully submitted,

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