

Nos. 17-17478, 17-17480

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

CITY AND COUNTY OF SAN FRANCISCO, et al.,

Plaintiffs-Appellees,

v.

DONALD TRUMP, et al.,

Defendants-Appellants.

On Appeal from the United States District Court

for the Northern District of California, San Francisco

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

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

The Honorable William H. Orrick, District Judge

***AMICUS CURIAE* BRIEF OF THE NATIONAL CENTER FOR LESBIAN
RIGHTS, CENTRO LEGAL DE LA RAZA, TRANSGENDER LAW
CENTER, AND EL/LA PARA TRANSLATINAS IN SUPPORT OF
PLAINTIFFS-APPELLEES AND AFFIRMANCE**

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CORPORATE DISCLOSURE STATEMENT

Amici curiae hereby certify that they have no parent corporation and that no publicly held corporation owns 10% or more of their stock.

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8 U.S.C. § 1101(a)(51)	8
8 U.S.C. § 1229b(b)	8

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Regulations

Executive Order, Enhancing Public Safety in the Interior of the United States, 82 Fed. Reg. 8799, 13,768 1

Other Authorities

Am. Coll. of Physicians, *Immigration Position Statement* (2017), available at https://www.acponline.org/acp_policy/policies/immigration_position_statement_2017.pdf.....20

Am. Immigration Council, *Immigrants in California* (2017), available at https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_california.pdf.....3

Am. Med. Ass’n, *Patient and Physician Rights Regarding Immigration Status H-315.966* (2017), available at <https://www.ama-assn.org/sites/default/files/media-browser/public/hod/i17-002.pdf>20

Am. Nursing Ass’n, *Nursing Beyond Borders: Access to Health Care for Documented and Undocumented Immigrants Living in the US* (2010), available at <http://www.nursingworld.org/MainMenuCategories/Policy-Advocacy/Positions-and-Resolutions/Issue-Briefs/Access-to-care-for-immigrants.pdf>.....20

Bill Ong Hing, *Immigration Sanctuary Policies: Constitutional and Representative of Good Policing and Good Public Policy*, 2 UC Irvine L. Rev. 247 (2012).....6

Christy Mallory et al., The Williams Inst., *Discrimination and Harassment by Law Enforcement Officers in the LGBT Community* (2015), available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Discrimination-and-Harassment-in-Law-Enforcement-March-2015.pdf> 12, 23

TABLE OF AUTHORITIES *(continued)*

	<u>Page(s)</u>
Council for Glob. Equal., <i>Countries Where Homosexuality Is Criminalized</i> (June 2011), available at http://www.globalequality.org/component/content/article/166	13
Dana Mitra, <i>Pennsylvania’s Best Investment: The Social and Economic Benefits of Public Education 3</i> (2011), available at https://www.elc-pa.org/wp-content/uploads/2011/06/BestInvestment_Full_Report_6.27.11.pdf	22
Duncan Tucker, <i>Homophobia In Honduras: Growing Attacks on LGBT Activists</i> , Index on Censorship (Apr. 20, 2016), available at https://www.indexoncensorship.org/2016/04/magazine-honduras-rainbow-warriors-the-dangers-of-being-an-lgbt-activist	16
Eduardo Morales, <i>Latino Lesbian, Gay, Bisexual, and Transgender Immigrants in the United States</i> , 7:2 J. LGBT Issues Counseling 172 (2013).....	11
Elizabeth M. McCormick, <i>Federal Anti-Sanctuary Law: A Failed Approach to Immigration Enforcement and A Poor Substitute for Real Reform</i> , 20 Lewis & Clark L. Rev. 165 (2016).....	19
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Emily Waters et al., Nat’l Coalition of Anti-Violence Programs, <i>Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence in 2015</i> (2016), available at http://avp.org/wp-content/uploads/2017/04/ncavp_hvreport_2015_final.pdf	23
Frank Newport & Gary J. Gates, <i>San Francisco Metro Area Ranks Highest in LGBT Percentage</i> , Gallup (Mar. 20, 2015), available at http://www.gallup.com/poll/182051/san-francisco-metro-area-ranks-highest-lgbt-percentage.aspx	10

TABLE OF AUTHORITIES *(continued)*

	<u>Page(s)</u>
Gustavo Lopez & Jynnah Radford, <i>Facts on U.S. Immigrants, 2015</i> , Pew Research Center (May 3, 2017), available at http://www.pewhispanic.org/2017/05/03/facts-on-u-s-immigrants-current-data	3
Human Rights Watch, <i>World Report 2017</i> 197 (2017), available at https://www.hrw.org/sites/default/files/world_report_download/wr2017-web.pdf	14, 15, 17
Lynn Tramonte, Immigration Policy Ctr., <i>Debunking the Myth of “Sanctuary Cities”</i> (2011), available at https://www.americanimmigrationcouncil.org/sites/default/files/research/Community_Policing_Policies_Protect_American_042611_update.pdf	7, 8
Major Cities Chiefs Ass’n, <i>M.C.C. Immigration Committee Recommendations for Enforcement of Immigration Laws by Local Police Agencies</i> (2006), available at https://www.majorcitieschiefs.com/pdf/news/MCC_Position_Statement.pdf	9
Mark L. Hatzenbuehler et al., <i>The Impact of Institutional Discrimination on Psychiatric Disorders in Lesbian, Gay, and Bisexual Populations: A Prospective Study</i> , 100(3) <i>Am. J. Pub. Health</i> 452 (Mar. 2010).....	24
Nat’l Inst. of Allergy and Infectious Diseases, <i>HIV Infection and AIDS: An Overview</i> , U.S. Dep’t of Health & Human Servs. (Aug. 1, 2002), available at https://aidsinfo.nih.gov/news/105/hiv-infection-and-aids-an-overview	21
Sandy E. James et al., Nat’l Ctr. for Transgender Equal., <i>The Report of the 2015 U.S. Transgender Survey</i> (2016), available at http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf	23
Sarah Stillman, <i>When Deportation is a Death Sentence</i> , <i>New Yorker</i> (Jan. 16, 2017), available at https://www.newyorker.com/magazine/2018/01/15/when-deportation-is-a-death-sentence	7, 8

TABLE OF AUTHORITIES (continued)

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Sharita Gruberg, <i>LGBT Undocumented Immigrants Face an Increased Risk of Hate Violence</i> , Ctr. for Am. Progress (June 10, 2014), available at https://www.americanprogress.org/issues/immigration/news/2014/06/10/91233/lgbt-undocumented-immigrants-face-an-increased-risk-of-hate-violence	11, 12
Sonal S. Munsiff, <i>Communicable Disease and Immigration Fears</i> , 9 Am. Med. Ass’n J. Ethics 799 (2007)	20
Tom K. Wong, <i>The Effects of Sanctuary Policies on Crime and the Economy</i> , Ctr. for Am. Progress (Jan. 26, 2017), available at https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy	8
Transgender L. Ctr. & Cornell Univ. L. Sch. LGBT Clinic, <i>Report on Human Rights Conditions of Transgender Women in Mexico</i> (2016) available at https://transgenderlawcenter.org/wp-content/uploads/2016/05/CountryConditionsReport-FINAL.pdf	15
U.S. Citizenship & Immigr. Servs, <i>Affirmative Asylum Statistics, March 2016</i> (May 4, 2016), available at https://www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/AffirmativeAsylumStatisticsMarch2016.pdf	14
U.S. Dep’t of State, Bureau of Democracy, Hum. Rts. and Lab., <i>China (Includes Tibet, Hong Kong, and Macau) 2016 Human Rights Report</i> (2016), available at https://www.state.gov/documents/organization/265540.pdf	15
U.S. Dep’t of State, Bureau of Democracy, Hum. Rts. and Lab., <i>El Salvador 2016 Human Rights Report</i> (2016), available at https://www.state.gov/documents/organization/265798.pdf	16
U.S. Dep’t of State, Bureau of Democracy, Hum. Rts. and Lab., <i>Guatemala 2013 Human Rights Report</i> (2013), available at https://www.state.gov/documents/organization/220657.pdf	16

TABLE OF AUTHORITIES *(continued)*

	<u>Page(s)</u>
U.S. Dep’t of State, Bureau of Democracy, Hum. Rts. and Lab., <i>Russia 2016 Human Rights Report</i> (2016), available at https://www.state.gov/documents/organization/265678.pdf	16, 17
The Williams Inst., <i>The LGBT Divide in California: A Look at the Socioeconomic Well-Being of LGBT People in California</i> (2015), available at https://williamsinstitute.law.ucla.edu/wp- content/uploads/California-LGBT-Divide-Jan-2016.pdf	10

INTERESTS OF *AMICI CURIAE*¹

The National Center for Lesbian Rights (“NCLR”) and other *amici*, a complete list of which is available at Appendix A, are direct-services and policy-advocacy organizations working on behalf of LGBT immigrants. *Amici* have a special understanding of the severe impact that the President’s so-called Sanctuary Cities Executive Order would have on LGBT immigrants and their families. *See* Executive Order, Enhancing Public Safety in the Interior of the United States, 82 Fed. Reg. 8799, 13,768 (the “Executive Order”). The Executive Order jeopardizes *amici*’s clients’ access to agencies and services that protect public safety and health, such as police and fire departments, discrimination enforcement agencies, health-care facilities, and other social services.

Amici respectfully submit this brief to assist the Court in analyzing the irreparable injuries that San Francisco, Santa Clara, and their residents would face if the district court’s order permanently enjoining the Executive Order is not upheld and if local jurisdictions are forced to abandon the community-focused policies at issue in this case. *Amici* work extensively on behalf of LGBT

¹ All parties have consented to the filing of this brief. Fed. R. App. P. 29(a) (“Any other *amicus curiae* may file a brief . . . if the brief states that all parties have consented to its filing.”). No counsel for a party authored this brief in whole or in part, and neither the parties, nor their counsel, nor anyone except for *amici*, financially contributed to preparing this brief. *Id.*

immigrants, many of whom are asylum seekers and survivors of trafficking, and *amici* know well that the Bay Area serves as a refuge for LGBT people who suffer persecution around the globe. If the district court's order is not affirmed—and if the Executive Order is therefore implemented—the Executive Order will irreparably injure San Francisco and Santa Clara, undermining their efforts to keep their residents safe and healthy and to combat invidious discrimination and other forms of abuse.

INTRODUCTION

The Bay Area is home to one of the most vulnerable populations in America—people who face disproportionate risks of crime and violence and who thus need free and open access to local government services: LGBT immigrants. To ensure such open access, and to combat crime and discrimination and advance public safety, San Francisco and Santa Clara have enacted community-focused policies that allow residents (including documented and undocumented immigrants alike) to engage with local governments without risking immigration consequences, including deportation.

The need for these policies in San Francisco and Santa Clara is substantial. California is home to nearly a quarter of the nation's 43.2 million immigrants, and its population is 27 percent foreign-born.² Immigrants constitute approximately 30 percent of the population of the San Francisco metropolitan area (including Oakland and Hayward) and 37 percent of the Santa Clara, San Jose, and Sunnyvale metropolitan area, making the latter the community with the second-largest share of immigrants in the United States. Community-focused policies allow these

² Am. Immigration Council, *Immigrants in California* 1 (2017), available at https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_california.pdf; Gustavo Lopez & Jynnah Radford, *Facts on U.S. Immigrants, 2015*, Pew Research Center (May 3, 2017), available at <http://www.pewhispanic.org/2017/05/03/facts-on-u-s-immigrants-current-data>.

substantial populations—and particularly LGBT immigrants who simply cannot risk deportation to countries where they have suffered extreme abuse and violence—to engage local government freely. In turn, this helps the government fight crime, treat threats to public health, and combat invidious discrimination.

But community-focused policies are under threat. The President’s Executive Order, which the district court enjoined permanently, seeks to abrogate community-focused policies by presenting a Hobson’s choice: San Francisco and Santa Clara must either abandon their community-focused policies or sacrifice essential federal funding. The government’s attorneys, of course, claim otherwise in their papers before this Court, *see* Appellants’ Br. 21, but the government has made its aim clear: President Trump has threatened to “defund [sanctuary cities],” and California’s in particular, because “California in many ways is out of control” SJ Order 13 (internal quotations omitted), and the Attorney General has pledged to “claw back *any* funds awarded to a [sanctuary city] jurisdiction.” *Id.* at 12 (emphasis added).

Community-focused policies, however, are essential. They ensure that all community members, and particularly those most prone to exploitation and abuse like *amici*’s clients, can report crimes and discrimination and can access essential services. Abrogating these policies would engender a culture of distrust between residents and their local governments. It would create a permanent underclass of

people with reduced access to the police and public services, an intolerable result for communities like San Francisco and Santa Clara that are home to some of the largest immigrant and LGBT communities in the nation.

Amici, therefore, respectfully urge this Court to affirm the district court’s permanent injunction and, therefore, to allow San Francisco and Santa Clara (and others like them) to maintain their community-focused policies.

ARGUMENT

Amici know from experience the harm the Executive Order would cause to their communities and their clients, particularly documented and undocumented LGBT immigrants. According to the Chief Operating Officer for the County of Santa Clara, the Executive Order forces the Plaintiff communities to choose among “(1) continu[ing to] incur[] hundreds of millions of dollars in costs that may never be reimbursed by the federal government, (2) discontinu[ing] basic safety-net services delivered to its most vulnerable residents, or (3) in an attempt to avoid either of these outcomes, be[ing] effectively conscripted into using local law enforcement and other resources to assist the federal government in its immigration enforcement efforts.” *See* Decl. of Miguel Márquez ISO County’s MSJ (“Márquez Decl.”) ¶ 12 [SER 122–23].

For the people *amici* serve, that means they either will find themselves cut off from their local governments and public services, unable to communicate with

these agencies due to tangible, credible fears of deportation, *see infra* Parts I.A–C, or will find vital city services without essential funds, *see infra* Part I.D. The district court appropriately prohibited the government from imposing such a choice upon San Francisco or Santa Clara. This Court should as well.

I. SAN FRANCISCO AND SANTA CLARA WILL SUFFER IRREPARABLE INJURY IF THEY ARE FORCED TO ABANDON THEIR COMMUNITY-FOCUSED POLICIES

A. Community-Focused Policies Serve a Vital Purpose, Particularly for Cities with Large Immigrant Populations.

Although the Executive Order does not define “sanctuary jurisdiction,” *amici* understand the Order to apply to jurisdictions that adopt “community-focused” policies that prioritize overall public safety—a compelling governmental interest—by establishing trust between the community and law enforcement. *See, e.g., Schall v. Martin*, 467 U.S. 253, 264 (1984); *Fyock v. City of Sunnyvale*, 25 F. Supp. 3d 1267, 1279 (N.D. Cal. 2014), *aff’d sub nom. Fyock v. Sunnyvale*, 779 F.3d 991 (9th Cir. 2015). These policies are essentially “‘don’t ask’ policies with respect to [the immigration statuses of] witnesses, victims, and low-level criminal arrests.” Bill Ong Hing, *Immigration Sanctuary Policies: Constitutional and Representative of Good Policing and Good Public Policy*, 2 UC Irvine L. Rev. 247, 260 (2012). “The idea is that gaining the trust of all parts of the community is important to keeping the entire community safe.” *Id.*

The experience of Guatemalan immigrant Danny Sigui demonstrates why that trust matters. Mr. Sigui witnessed and reported a murder in Rhode Island, and his testimony ultimately put the murderer behind bars. Lynn Tramonte, Immigration Policy Ctr., *Debunking the Myth of “Sanctuary Cities”* 4 (2011), available at https://www.americanimmigrationcouncil.org/sites/default/files/research/Community_Policing_Policies_Protect_American_042611_update.pdf. State officials subsequently reported Mr. Sigui to federal authorities, and he was deported. Mr. Segui explained that “[i]f I had known they would take my liberty, that they would take my children away from me, that they would put me [in immigration detention], I would [not have reported the crime or testified at the killer’s trial].” *Id.* (second alteration in original). Absent community-focused policies, someone in Mr. Segui’s position is forced to choose between letting murderers go free and risking his own life and family.

Mr. Segui’s anecdote is no anomaly. According to the International Association of Chiefs of Police, “local police agencies depend on the cooperation of immigrants, legal and [undocumented], in solving all sorts of crimes and in the maintenance of public order. Without assurances that they will not be subject to an immigration investigation and possible deportation, many immigrants with critical information would not come forward, even when heinous crimes are committed against them or their families.” Tramonte, *supra*, at 6; *see also* Sarah Stillman,

When Deportation is a Death Sentence, New Yorker (Jan. 16, 2017), available at <https://www.newyorker.com/magazine/2018/01/15/when-deportation-is-a-death-sentence> (noting that 60 law-enforcement officials warned that the abandonment of community-focused policies “could harm community trust and make it harder for state and local law enforcement agencies to do our jobs”). For example, in the first eight months after President Trump’s inauguration, domestic-assault reports in one predominantly Latino neighborhood in Arlington, Virginia—a city that lacks community-focused policies—“dropped [] eighty-five per cent,” while “[r]eports of rape and sexual assault fell seventy-five per cent” over the same period. Stillman, *supra*. In contrast, in Austin, Texas—when community-focused policies were implemented—“reports of armed robberies grew by 20 percent, and over 150 serial criminals were arrested.” Tramonte, *supra*, at 7. Generally, counties with community-focused policies have on average 35.5 fewer crimes committed per 10,000 people. See Tom K. Wong, *The Effects of Sanctuary Policies on Crime and the Economy*, Ctr. for Am. Progress (Jan. 26, 2017), available at <https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy>.

Congress itself has recognized how community-focused policies protect public safety. Federal immigration law enables survivors of domestic violence (VAWA relief, 8 U.S.C. §§ 1101(a)(51), 1229b(b)(2)(A)(i)), survivors of crimes

(U-Visa, 8 U.S.C. § 1101(a)(15)(U)(i)), and survivors of sexual assault or trafficking (T-Visa, 8 U.S.C. § 1101(a)(15)(T)(i)), for instance, to obtain immigration relief. In fact, several of these laws explicitly require cooperation with law enforcement. *See, e.g.*, 8 U.S.C. § 1101(a)(15)(T)(i)(III), (U)(i)(III). Congress has thus enacted protections based on the same public-safety policies the federal government would have San Francisco and Santa Clara County abandon: policies that prioritize establishing trust with all segments of a community and that empower vulnerable community members to report crimes in order to enhance overall public safety.

If a portion of the public is afraid to report crimes and testify, the police and prosecutors cannot effectively investigate and prosecute criminal activities, including violent crimes. According to police chiefs from the 64 largest police departments in the United States and Canada, “[s]uch a divide between the local police and immigrant groups would result in increased crime against immigrants and in the broader community, create a class of silent victims and eliminate the potential for assistance from immigrants in solving crimes or preventing future terroristic acts.” Major Cities Chiefs Ass’n, *M.C.C. Immigration Committee Recommendations for Enforcement of Immigration Laws by Local Police Agencies* 6 (2006), available at https://www.majorcitieschiefs.com/pdf/news/MCC_Position_Statement.pdf.

B. Community-Focused Policies Are Essential to Protect LGBT Immigrant Communities.

LGBT immigrants, in particular, are prone to exploitation and abuse and need ready access to and constructive relations with authorities such as the police, emergency medical services, and civil rights enforcement authorities. This need is pronounced in the Bay Area, which is a unique home to LGBT immigrants, many of whom come to the United States and to the Plaintiff communities seeking refuge from persecution abroad. Indeed, the Bay Area's population has the highest percentage of LGBT people in the country, due in no small part to the fact that San Francisco is known to be a "particularly supportive" environment for LGBT people. See The Williams Inst., *The LGBT Divide in California: A Look at the Socioeconomic Well-Being of LGBT People in California* 3 (2015), available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/California-LGBT-Divide-Jan-2016.pdf>; see also Frank Newport & Gary J. Gates, *San Francisco Metro Area Ranks Highest in LGBT Percentage*, Gallup (Mar. 20, 2015), available at <http://www.gallup.com/poll/182051/san-francisco-metro-area-ranks-highest-lgbt-percentage.aspx>. Building a trusting relationship between the government and these substantial yet vulnerable communities ensures not only the protection of these individuals, but also the community at large. Consequently, the Bay Area has embraced community-focused policies. Indeed, *amici* and their clients see the effects of these policies every day.

Despite seeking refuge in the United States, there is no question that LGBT people, and LGBT immigrants in particular, remain targets for abuse in this country. Undocumented LGBT immigrants belong to three marginalized populations—they are undocumented, LGBT-identifying, and often ethnic minorities. As a result, they are at higher risk of encountering severe hatred and violence, and they face significant institutional barriers and decreased access to services.

Due to these vulnerabilities, LGBT immigrants are among the groups that most need government assistance and protection. Emily Waters et al., Nat'l Coal. of Anti-Violence Programs, *Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Hate Violence in 2016* 7–8 (2017), available at https://avp.org/wp-content/uploads/2017/06/NCAVP_2016HateViolence_REPORT.pdf; see also Eduardo Morales, *Latino Lesbian, Gay, Bisexual, and Transgender Immigrants in the United States*, 7:2 J. LGBT Issues Counseling 172 (2013). Although undocumented immigrants constitute less than three percent of the LGBT population, they experience nearly eight percent of the hate violence perpetrated against the LGBT community. Sharita Gruberg, *LGBT Undocumented Immigrants Face an Increased Risk of Hate Violence*, Ctr. for Am. Progress (June 10, 2014), available at <https://www.americanprogress.org/issues/immigration/news/2014/06/10/91233/lgb>

t-undocumented-immigrants-face-an-increased-risk-of-hate-violence.

Undocumented LGBT immigrants are also “3.4 times more likely to experience sexual violence and 3.5 times more likely to experience physical violence” than the general LGBT community. *Id.*

Community-focused policies are even more essential for the LGBT immigrant community given the historic discrimination perpetrated against the LGBT community in this country and others throughout the last century. “The United States has had a significant history of mistreatment of LGBT people by law enforcement, including profiling, entrapment, discrimination and harassment by officers; victimization that was often ignored by law enforcement; and discrimination and even blanket exclusions from being hired by law enforcement agencies.” Christy Mallory et al., The Williams Inst., *Discrimination and Harassment by Law Enforcement Officers in the LGBT Community* 1 (2015), available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Discrimination-and-Harassment-in-Law-Enforcement-March-2015.pdf>. This discrimination has the effect of “breaking down trust” and “inhibiting communication” between law enforcement and LGBT individuals. *Id.* at 1–2 (“A 2013 report on hate violence against LGBTQ and HIV-affected communities found that only 56% of survivors of hate violence reported such incidents to the police.”).

Community-focused policies contribute to rebuilding that trust for the good of the LGBT (and LGBT immigrant) communities and for the good of the public.

Without community-focused policies, immigrants would fear that any contact with any government authority—from the police officer answering a call for a domestic disturbance to a public hospital nurse—could result in deportation. And the impact of deportation on members of the LGBT community is particularly acute—indeed, the implications of being “removed” to a foreign country are so profound that LGBT immigrants (and particularly those who are undocumented) are likely to forgo even emergency public health services, will refrain from reporting even serious crimes, and will otherwise avoid protection from the authorities if doing so will expose them to the risk of deportation.

For many LGBT immigrants, deportation is simply not an option. As of 2011, more than eighty-five countries criminalized sexual conduct between consenting adults of the same sex. Council for Glob. Equal., *Countries Where Homosexuality Is Criminalized* (June 2011), available at <http://www.globalequality.org/component/content/article/166>. And even in countries that do not expressly target LGBT people in their laws or policies, LGBT individuals experience unspeakable violence and discrimination. This is especially true in countries from which the United States sees the highest numbers of asylum seekers, including China, Venezuela, Mexico, Guatemala, El Salvador, Honduras,

Ecuador, India, Haiti, and the Ukraine. U.S. Citizenship & Immigr. Servs., *Affirmative Asylum Statistics, March 2016* (May 4, 2016), available at <https://www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/AffirmativeAsylumStatisticsMarch2016.pdf>.

For these reasons, this Court consistently affords protection from deportation to LGBT immigrants in light of the persecution they face in their home countries. *See, e.g., Avendano-Hernandez v. Lynch*, 800 F.3d 1072, 1080–82 (9th Cir. 2015) (granting protection to a transgender woman and recognizing the “unique identities and vulnerabilities of transgender individuals . . . in evaluating a transgender applicant’s . . . claim”); *Hernandez-Montiel v. INS*, 225 F.3d 1084, 1087 (9th Cir. 2000) (granting relief and finding that sexual assaults against transgender women “undoubtedly constitute persecution”), *overruled in part on other grounds by Thomas v. Gonzales*, 409 F.3d 1177 (9th Cir.2005); *Pitcherskaia v. INS*, 118 F.3d 641, 644–45, 648 (9th Cir. 1997) (electric shock therapy to “cure” lesbian of her sexual orientation amounts to persecution); *see also Matter of Toboso-Alfonso*, 20 I. & N. Dec. 819, 822–23 (B.I.A. 1990) (granting protection to a gay man from Cuba on account of his sexual orientation).

In China, for example, gay people are subjected to harmful “therap[ies] [intended] to ‘cure’ . . . homosexuality,” and textbooks depict “homosexuality as an illness.” Human Rights Watch, *World Report 2017* 197 (2017), available at

https://www.hrw.org/sites/default/files/world_report_download/wr2017-web.pdf.

No laws protect people from discrimination based on sexual orientation or gender identity. *Id.* Domestic violence laws do not include same-sex partnerships, leaving LGBT people without legal recourse for violence by family members and intimate partners. U.S. Dep't of State, Bureau of Democracy, Hum. Rts. and Lab., *China (Includes Tibet, Hong Kong, and Macau) 2016 Human Rights Report* 66 (2016), available at <https://www.state.gov/documents/organization/265540.pdf>.

In Mexico, a 2010 survey found that “83.4 [percent] of LGBT Mexicans had faced discrimination because of their sexual preference.” See Transgender L. Ctr. & Cornell Univ. L. Sch. LGBT Clinic, *Report on Human Rights Conditions of Transgender Women in Mexico* 14 (2016), available at <https://transgenderlawcenter.org/wp-content/uploads/2016/05/CountryConditionsReport-FINAL.pdf>. That problem is heightened for transgender women, who regularly experience harassment and hate crimes. For example, in late 2011, a group of men in Chihuahua kidnapped and dismembered two transgender women. *Id.* at 15. Similarly, in June 2012, attackers dismembered the body of a transgender woman in Mexico City. *Id.*

These are not isolated examples. In Honduras, “sexual violence against LGBT[] individuals forces them into ‘internal displacement’ or to flee the country in search of international protection.” Human Rights Watch, *supra*, at 311. The

murder rate of LGBT people there jumped to an average of 31 murders per year in 2009. Duncan Tucker, *Homophobia In Honduras: Growing Attacks on LGBT Activists*, Index on Censorship (Apr. 20, 2016), available at <https://www.indexoncensorship.org/2016/04/magazine-honduras-rainbow-warriors-the-dangers-of-being-an-lgbt-activist>. In Guatemala, the police regularly extort LGBT people by waiting outside clubs and bars to demand protection money or payments to avoid jail. U.S. Dep't of State, Bureau of Democracy, Hum. Rts. and Lab., *Guatemala 2013 Human Rights Report* 22 (2013), available at <https://www.state.gov/documents/organization/220657.pdf>. The Guatemala Public Ministry, however, has refused to investigate violence against gay men and lesbians. *See id.* at 23. And in El Salvador, at least 11 people were murdered in 2016 because of their sexual orientation, and 52 percent of transgender people suffered death threats or violence. U.S. Dep't of State, Bureau of Democracy, Hum. Rts. and Lab., *El Salvador 2016 Human Rights Report* 27–28 (2016), available at <https://www.state.gov/documents/organization/265798.pdf>.

The trends of abuse and persecution against LGBT people in Eastern Europe, South and Central Asia, and Russia are also alarming. In 2016, a group “savagely beat” patrons of a gay club in Russia. U.S. Dep't of State, Bureau of Democracy, Hum. Rts. and Lab., *Russia 2016 Human Rights Report* 71 (2016), available at <https://www.state.gov/documents/organization/265678.pdf>. Russian

police officers systematically abuse and harass LGBT people. *Id.* In 2015, there were 21 documented cases of abuse or harassment of LGBT individuals by Russian law enforcement. *Id.* Russian authorities have also banned websites providing online support for the LGBT community. Human Rights Watch, *supra*, at 498–99. In Pakistan, there have been dozens of threats and attacks against transgender people. *Id.* at 473. A transgender activist in Pakistan was shot eight times and died “while [hospital] staff debated whether to put her in the male or female ward.” *Id.* In 2016 in the Ukraine, an LGBT equality festival had to be cancelled when attackers descended on the event. *Id.* at 624.

Community-focused policies are integral to facilitating communication between LGBT immigrants—whose backgrounds and experiences render them far less likely to seek assistance when needed—and law enforcement. Simply put, LGBT immigrants cannot risk being deported—even if it means they must endure risks to their health or safety (or to the health or safety of the general public) to avoid such a fate.

Amici understand the effects of eliminating community-focused policies not only from social science and research but also from experience with their own clients, who are identified here by their first names to protect those individuals’ safety and privacy. When NCLR’s client Jose was a victim of kidnapping and rape in San Francisco, he felt safe calling the police and seeking medical care at a San

Francisco hospital, without fear of discrimination or deportation. Similarly, NCLR's client Liliana, a transgender woman from Mexico, reported her boyfriend to the police after he subjected her to severe domestic violence. She is now applying for a U-Visa. If Jose or Liliana had feared that the police or hospital staff would report their immigration statuses to Immigration and Customs Enforcement ("ICE"), they likely would not have filed police reports or sought critical medical assistance. They would not have risked deportation and would likely have continued to suffer in a country that should be offering them help and protection. These policies directly protect Jose and Liliana, and others like them, and also ensure that their abusers do not threaten or harm anyone else in the community.

In short, many cities and counties, including San Francisco and Santa Clara, have determined that using local law enforcement to enforce federal immigration law actually jeopardizes public safety and thus puts the entire community at risk of harm. These communities will suffer irreparable injury to public safety if they are forced to abandon these policies because of the Executive Order at issue in this case. *Cf. City of Chicago v. Sessions*, 264 F. Supp. 3d 933, 950 (N.D. Ill. 2017) (holding that the "harm to [Chicago]'s relationship with the immigrant community if it should accede to the conditions [in the Executive Order] is irreparable. Once such trust is lost, it cannot be repaired through an award of money damages").

C. Community-Focused Policies Ensure Access to Public Health and Essential Governmental Programs, and the Ability to Combat Discrimination.

Community-focused policies further ensure that immigrants, including *amici's* clients, feel safe reporting discrimination, enrolling in schools and universities, and accessing essential services, such as medical care. For instance, when Alabama passed an anti-sanctuary bill, “there was an immediate drop in attendance in public schools serving the immigrant communities . . . and a child’s death was reported when his parents delayed seeking medical treatment because they feared that hospital officials would report them to ICE.” Elizabeth M. McCormick, *Federal Anti-Sanctuary Law: A Failed Approach to Immigration Enforcement and A Poor Substitute for Real Reform*, 20 *Lewis & Clark L. Rev.* 165, 199 (2016). Such negative societal impacts are felt acutely by the LGBT immigrant community, which faces a greater risk of isolation due to discrimination, harassment, and abuse.

Concerns about how anti-sanctuary policies could jeopardize public health have led medical associations and public health experts to support publicly the type of community-focused policies San Francisco and Santa Clara have adopted. The American College of Physicians’ Immigration Position Statement recognizes that “society has a public health interest in ensuring that all residents have access to health care, particularly for communicable diseases, and that delayed treatment for

both communicable and noncommunicable diseases may be costly and can endanger the rest of the population.” Am. Coll. of Physicians, *Immigration Position Statement* 7 (2017), available at https://www.acponline.org/acp_policy/policies/immigration_position_statement_2017.pdf. Similarly, the American Medical Association supports “protections that prohibit . . . law enforcement agencies from utilizing information from medical records to pursue immigration enforcement actions against patients who are undocumented.” Am. Med. Ass’n, *Patient and Physician Rights Regarding Immigration Status H-315.966* 2 (2017), available at <https://www.ama-assn.org/sites/default/files/media-browser/public/hod/i17-002.pdf>; see also Am. Nursing Ass’n, *Nursing Beyond Borders: Access to Health Care for Documented and Undocumented Immigrants Living in the US*, 7–8 (2010), available at <http://www.nursingworld.org/MainMenuCategories/Policy-Advocacy/Positions-and-Resolutions/Issue-Briefs/Access-to-care-for-immigrants.pdf> (advocating for comprehensive health care to control the spread of infectious diseases and lower systemic costs, benefiting the entire U.S.); Sonal S. Munsiff, *Communicable Disease and Immigration Fears*, 9 Am. Med. Ass’n J. Ethics 799, 803 (2007) (observing that since “[p]atients who fear and avoid treatment could infect many more people[,] it is in all of society’s interest to ensure that all patients with [tuberculosis] are fully and confidentially treated”).

Amici have seen the impact of community-focused policies on public health through the experiences of their LGBT immigrant clients. NCLR’s client Gustavo, for instance, is a 19-year-old with HIV who suffered extreme sexual abuse and violence in Mexico based on his sexuality. Because of San Francisco’s community-focused policies, he has access to medical care and counseling, protecting his health, as well as the public’s. The viral suppression that comes with access to medical care dramatically improves a person with HIV’s ability to thrive and decreases the chance of passing HIV on to others. *See generally* 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), *available at* <https://aidsinfo.nih.gov/news/105/hiv-infection-and-aids-an-overview>. Likewise, Centro Legal de la Raza’s (“Centro Legal”) client Eduardo is a 19-year-old bisexual man from El Salvador who is able to access Post-Exposure Prevention (“PEP”) treatment, a treatment to prevent infection with HIV. Without assurances that they would not be targeted by government authorities because of their immigration statuses, people like Gustavo and Eduardo would likely forego the health care they need, putting them and the public at risk.

Community-focused policies also ensure access to schools. *Cf. Plyler v. Doe*, 457 U.S. 202, 218–230 (1982) (holding that denying immigrant children access to public education violates equal protection under the Fourteenth

Amendment of the U.S. Constitution); *see also Hispanic Interest Coal. of Ala. v. Governor of Ala.*, 691 F.3d 1236, 1247 (11th Cir. 2012) (noting that “an increased likelihood of deportation or harassment upon enrollment in school significantly deters undocumented children from enrolling in and attending school, in contravention of their rights under *Plyler*”). If it were not for community-focused policies, Centro Legal’s client Jocelyn may not have enrolled her six-year-old daughter in school. Similarly, Eduardo, *see supra* p. 21, and Jocelyn may not have enrolled themselves in community college classes and a vocational training center, respectively. Access to education has “immense social and economic benefits” for individuals and their communities. Dana Mitra, *Pennsylvania’s Best Investment: The Social and Economic Benefits of Public Education* 3 (2011), available at https://www.elc-pa.org/wp-content/uploads/2011/06/BestInvestment_Full_Report_6.27.11.pdf. Those who “have access to quality education throughout primary and secondary school are more likely to find gainful employment, have stable families, and be active and productive citizens”; they are concomitantly less likely to “commit serious crimes,” “place high demands on the public health care system,” and “be enrolled in welfare assistance programs.” *Id.* By ensuring access to schools, community-focused policies benefit both immigrant communities and the larger communities in which they are situated.

Community-focused policies further encourage the reporting of instances of discrimination and abuse to the relevant authorities, which advances the compelling government interest of eliminating discrimination. *See, e.g., New York State Club Ass’n, Inc. v. City of New York*, 487 U.S. 1, 14 n.5 (1988) (recognizing the state’s “compelling interest in combating invidious discrimination” (internal quotation marks omitted)); *Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984) (same). Many LGBT immigrants, and transgender women of color in particular, face very high rates of discrimination in the U.S., including interpersonal crime and police abuse.³

When Centro Legal’s client, here called “Diego,” experienced severe discrimination at work, he was unsure what to do. Co-workers harassed him because he is transgender, and his employer refused to pay him his wages. San Francisco’s community-focused policies allowed Diego to file a wage claim with the California Division of Labor Standards Enforcement and a discrimination claim with the Department of Fair Employment and Housing. Without the security

³ *See generally* Sandy E. James et al., Nat’l Ctr. for Transgender Equal., *The Report of the 2015 U.S. Transgender Survey* (2016), available at <http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf>; Mallory, *supra*; Emily Waters et al., Nat’l Coalition of Anti-Violence Programs, *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence in 2015* (2016), available at http://avp.org/wp-content/uploads/2017/04/ncavp_hvreport_2015_final.pdf.

of knowing his claims did not put him at risk for deportation, Diego likely would not have reported these unlawful behaviors, thereby emboldening his harassers and employers to continue their illegal discrimination with impunity. Indeed, government-sanctioned policies that target minority populations, such as the Executive Order, sanction and engender discrimination and can cause psychological harm to the targeted victims. *See* Mark L. Hatzenbuehler et al., *The Impact of Institutional Discrimination on Psychiatric Disorders in Lesbian, Gay, and Bisexual Populations: A Prospective Study*, 100(3) *Am. J. Pub. Health* 452, 455–56 (Mar. 2010).

Community-focused policies are integral to the health and welfare of LGBT immigrants. They facilitate access to lifesaving medical treatments and empower LGBT immigrants, who are particularly vulnerable to abuse and discrimination, to speak out and seek assistance rather than suffer in silence. If the Plaintiff communities are forced to abandon these policies, they will suffer irreparable injury, and the most vulnerable residents among them will be relegated to second-class status, cut off from access to essential services.

D. Risking Loss of Federal Funds is Not A Viable Alternative To Abandoning Community-Focused Policies.

Just as the abandonment of San Francisco and Santa Clara’s community-focused policies would irreparably injure them and their residents—particularly those that *amici* work with on a day-to-day basis—so too would the loss of federal

funds that the Executive Order threatens. As the district court correctly found below, the issuance of the Executive Order and the consequential need to mitigate the potential loss of funds “wreaked havoc with [Plaintiffs’] budgeting processes prior to issuance of the preliminary injunction.” SJ Order 15. Federal grants make up “a significant part of the [Plaintiffs’] budgets,” *id.* at 14, most of which are used to “provide essential services to its residents.” *Id.* at 10 (citing Marquez Decl. at ¶¶ 5-8 [SER 121]). Many of these services are particularly important to the LGBT and immigrant communities in San Francisco and Santa Clara.

As just one example, Centro Legal’s client Eduardo, *see supra* p. 21, receives health-care services including Post-Exposure Prevention Treatment from a federally funded community health center that welcomes everyone regardless of immigration status. Similarly, Santa Clara County relies on funds from the federal government’s Ryan White HIV/AIDS Program to provide “core medical services (including pharmaceutical assistance, early intervention services, home health care, hospice services, mental health services, oral health care, and medical case management) and support services (including medical transportation, linguistic services, referrals for health care and other support services) to low-income individuals living with HIV/AIDS in the County.” Decl. of Sara H. Cody ISO County’s MSJ ¶ 9 [SER 161]. In 2016, nearly half of the persons living with HIV/AIDS in the County received care funded by Ryan White grants. *Id.* The loss

of this funding “would mean that hundreds of low-income, chronically ill individuals in our community would not receive the health care, drugs, and other essential services they need to survive and enjoy a reasonable quality of life,” and would also increase the risk that “[p]atients with HIV infection who are not adequately treated” might spread the virus to others. *Id.* at ¶ 14.

Enforcement of the Executive Order would irreparably injure *amici* and their clients, as well as threaten the health and safety of the public at large, whether it resulted in San Francisco and Santa Clara ultimately abandoning their community-focused policies or sacrificing critical funding.

CONCLUSION

As *amici* are keenly aware, San Francisco, Santa Clara and their residents, including *amici*'s clients, will suffer irreparable injuries if the communities are forced to abandon their community-focused policies. All community members must be able to report crimes and discrimination and access services such as health care and education. The Executive Order, however, seeks to create a permanent underclass of people with restricted access to essential public services. It would harm not only those people but also the public at large, which benefits from having a government that is open, welcoming, and accessible to all. The district court appropriately and permanently enjoined the Executive Order. *Amici* respectfully submit that this Court should affirm.

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APPENDIX A

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

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

Transgender Law Center (“TLC”) is the nation’s largest organization dedicated to advancing the rights of transgender and gender nonconforming people. TLC strives to change law, policy, and attitudes so that all people can live safely, authentically, and free from discrimination regardless of their gender identity or expression. TLC pursues a multidisciplinary approach to advocacy, including impact litigation, policy advocacy, and a legal helpline that serves more than 1,500 people each year. The work of TLC includes the Immigration Detention Project, which works to improve 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.

CERTIFICATE OF SERVICE

I, Rachel S. Brass, hereby certify that I electronically filed the foregoing *amicus curiae* Brief of National Center for Lesbian Rights et al. with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on February 12, 2018, which will send notice of such filing to all registered CM/ECF users.

/s/ Rachel S. Brass
Rachel S. Brass

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Signature of Attorney or Unrepresented Litigant

s/ Rachel S. Brass

Date

Feb 12, 2018

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