

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 J. TRUMP, et al.

Defendants-Appellants.

COUNTY OF SANTA CLARA,

Plaintiff-Appellee,

v.

DONALD J. TRUMP, et al.

Defendants-Appellants.

On Appeal from the United States District Court for the
Northern District of California, Nos. 17-cv-485 & 17-cv-574
Hon. William H. Orrick

**BRIEF OF AMICI CURIAE CURRENT AND FORMER LAW
ENFORCEMENT LEADERS IN SUPPORT OF PLAINTIFFS-APPELLEES
AND FOR AFFIRMANCE**

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INTEREST AND IDENTITY OF AMICI CURIAE

Amici Current and Former Prosecutors and Law Enforcement

Leaders file this brief as Amici Curiae in support of Plaintiffs-Appellees.¹

Amici are criminal justice leaders who have extensive expertise in law enforcement, prosecution, and cooperative federal-state law enforcement activities. They are intimately familiar with the challenges of performing critical law enforcement and governance functions in communities where immigrants fear the police and are vulnerable to exploitation and crime. Amici represent jurisdictions from across the country that understand the challenges of balancing local community needs and public safety. A full list of amici is attached as Exhibit A.

Amici's experience in keeping their communities safe has underscored the critical importance of bringing immigrants and their families "out of the shadows." Community trust and cooperation are

¹ The parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici curiae or their counsel made a monetary contribution to this brief's preparation or submission.

essential to public safety, and sound police work as well as successful prosecutors' efforts are undermined by undocumented immigrants' fears of interacting with law enforcement and the justice system. This dynamic, moreover, leaves undocumented immigrants more vulnerable to crime and exploitation, and undocumented immigrant victims less likely to come forward or cooperate with investigations and prosecutions, leading to more violence in the communities amici are charged with protecting.

Amici believe that Section 9(a) of Executive Order 13768 would dangerously impact local communities, both by requiring jurisdictions to prioritize civil immigration enforcement over public safety, and by potentially stripping jurisdictions of broad federal funding for important public safety and community initiatives. Section 9(a) does not define "sanctuary" jurisdictions, but Section 9 of the Executive Order does equate such jurisdictions with those that decline to honor civil detainers—requests from Immigration and Customs Enforcement ("ICE") to hold an individual in local governmental custody to allow ICE to take the individual into

federal custody—and thus seeks to compel local involvement in immigration enforcement.

Greater local involvement in immigration enforcement, including honoring detainers, would cause community members to distrust the police and justice system officials and thereby result in a decrease in cooperation, hindering the ability of local law enforcement and local prosecutors to keep their communities safe. Such involvement would also drain scarce resources that would otherwise be used to enhance public safety, depriving local law enforcement and justice system leaders of the discretion necessary to determine how best to protect their communities. Local officials are in the best position to know what policing and law enforcement policies work best for their communities. Further, detention of individuals under ICE detainers who would otherwise be released from custody has been found by federal courts across the country to violate the Fourth Amendment of the United States Constitution.

Jurisdictions nationwide rely heavily on federal funds to support programs related to law enforcement, prosecution, corrections, courts,

crime prevention and education, drug and mental health treatment, and victim-witness initiatives. Amici believe that the injunction issued by the district court is necessary to halt the Executive Order's attempt to force local law enforcement officers and agencies to engage in practices detrimental to public safety.

INTRODUCTION

The lessons amici have learned in protecting their communities shed important light on the issues raised in these cases. When community residents live in constant fear that interactions with local law enforcement officials could result in deportation, there is a fundamental breakdown in trust that threatens public safety and impedes justice system leaders from doing their jobs. Extensive evidence shows that undocumented immigrants—and their lawfully present family and neighbors—fear that turning to the police and cooperating with prosecutors could bring adverse immigration consequences. As a result, immigrant communities are less willing to report crimes and cooperate with criminal investigations and prosecutions. This fundamental breakdown in trust poses a major

challenge both to the investigation and prosecution of individual crimes and to the proper allocation of public safety resources.

Current policies limiting local and state involvement in federal immigration enforcement address this issue of trust. Though they take several different forms, these policies generally aim to preserve local and state resources and improve public safety by promoting cooperation between law enforcement and the communities they serve.² Many jurisdictions—whether via ordinance, administrative policy, or state law—limit the degree to which their officials may, for example, cooperate with ICE detainers.³ The Executive Order would upend these policies, to the detriment of community safety, by seeking to compel local jurisdictions to

² See *Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact of Public Safety and Honoring the Victims: Hearing Before the S. Comm. on the Judiciary*, at 2 (July 21, 2015) (statement of Tom Manger, Chief, Montgomery Cty., Md., Police Dep't & President, Major Cities Chiefs Ass'n), available at <http://www.judiciary.senate.gov/imo/media/doc/07-21-15%20Manger%20Testimony.pdf>.

³ 8 C.F.R. § 287.7; see also Jasmine C. Lee, Rudy Omri, and Julia Preston, *What Are Sanctuary Cities?*, N.Y. Times, Feb. 6, 2017, <http://www.nytimes.com/interactive/2016/09/02/us/sanctuary-cities.html>; *Detainer Policies*, Immigrant Legal Res. Ctr. (Mar. 21, 2017), available at <https://www.ilrc.org/detainer-policies> [hereinafter *ILRC Detainer Policies*].

take part in federal immigration enforcement. Cities and counties would be forced to choose between building trust with immigrant communities and enhancing public safety on one hand, and losing vital federal funds on the other. The federal government cannot force local law enforcement into such a Hobson's choice.

ARGUMENT

I. Trust and Respect Between Communities and Law Enforcement Officials Are Essential to Public Safety and Are Thwarted When Victims and Witnesses Fear Deportation Consequences of Cooperating.

The experience of policing cities across the country has taught law enforcement officers that “[t]o do our job, we must have the trust and respect of the communities we serve.”⁴ In order to stop crime, police officers “need the full cooperation of victims and witnesses.”⁵

This common-sense philosophy is sometimes called “community policing.” Community policing is an approach to policing whereby local law enforcement engages communities in a working partnership to reduce

⁴ Statement of Tom Manger, *supra* note 2, at 2.

⁵ *Id.*

crime and promote public safety.⁶ It thus requires police to interact with neighborhood residents in a manner that will build trust and improve the level of cooperation with the police department.⁷ When that relationship of trust is missing—as it is when people believe that contacting police or cooperating with prosecutors could lead to deportation for themselves or others—community policing breaks down and the entire community is harmed.

According to a recent Pew survey, 67 percent of Hispanic immigrants and 47 percent of all Hispanic adults in the United States worry about deportation—of themselves, family members, or close friends.⁸ This fear necessarily affects cooperation and communication with police and prosecutors. Immigrants—and their family members and neighbors who

⁶ See Anita Khashu, *The Role Of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties*, Police Found. (Apr. 2009), available at <https://www.policefoundation.org/wp-content/uploads/2015/06/The-Role-of-Local-Police-Narrative.pdf>.

⁷ *Id.*

⁸ *Latinos and the New Trump Administration*, Pew Research Ctr.: Hispanic Trends, Feb. 23, 2017, <http://www.pewhispanic.org/2017/02/23/latinos-and-the-new-trump-administration/>.

may be U.S. citizens or lawfully present—often assume that interaction with law enforcement officials could have adverse consequences for themselves or a loved one.

As a result, immigrant communities in general, and undocumented immigrants in particular, are less likely to trust and cooperate with local police and prosecutors. One survey of Latinos in four major cities found that 70 percent of undocumented immigrants and 44 percent of all Latinos would be less likely to contact law enforcement authorities if they were victims of a crime for fear that the police would ask them or people they know about their immigration status; and 67 percent of undocumented immigrants and 45 percent of all Latinos would be less likely to voluntarily offer information about, or report, crimes because of the same fear.⁹

⁹ Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement* 5-6 (May 2013), available at www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF; see also *id.* at 1 (“Survey results indicate that the greater involvement of police in immigration enforcement has significantly heightened the fears many Latinos have of the police, . . . exacerbating their mistrust of law enforcement authorities.”).

This study (among others) highlights that fears of immigration enforcement and the resulting damage to law enforcement cooperation affect not just undocumented community members but also individuals with citizenship or lawful status, particularly in “mixed-status” households.¹⁰

This problematic atmosphere of mistrust is felt by police as well. In one study, two-thirds of the law enforcement officers polled expressed the view that recent immigrants reported crimes less frequently than others.¹¹ Those surveyed also indicated that the crimes underreported by immigrants are most often serious ones, with domestic violence and gang

¹⁰ An estimated 85% of immigrants live in mixed-status families. See Khashu, *supra* note 6, at 24; see also Jill Theresa Messing et al., *Latinas’ Perceptions of Law Enforcement: Fear of Deportation, Crime Reporting, and Trust in the System*, 30 J. Women & Soc. Work 328, 334 (2015) (“The results indicate that for each 1-point increase in fear of deportation [e.g., from ‘not much’ to ‘some’ worry, or from ‘some’ to ‘a lot’], Latina participants were 15% less willing to report being victim of a violent crime to police.”).

¹¹ Robert C. Davis, Edna Erez, & Nancy Avitabile, *Access to Justice for Immigrants Who Are Victimized: The Perspectives of Police and Prosecutors*, 12 Crim. Just. Pol’y Rev. 183, 187 (2001).

violence at the top.¹² These trends have only worsened in recent months. According to the Houston Police Department, rape reporting by members of the Hispanic community fell over 40 percent from the first quarter of 2016 to the same period in 2017, despite an overall *increase* in city-wide crime reports.¹³ Los Angeles, San Francisco, and San Diego also witnessed lagging sexual assault and domestic violence reporting by Hispanic persons—but not other ethnic groups—in the first half of 2017.¹⁴ According to Los Angeles County Sheriff’s Deputy Marino Gonzalez, “[t]hey’re afraid of us. And the reason they’re afraid of us is because they think we’re going to deport them.”¹⁵

Immigrants’ widely recognized fear of interacting with law enforcement and prosecutors poses a fundamental challenge for

¹² *Id.* at 188-89.

¹³ Michael Morris & Lauren Renee Sepulveda, *A New ICE Age*, Texas Dist. & Cty. Attorneys Ass’n, *The Texas Prosecutor*, Vol. 47, No. 4 (July/Aug. 2017), <https://www.tdcaa.com/journal/new-ice-age>.

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

¹⁵ *Id.*

community policing. Police cannot prevent or solve crimes if victims or witnesses are unwilling to talk to them or prosecutors because of concerns that they or their loved ones or neighbors will face adverse immigration consequences. As the president of the Major Cities Chiefs Association has explained to Congress, “[c]ooperation is not forthcoming from persons who see their police as immigration agents.”¹⁶ As cautioned by one official, “immigrants will never help their local police to fight crime once they fear we have become immigration officers.”¹⁷

The underreporting of crimes by recent immigrants is a problem for the entire criminal justice system.¹⁸ The most immediate consequence, of course, is that serious crimes go unreported and unpunished. As one official explained, when criminal behavior goes unreported, “[c]rime

¹⁶ Statement of Tom Manger, *supra* note 2, at 2.

¹⁷ *Local Law Enforcement Leaders Oppose Mandates to Engage in Immigration Enforcement*, Nat’l Immigration Law Ctr. (Aug. 2013), at 2 (statement of Chief Acevedo), *available at* <https://www.nilc.org/wp-content/uploads/2017/02/Law-Enforcement-Opposition-to-Mandates-2013-08-30.pdf>.

¹⁸ Davis et al., *supra* note 11, at 188.

multiplies” and “[u]nresolved resentments grow in the community.”¹⁹

Another added that the underreporting of crime “keeps fear at very high levels and diminishes quality of life.”²⁰ Even beyond the underreporting of crime, undocumented immigrant victims and witnesses may refuse to come to court to testify in important criminal cases because of their fear of being detained and deported.

These concerns are anything but hypothetical. Over the past several months, they have manifested in ways that threaten long-term harm to criminal justice system operations. A Department of Homeland Security official recently illustrated why many immigrants hesitate to cooperate with law enforcement. In a briefing to reporters, he stated that “[j]ust because they’re a victim in a certain case does not mean there’s not something in their background that could cause them to be a removable alien.”²¹ An immigrant woman living in Texas learned that lesson all too

¹⁹ *Id.*

²⁰ *Id.*

²¹ Devlin Barrett, *DHS: Immigration Agents May Arrest Crime Victims, Witnesses at Courthouses*, Wash. Post, Apr. 4, 2017,

perversely when she arrived at a courthouse seeking a protective order against her abusive boyfriend, only to leave under arrest—likely due to a tip from her abuser.²² In August 2017, federal agents detained an undocumented immigrant who had provided key testimony in two homicide cases.²³ And weeks later, ICE agents arrested a victim of domestic violence as he left a county courthouse.²⁴ The Immigrant Defense Project reports that the number of arrests or attempted arrests by ICE agents at

https://www.washingtonpost.com/world/national-security/dhs-immigration-agents-may-arrest-crime-victims-witnesses-at-courthouses/2017/04/04/3956e6d8-196d-11e7-9887-a5314b56a08_story.html.

²² Katie Mettler, *“This is Really Unprecedented”*: ICE Detains Woman Seeking Domestic Abuse Protection at Texas Courthouse, Wash. Post, Feb. 16, 2017, <https://www.washingtonpost.com/news/morning-mix/wp/2017/02/16/this-is-really-unprecedented-ice-detains-woman-seeking-domestic-abuse-protection-at-texas-courthouse/>.

²³ James Fanelli, *Father of Two Who Testified in Brooklyn Homicide Cases and Is Married to a U.S. Citizen Detained by ICE*, N.Y. Daily News, Aug. 2, 2017, <http://www.nydailynews.com/new-york/dad-2-testified-brooklyn-murder-cases-detained-ice-article-1.3378899>.

²⁴ Steve Coll, *When a Day in Court is a Trap for Immigrants*, New Yorker, Nov. 8, 2017, <https://www.newyorker.com/news/daily-comment/when-a-day-in-court-is-a-trap-for-immigrants>.

courthouses throughout New York rose by a staggering 900 percent from 2016 to 2017.²⁵

Precisely because victims and witnesses fear similar treatment from immigration authorities, some violent crimes have gone unreported, and pending prosecutions have disappeared from courts' dockets. A Texas district attorney confirmed that a victim of domestic violence had become uncooperative because she feared deportation.²⁶ Denver prosecutors were forced to drop four domestic abuse cases when similar worries deterred the victims from testifying;²⁷ in 2017, more than a dozen Latina women in

²⁵ Stephen Rex Brown, *Courthouse Arrests of Immigrants by ICE Agents Have Risen 900% in New York This Year: Immigrant Defense Project*, N.Y. Daily News, Nov. 15, 2017, <http://www.nydailynews.com/new-york/ice-courthouse-arrests-immigrants-900-n-y-2017-article-1.3633463>.

²⁶ Philip Jankowski, *Deportation Fears Keep Victim from Cooperating in Domestic Violence Case, Travis DA Says*, The Statesman (Austin), Mar. 8, 2017, <http://www.statesman.com/news/local/deportation-fears-keep-victim-from-cooperating-domestic-violence-case-travis-says/rdZAJFEAxjHWnxXV1LlpjM/>.

²⁷ Heidi Glenn, *Fear of Deportation Spurs 4 Women to Drop Domestic Abuse Cases in Denver*, NPR, Mar. 21, 2017, <http://www.npr.org/2017/03/21/520841332/fear-of-deportation-spurs-4-women-to-drop-domestic-abuse-cases-in-denver>.

Denver dropped their own civil cases against domestic abusers, citing fear of deportation.²⁸ An immigrant mother in New Jersey, fearing that interaction with the court system could trigger removal, declined to report that her son had been assaulted on his way to school.²⁹ And a victim of domestic violence in New York City “did not think it was in her best interest” to pursue a protective order.³⁰ In addition to their particular deportation concerns, undocumented immigrant victims and witnesses may understandably recoil more generally from a system that allows participants to walk freely into a courthouse to fulfill a civic responsibility to testify, only to be detained by immigration authorities and prevented from returning to their lives.

²⁸ Sarah Stillman, *When Deportation Is a Death Sentence*, *New Yorker*, Jan. 15, 2018, <https://www.newyorker.com/magazine/2018/01/15/when-deportation-is-a-death-sentence>.

²⁹ S.P. Sullivan, *Advocates Say ICE Courthouse Arrests in N.J. Are Hurting Immigrant Crime Victims*, *NJ*, June 5, 2017, http://www.nj.com/politics/index.ssf/2017/06/advocates_say_ice_courthouse_arrests_are_hurting_i.html.

³⁰ Emma Whitford, *Courthouse ICE Arrests Are Making Immigrants ‘Sitting Ducks,’ Lawyers Warn*, *Gothamist*, June 22, 2017, http://gothamist.com/2017/06/22/ice_immigrants_courts.php.

In response to these incidents, the chief justices of three state supreme courts have written top federal authorities to emphasize that preserving trust with immigrant communities is essential to the administration of justice.³¹ As Massachusetts Attorney General Maura Healey has explained, using local court systems as levers for federal immigration enforcement “undercuts local law enforcement’s ability to develop the critical trust needed to keep communities safe.”³²

³¹ Letter from Tani G. Cantil-Sakauye, Chief Justice of the Supreme Court of California, to Jeff Sessions, Att’y Gen. of the U.S., and John F. Kelly, Sec’y of Dep’t of Homeland Sec. (Mar. 16, 2017), *available at* <http://newsroom.courts.ca.gov/news/chief-justice-cantil-sakauye-objects-to-immigration-enforcement-tactics-at-california-courthouses>; Letter from Mary E. Fairhurst, Chief Justice of the Supreme Court of Washington, to John F. Kelly, Sec’y of Dep’t of Homeland Sec. (Mar. 22, 2017), *available at* <https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/KellyJohnDHSICE032217.pdf>; Letter from Stuart Rabner, Chief Justice of the Supreme Court of New Jersey, to John F. Kelly, Sec’y of Dep’t of Homeland Sec. (Apr. 19, 2017), *available at* <https://www.documentcloud.org/documents/3673664-Letter-from-Chief-Justice-Rabner-to-Homeland.html#document/p1>.

³² Maria Cramer, *ICE Courthouse Arrests Worry Attorneys, Prosecutors*, Boston Globe, June 16, 2017, <https://www.bostonglobe.com/metro/2017/06/15/ice-arrests-and-around-local-courthouses-worry-lawyers-prosecutors/xxFH5vVJnMeggQa0NMI8gI/story.html>.

Distrust between immigrants and law enforcement also results in greater victimization of immigrants. “When immigrants come to view their local police and sheriffs with distrust because they fear deportation, it creates conditions that encourage criminals to prey upon victims and witnesses alike.”³³ This phenomenon has been termed the “deportation threat dynamic,” whereby individuals who fear removal from the United States do not report the crimes they suffer.³⁴ Nearly two-thirds of undocumented migrant workers participating in a study in Memphis, Tennessee, reported being the victim of at least one crime, with the most common being theft and robbery.³⁵ Respondents indicated that fewer than a quarter of these crimes were reported to the police, and *only one* was reported by the victim himself.³⁶

³³ Statement of Tom Manger, *supra* note 2, at 2.

³⁴ Elizabeth Fussell, *The Deportation Threat Dynamic & Victimization of Latino Migrants: Wage Theft & Robbery*, 52 Soc. Q. 593, 610 (2011).

³⁵ Jacob Bucher, Michelle Manasse, & Beth Tarasawa, *Undocumented Victims: An Examination of Crimes Against Undocumented Male Migrant Workers*, 7 Sw. J. Crim. Just. 159, 164, 166 (2010).

³⁶ *Id.* at 165.

Undocumented immigrants are especially vulnerable to domestic violence. A number of studies have shown that abusive partners may exploit the threat of deportation in order to maintain power and control.³⁷ Financial dependence on an abusive partner with stable immigration status may facilitate violence in this way.³⁸ Seventy percent of participants in one study of domestic abuse victims said that immigration status was a major factor keeping them from seeking help or reporting their abuse to the authorities—and thereby permitting the violence to continue.³⁹ In another study, immigration status was identified as the single largest factor

³⁷ See, e.g., Messing et al., *supra* note 10, at 330 (citing several studies); Angelica S. Reina, Brenda J. Lohman, & Marta María Maldonado, “He Said They’d Deport Me”: Factors Influencing Domestic Violence Help-Seeking Practices Among Latina Immigrants, 29 *J. Interpersonal Violence* 593, 601 (2013). The latter study cited a participant who explained that a partner “beat me up and I could have called the police because that was what I thought to do . . . but he threatened me [H]e told me that if I called the police I was going to lose out . . . because [police officers] . . . would . . . take me, because I didn’t have legal documents.” Reina, Lohman, & Maldonado at 601.

³⁸ See, e.g., Messing et al., *supra* note 10, at 330.

³⁹ Reina, Lohman, & Maldonado, *supra* note 37, at 600.

independently affecting the rate at which battered Latina immigrants called the police.⁴⁰

II. Policies Limiting Local and State Involvement in Federal Immigration Enforcement Are Critical to Building and Maintaining Trust Between the Community and Law Enforcement While Preserving Local Resources.

In limiting local and state involvement in federal immigration enforcement, many jurisdictions aim to enhance community trust and preserve local resources. These policies—including Santa Clara’s and San Francisco’s—improve public safety by promoting cooperation between law enforcement and the communities they serve.

Some administrative policies or laws include formal restrictions on local law enforcement’s ability to apprehend or arrest an individual for federal immigration violations, including restrictions on arrests for civil violations of federal immigration law.⁴¹ Other policies include restrictions

⁴⁰ Nawal H. Ammar et al., *Calls to Police and Police Response: A Case Study of Latina Immigrant Women in the USA*, 7 Int’l J. Police Sci. & Mgmt. 230, 237 (2005).

⁴¹ See Michael John Garcia & Kate M. Manuel, Cong. Research Serv., R43457, State and Local “Sanctuary” Policies Limiting Participation in

on local law enforcement inquiries or investigations into a person's immigration status or the gathering of such information at the local level.⁴²

Additionally, many jurisdictions have adopted policies against continued

Immigration Enforcement 9 (July 10, 2015), *available at* <https://www.fas.org/sgp/crs/homsec/R43457.pdf>; *see also* OR. REV. STAT. ANN. § 181A.820 (“No law enforcement agency of the State of Oregon or of any political subdivision of the state shall use agency moneys, equipment or personnel for the purpose of detecting or apprehending persons whose only violation of law is that they are persons of foreign citizenship present in the United States in violation of federal immigration laws.”); Washington, DC, Mayor’s Order 2011-174: Disclosure of Status of Individuals: Policies and Procedures of District of Columbia Agencies, at 2 (Oct. 19, 2011) (“No person shall be detained solely on the belief that he or she is not present legally in the United States or that he or she has committed a civil immigration violation.”), *available at* <https://www.scribd.com/document/69470234/Disclosure-Status-of-Individuals-D-C> [hereinafter DC Order]; Phoenix, AZ, Police Dep’t Operations Order Manual, at 1.4 (Jan. 2011) (“The investigation and enforcement of federal laws relating to illegal entry and residence in the United States is specifically assigned to [Immigration and Customs Enforcement within DHS].”), *available at* <https://www.phoenix.gov/policesite/Documents/089035.pdf>; *see also* *Melendres v. Arpaio*, 695 F.3d 990, 1001 (9th Cir. 2012) (“[The sheriff] may not detain individuals solely because of unlawful presence.”).

⁴² *See, e.g.*, DC Order, *supra* note 41 (public safety employees “shall not inquire about a person’s immigration status . . . for the purpose of initiating civil enforcement of immigration proceedings that have no nexus to a criminal investigation”).

detention of an individual based on immigration detainer requests for at least some categories of noncitizens.⁴³ Several states, including California, limit the extent to which local police can cooperate with detainer requests, and more than 400 counties have policies limiting cooperation with detainers.⁴⁴

These policies also play an important role in preserving local law enforcement resources. For example, complying with ICE detainer requests can add staggering costs—in some cases, tens of millions of dollars annually.⁴⁵ Under long-standing Fourth Amendment precedent, numerous federal courts have found that continued detention under an ICE detainer gives rise to a claim for a violation of the Fourth Amendment, and subjects

⁴³ Garcia & Manuel, *supra* note 41, at 14.

⁴⁴ See Cal. Gov't Code § 7284.6(a)(1)(B) (prohibiting local law enforcement agencies from “[u]sing agency or department moneys or personnel to . . . [d]etain an individual on the basis of a hold request”); see also Lee, Omri, & Preston, *supra* note 3; ILRC *Detainer Policies*, *supra* note 3.

⁴⁵ See *Legislative Threats to Undermine Community Safety Policies: The Costs of Entangling Local Policing and Immigration Law*, Nat'l Immigrant Justice Ctr. & Nat'l Immigration Law Ctr. (Aug. 2015), available at http://immigrantjustice.org/sites/immigrantjustice.org/files/201508_05_NIJC_NILC_EnforcementCosts.pdf.

the detaining officer or jurisdiction to civil liability.⁴⁶ Cities and counties should not be faced with the stark choice of losing federal funds or

⁴⁶ See *Morales v. Chadbourne*, 996 F. Supp. 2d 19 (D. R.I. 2014), *aff'd on appeal*, 793 F.3d 208 (1st Cir. 2015) (plaintiff stated Fourth Amendment claim where she was held for 24 hours on ICE detainer issued without probable cause); *Galarza v. Szalczyk*, No. 10-cv-06815, 2012 WL 1080020, at *10, *13 (E.D. Pa. Mar. 30, 2012) (plaintiff stated a Fourth Amendment claim against both federal and local defendants where he was held for 3 days after posting bail based on an ICE detainer), *rev'd on other grounds*, 745 F.3d 634 (3d Cir. 2014); *Miranda-Olivares v. Clackamas Cnty.*, No. 12-cv-02317-ST, 2014 WL 1414305, at *10 (D. Or. Apr. 11, 2014) (plaintiff's detention on an ICE detainer after she would otherwise have been released "constituted a new arrest, and must be analyzed under the Fourth Amendment"); *Mendoza v. Osterberg*, No. 13CV65, 2014 WL 3784141, at *6 (D. Neb. July 31, 2014) (recognizing that "[t]he Fourth Amendment applies to all seizures of the person," and thus, "[i]n order to issue a detainer[,] there must be probable cause") (internal quotation marks, ellipses, and citations omitted); *Villars v. Kubiowski*, 45 F. Supp. 3d 791, 808 (N.D. Ill. 2014) (holding that plaintiff stated a Fourth Amendment claim where he was held on an ICE detainer that "lacked probable cause"); *Uroza v. Salt Lake Cnty.*, No. 11CV713DAK, 2013 WL 653968, at *5-6 (D. Ut. Feb. 21, 2013) (holding that plaintiff stated a Fourth Amendment claim where ICE issued his detainer without probable cause); *Vohra v. United States*, No. 04-cv-00972-DSF-RZ, 2010 U.S. Dist. LEXIS 34363, at *25 (C.D. Cal. Feb. 4, 2010) (magistrate's report and recommendation) ("Plaintiff was kept in formal detention for at least several hours longer due to the ICE detainer. In plain terms, he was subjected to the functional equivalent of a warrantless arrest" to which the "'probable cause' standard . . . applies"), *adopted*, 2010 U.S. Dist. LEXIS 34088 (C.D. Cal. Mar. 29, 2010).

committing constitutional violations for which they will be subject to civil liability. Communities carefully allocate resources such as funds, training, and officer duties to best serve local law enforcement needs; forced redistribution to immigration enforcement (or defending civil lawsuits) would siphon limited resources away from where they are most needed while simultaneously damaging community engagement and protection.⁴⁷

Recent incidents in localities with policies limiting local involvement in federal immigration enforcement demonstrate the public safety benefits of such policies. For example, in 2016, Los Angeles Police Department officers had an encounter with a suspected gang member that resulted in a vehicle chase, a foot pursuit, and shots fired. An undocumented immigrant helped police locate the suspect by providing a description and vehicle information.⁴⁸ In Tucson, Arizona, an undocumented man confronted and

⁴⁷ See Letter from Law Enforcement Task Force to Hon. Trey Gowdy and Hon. Zoe Lofgren (July 20, 2015), *available at* <https://immigrationforum.org/wp-content/uploads/2015/07/072015-LEITF-Letter-House.pdf>.

⁴⁸ Chuck Wexler, *Commentary: Why Police Support Sanctuaries*, Phila. Inquirer, Mar. 10, 2017, http://www.philly.com/philly/opinion/20170310_Commentary__Why_police_support_sanctuaries.html.

struggled with a man who tried to steal a car with children inside. The immigrant held the individual until police arrived, then cooperated with detectives in the follow-up investigation, resulting in charges of kidnapping, auto theft, and burglary.⁴⁹ These examples show why crime is lower in statistically significant ways in counties that limit local involvement in federal immigration enforcement, as by declining to hold individuals in local custody simply because ICE requests it.⁵⁰

The Executive Order threatens both to disrupt many communities' efforts to ensure that immigrants do not fear interactions with local law enforcement, and to divert jurisdictions' resources from effective public safety efforts. Conditioning broad federal grants in this way would also deter other communities from adopting trust-enhancing policies in the

⁴⁹ *Id.*

⁵⁰ Tom K. Wong, "The Effects of Sanctuary Policies on Crime and the Economy," Center for American 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/> ("The results of the CEM analysis show that there are, on average, 35.5 fewer crimes per 10,000 people in sanctuary counties—a result that is highly statistically significant.").

future. In short, forcing grantee jurisdictions to entangle themselves further with federal immigration enforcement would send a dangerous signal to witnesses and victims within immigrant communities: cooperate with local law enforcement at your own risk.

CONCLUSION

For the foregoing reasons, as well as the reasons set forth in Plaintiffs-Appellees' Brief, this Court should affirm the ruling of the district court enjoining Section 9(a) of the Executive Order.

February 12, 2018

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of BRIEF OF AMICI CURIAE CURRENT AND FORMER LAW ENFORCEMENT LEADERS was served on February 12, 2018 via this Court's ECF filing system, whereupon all counsel of record were served.

/s/ Matthew J. Piers
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CERTIFICATE OF COMPLIANCE

I certify that this document complies with the type-volume limitation set forth in Federal Rules of Appellate Procedure 29(a)(5) & 32(a)(7)(B) because it contains 4,563 words, exclusive of the portions of the brief that are exempted by Rule 32(f).

I certify that this document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point roman-style Palatino Linotype font.

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EXHIBIT A

EXHIBIT A: LIST OF AMICI*

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