

No. 18-16496

**In The United States Court Of
Appeals For The Ninth Circuit**

THE UNITED STATES OF AMERICA,

Plaintiffs-Appellants,

v.

STATE OF CALIFORNIA, *et al.*,

Defendants-Appellees.

*On Appeal from the United States District Court
for the Eastern District of California*

No. 2:18-cv-00490-JAM-KJN

BRIEF OF *AMICI CURIAE* NATIONAL HEALTH LAW PROGRAM,
ET AL., IN SUPPORT OF DEFENDANTS-APPELLEES, STATE OF
CALIFORNIA, *ET AL.* AND AFFIRMANCE

Abigail K. Coursolle
coursolle@healthlaw.org
Counsel of Record
NATIONAL HEALTH LAW
PROGRAM
3701 Wilshire Blvd, Suite 750
Los Angeles, CA 90010
Telephone: (310) 204-6010

Sarah Grusin*
grusin@healthlaw.org
Joe McLean*
mclean@healthlaw.org
Ian McDonald*
mcdonald@healthlaw.org
* Not admitted in this jurisdiction

Attorneys for *Amici Curiae*
National Health Law Program, *et al.*

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and Circuit Rule 26.1(a), the undersigned counsel certifies that the *amici curiae*, National Health Law Program (NHeLP); Asian Law Alliance; Bay Area Lawyers for Individual Freedom (BALIF); California Center for Rural Policy; California National Organization for Women; Center for Civil Justice; Center for Medicare Advocacy, Inc.; Citizens for Choice; Community Legal Aid Society, Inc.; Congregation of Our Lady of Charity of the Good Shepherd, US Provinces; CWDA; Desert AIDS Project; Disability Rights California; Disability Rights Education and Defense Fund (DREDF); Disability Rights Legal Center; Equality California; Florida Legal Services, Inc.; In Our Own Voice: National Black Women's Reproductive Justice Agenda; Kentucky Equal Justice Center; Legal Aid Justice Center; Legal Aid Society of San Mateo County; Legal Council for Health Justice; Maternal and Child Health Access; Medical Students for Choice; National Asian Pacific American Families Against Substance Abuse (NAPAFASA); NARAL Pro-Choice California; National Asian Pacific American Women's Forum; National Center for Law and Economic Justice; National Hispanic Medical Association; National Institute for Reproductive Health; National Organization for Women Foundation; National Women's Law Center; Northwest Health Law Advocates; Physicians for Reproductive Health; Planned Parenthood Affiliates of California; Positive Women's Network - USA ;

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Dated: November 13, 2018

/s/ Abigail K. Coursolle

Abigail K. Coursolle

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INTEREST OF *AMICI*¹

The *amici curiae* are the National Health Law Program (NHeLP); Asian Law Alliance; Bay Area Lawyers for Individual Freedom (BALIF); California Center for Rural Policy; California National Organization for Women; Center for Civil Justice; Center for Medicare Advocacy, Inc.; Citizens for Choice; Community Legal Aid Society, Inc.; Congregation of Our Lady of Charity of the Good Shepherd, US Provinces; CWDA; Desert AIDS Project; Disability Rights California; Disability Rights Education and Defense Fund (DREDF); Disability Rights Legal Center; Equality California; Florida Legal Services, Inc.; In Our Own Voice: National Black Women's Reproductive Justice Agenda; Kentucky Equal Justice Center; Legal Aid Justice Center; Legal Aid Society of San Mateo County; Legal Council for Health Justice; Maternal and Child Health Access; Medical Students for Choice; National Asian Pacific American Families Against Substance Abuse (NAPAFASA); NARAL Pro-Choice California; National Asian Pacific American Women's Forum; National Center for Law and Economic Justice; National Hispanic Medical Association; National Institute for Reproductive Health; National Organization for Women Foundation; National Women's Law Center; Northwest Health Law Advocates;

¹ Pursuant to Fed. R. App. P. 29(a)(4)(E), counsel for *amici curiae* states that no counsel for a party authored the brief in whole or in part, and no person other than *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

Physicians for Reproductive Health; Planned Parenthood Affiliates of California; Positive Women's Network - USA ; Public Justice Center; The Children's Partnership; The New York Immigration Coalition; The Praxis Project; The Sargent Shriver National Center on Poverty Law; The Southwest Women's Law Center; and Western Center on Law & Poverty (collectively, "NHeLP et al.").

While each *amicus* has particular interests, together they share the mission of advancing public health and removing barriers to health care for all people, including immigrants and their families. *Amici* NHeLP *et al.* work on behalf of low-income populations and immigrants in California and throughout the country to remove barriers to health care using various tools such as direct legal and health services, policy advocacy, education, and litigation. *Amici* submit this brief to provide the Court with additional information about the important public health protections that SB 54, AB 450, and AB 103 provide to California residents. *Amici* NHeLP *et al.* obtained consent of both parties to file an amicus brief in this matter.

INTRODUCTION^o

Immigrants and their families living in the United States face a nearly constant fear of detention and deportation.² Immigrants and their families are highly sensitive to changes in immigration policies and awareness that state and local entities cooperate with federal immigration officials greatly exacerbates these fears.³ Living with such chronic stress, anxiety, and fear has well-

^o The authors of this brief thank Brian Brooks of the National Health Law Program for his invaluable research assistance.

² See, e.g., Alexia Elejalde-Ruiz, *Fear, Anxiety, Apprehension: Immigrants Fear Doctor Visits Could Leave Them Vulnerable to Deportation*, Chicago Trib., Feb. 22, 2018, <http://www.chicagotribune.com/business/ct-biz-immigration-fears-hurt-health-care-access-0225-story.html>; Alameda Cty. Pub. Health Dep't, *Immigration and Public Health* 3-5 (2017), <http://www.acphd.org/media/470384/immigration.pdf>; Lilli Mann et al., *Reducing the Impact of Immigration Enforcement Policies to Ensure the Health of North Carolinians*, 77 N. Carolina Med. J. 240, 240-41 (2016), <http://www.ncmedicaljournal.com/content/77/4/240.full>; Consuelo Arbona et al., *Acculturative Stress Among Documented and Undocumented Latino Immigrants in the United States*, 32 *Hispanic J. Behav. Sci.* 362, *13 (2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4254683/pdf/nihms609057.pdf>.

³ See, e.g., Elisabeth Poorman, *Houston Lesson: Anti-Immigrant Moves Put Public Health at Greater Risk*, WBUR CommonHealth Blog (Sep. 7, 2017), <http://www.wbur.org/commonhealth/2017/09/07/houston-immigrant-public-health>; Alameda Cty. Pub. Health Dep't, *supra* note 2, at 3-5; Mark L. Hatzenbuehler et al., *Immigration Policies and Mental Health Morbidity Among Latinos: A State-Level Analysis*, 174 *J. Soc. Sci. Med.* 169, *4, *9-10 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5258771/pdf/nihms840324.pdf>; Russell B. Toomey et al., *Impact of Arizona's SB 1070 Immigration Law on Utilization of Health Care and Public Assistance Among Mexican-Origin Adolescent Mothers and Their Mother Figures*, 104 *Am. J. Pub. Health* S28, S31 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3924594/pdf/AJPH.2013.301655>.

documented negative consequences for the health and well-being of immigrants and their families.⁴

In California, where 27 percent of the population are immigrants, changes in immigration enforcement policies, therefore, have sweeping public health consequences.⁵ The consequences are not limited to the immigrant population.

More than 4.6 million California residents (approximately 12 percent of the total population) live with at least one undocumented family member.⁶ The numbers

pdf; Angela S. Garcia & David G. Keyes, Ctr. Am. Progress, *Life as an Undocumented Immigrant* 2-3 (2012), https://cdn.americanprogress.org/wp-content/uploads/issues/2012/03/pdf/life_as_undocumented.pdf; U.S. Dep't Health & Hum. Servs., *Barriers to Immigrants' Access to Health and Human Services Programs* 12 (2012), <https://aspe.hhs.gov/system/files/pdf/76471/rb.pdf>; Karen Hacker et al., *The Impact of Immigration and Customs Enforcement on Immigrant Health: Perceptions of Immigrants in Everett, Massachusetts, USA*, 73 Soc. Sci. Med. 586, *7 (2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3159749/pdf/nihms308839.pdf>; Tara Watson, Nat'l Bureau of Econ. Res., *Inside the Refrigerator: Immigration Enforcement and Chilling Effects in Medicaid Participation* 16 (2010), <http://www.nber.org/papers/w16278>.

⁴See *infra*, Section II.

⁵ See U.S. Census Bureau, Quick Facts: California, <https://www.census.gov/quickfacts/CA>; Hans Johnson & Sergio Sanchez, Public Pol'y Inst. Cal., *Immigrants in California* 1 (2018), <http://www.ppic.org/wp-content/uploads/jtf-immigrants-in-california.pdf>.

⁶ See Silva Mathema, Ctr. Am. Progress, *State-by-State Estimates of the Family Members of Unauthorized Immigrants* (2017) (California "Total Population"), <https://www.americanprogress.org/issues/immigration/news/2017/03/16/427868/state-state-estimates-family-members-unauthorized-immigrants>; Am. Immigr. Council, *Immigrants in California* 1 (2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_california.pdf.

are especially high for children: Approximately 2 million (close to one in five) live with at least one undocumented family member, and 4.5 million (nearly half of all of all) children in the State live in immigrant families.⁷ The vast majority of these children are U.S. citizens.⁸ Yet they too suffer health consequences from hostile immigration policies.⁹

California has a strong interest in protecting the health and well-being of all of its residents and that interest tips strongly against an injunction in this case. *See Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 607 (1982) (“[A] State has a quasi-sovereign interest in the health and well-being—both physical and economic—of its residents.”); *City of Philadelphia v. Sessions*, 309 F. Supp. 3d 289, 341 (E.D. Pa. 2018) (noting that public health goals of city policies supported enjoining DOJ policy barring such “sanctuary city” policies for grant recipients). These widespread and evident harms to a huge swath of California residents are not counterbalanced by any of the purported, and speculative, harms that the

⁷ *See* Mathema, *supra* note 6 (California “Total Population”); Am. Immigr. Council, *supra* note 6, at 1.

⁸ Mathema, *supra* note 6 (compare California’s “Total Population” number of children with at least one unauthorized family member (1,967,756), with California’s “U.S.-born Population,” number of children with at least one unauthorized family member (1,658,456)).

⁹ *See, e.g.*, Am. Immigr. Council, *U.S. Citizen Children Impacted by Immigration Enforcement 2* (2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/us_citizen_children_impacted_by_immigration_enforcement.pdf.

federal government asserts. In short, the balance of harms and the public interest both tip strongly in favor of California, and *amici* urge the Court to affirm the District Court’s decision denying the Plaintiff’s motion for a preliminary injunction.

ARGUMENT

I. The District Court’s Decision Protects the Public Interest: Enjoining SB 54 Would Increase Fear and Jeopardize the Health of All Californians.

Coordination between local law enforcement and federal immigration authorities means that even low-stakes interactions with police—like traffic stops—can result in deportation.¹⁰ When cooperation is prevalent, immigrants are reluctant to drive, causing them to delay or forgo all kinds of health appointments, including “regular doctor visits, diabetes education, vaccines, prenatal care, HIV education, and procurement of medications.”¹¹ This problem has been well

¹⁰ E.g., Urban Institute, *State Immigration Enforcement Policies: How They Impact Low-Income Households 2* (2017), <https://www.urban.org/sites/default/files/publication/90091/state-immigration-enforcement-policies.pdf>.

¹¹ Lisa J. Hardy et al., *A Call for Further Research on the Impact of State-Level Immigration Policies on Public Health*, 102 *Am. J. of Public Health* 1250, 1252 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3477996/pdf/AJPH.2011.300541.pdf>.

documented nationally,¹² in surveys of providers,¹³ and locally in immigrant communities here in California,¹⁴ and in Massachusetts,¹⁵ North Carolina,¹⁶ and Arizona.¹⁷ Because deportation is such a serious consequence, some immigrant communities become extremely cautious about going out in public, even where there is no risk of deportation.¹⁸ Some immigrants have stated that the fear of deportation means they would not drive even in order to obtain necessary health care treatment.¹⁹

¹² *Id.*

¹³ Karen Hacker et al., *Provider's Perspectives on the Impact of Immigration and Customs Enforcement (ICE) Activity on Immigrant Health*, 23 *J. Health Care Poor & Underserved* 651, *5-6 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3753075>.

¹⁴ Alexander N Ortega et al., *Health Care Access and Physical and Behavioral Health Among Undocumented Latinos in California*, 56 *Med. Care* 1, 5-6 (2018), <https://www.researchgate.net/publication/327644453> Health Care Access and Physical and Behavioral Health Among Undocumented Latinos in California.

¹⁵ Hacker et al., *supra* note 3, at *3.

¹⁶ Lilli Mann-Jackson et al., *The Health Impact of Experiences of Discrimination, Violence, and Immigration Enforcement Among Latino Men in a New Settlement State*, 12 *Am. J. Men's Health* 1937, 1938 (2018), <http://journals.sagepub.com/doi/pdf/10.1177/1557988318785091>; Mann et al., *supra* note 2, at 240-41; Scott D. 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, 322-36 (2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4318326/>.

¹⁷ Hardy et al., *supra* note 11, at 1251.

¹⁸ Hacker et al., *supra* note 3, at *7.

¹⁹ Mann, *supra* note 2, at 241.

Immigrants' reluctance to seek treatment has a significant negative impact on their personal health. But it also has consequences for the health of Californians as a whole. Infectious diseases pay no regard to immigration status. The prevention plan for many highly contagious diseases relies on the concept of "population immunity"—if a sufficient portion of the population is vaccinated, the entire population becomes protected. However, if not enough people receive the vaccine, the community is at risk. For example, the population is at risk of a measles outbreak if the vaccine reaches less than 92 to 95 percent of the population.²⁰ Similarly, for HIV, prevention and adherence to regular treatment are important not just for an individual's health, but for the population as a whole.²¹

The cure for these avoidance behaviors is a broad, public assurance to immigrants that trivial interactions with law enforcement will not lead to detention or deportation.²² Sanctuary cities have used similar policies to reduce

²⁰ Kimberly Gittings & Kelly L. Matson, *Establishing Herd Immunity Against Ebola Through Vaccination*, 34 *Vaccine* 2664, 2664 (2016), attached as Exhibit A.

²¹ World Health Org., *Consolidated Guidelines on the Use of Antiretroviral Drugs for Treating and Preventing HIV Infection* 255 (2d ed. 2016), <https://www.ncbi.nlm.nih.gov/books/NBK374294>; Jared M. Baeten, *Amplifying the Population Health Benefits of PrEP for HIV Prevention*, 217 *J. of Infectious Diseases* 1509, 1510 (2018) ("HIV prevention is about a best prevention plan for an individual, but must also be about prevention for ... the population more generally."), attached as Exhibit B.

²² Much of the research cited in this brief recommends such a solution, see Hacker et al., *supra* note 3, at *10; Mann et al., *supra* note 2, at 244. A global survey of anti-immigrant laws reached the same conclusion: "[I]mmigration policy should

health disparities between non-citizens and citizens.²³ They have also created an understanding among undocumented immigrants that it is safe to take care of their health.²⁴ However, the efforts of sanctuary cities are “imperfect substitutes,” and eventually run up against barriers created by state and federal law.²⁵

recognize the public health risks associated with undocumented persons not receiving medical care [and] should encourage all residents to obtain clinically effective vaccinations and screening for prevalent infectious diseases.” Omar Martinez et al., *Evaluating the Impact of Immigration Policies on Health Status Among Undocumented Immigrants: A Systematic Review*, 17 J. Immigr. Minority Health 947, *13 (2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4074451/>.

²³ A. Elizabeth Iten et al., *Undocumented Immigration Status and Diabetes Care Among Mexican Immigrants in Two Immigration “Sanctuary” Areas*, 16 J. Immigr. Minority Health 229, 232-34 (2014) (finding that in San Francisco and Chicago, two self-designated sanctuary cities, there was no significant difference in clinical outcomes of diabetic Mexican-Americans, whether they were undocumented immigrants, documented immigrants, or citizens), attached as Exhibit C.

²⁴ Sheyada M. Aboii, *Undocumented Immigrants and the Inclusive Health Policies of Sanctuary Cities*, Harv. Pub. Health Rev (Apr. 2016), <http://harvardpublichealthreview.org/undocumented-immigrants-and-the-inclusive-health-policies-of-sanctuary-cities> (finding based on dozens of interviews at an immigrant shelter in a sanctuary city in Texas: “[T]he self-understanding of undocumented immigrants is impacted by the tone of public policy and rhetoric addressing their presence. Whether they view themselves to be members; to be worthy of due consideration; to have a claim to the community or its resources; or to have a say regarding their own health and well-being is influenced by the character of their surroundings.”).

²⁵ Helen B. Marrow, *The Power Of Local Autonomy: Expanding Health Care To Unauthorized Immigrants In San Francisco*, 35 Ethnic & Racial Studies 72, 86 (2012) (noting that providers’ efforts to treat the public regardless of immigration status would “break down” when forced to deal directly with “a more restrictive federal and state policy climate”), attached as Exhibit D.

SB 54 represents an important effort by California to mimic the success of these sanctuary cities statewide. By declaring that it will not provide information to federal immigration enforcement about individuals held in local or state custody, California is proclaiming to immigrants that a routine traffic stop is not likely to end in deportation. As seen in sanctuary cities, this makes immigrants feel safe enough to participate in the community, including to access health services. The public health of Californians, and the public interest, therefore favors sustaining the existing law.

II. AB 450's Employee-Notice Provisions Protect California Residents from Surprise and Encourages Participation in Local Communities.

AB 450's employee-notice provisions likewise protect employees from the surprise and stress of workplace inspections by federal immigration officers. Numerous studies establish that fear of immigration inspections and resulting deportation is associated with chronic stress.²⁶ Moreover, the research establishes that this stress not only affects undocumented immigrants, but also documented immigrants, citizen family members, and citizens in their communities more broadly.²⁷ Chronic stress is associated with long-term poor health outcomes

²⁶ See, e.g., Martinez et al., *supra* note 22, at *7-9; Hacker et al., *supra* note 3, at *3.

²⁷ Hacker et al., *supra* note 3, at *3; Am. Immigr. Council *supra* note 9, at 2.

among immigrants and their families.²⁸ It can exacerbate their existing health conditions.²⁹ Immigrants who experience chronic stress are also more likely to have depression and other mental health conditions.³⁰ Chronic stress also deteriorates physical health; among immigrants, it is associated with worse maternal and birth outcomes for pregnant women.³¹ Chronic fear in children is especially harmful. It is associated with an increased risk of developmental delays,

²⁸ Hacker et al., *supra* note 3, at *7, *9; Rhodes et al., *supra* note 16, at 331. The literature on the impact of chronic stress on immigrants is consistent with the larger body of research on the health effects of chronic stress. *See, e.g.*, Ronald Glaser & Janice K. Kiecolt-Glaser, *Stress-Induced Immune Dysfunction: Implications for Health*, 5 *Immunology* 243, 244-49 (2005) (chronic stress associated with lower immunity, increased susceptibility to infectious disease, slower wound healing, increased inflammation), attached as Exhibit F; Vivette Glover, *Maternal Stress or Anxiety in Pregnancy and Emotional Development of the Child*, 871 *British J. Psych.* 105, 105 (1997) (maternal stress associated with lower birth weight), <https://www.cambridge.org/core/journals/the-british-journal-of-psychiatry/article/maternal-stress-or-anxiety-in-pregnancy-and-emotional-development-of-the-child/848EC3D9AC82C4E4BB3BF304F2A26A31>.

²⁹ Hardy et al., *supra* note 11, at 1251.

³⁰ Martinez et al., *supra* note 22, at *9; Joshua Breslau et al., *Migration from Mexico to the United States and Subsequent Risk for Depressive and Anxiety Disorders*, 68 *Arch. Gen. Psych.* 428, 431 (2011), <https://www.ncbi.nlm.nih.gov/pubmed/21464367>.

³¹ Nicole L Novak et al., *Change in Birth Outcomes Among Infants Born to Latina Mothers After a Major Immigration Raid*, 17 *Int'l J. Epidemiology* 1, 8 (2017) (finding that infants born to Latina mothers (immigrant and US-born) were more likely to be born with low birth weights—which can be caused by maternal stress—in the nine-month period following a nearby immigration raid, compared to a comparable period in which there was no raid), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5837605>; Rhodes et al., *supra* note 16, at 333.

emotional and behavioral issues, and mental health disorders, including Post-Traumatic Stress Disorder (PTSD) for children with immigrant parents or caretakers.³² By contrast, where immigrants feel a greater sense of security, health outcomes improve.³³ The legislature has a particular interest in protecting the rights of immigrant workers since 64 percent of California's 10 million immigrants are in the labor force.³⁴ The public interest thus militates towards preserving AB 450, as it provides increased security and eases fear among California residents, reducing their risk of adverse health consequences.

³² Randy Capps et al., Nat'l Council of La Raza, *Paying the Price: The Impact of Immigration Raids on America's Children*, 5 (2007), <https://www.urban.org/sites/default/files/publication/46811/411566-Paying-the-Price-The-Impact-of-Immigration-Raids-on-America-s-Children.PDF>; Lisseth Rojas-Flores et al., *Trauma and Psychological Distress in Latino Citizen Children Following Parental Detention and Deportation*, 9 *Psych. Trauma* 352, 358-59 (2017), attached as Exhibit G.

³³ See Su Yeong Kim et al., *Culture's Influence on Stressors, Parental Socialization, and Developmental Processes in the Mental Health of Children of Immigrants*, 14 *Annual Rev. Clin. Psychol.* 8.1, 8.8 (2018), https://www.researchgate.net/publication/322946260_Culture%27s_Influence_on_Stressors_Parental_Socialization_and_Developmental_Processes_in_the_Mental_Health_of_Children_of_Immigrants; Atheendar S Venkataramani et al., *Health Consequences of the US Deferred Action for Childhood Arrivals (DACA) Immigration Programme: A Quasi-Experimental Study*, 2 *Lancet Pub. Health* e175, e178-79 (2017), <https://www.sciencedirect.com/science/article/pii/S2468266717300476>; Shakeh Momartin et al., *A Comparison of the Mental Health of Refugees with Temporary Versus Permanent Protection Visas*, 185 *Med. J. Aust.* 357, 360 (2006), <https://www.ncbi.nlm.nih.gov/pubmed/17014402>.

³⁴ Johnson & Sanchez, *supra* note 5, at 1.

III. AB 103 Protects California's Interest in Safeguarding the Health and Safety of its Residents in Detention Centers.

Finally, California has a strong interest in ensuring that detention centers in the State protect the health and safety of its residents. It cannot rely on the federal government to do so: federal immigration detention centers have proven unwilling or unable to meet the most basic needs of the highly vulnerable population of immigrants in detention, exacerbating the threats to health that initially compelled many to depart from their counties of origin.³⁵

The history of health care in federal immigration detention facilities is checkered with institutional neglect and harm of migrants and asylum seekers, which has caused fatal health outcomes.³⁶ In Fiscal Year 2018, nine individuals died in ICE custody.³⁷ At least 100 migrants died in ICE detention from 2007 to 2017, including 15 deaths in facilities located in California.³⁸ Many of these deaths

³⁵ Stacey A. Tovino, *The Grapes of Wrath: On the Health of Immigrant Detainees*, 57 B.C. L. Rev. 167, 170 (2016), <https://lawdigitalcommons.bc.edu/bclr/vol57/iss1/5/>.

³⁶ This is a product of ICE officials consistently delaying and refusing medically necessary treatments and denying access to critical mental and physical health care, even for the child asylum seekers being detained in adult facilities. *Id.* at 174, 176, 181; Det. Watch Network, *Expose & Close: Theo Lacy Detention Center 5* (2012), <https://www.detentionwatchnetwork.org/sites/default/files/reports/DWN%20Expose%20and%20Close%20Theo%20Lacy.pdf>.

³⁷ Press Release, U.S. Immigr. Customs Enf't, ICE Detainee Passes Away (Jul. 27, 2018), <https://www.ice.gov/news/releases/ice-detainee-passes-away-0>.

³⁸ U.S. Immigr. Customs Enf't, *List of Deaths in Ice Custody* (2018), <https://www.ice.gov/doclib/foia/reports/detaineedeaths-2003-2017.pdf>; see also Jeanne Kuang, *Immigration Detention Deaths Reach Highest Total Since 2009*, Houston

were a result of medically treatable conditions, diseases, and infections that went ignored by ICE.³⁹

Despite recent assertions from ICE that it has improved its standard of care, evidence suggests otherwise. According to a 2017 Inspector General report, at a facility in Orange, California, detained individuals were regularly served expired and moldy meat and were expected to use moldy and mildewed shower stalls, while facility officials failed to properly record grievances from the detained migrants and violated ICE standards by improperly using disciplinary segregation.⁴⁰ More troubling is that the number of deaths in these facilities has been trending upwards. Fiscal Year 2017 saw the most deaths in detention facilities in nearly a decade; 25 percent of these deaths occurred in California.⁴¹

More recently, in September 2018, the Inspector General issued another report regarding the Adelanto ICE Processing Center documenting several serious

Chron., Jan. 12, 2018, <https://www.houstonchronicle.com/news/houston-texas/houston/article/Immigration-detention-deaths-reach-the-highest-12494624.php>.

³⁹ Tovino, *supra* note 35, at 169-170, 179.

⁴⁰ Office Inspect. Gen., *Management Alert on Issues Requiring Immediate Action at the Theo Lacy Facility in Orange, California* 1, 3, 5, 6, 9, 10 (2017), <https://www.oig.dhs.gov/sites/default/files/assets/Mga/2017/oig-mga-030617.pdf>. Similarly, an investigation of California's Theo Lacy Detention Center found moldy food and an absence of fruits and vegetables. Det. Watch Network, *supra* note 36, at 5.

⁴¹ U.S. Immigr. Customs Enf't, *supra* note 38.

issues that “pose significant health and safety risks at the facility.”⁴² The facility did not ensure that detainees had access to necessary medical or dental care, and some individuals were left on months- or years-long waitlists to receive dental care, which resulted in tooth loss and unnecessary tooth extractions.⁴³ Moreover, the inspection revealed that health care providers, including nurses, physicians, and mental health providers, routinely stamped medical records to falsely indicate that they had conducted an examination, despite never having any contact with the detainee; these issues persisted notwithstanding a previous report in 2017 documenting the same problems.⁴⁴

The 2018 report also documented numerous “nooses” made from braided sheets hanging in detainee cells, which have been used for repeated suicide attempts. Suicide attempts notwithstanding, the facility’s management did not consider the prevalence of these nooses a “high priority,” and the report concluded that despite clear awareness of the issue, “ICE’s lack of response . . . shows a disregard for detainee health and safety.”⁴⁵

⁴² Office Inspect. Gen., *Management Alert—Issues Requiring Action at the Adelanto ICE Processing Center in Adelanto, California 1* (2018) [hereinafter Office Inspect. Gen., *Adelanto*], <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-86-Sep18.pdf>.

⁴³ *Id.* at 7.

⁴⁴ *Id.*

⁴⁵ *Id.* at 3-4.

ICE also fails to have or enforce health care standards specific to women. Pre- and post-natal care in detention facilities remains inadequate and threatens to cause irreparable harm to women and their children.⁴⁶ In 2017, a pregnant woman detained in a California facility miscarried after detention officials repeatedly denied her medical care despite numerous requests for help.⁴⁷ Even after the miscarriage, facility administrators refused to let her see a doctor despite her persisting health needs.⁴⁸ In March of 2018, ICE publicly announced the end of its policy that forbade the detention of pregnant women except in “extraordinary circumstances” and eliminated reporting requirements that record their treatment of pregnant women—actions that will only increase similar occurrences as ICE

⁴⁶ Am. College of Obstets. & Gyn., *Committee Opinion: Health Care for Pregnant and Postpartum Incarcerated Women and Adolescent Females*, 118 *Obstetrics & Gynecology* 1198, *2, *3 (2011), <https://www.acog.org/-/media/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/co511.pdf>; Hum. Rights Watch, *Detained and Dismissed: Women’s Struggles to Obtain Health Care in United States Immigration Detention* 4, 17, 52, 53 (2009), https://www.hrw.org/sites/default/files/reports/wrd0309webwcover_1.pdf; Michael T. Kinsella & Catherine Monk, *Impact of Maternal Stress, Depression & Anxiety on Fetal Neurobehavioral Development*, 52 *Clinical Obstetrics & Gynecology* 425, *3, *4, *7 (2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3710585>.

⁴⁷ Letter from Am. Civ. Lib. Union *et al.* to Cameron Quinn & John Roth, Dep’t Homeland Sec. 8, 9 (Nov. 13, 2017), https://americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_increasing_numbers_of_pregnant_women_facing_harm_in_detention.pdf.

⁴⁸ *Id.* at 9.

detains more women during their pregnancies.⁴⁹

Several investigations have also found inconsistent medical documentation of detained patients and incomplete administrative information on medical costs.⁵⁰ Among numerous administrative errors, ICE's refusal to appropriately collect basic information has allowed negative health outcomes to go unseen.⁵¹ In one investigation of HIV/AIDS care in ICE-supervised facilities, including a California facility, detention centers did not deliver consistent care, risking a drug resistance

⁴⁹ U.S. Immigr. Customs Enf't, *ICE Directive 11032.3: Identification and Monitoring of Pregnant Detainees* (Dec. 14, 2017), https://www.ice.gov/sites/default/files/documents/Document/2018/11032_3_PregnantDetainees.pdf; U.S. Immigr. Customs Enf't, FAQs: Identification and Monitoring of Pregnant Detainees, <https://www.ice.gov/faqs-identification-and-monitoring-pregnant-detainees> (last visited Nov. 11, 2018) ("ICE has ended the presumption of release for all pregnant detainees."); see also Letter from 18MillionRising.org to Thomas D. Homan, U.S. Immigr. Customs Enf't (Apr. 11, 2018), <https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/ICE%20sign-on%20letter%20FINAL%204.11.18.pdf>.

⁵⁰ John V. Kelly, Office Inspect. Gen., Dep't Homeland Sec., *Concerns about ICE Detainee Treatment and Care at Detention Facilities* 7 (2017), <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf>; Hum. Rights Watch, *Systemic Indifference: Dangerous & Substandard Medical Care in US Immigration Detention* 24 (2017), [hereinafter Hum. Rights Watch, *Systemic Indifference*], https://www.hrw.org/sites/default/files/report_pdf/usimmigration0517_web_0.pdf; U.S. Gov't Account. Office, *Immigration Detention: Additional Actions Needed to Strengthen Management and Oversight of Detainee Medical Care* ii, 12 (2016), <https://www.gao.gov/assets/680/675484.pdf>.

⁵¹ Derrick Silove et al., *Detention of Asylum Seekers: Assault on Health, Human Rights, and Social Development*, 357 *The Lancet* 1436, 1437 (2001), <https://pdfs.semanticscholar.org/00c0/35b22fc12fad531fe5371c7111342d7eeaa.pdf>.

that could inflict tremendous harm on the patients and the general public.⁵² The facilities also improperly handled medical records and failed to protect medical confidentiality, exposing patients to harassment due to their health status.⁵³

For those who receive care, individual reports recount facility staff superseding doctors' directives by unilaterally denying recommended treatments and seizing vital prescription medications from patients.⁵⁴ Independent medical doctors have cited this widespread practice of patient neglect and "systemic indifference" as an apparent cause of several injuries in California detention facilities, namely the loss of vision, the loss of mobility, and a preventable death.⁵⁵

Nor does ICE adequately treat detainees' mental health. For migrants, many of whom are fleeing war, conflict, or natural disaster, the immense stress of apprehension and detention in these facilities can deteriorate their mental health.⁵⁶ Understanding the circumstances of their apprehension and their

⁵² Hum. Rights Watch, *Chronic Indifference: HIV/AIDS Services for Immigrants Detained by the United States* 38-39 (2007), <https://www.hrw.org/report/2007/12/05/chronic-indifference/hiv/aids-services-immigrants-detained-united-states>.

⁵³ *Id.* at 2, 20, 46, 60.

⁵⁴ Hum. Rights First, *Ailing Justice: New Jersey Inadequate Healthcare, Indifference, and Indefinite Confinement in Immigration Detention* 6-7 (2018) <https://www.humanrightsfirst.org/sites/default/files/Ailing-Justice-NJ.pdf>.

⁵⁵ *Id.* at 2; Hum. Rights Watch, *Systemic Indifference*, *supra* note 50, at 1, 27, 38-40, 54-56.

⁵⁶ Kenneth E. Miller & Andrew Rasmussen, *War Exposure, Daily Stressors, and Mental Health in Conflict and Post-Conflict Settings*, 70 *Soc. Sci. Med.* 7, 11-12 (2010), attached as Exhibit H.

previous history of trauma is important to ensuring that detainees receive adequate mental health care.⁵⁷ Medical experts report that separation from loved ones, fear of deportation, and general conditions in detention facilities are clear causes of frustration and anxiety, which often progress into lifelong psychological issues, such as clinical depression and PTSD.⁵⁸ The detrimental effects of detention on the mental health of migrants and asylum seekers intensifies with time.⁵⁹ In one survey of asylum seekers in U.S. detention, 77 percent had clinically significant

⁵⁷ Substance Abuse & Mental Health Servs. Admin., *A Treatment Improvement Protocol: Trauma-Informed Care in Behavioral Health Services* 17-18, 93 (2014), <https://store.samhsa.gov/shin/content/SMA14-4816/SMA14-4816.pdf>; Luis H. Zayas & Laurie Cook Heffron, *Disrupting Young Lives: How Detention and Deportation Affect US-Born Children of Immigrants*, Am. Psych. Ass'n: CYF News (Nov. 2016), <https://www.apa.org/pi/families/resources/newsletter/2016/11/detention-deportation.aspx>.

⁵⁸ Silove et al., *supra* note 51, at 1436-37; Hum. Rights First, *supra* note 54, at 1, 8; Physicians Hum. Rights et al., *From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers* 55-56, 83-85 (2003), https://s3.amazonaws.com/PHR_Reports/persecution-to-prison-US-2003.pdf; Martinez et al., *supra* note 22, at *9; Etienne V Langlois et al., *Refugees: Towards Better Access to Health-Care Services*, 387 *The Lancet* 319, 320 (2017), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(16\)00101-X/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(16)00101-X/fulltext); Zachary Steel et al., *Impact of Immigration Detention and Temporary Protection on the Mental Health of Refugees*, 188 *British J. Psychiatry* 58, 61, 63 (2006) <https://www.cambridge.org/core/journals/the-british-journal-of-psychiatry/article/impact-of-immigration-detention-and-temporary-protection-on-the-mental-health-of-refugees/B6914BF421D202CE4474C5F757BC541E/core-reader>.

⁵⁹ Hum. Rights First, *supra* note 54, at 8; Physicians Hum. Rights et al., *supra* note 58, at 55-56; Steel et al., *supra* note 58, at 58-60, 63.

symptoms of anxiety, 86 percent had symptoms of depression, and 50 percent had symptoms of PTSD, all of which increased in prevalence with the length of detention.⁶⁰ In a follow-up survey, participants who were no longer detained had reduced psychological symptoms, while individuals still in custody were more distressed than before.⁶¹

Solitary confinement and segregation significantly exacerbate the harms to mental health and can increase the likelihood of patient death.⁶² Reports demonstrate that ICE facilities, including in California, improperly use disciplinary segregation. Indeed, the recent Inspector General report concluded that in the Adelanto facility, all of the individuals placed in segregation at the time

⁶⁰ Allen S. Keller et al., *Mental Health of Detained Asylum Seekers*, 362 *Lancet* 1721, 1722 (2003), attached as Exhibit E. Over one-quarter of these detained migrants reported suicidal thoughts while detained, some having attempted it, a troubling, pervasive issue that is underreported by ICE despite being a leading cause of death in these facilities. *Id.* at 1722; *see also* Tovino, *supra* note 35, at 181-87; Megan Granski et al., *Death Rates among Detained Immigrants in the United States*, 12 *Int'l J. Env. Res. & Pub. Health* 14414, 14416 (2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4661656/>.

⁶¹ Keller et al., *supra* note 60, at 1722.

⁶² Hum. Rights First, *supra* note 54, at 5-6; Det. Watch Network, *supra* note 36, at 5; Hum. Rights Watch, *Systemic Indifference*, *supra* note 50, at 40-41, 73-76, 96. A DHS review reported insufficient recording of individual segregation of individuals with mental health conditions and no institutional ability to review the safety of this practice. Office Inspect. Gen., *ICE Field Offices Need to Improve Compliance with Oversight Requirements for Segregation of Detainees with Mental Health Conditions* 1, 4-5 (2017), <https://www.oig.dhs.gov/sites/default/files/assets/2017-11/OIG-17-119-Sep17.pdf>.

of the inspection were inappropriately placed there before any finding of a disciplinary violation, and that a disabled detainee was placed in disciplinary, rather than administrative, segregation.⁶³

The inadequate health services and conditions in U.S. immigration detention facilities are well documented and are due in large part to the absence of accountability and oversight.⁶⁴ In 2017, the Inspector General reported long waits for medical services in numerous facilities, even for urgent or necessary care.⁶⁵ ICE has resisted calls to improve the conditions of its facilities, despite reports of abuse from the Office for Civil Rights and Civil Liberties.⁶⁶

Given the high risk of harm that detention facilities pose to California residents, and the lack of accurate reporting and documentation from ICE itself, California has a compelling interest in investigating facilities within its borders to ensure that they are protecting the health and welfare of California residents.

⁶³ Office Inspect. Gen., *Adelanto*, *supra* note 42, at 5-6.

⁶⁴ Hum. Rights Watch, *Systemic Indifference*, *supra* note 50, at 79-92.

⁶⁵ Kelly, *supra* note 50, at 7; *see also* Hum. Rights Watch, *Systemic Indifference*, *supra* note 50, at 45.

⁶⁶ *See generally*, Office Civil Rights & Civil Liberties, Dep't Homeland Sec., *Fiscal Year 2015 Annual Report to Congress* (2016), <https://www.dhs.gov/sites/default/files/publications/crcl-fy-2015-annual-report.pdf>.

CONCLUSION

California's laws help create a safe and inclusive community for immigrants in the State, which protects the immigrant population and the State as a whole against a myriad of detrimental health consequences. In light of these crucial public health concerns, the balance of harms and the public interest support the District Court's decision to deny in part the Federal Government's request for an injunction against portions of SB 54, AB 450, and AB 103.

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Respectfully submitted,

/s/ Abigail K. Coursolle

Abigail K. Coursolle
NATIONAL HEALTH
LAW PROGRAM
3701 Wilshire Boulevard
Suite 750
Los Angeles, CA 90010
Telephone: (310) 736-1652

Attorney for *Amici Curiae*

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in 14-point Times New Roman, a proportionally spaced font. I certify that the foregoing brief complies with the requirements of Fed. R. App. P. 32(a)(7)(B) and 29(a)(5), and that the total number of words in this brief is 5,004 according to the count of Microsoft Word, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

Date: November 13, 2018

/s/ Abigail K. Coursolle
Abigail K. Coursolle

CERTIFICATE OF SERVICE

I certify that on November 13, 2018, I electronically filed the forgoing brief with the Clerk of the Court by using the CM/ECF system.

Date: November 13, 2018

/s/ Abigail K. Coursolle
Abigail K. Coursolle