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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(San Francisco Division)

COUNTY OF SANTA CLARA,

 Plaintiff,

 v.

DONALD J. TRUMP, ET AL.,

 Defendants.

Case No. 17-cv-00574-WHO

**[Proposed] Brief of Amici Curiae Services,
Immigrant Rights, and Education Network,
Silicon Valley De-Bug, Asian Law Alliance,
Community Legal Services in East Palo
Alto, and Pangea Legal Services in Support
of Plaintiff's Motion for Preliminary
Injunction**

Date: April 5, 2017
Time: 2:00 p.m.
Dept.: Courtroom 2

Hon. William H. Orrick

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1 **INTRODUCTION**

2 Amici Curiae Silicon Valley De-Bug (“De-Bug”), Services, Immigrant Rights, and
3 Education Network (“SIREN”), Asian Law Alliance, Community Legal Services in East Palo Alto
4 (“CLSEPA”), and Pangea Legal Services (“Pangea”) submit this brief to illustrate the destructive
5 impact that Executive Order No. 13768, 82 Fed. Reg. 8799 (Jan. 25, 2017) (the “Executive
6 Order”) has on immigrant communities¹ in the County of Santa Clara (the “County” or “Santa
7 Clara”) and nationwide. Santa Clara County, with the ninth largest immigrant population in the
8 country,² exemplifies the diverse character of immigrant communities across the country. This
9 brief focuses on the harmful effects of the Executive Order on Santa Clara County, which reflect
10 the ways the Executive Order harms communities nationwide. As the County’s preliminary
11 injunction motion explains, the Executive Order conflicts with: (1) Santa Clara’s Civil Detainer
12 Policy, under which the County declines to respond to Immigration and Customs Enforcement
13 (“ICE”) civil detainer requests; and (2) Santa Clara’s 2010 Resolution “affirming a separation
14 between County services and the enforcement of federal civil immigration law.” Compl. ¶¶ 54-60,
15 ECF/Dkt. No. 1. The Executive Order harms the County’s immigrant community in at least two
16 ways.

17 First, the Executive Order erodes community trust in law enforcement, and thereby reduces
18 public safety. The Executive Order forces immigrants into a Hobson’s choice when confronted
19 with a situation requiring police intervention: either interact with the police and risk being
20 subjected to immigration enforcement, or avoid contact with law enforcement and face a
21 potentially violent or dangerous situation.

22 Second, the Executive Order engenders racialized policing for communities of color,
23 contrary to the County’s commitment to preventing racial profiling. Empirical evidence from

24 _____
25 ¹ The term “immigrant” in this brief refers to all noncitizens, including both undocumented
individuals and those with legal immigration status.

26 ² See Migration Policy Institute, *U.S. Immigrant Population by State and County* (2015),
27 [http://www.migrationpolicy.org/programs/data-hub/charts/us-immigrant-population-state-and-](http://www.migrationpolicy.org/programs/data-hub/charts/us-immigrant-population-state-and-county?width=1000&height=850&iframe=true)
28 [county?width=1000&height=850&iframe=true](http://www.migrationpolicy.org/programs/data-hub/charts/us-immigrant-population-state-and-county?width=1000&height=850&iframe=true); Immigrant Legal Resource Center, *Searching for Sanctuary* 15 (2016), [https://www.ilrc.org/sites/default/files/resources/sanctuary_report_final_1-](https://www.ilrc.org/sites/default/files/resources/sanctuary_report_final_1-min.pdf)
[min.pdf](https://www.ilrc.org/sites/default/files/resources/sanctuary_report_final_1-min.pdf).

1 previous implementations of programs that increased local police involvement in civil
2 immigration enforcement, such as the Secure Communities program—which was also resurrected
3 by a separate provision of the Executive Order³—shows the devastating impacts that such
4 involvement has in immigrant communities and communities of color. Racial profiling causes
5 both constitutional and psychological injury, violating equal protection by singling out individuals
6 based on the color of their skin, and humiliating and alienating racial minorities.

7 **BACKGROUND**

8 Like many other cities and counties with large immigrant populations,⁴ Santa Clara County
9 is home to a diverse community, in which the lives of immigrants and citizens are intertwined. In a
10 county of about 1.8 million people, over 700,000 are foreign-born, including 374,000 naturalized
11 U.S. citizens. U.S. Census Bureau, *2011-2015 American Community Survey 5 Year Estimates:
12 Selected Social Characteristics of the United States: Santa Clara County* (2015) [hereinafter
13 “SCC Census”].⁵ Community members hail from all over the world, with about a quarter of the
14 foreign-born population coming from Latin America and two-thirds coming from Asia. *SCC
15 Census*. More than half its residents speak a language other than English at home. *Id.* County data
16 indicate that two-thirds of immigrants live in “mixed status” households with U.S. citizens. Office
17 of Immigrant Relations, *Santa Clara County Immigrant Contributions* [hereinafter “SCC
18 Immigrant Contributions”].⁶ These “mixed-status” households include families composed of U.S.
19 citizen children living with their undocumented parents. *See, e.g., Silicon Valley De-Bug, 'Tis the
20 Season: Children Affected by Deportation Write Letters to the Board of Supervisors* (Dec. 15,
21 2015) (children sharing their experiences of having a parent deported).⁷

22 _____
23 ³ *See* Exec. Order No. 13768 § 10(a), 82 Fed. Reg. at 8801.

24 ⁴ Although the Executive Order does not define “sanctuary city,” nine of the ten jurisdictions with
25 the largest immigrant populations in the country limit local law enforcement participation in civil
26 immigration enforcement in some way. *See* Immigrant Legal Resource Center, *Searching for
27 Sanctuary* 15 (2016), [https://www.ilrc.org/sites/default/files/resources/sanctuary_report_final_1-
28 min.pdf](https://www.ilrc.org/sites/default/files/resources/sanctuary_report_final_1-min.pdf).

26 ⁵ <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.

27 ⁶ [https://www.sccgov.org/sites/oir/Documents/Immigrant%20Contributions%20Newsletter-
28 FINAL%201-15-16.pdf](https://www.sccgov.org/sites/oir/Documents/Immigrant%20Contributions%20Newsletter-FINAL%201-15-16.pdf).

28 ⁷ <http://archives.siliconvalleydebug.org/articles/2015/12/15/tis-season-to-kick-out-ice>.

1 The County community—including immigrants and citizens—advocated strongly for the
2 County’s Civil Detainer Policy and its 2010 Resolution to separate local law enforcement from
3 civil immigration enforcement. When the County Board of Supervisors convened in 2011 to
4 consider whether to cease responding to ICE detainer requests, the community came out in force
5 to urge the County to get out of the business of participating in the enforcement of federal civil
6 immigration laws. *See* Tracey Kaplan, *On Crime Policy, Santa Clara County Takes a Cutting*
7 *Edge—and Some Say Risky—Approach*, San Jose Mercury News (Nov. 5, 2011) (listing
8 community organizations, including Amicus SIREN, that advocated for Santa Clara County’s
9 detainer policy to the Board of Supervisors)⁸; *see also* Jon Pedigo & Richard Konda, Op-ed,
10 *Community Trust Is Crucial to Fighting Crime*, San Jose Mercury News (Nov. 5, 2011).⁹ These
11 successful advocacy efforts—combined with voices highlighting the importance of the policy to
12 public safety—led to the Board adopting Santa Clara County’s current policy by a 3-1 vote.
13 Kaplan, *Santa Clara County Takes Cutting Edge Approach*. When the County reconsidered the
14 detainer policies in 2013, the community again turned out, and “more than 60 impassioned
15 activists” attended the Board of Supervisors meeting to urge it to retain the policy. Tracey Kaplan,
16 *Jailed Illegal Immigrants: Santa Clara County Sticks with Lenient Policy*, San Jose Mercury News
17 (Nov. 5, 2013).¹⁰ *See also* Raul Peralez, *Notifying Immigration About Prisoners to be Released is*
18 *Wrong*, San Jose Mercury News (July 24, 2015) (describing the Santa Clara community’s
19 continuing defense of its detainer policy in 2015).¹¹

20 As part of Amici’s efforts to defend Santa Clara County’s detainer policy in 2013, Amicus
21 Silicon Valley De-Bug conducted a public opinion community survey of 519 people to measure
22 the community’s support for the detainer policy. Silicon Valley De-Bug, *Trust Index* (Sept. 21,

23

24 ⁸ <http://www.mercurynews.com/2011/11/05/on-crime-policy-santa-clara-county-takes-a-cutting-edge-some-say-risky-approach/>.

25 ⁹ <http://www.mercurynews.com/2011/11/04/father-jon-pedigo-and-richard-konda-community-trust-in-police-is-crucial-to-fighting-crime/>.

26 ¹⁰ <http://www.mercurynews.com/2013/11/05/jailed-illegal-immigrants-santa-clara-county-sticks-with-lenient-policy/>.

27 ¹¹ <http://www.mercurynews.com/2015/07/24/raul-peralez-notifying-immigration-about-prisoners-to-be-released-is-wrong/>.

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1 2013).¹² The survey (in which 69% of respondents were born in the United States) demonstrated
2 widespread community support for the detainer policy, with 88% of respondents agreeing that the
3 County should maintain the policy prohibiting detainers. *Id.* And 90% of respondents agreed that
4 the effort to promote trust between immigrant communities and law enforcement “is an important
5 aspect of creating public safety *for all.*” *Id.* (emphasis added). The survey incorporated a wide
6 variety of ethnicities; about half the respondents were Latino/a, while Caucasians and Asian
7 Americans each represented about 15% of those surveyed. *Id.*

8 Since the Executive Order, immigrant communities are expressing concern about trusting
9 local authorities, even in life-threatening situations. A recent flood in San Jose (the largest city in
10 the County) necessitated the mandatory evacuation of entire neighborhoods, Jennifer Wadsworth,
11 *Flood in San Jose Prompts Evacuations, Rescue Missions*, San Jose Inside (Feb. 21, 2017),¹³ and
12 some of the hardest hit communities included Latino and Vietnamese immigrants. Paul Rogers,
13 *San Jose Flood: Feds Refused to Fund Project that Would Have Saved Rock Springs*
14 *Neighborhood*, San Jose Mercury News (Mar. 4, 2017).¹⁴ Despite the dangers, news accounts
15 reported residents’ worry that their immigrant neighbors, scared and not knowing where to turn,
16 would be left without help. See Robert Salonga, *After the Flood, San Jose Residents Get Sober*
17 *Look at Homes*, East Bay Times (Feb. 22, 2017).¹⁵

18 **ARGUMENT**

19 By imperiling Santa Clara County’s detainer policy and resolution to separate law
20 enforcement from civil immigration enforcement through threats of cutting federal funding, the
21 Executive Order has at least two negative effects on the community. First, it diminishes trust in
22 law enforcement, thereby undermining public safety. Second, it creates an environment in which
23 the County’s ability to prevent racialized policing is undermined and the danger of racial profiling
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25 ¹² <http://archives.siliconvalleydebug.org/articles/2013/09/21/trustindex>.

26 ¹³ <http://www.sanjoseinside.com/2017/02/21/flooding-in-san-jose-prompts-evacuations-rescue-missions/>.

27 ¹⁴ <http://www.mercurynews.com/2017/03/04/san-jose-flood-feds-refused-to-fund-project-that-would-have-saved-rock-springs-neighborhood/>.

28 ¹⁵ <http://www.eastbaytimes.com/2017/02/22/evacuees-tell-stories-of-escape-from-san-jose-flood/>.

1 that violates the Fourteenth Amendment is heightened.

2 **I. The Executive Order Undermines the Santa Clara County Community’s Trust in**
3 **Law Enforcement.**

4 The Executive Order undermines immigrants’ trust of law enforcement in the County.
5 Numerous studies demonstrate that, when local police enforce or are entangled with federal civil
6 immigration laws, immigrants fear interacting with the police. *See, e.g.*, David S. Kirk et al., *The*
7 *Paradox of Law Enforcement in Immigrant Communities*, 641 *Annals Am. Acad. Pol. & Soc. Sci.*
8 79, 95 (2012) (“[D]raconian immigration laws . . . will likely undermine the very public safety that
9 they were purportedly designed to protect.”); Mai Thi Nguyen & Hannah Gill, *Interior*
10 *Immigration Enforcement: The Impacts of Expanding Local Law Enforcement Authority*, 53 *Urb.*
11 *Studs.* 302, 318 (2016) (finding that local police cooperation with ICE chilled immigrant
12 willingness to contact the police and had an adverse effect on public safety); *see also* Andres F.
13 Reniglo & Jennifer Fratello, *Perceptions of the Police by Immigrant Youth*, 13 *Youth Violence &*
14 *Juvenile Justice* 409, 423 (2015) (finding that more intense policing in immigrant neighborhoods
15 decreased immigrant youths’ trust in police); Decl. of District Attorney Jeffrey F. Rosen, ¶ 11,
16 ECF/Dkt. No. 33. Amicus De-Bug’s public opinion survey of 519 respondents about the County’s
17 Civil Detainer Policy is illustrative: more than three-quarters of the individuals surveyed
18 (including many U.S. citizens) agreed that the detainer policy is in the best interest of the *entire*
19 Santa Clara County community. Silicon Valley De-Bug, *Trust Index* (Sept. 21, 2013) (emphasis
20 added);¹⁶ *see also* Decl. of Sheriff Laurie Smith, ¶ 7, ECF/Dkt. No. 35.

21 Because the County is home to many mixed-status families—and is a mixed-status
22 community as a whole, *see SCC Immigrant Contributions*—the Executive Order discourages even
23 County residents with legal status from contacting law enforcement. Studies of communities
24 across the country confirm that immigrant residents, including those with legal documentation,
25 who witness criminal activity or are the victim of a crime fear that *any* interaction with police will
26 put them or their loved ones at risk of deportation. *See, e.g.*, ACLU of Georgia et al., *Prejudice*,

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¹⁶ <http://archives.siliconvalleydebug.org/articles/2013/09/21/trustindex>.

1 *Policing, and Public Safety* 18 (2014).¹⁷ Latinos, both immigrants and U.S. citizens, are
2 particularly wary of contacting police for fear that they, or their friends and family, may come to
3 ICE’s attention. Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement*
4 *in Immigration Enforcement* 5-6 (2013).¹⁸ These findings are significant in Santa Clara County,
5 where about one-quarter of the population identifies as Latino, *SCC Census*, and where over 70%
6 of surveyed residents in San Jose (the County’s largest city) reported feeling that it was important
7 that their police chief commit to not doing the job of civil immigration enforcement, Coalition for
8 Justice and Accountability, *Community Input Report* 4 (2011).¹⁹

9 Given the large number of mixed-status households in Santa Clara, the loss of trust caused
10 by the Executive Order impacts U.S. citizen children with immigrant parents. Amicus De-Bug has
11 collected the statements of children fearful of losing a parent to deportation, or who had seen their
12 parent deported. Silicon Valley De-Bug, *'Tis the Season: Children Affected by Deportation Write*
13 *Letters to the Board of Supervisors* (Dec. 15, 2015).²⁰ One seven-year-old girl, in a letter to the
14 County Board of Supervisors, begged them haltingly to “please not let ICE separate families. I
15 will be sad about it.” *Id.* Another young woman, now 17, remembered her experience with her
16 father when she was 11, in the middle of 5th grade. *Id.* Because the rest of her family feared
17 visiting the police station due to their immigration status, she was the only one who could see him
18 after his arrest. *Id.* These experiences illustrate that the damaging effects of local law enforcement
19 participation in civil immigration enforcement extends to even the youngest members of the
20 County’s immigrant community. *See also* Damian Trujillo, *False Report of ICE Raid Causes*
21 *Panic in East San Jose*, NBC Bay Area (Feb. 15, 2017) (describing school administrators’ panic in
22 deciding what to do with children not being picked up in the event of an ICE raid).²¹

23 _____
24 ¹⁷http://www.law.nyu.edu/sites/default/files/upload_documents/Prejudice_Policing_Public%20Safety.pdf.

25 ¹⁸ [https://greatcities.uic.edu/wp-](https://greatcities.uic.edu/wp-content/uploads/2014/05/Insecure_Communities_Report_FINAL.pdf)
26 [content/uploads/2014/05/Insecure_Communities_Report_FINAL.pdf](https://greatcities.uic.edu/wp-content/uploads/2014/05/Insecure_Communities_Report_FINAL.pdf).

27 ¹⁹ <https://issuu.com/svdebug/docs/cjasurveyreport>.

28 ²⁰ <http://archives.siliconvalleydebug.org/articles/2015/12/15/tis-season-to-kick-out-ice>.

²¹ [http://www.nbcbayarea.com/news/local/False-Report-of-ICE-Raid-Causes-Panic-in-East-San-](http://www.nbcbayarea.com/news/local/False-Report-of-ICE-Raid-Causes-Panic-in-East-San-Jose-413905663.html)
[Jose-413905663.html](http://www.nbcbayarea.com/news/local/False-Report-of-ICE-Raid-Causes-Panic-in-East-San-Jose-413905663.html).

1 The County’s experience prior to its enactment of the Civil Detainer Policy in 2011
2 underscores how law enforcement involvement with civil immigration enforcement harms
3 community trust. At that time, the County participated in the Secure Communities program. Under
4 that program, local authorities would, at ICE’s request, detain immigrants after an arrest for up to
5 48 hours beyond when they would have been released. Haas Institute, *Why Sanctuary Policies*
6 *Must Stay: The Legal and Factual Reasons for Limiting ICE Detainers* (2016).²² The policy was
7 disastrous for both the Santa Clara County community and law enforcement because it “create[d]
8 an atmosphere of fear.” Tracy Seipel, *Santa Clara Supervisors Vote to Opt Out of Secure*
9 *Communities Program*, San Jose Mercury News (Sept. 28, 2010).²³ Santa Clara County’s
10 experience is representative of many cities and counties’ rejection of Secure Communities; the
11 adverse effects of the program on trust with law enforcement were consistently demonstrated
12 across the country. *See, e.g.*, Julia Preston & Steven Yaccino, *Obama Policy on Immigrants Is*
13 *Challenged by Chicago*, N.Y. Times (July 10, 2012) (quoting Mayor Rahm Emanuel announcing
14 an ordinance to bar detainers in Chicago).²⁴ The Executive Order represents a return to this old
15 regime, despite its demonstrable negative effect on public trust.

16 The experience of immigrant communities during the devastating floods of February 2017
17 indicates that the Executive Order is already generating increased mistrust of local authorities.
18 Residents in Santa Clara reported concern that their undocumented neighbors—residents of some
19 of the worst-flooded neighborhoods—did not know where to turn as water filled their homes.
20 Salonga, *After the Flood, San Jose Residents Get Sober Look at Homes; see also KRON4, Video:*
21 *3,000 people Still Out of Flooded San Jose Homes* (Feb. 24, 2017) (depicting effects of floods).²⁵
22 Without a preliminary injunction—preventing the operation of the Executive Order—Amici fear

23

24 ²² <http://haasinstitute.berkeley.edu/why-sanctuary-policies-must-stay-legal-and-factual-reasons-limiting-ice-detainers>.

25 ²³ <http://www.mercurynews.com/2010/09/28/santa-clara-county-supervisors-vote-to-opt-out-of-secure-communities-program>.

26 ²⁴ <http://www.nytimes.com/2012/07/11/us/obama-policy-on-illegal-immigrants-is-challenged-by-chicago.html?ref=illegalimmigrants>.

27 ²⁵ <http://kron4.com/2017/02/24/video-3000-people-still-out-of-flooded-san-jose-homes-down-from-4000-thursday>.
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1 that such fear of contacting the police or other emergency services for fear of adverse immigration
2 consequences will become even more common.

3 **II. The Executive Order Engenders Fear of Racialized Policing in the Santa Clara**
4 **Community.**

5 By placing Santa Clara under the imminent threat of losing its federal grant funding unless
6 it eliminates its Civil Detainer Policy and 2010 Resolution, the Executive Order promotes
7 increased local law enforcement involvement in civil immigration enforcement. This raises well-
8 documented concerns about an environment in which the County’s commitment to prevent the
9 over-policing of communities of color is undermined.

10 **A. Enmeshing Local Law Enforcement with Federal Immigration Directives**
11 **Leads to Over-Policing of Communities of Color and Immigrant**
12 **Communities.**

13 Experience with the Secure Communities program nationwide illustrates that with
14 increased local involvement in immigration enforcement comes increased racial profiling. A 2011
15 study by the Chief Justice Earl Warren Institute on Law and Social Policy, for instance, revealed
16 that although Latinos comprised only 77% of the undocumented population in the United States,
17 they comprised 93% of the individuals arrested through Secure Communities. Aarti Kohli et al.,
18 *Secure Communities by the Numbers: An Analysis of Demographics and Due Process* 2 (2011).²⁶
19 The ACLU reached a similar conclusion in 2014 when it studied Georgia’s experience with Secure
20 Communities. After Secure Communities substantially increased local involvement with federal
21 immigration enforcement in Georgia, ICE mistakenly issued 54 detainers against U.S. citizens—
22 out of these, 48 involved U.S. citizens with a “dark or medium” complexion. ACLU of Georgia,
23 *Prejudice, Policing, and Public Safety* 14 (2014).²⁷ These studies are consistent with a growing
24 body of research detailing how mandates like those in the Executive Order lead to the over-
25 policing of communities of color.²⁸

26 ²⁶ https://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf.

27 ²⁷ http://www.law.nyu.edu/sites/default/files/upload_documents/Prejudice_Policing_Public%20Safety.pdf.

28 ²⁸ See, e.g., Amelia Fischer, *Secure Communities, Racial Profiling, and Suppression Law in Removal Proceedings*, 19 Tex. Hisp. J.L. & Pol’y 63 (2013); Ankit Rastogi, *DHS Immigrant*

1 A study of ICE’s own data similarly demonstrates a strong correlation between
2 jurisdictions with a history of discriminatory policing—for example, Arizona’s Maricopa County,
3 which was the subject of a Department of Justice investigation for its practice of racial profiling—
4 and high rates of deportations of undocumented individuals who had no criminal history (who
5 were supposedly not an enforcement priority under Secure Communities). *See* Rights Working
6 Group, *Faces of Racial Profiling: A Report from Communities Across America* 7 (2010).²⁹ The
7 data are robust across jurisdictions: the same ICE data highlights jurisdictions like Travis, Texas,
8 with 82 percent of deportations under Secure Communities focused on targeting individuals with
9 no criminal history. *Id.* That cities with a history of discriminatory policing are substantially more
10 likely to sweep in undocumented individuals with no criminal history—which were not the focus
11 of Secure Communities—suggests that increased linkage between local police and federal
12 immigration enforcement strongly correlates with an increase in profiling of individuals perceived
13 to be immigrants.

14 When local law enforcement joins in ICE’s civil enforcement mission, its incentives
15 change. Merging the mission of local law enforcement with federal immigration enforcement
16 “heightens the incentives (and reduces the costs) of making stops where a state or local official
17 believes the stop might reveal an immigration violator.” Jennifer Chacon, *Border Exceptionalism*
18 *in the Era of Moving Borders*, 38 *Fordham Urb. L.J.* 129, 149 (2010). When pulling over a Latino
19 motorist is perceived as more likely to reveal an immigration violation than pulling over a white
20 motorist, and when local police become integrated in the federal immigration enforcement
21 machinery in order to detect these immigration violations, communities can expect increased
22 racialized profiling.³⁰

23 _____
24 *Dragnet Yields Sorry Results*, ACLU Speak Freely (Feb. 25, 2010),
25 [https://www.aclu.org/blog/speakeasy/dhs-immigrant-drag-net-yields-sorry-](https://www.aclu.org/blog/speakeasy/dhs-immigrant-drag-net-yields-sorry-results?redirect=blog/immigrants-rights/dhs-immigrant-drag-net-yields-sorry-results)
26 [results?redirect=blog/immigrants-rights/dhs-immigrant-drag-net-yields-sorry-](https://www.aclu.org/blog/speakeasy/dhs-immigrant-drag-net-yields-sorry-results?redirect=blog/immigrants-rights/dhs-immigrant-drag-net-yields-sorry-results)
27 [results; Ralph De La Cruz, Report: Secure Communities Encourages Racial Profiling, Lack of Due Process](https://www.aclu.org/blog/speakeasy/dhs-immigrant-drag-net-yields-sorry-results?redirect=blog/immigrants-rights/dhs-immigrant-drag-net-yields-sorry-results), Fla. Center
28 for Investigative Reporting (Oct. 21, 2011), [http://fcir.org/2011/10/20/report-secure-communities-](http://fcir.org/2011/10/20/report-secure-communities-encourages-racial-profiling-lack-of-due-process)
[encourages-racial-profiling-lack-of-due-process.](http://fcir.org/2011/10/20/report-secure-communities-encourages-racial-profiling-lack-of-due-process)

²⁹ [http://cdm16064.contentdm.oclc.org/cdm/ref/collection/p266901coll4/id/2973.](http://cdm16064.contentdm.oclc.org/cdm/ref/collection/p266901coll4/id/2973)

³⁰ *See* Trevor Gardner II & Aarti Kohli, *The C.A.P. Effect* 1 (2009),

1 **B. Racial Profiling is Unconstitutional and Causes Significant Social and**
2 **Psychological Harm.**

3 Increased racial profiling raises serious constitutional problems. In *Ortega-Melendres v.*
4 *Arpaio*, the court held that the “use of [apparent] Hispanic ancestry or race as a factor in forming
5 reasonable suspicion that persons have violated . . . laws relating to immigration status violates the
6 Equal Protection Clause of the Fourteenth Amendment.” 989 F. Supp. 2d 822, 899 (D. Ariz.
7 2013), *aff’d on other gds. in Melendres v. Arpaio*, 784 F.3d 1254 (9th Cir. 2015). Rejecting the
8 defendant’s argument that people of Hispanic ancestry were statistically more likely to be
9 immigration violators, the court found that the practice of racial profiling was not narrowly
10 tailored enough to survive strict scrutiny. *Id.* at 901.

11 Increased racial profiling also causes psychological harm. Studies on racial profiling have
12 consistently found that the effects of being profiled are “consistent with models of traumatic
13 stress, and that a smaller proportion also fit the narrower criteria for PTSD or Acute Stress.” *See*
14 Robert T. Carter & Silvia L. Mazzula, *The Mental Health Effects of Racial Profiling*, 6 L.
15 Enforcement Exec. Forum 111, 117 (2006). The American Psychological Association has
16 corroborated this view, indicating that the “victim effects” of racial profiling include a host of
17 “stress-related disorders.” Ontario Human Rights Commission, *The Effects of Racial Profiling*
18 (last visited Mar. 13, 2017).³¹

19 Consider Guillermo,³² a father and grandfather of U.S. citizen children and a County
20 resident, who believes ICE targeted him and fifteen other day laborers for arrest because of their
21 Latino ethnicity. Silicon Valley De-Bug, *#WhenICECame Video Series: He Would Grab My Hand*

22 _____
23 http://www.motherjones.com/files/policybrief_irving_FINAL.pdf (showing that immediately after
24 law enforcement in Irving, Texas were given 24-hour access to ICE in the local jail, discretionary
25 arrests of Hispanics for petty offenses rose dramatically); *see also* Raj Jayadev, *More Charges*
26 *Linked to “Racial Profiling,”* San Jose Inside (Mar. 20, 2009),
http://www.sanjoseinside.com/2009/03/20/more_charges_linked_to_racial_profiling/ (describing
the tenuous history of racial profiling that Santa Clara County has sought to remedy for the last
decade).

27 ³¹ [http://www.ohrc.on.ca/en/paying-price-human-cost-racial-profiling/effects-racial-](http://www.ohrc.on.ca/en/paying-price-human-cost-racial-profiling/effects-racial-profiling#fn33)
28 [profiling#fn33.](http://www.ohrc.on.ca/en/paying-price-human-cost-racial-profiling/effects-racial-profiling#fn33)

³² “Guillermo” is a pseudonym used to preserve confidentiality.

1 *to Make Me Sign* (Oct. 15, 2015).³³ Guillermo recalls how “[his] family had no idea where [he]
2 was” for an entire night, and how he returned to a car that had already been towed. *Id.* Despite the
3 fact that the arrest and detention happened eight years ago, Guillermo explains that this “incident
4 has marked [him and the others] for the rest of [their] lives.” *Id.*

5 Guillermo’s story demonstrates the psychological impact of racial profiling on
6 communities of color—an impact that is likely to increase with the Executive Order’s requirement
7 that localities become enmeshed in civil immigration enforcement.

8

9

CONCLUSION

10 For the foregoing reasons, Amici urge this Court to grant Santa Clara County’s motion for
11 a nationwide preliminary injunction.

12

13

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Respectfully submitted,

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28 ³³ <http://archives.siliconvalleydebug.org/articles/2015/10/15/father-detained-for-seeking-work>.