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15 **UNITED STATES DISTRICT COURT**  
16 **EASTERN DISTRICT OF CALIFORNIA**

17 \_\_\_\_\_ )  
18 THE UNITED STATES OF AMERICA, )

19 Plaintiff, )

20 v. )

21 THE STATE OF CALIFORNIA; )  
22 EDMUND GERALD BROWN JR., )  
23 Governor of California, in his Official )  
24 Capacity; and XAVIER BECERRA, )  
25 Attorney General of California, in his )  
26 Official Capacity, )

27 Defendants. )  
28 \_\_\_\_\_ )

Case No. 2:18-cv-00490 (JAM) (KJN)

**BRIEF OF AMICI CURIAE**  
**CURRENT AND FORMER**  
**PROSECUTORS AND LAW**  
**ENFORCEMENT LEADERS IN**  
**SUPPORT OF DEFENDANTS’**  
**OPPOSITION TO PLAINTIFF’S**  
**MOTION FOR PRELIMINARY**  
**INJUNCTION**

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1 **INTEREST AND IDENTITY OF AMICI CURIAE**

2 Amici Current and Former Prosecutors and Law Enforcement Leaders file this brief as  
3 Amici Curiae in support of Defendants.<sup>1</sup> Amici are criminal justice leaders who have extensive  
4 expertise in law enforcement, prosecution, and cooperative federal-state law enforcement  
5 activities. They are intimately familiar with the challenges of performing critical law  
6 enforcement and governance functions in communities where immigrants fear the police and are  
7 vulnerable to exploitation and crime. Amici represent jurisdictions from across the country that  
8 understand the challenges of protecting local community needs and public safety.  
9

10 Amici’s experience in keeping their communities safe has underscored the critical  
11 importance of bringing immigrants and their families “out of the shadows.” Community trust and  
12 cooperation are essential to public safety, and sound police work as well as successful  
13 prosecutorial efforts are undermined by undocumented immigrants’ and their communities’ fears  
14 of interacting with law enforcement and the justice system. This dynamic, moreover, leaves  
15 undocumented immigrants more vulnerable to crime and exploitation, and undocumented  
16 immigrant victims less likely to come forward or cooperate with investigations and prosecutions,  
17 leading to more violence in the communities amici are and have been charged with protecting. In  
18 the State of California, where more than a quarter of the population are immigrants,<sup>2</sup> these  
19 problems have a particularly profound impact.  
20

21 Amici believe that enjoining Senate Bill 54, commonly known as the “California Values  
22 Act,” Cal. Gov’t Code § 7284 *et seq.* (“SB 54”), would precariously impact public safety in  
23 California. By ensuring that jurisdictions throughout the state uniformly prioritize public safety  
24  
25

26 \_\_\_\_\_  
27 <sup>1</sup> A full list of amici is attached as Exhibit A.

28 <sup>2</sup> American Immigration Council, *Immigrants in California* (2017) available at  
[https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants\\_in\\_california.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_california.pdf) (2017) (in 2015 immigrants comprised 27.3 percent of California’s population).



1 over civil immigration enforcement, SB 54 aims to reduce fear and uncertainty in California  
2 communities regarding engagement with law enforcement and preserve limited state and local  
3 resources—at a time when aggressive federal immigration enforcement has impacted each of  
4 these issues.  
5

6 Local involvement in immigration enforcement, including honoring transfer requests or  
7 civil detainers—requests from Immigration and Customs Enforcement (“ICE”) to hold an  
8 individual in local governmental custody to allow ICE to take the individual into federal  
9 custody—or providing information about release dates and custody status, causes community  
10 members to distrust the police and justice system officials. This dwindling of trust results in a  
11 decrease in cooperation, hindering the ability of local law enforcement and local prosecutors to  
12 keep their communities safe. Such involvement also drains scarce resources that would otherwise  
13 be used to enhance public safety measures. SB 54 ensures that localities throughout the state will  
14 refrain from adopting certain policies that could jeopardize public safety in their own and  
15 neighboring jurisdictions, or that could subject them to liability for unconstitutional practices.  
16  
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18 Amici believe that the injunction sought by the federal government is misguided and  
19 would eliminate important public safety protections established by the State of California after  
20 having carefully evaluated the needs of its residents.  
21

## 22 INTRODUCTION

23 The lessons amici have learned in protecting their communities shed important light on  
24 the issues raised in this case. When community residents live in constant fear that interactions  
25 with local law enforcement officials could result in deportation, there is a fundamental  
26 breakdown in trust that threatens public safety and impedes justice system leaders from doing  
27 their jobs. Extensive evidence shows that undocumented immigrants—and their lawfully present  
28 family and neighbors—fear that turning to the police and cooperating with prosecutors could

1 bring adverse immigration consequences. As a result, immigrant communities are less willing to  
2 report crimes and cooperate with criminal investigations and prosecutions. This fundamental  
3 breakdown in trust poses a major challenge both to the investigation and prosecution of  
4 individual crimes and to the proper allocation of public safety resources.  
5

6 SB 54 is one of many policies designed to address this issue of trust by limiting local and  
7 state involvement in federal immigration enforcement. Under SB 54, local law enforcement  
8 entities cannot ask an individual about his or her immigration status for immigration enforcement  
9 purposes, cannot hold individuals past their release dates pursuant to a warrantless detainer  
10 request, and are limited in providing release date information for individuals or transferring such  
11 individuals in local custody.<sup>3</sup> Like similar policies, SB 54 aims to preserve state and local  
12 resources and improve public safety by promoting cooperation between law enforcement and the  
13 communities they serve.<sup>4</sup> SB 54's uniform approach enhances its effectiveness by reducing the  
14 fear and confusion that exist when neighboring jurisdictions employ varying practices that the  
15 public does not fully understand. The injunction sought by the federal government, if granted,  
16 would upend important protections the State of California has deemed necessary for its residents  
17 at a time when federal immigration enforcement practices have exacerbated the already-  
18 challenging task of cultivating trust between immigrant communities and local law enforcement.  
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25 <sup>3</sup> Cal. Gov't Code § 7284 *et seq.*

26 <sup>4</sup> 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>.  
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1 **ARGUMENT**

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

5 The experience of policing cities across the country has taught law enforcement officers  
6 that “[t]o do our job, we must have the trust and respect of the communities we serve.”<sup>5</sup> In order  
7 to stop crime, police officers “need the full cooperation of victims and witnesses.”<sup>6</sup>

8 This common-sense philosophy is sometimes called “community policing.” Community  
9 policing is an approach to policing whereby local law enforcement engages communities in a  
10 working partnership to reduce crime and promote public safety.<sup>7</sup> It thus requires police to  
11 interact with neighborhood residents in a manner that will build trust and improve the level of  
12 cooperation with the police department.<sup>8</sup> When that relationship of trust is missing—as it is when  
13 people believe that contacting police or cooperating with prosecutors could lead to deportation  
14 for themselves or others—community policing breaks down and the entire community is harmed.

15 According to a recent Pew survey, 67 percent of Hispanic immigrants and 47 percent of  
16 all Hispanic adults in the United States worry about deportation—of themselves, family  
17 members, or close friends.<sup>9</sup> This fear necessarily affects cooperation and communication with  
18 police and prosecutors. Immigrants—and their family members and neighbors who may be U.S.  
19 citizens or lawfully present—often assume that interaction with law enforcement officials could  
20 have adverse consequences for themselves or a loved one.  
21  
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24 <sup>5</sup> *Id.* at 2.

25 <sup>6</sup> *Id.*

26 <sup>7</sup> See Anita Khashu, *The Role Of Local Police: Striking a Balance Between Immigration*  
27 *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](https://www.policefoundation.org/wp-content/uploads/2015/06/The-Role-of-Local-Police-Narrative.pdf).

28 <sup>8</sup> *Id.*

<sup>9</sup> *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/>.

1 As a result, immigrant communities in general, and undocumented immigrants in  
2 particular, are less likely to trust and cooperate with local police and prosecutors. One survey of  
3 Latinos in four major cities found that 70 percent of undocumented immigrants and 44 percent of  
4 all Latinos would be less likely to contact law enforcement authorities if they were victims of a  
5 crime for fear that the police would ask them or people they know about their immigration status;  
6 and 67 percent of undocumented immigrants and 45 percent of all Latinos would be less likely to  
7 voluntarily offer information about, or report, crimes because of the same fear.<sup>10</sup> And a recent  
8 survey of undocumented individuals in San Diego County found that if local law enforcement  
9 officials were working together with ICE, 60.8 percent of survey respondents would be less  
10 likely to report a crime they witnessed, and 42.9 percent would be less likely to report being a  
11 victim of a crime.<sup>11</sup>

14 These studies (among others) highlight that fears of immigration enforcement and the  
15 resulting damage to law enforcement cooperation affect not just undocumented community  
16 members but also individuals with citizenship or lawful status, particularly in “mixed-status”  
17 households.<sup>12</sup>

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21 <sup>10</sup> Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in*  
22 *Immigration Enforcement* 5–6 (May 2013), available at [www.policylink.org/sites/default/](http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF)  
23 [files/INSECURE\\_COMMUNITIES\\_REPORT\\_FINAL.PDF](http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF); see also *id.* at 1 (“Survey results  
24 indicate that the greater involvement of police in immigration enforcement has significantly  
25 heightened the fears many Latinos have of the police, . . . exacerbating their mistrust of law  
26 enforcement authorities.”).

25 <sup>11</sup> Tom K. Wong, *Sanctuary Cities Don’t ‘Breed Crime.’ They Encourage People to Report*  
26 *Crime.*, Wash. Post., Apr. 24, 2018, [https://www.washingtonpost.com/news/monkey-cage/](https://www.washingtonpost.com/news/monkey-cage/wp/2018/04/24/sanctuary-cities-dont-breed-crime-they-encourage-people-to-report-crime/)  
27 [wp/2018/04/24/sanctuary-cities-dont-breed-crime-they-encourage-people-to-report-crime/](https://www.washingtonpost.com/news/monkey-cage/wp/2018/04/24/sanctuary-cities-dont-breed-crime-they-encourage-people-to-report-crime/).

28 <sup>12</sup> An estimated 85% of immigrants live in mixed-status families. See Khashu, *supra* note 7, at  
24; see also Jill Theresa Messing et al., *Latinas’ Perceptions of Law Enforcement: Fear of*  
29 *Deportation, Crime Reporting, and Trust in the System*, 30 J. Women & Soc. Work 328, 334  
30 (2015) (“The results indicate that for each 1-point increase in fear of deportation [e.g., from ‘not

1 This problematic atmosphere of mistrust is felt by police as well. In one study, two-thirds  
 2 of the law enforcement officers polled expressed the view that recent immigrants reported crimes  
 3 less frequently than others.<sup>13</sup> Those surveyed also indicated that the crimes underreported by  
 4 immigrants are most often serious ones, with domestic violence and gang violence at the top.<sup>14</sup>  
 5 These trends have only worsened in recent months. According to the Houston Police  
 6 Department, rape reporting by members of the Hispanic community fell over 40 percent from the  
 7 first quarter of 2016 to the same period in 2017, despite an overall *increase* in city-wide crime  
 8 reports.<sup>15</sup> Los Angeles, San Francisco, and San Diego also witnessed lagging sexual assault and  
 9 domestic violence reporting by Hispanic persons—but not other ethnic groups—in the first half  
 10 of 2017.<sup>16</sup> According to Los Angeles County Sheriff’s Deputy Marino Gonzalez, “[t]hey’re  
 11 afraid of us. And the reason they’re afraid of us is because they think we’re going to deport  
 12 them.”<sup>17</sup>

15 Immigrants’ widely recognized fear of interacting with law enforcement and prosecutors  
 16 poses a fundamental challenge for community policing. Police cannot prevent or solve crimes if  
 17 victims or witnesses are unwilling to talk to them or prosecutors because of concerns that they,  
 18

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 20  
 21 much’ to ‘some’ worry, or from ‘some’ to ‘a lot’], Latina participants were 15% less willing to  
 22 report being victim of a violent crime to police.”).

23 <sup>13</sup> Robert C. Davis, Edna Erez, & Nancy Avitabile, *Access to Justice for Immigrants Who Are  
 24 Victimized: The Perspectives of Police and Prosecutors*, 12 *Crim. Just. Pol’y Rev.* 183, 187  
 25 (2001).

26 <sup>14</sup> *Id.* at 188–89.

27 <sup>15</sup> Michael Morris & Lauren Renee Sepulveda, *A New ICE Age*, Texas Dist. & Cty. Attorneys  
 28 Ass’n, *The Texas Prosecutor*, Vol. 47, No. 4 (July/Aug. 2017), [https://www.tdcaa.com/journal/  
 new-ice-age](https://www.tdcaa.com/journal/new-ice-age).

<sup>16</sup> 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](http://www.latimes.com/local/lanow/la-me-ln-undocumented-crime-reporting-20171009-story.html).

<sup>17</sup> *Id.*

1 their loved ones, or their neighbors will face adverse immigration consequences. As the president  
2 of the Major Cities Chiefs Association has explained to Congress, “[c]ooperation is not  
3 forthcoming from persons who see their police as immigration agents.”<sup>18</sup> As cautioned by one  
4 official, “immigrants will never help their local police to fight crime once they fear we have  
5 become immigration officers.”<sup>19</sup>  
6

7 The underreporting of crimes by recent immigrants is a problem for the entire criminal  
8 justice system.<sup>20</sup> The most immediate consequence, of course, is that serious crimes go  
9 unreported and unpunished. As one official explained, when criminal behavior goes unreported,  
10 “[c]rime multiplies” and “[u]nresolved resentments grow in the community.”<sup>21</sup> Another added  
11 that the underreporting of crime “keeps fear at very high levels and diminishes quality of life.”<sup>22</sup>  
12 Even beyond the underreporting of crime, undocumented immigrant victims and witnesses may  
13 refuse to come to court to testify in important criminal cases because of their fear of being  
14 detained and deported.  
15

16 These concerns are anything but hypothetical. Over the past several months, they have  
17 manifested in ways that threaten long-term harm to criminal justice system operations. A  
18 Department of Homeland Security official recently illustrated why many immigrants hesitate to  
19 cooperate with law enforcement. In a briefing to reporters, he stated that “[j]ust because they’re a  
20 victim in a certain case does not mean there’s not something in their background that could cause  
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24 <sup>18</sup> Statement of Tom Manger, *supra* note 4, at 2.

25 <sup>19</sup> *Local Law Enforcement Leaders Oppose Mandates to Engage in Immigration Enforcement*,  
26 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>.

27 <sup>20</sup> Davis et al., *supra* note 13, at 188.

28 <sup>21</sup> *Id.*

<sup>22</sup> *Id.*

1 them to be a removable alien.”<sup>23</sup> An immigrant woman living in Texas learned that lesson all too  
2 perversely when she arrived at a courthouse seeking a protective order against her abusive  
3 boyfriend, only to leave under arrest—likely due to a tip from her abuser.<sup>24</sup> In August 2017,  
4 federal agents detained an undocumented immigrant who had provided key testimony in two  
5 homicide cases.<sup>25</sup> And weeks later, ICE agents arrested a victim of domestic violence as he left a  
6 county courthouse.<sup>26</sup> The Immigrant Defense Project reports that the number of arrests or  
7 attempted arrests by ICE agents at courthouses throughout New York rose by a staggering 900  
8 percent from 2016 to 2017.<sup>27</sup>

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10  
11 Precisely because victims and witnesses fear similar treatment from immigration  
12 authorities, some violent crimes have gone unreported, and pending prosecutions have  
13 disappeared from courts’ dockets. A Texas district attorney confirmed that a victim of domestic  
14 violence had become uncooperative because she feared deportation.<sup>28</sup> Denver prosecutors were  
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17 <sup>23</sup> Devlin Barrett, *DHS: Immigration Agents May Arrest Crime Victims, Witnesses at*  
18 *Courthouses*, Wash. Post, Apr. 4, 2017, [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](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).

19 <sup>24</sup> Katie Mettler, *“This is Really Unprecedented”: ICE Detains Woman Seeking Domestic Abuse*  
20 *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/>.

21 <sup>25</sup> James Fanelli, *Father of Two Who Testified in Brooklyn Homicide Cases and Is Married to a*  
22 *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>.

23 <sup>26</sup> Steve Coll, *When a Day in Court Is a Trap for Immigrants*, New Yorker, Nov. 8, 2017,  
24 <https://www.newyorker.com/news/daily-comment/when-a-day-in-court-is-a-trap-for-immigrants>.

25 <sup>27</sup> Stephen Rex Brown, *Courthouse Arrests of Immigrants by ICE Agents Have Risen 900% in*  
26 *New York This Year: Immigrant Defense Project*, N.Y. Daily News, Nov. 15, 2017,  
27 <http://www.nydailynews.com/new-york/ice-courthouse-arrests-immigrants-900-n-y-2017-article-1.3633463>.

28 <sup>28</sup> 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/>

1 forced to drop four domestic abuse cases when similar worries deterred the victims from  
 2 testifying;<sup>29</sup> in 2017, more than a dozen Latina women in Denver dropped their own civil cases  
 3 against domestic abusers, citing fear of deportation.<sup>30</sup> An immigrant mother in New Jersey,  
 4 fearing that interaction with the court system could trigger removal, declined to report that her  
 5 son had been assaulted on his way to school.<sup>31</sup> And a victim of domestic violence in New York  
 6 City “did not think it was in her best interest” to pursue a protective order.<sup>32</sup> In addition to their  
 7 particular deportation concerns, undocumented immigrant victims and witnesses may  
 8 understandably recoil more generally from a system that allows participants to walk freely into a  
 9 courthouse to fulfill a civic responsibility to testify, only to be detained by immigration  
 10 authorities and prevented from returning to their lives.

13 In response to these incidents, the chief justices of three state supreme courts have written  
 14 top federal authorities to emphasize that preserving trust with immigrant communities is essential  
 15 to the administration of justice.<sup>33</sup> As the Chief Justice of California has explained, enforcement  
 16

17 \_\_\_\_\_  
 18 news/local/deportation-fears-keep-victim-from-cooperating-domestic-violence-case-travis-  
 19 says/rdZAjFEAxjHWnxXV1LlpjM/.

19 <sup>29</sup> Heidi Glenn, *Fear of Deportation Spurs 4 Women to Drop Domestic Abuse Cases in Denver*,  
 20 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>.

21 <sup>30</sup> Sarah Stillman, *When Deportation Is a Death Sentence*, New Yorker, Jan. 15, 2018,  
 22 <https://www.newyorker.com/magazine/2018/01/15/when-deportation-is-a-death-sentence>.

23 <sup>31</sup> S.P. Sullivan, *Advocates Say ICE Courthouse Arrests in N.J. Are Hurting Immigrant Crime*  
 24 *Victims*, NJ, June 5, 2017, [http://www.nj.com/politics/index.ssf/2017/06/advocates\\_say\\_ice\\_courthouse\\_arrests\\_are\\_hurting\\_i.html](http://www.nj.com/politics/index.ssf/2017/06/advocates_say_ice_courthouse_arrests_are_hurting_i.html).

25 <sup>32</sup> Emma Whitford, *Courthouse ICE Arrests Are Making Immigrants ‘Sitting Ducks,’ Lawyers*  
 26 *Warn*, Gothamist, June 22, 2017, [http://gothamist.com/2017/06/22/ice\\_immigrants\\_courts.php](http://gothamist.com/2017/06/22/ice_immigrants_courts.php).

27 <sup>33</sup> Letter from Tani G. Cantil-Sakauye, Chief Justice of the Supreme Court of California, to Jeff  
 28 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%20>



1 policies that include arresting immigrants at courthouses, “the vast majority of whom pose no  
2 risk to public safety, are neither safe nor fair.”<sup>34</sup> Other leaders around the country have stated that  
3 using local court systems as levers for federal immigration enforcement “undercuts local law  
4 enforcement’s ability to develop the critical trust needed to keep communities safe.”<sup>35</sup>  
5

6 Distrust between immigrants and law enforcement also results in greater victimization of  
7 immigrants. “When immigrants come to view their local police and sheriffs with distrust because  
8 they fear deportation, it creates conditions that encourage criminals to prey upon victims and  
9 witnesses alike.”<sup>36</sup> This phenomenon has been termed the “deportation threat dynamic,” whereby  
10 individuals who fear removal from the United States do not report the crimes they suffer.<sup>37</sup>  
11 Nearly two-thirds of undocumented migrant workers participating in a study in Memphis,  
12 Tennessee, reported being the victim of at least one crime, with the most common being theft  
13 and robbery.<sup>38</sup> Respondents indicated that fewer than a quarter of these crimes were reported to  
14 the police, and *only one* was reported by the victim himself.<sup>39</sup>  
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19 Court%20News/KellyJohnDHSICE032217.pdf; Letter from Stuart Rabner, Chief Justice of the  
20 Supreme Court of New Jersey, to John F. Kelly, Sec’y of Dep’t of Homeland Sec. (Apr. 19,  
21 2017), *available at* <https://www.documentcloud.org/documents/3673664-Letter-from-Chief-Justice-Rabner-to-Homeland.html#document/p1>.

22 <sup>34</sup> Cantil-Sakauye Letter, *supra* note 33.

23 <sup>35</sup> Maria Cramer, *ICE Courthouse Arrests Worry Attorneys, Prosecutors*, Boston Globe, June 16,  
24 2017, <https://www.bostonglobe.com/metro/2017/06/15/ice-arrests-and-around-local-courthouses-worry-lawyers-prosecutors/xxFH5vVJnMeggQa0NMI8gI/story.html> (citing Massachusetts Attorney General Maura Healey).

25 <sup>36</sup> Statement of Tom Manger, *supra* note 4, at 2.

26 <sup>37</sup> Elizabeth Fussell, *The Deportation Threat Dynamic & Victimization of Latino Migrants: Wage Theft & Robbery*, 52 Soc. Q. 593, 610 (2011).

27 <sup>38</sup> 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).

28 <sup>39</sup> *Id.* at 165.

1 Undocumented immigrants are especially vulnerable to domestic violence. A number of  
2 studies have shown that abusive partners may exploit the threat of deportation in order to  
3 maintain power and control.<sup>40</sup> Financial dependence on an abusive partner with stable  
4 immigration status may facilitate violence in this way.<sup>41</sup> Seventy percent of participants in one  
5 study of domestic abuse victims said that immigration status was a major factor keeping them  
6 from seeking help or reporting their abuse to the authorities—and thereby permitting the  
7 violence to continue.<sup>42</sup> In another study, immigration status was identified as the single largest  
8 factor independently affecting the rate at which battered Latina immigrants called the police.<sup>43</sup>

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10  
11 SB 54 aims to improve public safety by reducing fear of immigration enforcement and  
12 promoting cooperation between law enforcement and the communities they serve. Moreover, in a  
13 state where more than a quarter of its residents are immigrants, statewide uniformity enhances  
14 the impact of individual communities' policies by reducing the uncertainty and fear created when  
15 localities adopt varying approaches to immigration enforcement requests.  
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21 <sup>40</sup> See, e.g., Messing et al., *supra* note 12, at 330 (citing several studies); Angelica S. Reina,  
22 Brenda J. Lohman, & Marta María Maldonado, “*He Said They’d Deport Me*”: *Factors*  
23 *Influencing Domestic Violence Help-Seeking Practices Among Latina Immigrants*, 29 *J.*  
24 *Interpersonal Violence* 593, 601 (2013). The latter study cited a participant who explained that a  
25 partner “beat me up and I could have called the police because that was what I thought to do . . .  
26 but he threatened me . . . . [H]e told me that if I called the police I was going to lose out . . .  
27 because [police officers] . . . would . . . take me, because I didn’t have legal documents.” Reina,  
28 Lohman, & Maldonado at 601.

<sup>41</sup> See, e.g., Messing et al., *supra* note 12, at 330.

<sup>42</sup> Reina, Lohman, & Maldonado, *supra* note 40, at 600.

<sup>43</sup> 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).

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

4           In limiting local and state involvement in federal immigration enforcement, many  
 5 jurisdictions aim to enhance community trust as well as preserve local resources. For example,  
 6 like SB 54, some state and local policies seek to limit local involvement in immigration  
 7 enforcement by prohibiting local law enforcement from providing release date information or  
 8 holding individuals after their release date based on an ICE detainer request for purposes of  
 9 transfer to ICE custody.<sup>44</sup> Eliminating these protections serves no justifiable goal, particularly  
 10 when doing so substantially undermines other important public safety efforts. Moreover,  
 11 communities need significant resources including funds, training, and personnel to best serve  
 12 local law enforcement needs; redistribution to immigration enforcement siphons limited  
 13

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14  
 15 <sup>44</sup> See, e.g., Cook County, IL Code § 46-37(b): Policy for Responding to ICE Detainers. Under  
 16 long-standing Fourth Amendment precedent, numerous federal courts have found that continued  
 17 detention under an ICE detainer gives rise to a claim for a violation of the Fourth Amendment,  
 18 and subjects the detaining officer or jurisdiction to civil liability. See *Morales v. Chadbourne*,  
 19 996 F. Supp. 2d 19, 29 (D. R.I. 2014), *aff'd on appeal*, 793 F.3d 208 (1st Cir. 2015) (plaintiff  
 20 stated Fourth Amendment claim where she was held for 24 hours on ICE detainer issued without  
 21 probable cause); *Galarza v. Szalczyk*, No. 10-cv-06815, 2012 WL 1080020, at \*10, \*13 (E.D. Pa.  
 22 Mar. 30, 2012) (plaintiff stated a Fourth Amendment claim against both federal and local  
 23 defendants where he was held for 3 days after posting bail based on an ICE detainer), *rev'd on*  
 24 *other grounds*, 745 F.3d 634 (3d Cir. 2014); *Miranda-Olivares v. Clackamas Cnty.*, No. 12-cv-  
 25 02317-ST, 2014 WL 1414305, at \*10 (D. Or. Apr. 11, 2014) (plaintiff's detention on an ICE  
 26 detainer after she would otherwise have been released "constituted a new arrest, and must be  
 27 analyzed under the Fourth Amendment"); *Mendoza v. Osterberg*, No. 13CV65, 2014 WL  
 28 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) (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) (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), *adopted*, 2010 U.S. Dist. LEXIS 34088 (C.D. Cal. Mar. 29, 2010).

1 resources away from where they are most needed while simultaneously damaging community  
 2 engagement and protection.<sup>45</sup>

3 Policies limiting local law enforcement involvement in federal immigration matters are  
 4 not limited to California, and the policies embedded in SB 54 and challenged in this suit can be  
 5 found in jurisdictions around the country. Some administrative policies or laws include formal  
 6 restrictions on local law enforcement’s ability to apprehend or arrest an individual for federal  
 7 immigration violations, including restrictions on arrests for civil violations of federal  
 8 immigration law.<sup>46</sup> Other policies include restrictions on local law enforcement inquiries or  
 9 investigations into a person’s immigration status or the gathering of such information at the local  
 10 level.<sup>47</sup> Additionally, many jurisdictions have adopted policies against continued detention of an  
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14  
 15 <sup>45</sup> See Letter from Law Enforcement Task Force to Hon. Trey Gowdy and Hon. Zoe Lofgren  
 16 (July 20, 2015), *available at* <https://immigrationforum.org/wp-content/uploads/2015/07/072015-LEITF-Letter-House.pdf>.

17 <sup>46</sup> See Michael John Garcia & Kate M. Manuel, Cong. Research Serv., R43457, State and Local  
 18 “Sanctuary” Policies Limiting Participation in Immigration Enforcement 9 (July 10, 2015),  
 19 *available at* <https://www.fas.org/sgp/crs/homesec/R43457.pdf>; *see also* OR. REV. STAT. ANN.  
 20 § 181A.820 (“No law enforcement agency of the State of Oregon or of any political subdivision  
 21 of the state shall use agency moneys, equipment or personnel for the purpose of detecting or  
 22 apprehending persons whose only violation of law is that they are persons of foreign citizenship  
 23 present in the United States in violation of federal immigration laws.”); Washington, DC,  
 24 Mayor’s Order 2011-174: Disclosure of Status of Individuals: Policies and Procedures of District  
 25 of Columbia Agencies, at 2 (Oct. 19, 2011) (“No person shall be detained solely on the belief  
 26 that he or she is not present legally in the United States or that he or she has committed a civil  
 27 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  
 28 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.”).

<sup>47</sup> *See, e.g.*, DC Order, *supra* note 46 (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”).

1 individual based on immigration detainer requests to facilitate transfer to ICE custody for at least  
2 some categories of noncitizens.<sup>48</sup> Several states, like California, limit the extent to which local  
3 police can cooperate with detainer requests, and more than 400 counties have policies limiting  
4 cooperation with detainers.<sup>49</sup>

5  
6 Recent incidents in localities with policies limiting local involvement in federal  
7 immigration enforcement demonstrate the public safety benefits of such policies. For example, in  
8 2016, Los Angeles Police Department officers had an encounter with a suspected gang member  
9 that resulted in a vehicle chase, a foot pursuit, and shots fired. An undocumented immigrant  
10 helped police locate the suspect by providing a description and vehicle information.<sup>50</sup> In Tucson,  
11 Arizona, an undocumented man confronted and struggled with a man who tried to steal a car  
12 with children inside. The immigrant held the individual until police arrived, then cooperated with  
13 detectives in the follow-up investigation, resulting in charges of kidnapping, auto theft, and  
14 burglary.<sup>51</sup> These examples show why crime is lower to a statistically significant degree in  
15 counties that limit local involvement in federal immigration enforcement, as by declining to hold  
16 individuals in local custody simply because ICE requests it.<sup>52</sup>  
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19  
20 <sup>48</sup> Garcia & Manuel, *supra* note 46, at 14.

21 <sup>49</sup> Jasmine C. Lee, Rudy Omri, and Julia Preston, *What Are Sanctuary Cities?*, N.Y. Times, Feb.  
22 6, 2017, <http://www.nytimes.com/interactive/2016/09/02/us/sanctuary-cities>; *Detainer Policies*,  
23 Immigrant Legal Res. Ctr. (Mar. 21, 2017), *available at* <https://www.ilrc.org/detainer-policies>.  
24 The California TRUST Act, Cal. Gov't Code § 7282 *et seq.*, enacted in 2013, placed limitations  
25 on local jurisdictions' compliance with detainer requests. SB 54, recognizing that many courts  
26 have held that ICE detainers can give rise to Fourth Amendment violations, prohibits detention  
27 on the basis of a detainer request. *Id.* §§ 7284.2(e), 7284.6(a)(1)(b).

28 <sup>50</sup> Chuck Wexler, *Commentary: Why Police Support Sanctuaries*, Phila. Inquirer, Mar. 10, 2017,  
[http://www.philly.com/philly/opinion/20170310\\_Commentary\\_\\_Why\\_police\\_support\\_](http://www.philly.com/philly/opinion/20170310_Commentary__Why_police_support_sanctuaries.html)  
[sanctuaries.html](http://www.philly.com/philly/opinion/20170310_Commentary__Why_police_support_sanctuaries.html).

<sup>51</sup> *Id.*

<sup>52</sup> 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/>

1 The injunction sought by the federal government threatens to disrupt the California  
2 legislature’s effort to ensure that immigrants do not fear interactions with local law enforcement  
3 or face unconstitutional treatment, and that jurisdictions within the state do not divert resources  
4 from effective public safety efforts. In short, eliminating these protections would send a  
5 dangerous signal to witnesses and victims within immigrant communities: cooperate with local  
6 law enforcement at your own risk.

8 **CONCLUSION**

9 For the foregoing reasons, as well as the reasons set forth in Defendants’ Brief, this Court  
10 should deny Plaintiff’s Motion for Preliminary Injunction.

11 May 18, 2018

Respectfully Submitted,

13 /s/ Joshua A. Geltzer

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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.”).

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of BRIEF OF AMICI CURIAE CURRENT AND FORMER PROSECUTORS AND LAW ENFORCEMENT LEADERS was served on May 18, 2018 via this Court's ECF filing system, whereupon all counsel of record were served.

/s/ Joshua A. Geltzer  
Joshua A. Geltzer

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**EXHIBIT A**



**EXHIBIT A: LIST OF AMICI\***

**Law Enforcement Action Partnership (LEAP)**

**Roy L. Austin**

Former Deputy Assistant to the President for Urban Affairs, Justice and Opportunity,  
White House Domestic Policy Council  
Former Deputy Assistant Attorney General, Civil Rights Division, U.S. Department  
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**Sherry Boston**

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\*Individual affiliations are provided for identification purposes only.

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3 Former Assistant U.S. Attorney, Central District of California

4 Former Criminal Appellate Chief and Chief, General Crimes, Central District of  
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6 **William Landsdowne**

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9 Former Police Chief, Richmond, California

10 **Chris Magnus**

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16 Former Assistant U.S. Attorney and Chief, Criminal Division, U.S. Attorney's Office for the  
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