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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**STATE OF CALIFORNIA, ex rel. XAVIER
BECERRA, Attorney General of the State of
California,**

Plaintiff,

v.

**JEFFERSON B. SESSIONS III,
Attorney General of the United States, et al.,**

Defendants.

Case Nos. 1:17-cv-4701-WHO, 3:17-
cv-4642-WHO

**BRIEF OF AMICI CURIAE
CURRENT AND FORMER
PROSECUTORS AND LAW
ENFORCEMENT LEADERS IN
SUPPORT OF PLAINTIFFS'
MOTIONS FOR SUMMARY
JUDGMENT**

CITY AND COUNTY OF SAN FRANCISCO,

Plaintiff,

v.

**JEFFERSON B. SESSIONS III,
Attorney General of the United States, et al.,**

Defendants.

Date: September 5, 2018
Time: 2:00 PM
Judge: Hon. William H. Orrick
Courtroom: 2

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INTRODUCTION

1
2 The lessons amici have learned in protecting their communities shed important light on the
3 issues raised in this case. When community residents live in constant fear that interactions with
4 local law enforcement officials could result in deportation, there is a fundamental breakdown in
5 trust that threatens public safety and impedes justice system leaders from doing their jobs.
6 Extensive evidence shows that, in such circumstances, undocumented immigrants—and their
7 lawfully present family and neighbors—fear that turning to the police and cooperating with
8 prosecutors could bring adverse immigration consequences. As a result, immigrant communities
9 are less willing to report crimes and cooperate with criminal investigations and prosecutions. This
10 fundamental breakdown in trust poses a major challenge to the investigation and prosecution of
11 individual crimes and to the proper allocation of public safety resources.

12 Current policies limiting local and state involvement in federal immigration enforcement
13 address this issue of trust. Though they take several different forms, these policies generally aim
14 to preserve local and state resources and improve public safety by promoting cooperation between
15 law enforcement and the communities they serve.¹ Many jurisdictions—whether via ordinance,
16 administrative policy, or state law—limit the degree to which their officials may, for example,
17 cooperate with ICE detainers in certain circumstances.² Defendants' interpretation of 8 U.S.C.
18 § 1373 would upend these policies by conditioning federal law enforcement grants on participation
19 in federal immigration enforcement, to the detriment of public safety.
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23 ¹ 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>.

24 ² See 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*].
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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.”³ In order to stop crime, police officers “need the full cooperation of victims and witnesses.”⁴

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 crime and promote public safety.⁵ 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.⁶ 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.⁷ This fear necessarily affects cooperation and communication with police and prosecutors. Immigrants—and their family members and neighbors who 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.

³ Statement of Tom Manger, *supra* note 1, at 2.

⁴ *Id.*

⁵ 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>.

⁶ *Id.*

⁷ *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.⁸

8 These studies (among others) highlight that fears of immigration enforcement and the
9 resulting damage to law enforcement cooperation affect not just undocumented community
10 members but also individuals with citizenship or lawful status, particularly in “mixed-status”
11 households.⁹

12 This problematic atmosphere of mistrust is felt by police as well. In one study, two-thirds
13 of the law enforcement officers polled expressed the view that recent immigrants reported crimes
14 less frequently than others.¹⁰ Those surveyed also indicated that the crimes underreported by
15 immigrants are most often serious ones, with domestic violence and gang violence at the top.¹¹
16 These trends have only worsened in recent months. According to the Houston Police Department,
17 rape reporting by members of the Hispanic community fell over 40 percent from the first quarter
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20 ⁸ Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration*
21 *Enforcement* 5–6 (May 2013), available at [www.policylink.org/sites/default/files/INSECURE](http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF)
22 [_COMMUNITIES_REPORT_FINAL.PDF](http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF); see also *id.* at 1 (“Survey results indicate that the
23 greater involvement of police in immigration enforcement has significantly heightened the fears
24 many Latinos have of the police, . . . exacerbating their mistrust of law enforcement authorities.”).

25 ⁹ An estimated 85 percent of immigrants live in mixed-status families. See Khashu, *supra* note 5,
26 at 24; see also Jill Theresa Messing et al., *Latinas’ Perceptions of Law Enforcement: Fear of*
27 *Deportation, Crime Reporting, and Trust in the System*, 30 J. Women & Soc. Work 328, 334
28 (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.”).

¹⁰ 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).

¹¹ *Id.* at 188–89.

1 of 2016 to the same period in 2017, despite an overall *increase* in city-wide crime reports.¹² Los
2 Angeles, San Francisco, and San Diego also witnessed lagging sexual assault and domestic
3 violence reporting by Hispanic persons—but not other ethnic groups—in the first half of 2017.¹³
4 According to Los Angeles County Sheriff’s Deputy Marino Gonzalez, “[t]hey’re afraid of us. And
5 the reason they’re afraid of us is because they think we’re going to deport them.”¹⁴ Philadelphia
6 Police Commissioner Richard Ross recently echoed these concerns in sworn testimony.¹⁵

7 Immigrants’ widely recognized fear of interacting with law enforcement and prosecutors
8 poses a fundamental challenge for community policing. Police cannot prevent or solve crimes if
9 victims or witnesses are unwilling to talk to them or prosecutors because of concerns that they,
10 their loved ones, or their neighbors will face adverse immigration consequences. According to a
11 recent national survey, law enforcement officers have seen an across-the-board decline in
12 immigrant communities’ willingness to cooperate with law enforcement.¹⁶ As the president of the
13 Major Cities Chiefs Association has explained to Congress, “[c]ooperation is not forthcoming from
14 persons who see their police as immigration agents.”¹⁷ And, as cautioned by one official,
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17 ¹² Michael Morris & Lauren Renee Sepulveda, *A New ICE Age*, Texas Dist. & Cty. Attorneys
18 Ass’n, *The Texas Prosecutor*, Vol. 47, No. 4 (July/Aug. 2017), [https://www.tdcaa.com/
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19 ¹³ James Queally, *Fearing Deportation, Many Domestic Violence Victims Are Steering Clear of*
20 *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).

21 ¹⁴ *Id.*; see also Nat’l Immigrant Women’s Advocacy Project, *Promoting Access to Justice for*
22 *Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration*
23 *Enforcement: Initial Report from a 2017 National Survey*, at 99 (May 3, 2018), available at
24 <http://library.niwap.org/wp-content/uploads/Immigrant-Access-to-Justice-National-Report.pdf>
[hereinafter *NIWAP Report*] (finding that, between 2016 and 2017, fear of deportation was the
principal reason that immigrant victims did not call the police for help or file or follow through
with a court case).

25 ¹⁵ See *City of Philadelphia v. Sessions*, 309 F. Supp. 3d 289, 341 (E.D. Pa. 2018) (“Police
26 Commissioner Ross reiterated his earlier testimony that the City’s ability to fight crime is
impaired when victims and witnesses are afraid to report crimes for fear of immigration
consequences.”).

27 ¹⁶ *NIWAP Report*, *supra* note 14, at 101.

28 ¹⁷ Statement of Tom Manger, *supra* note 1, at 2.

1 “immigrants will never help their local police to fight crime once they fear we have become
2 immigration officers.”¹⁸

3 The underreporting of crimes by recent immigrants is a problem for the entire criminal
4 justice system.¹⁹ In a recent national survey, a majority of participating law enforcement officers
5 reported that such barriers to cooperation have “le[d] to greater numbers of perpetrators at large,”²⁰
6 thereby threatening officer safety and the safety of entire communities.²¹ The most immediate
7 consequence, of course, is that serious crimes go unreported and unpunished. As one official
8 explained, when criminal behavior goes unreported, “[c]rime multiplies,” and “[u]nresolved
9 resentments grow in the community.”²² Another added that the underreporting of crime “keeps
10 fear at very high levels and diminishes quality of life.”²³ Even beyond the underreporting of crime,
11 undocumented immigrant victims and witnesses may refuse to come to court to testify in important
12 criminal cases because of their fear of being detained and deported.

13 These concerns are anything but hypothetical. Over the past two years, the trends
14 generating such concerns have escalated in ways that threaten long-term harm to criminal justice
15 system operations. A Department of Homeland Security official recently illustrated why many
16 immigrants hesitate to cooperate with law enforcement. In a briefing to reporters, he stated that
17 “[j]ust because they’re a victim in a certain case does not mean there’s not something in their
18 background that could cause them to be a removable alien.”²⁴ An immigrant woman living in
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21 ¹⁸ *Local Law Enforcement Leaders Oppose Mandates to Engage in Immigration Enforcement*,
22 Nat’l Immigration Law Ctr., at 2 (Aug. 2013) (statement of Chief Acevedo), available at
23 [https://www.nilc.org/wp-content/uploads/2017/02/Law-Enforcement-Opposition-to-Mandates-
2013-08-30.pdf](https://www.nilc.org/wp-content/uploads/2017/02/Law-Enforcement-Opposition-to-Mandates-2013-08-30.pdf).

24 ¹⁹ Davis et al., *supra* note 10, at 188.

25 ²⁰ *NIWAP Report*, *supra* note 14, at 103.

26 ²¹ *Id.* at 104.

27 ²² Davis et al., *supra* note 10, at 188.

28 ²³ *Id.*

²⁴ Devlin Barrett, *DHS: Immigration Agents May Arrest Crime Victims, Witnesses at 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-11e7-9887-1a5314b56a08_story.html](https://www.washingtonpost.com/world/national-security/dhs-immigration-agents-may-arrest-crime-victims-witnesses-at-courthouses/2017/04/04/3956e6d8-196d-11e7-9887-1a5314b56a08_story.html).

1 Texas learned that lesson all too perversely when she arrived at a courthouse seeking a protective
2 order against her abusive boyfriend, only to leave under arrest—likely due to a tip from her
3 abuser.²⁵ In August 2017, federal agents detained an undocumented immigrant who had provided
4 key testimony in two homicide cases.²⁶ And, weeks later, ICE agents arrested a victim of domestic
5 violence as he left a county courthouse.²⁷ The Immigrant Defense Project reports that the number
6 of arrests or attempted arrests by ICE agents at courthouses throughout New York rose by a
7 staggering 1200 percent from 2016 to 2017.²⁸

8 Precisely because victims and witnesses fear similar treatment from immigration
9 authorities, some violent crimes have gone unreported, and pending prosecutions have disappeared
10 from courts' dockets. A Texas district attorney confirmed that a victim of domestic violence had
11 become uncooperative because she feared deportation.²⁹ Denver prosecutors were forced to drop
12 four domestic abuse cases when similar worries deterred the victims from testifying;³⁰ in 2017,
13 more than a dozen Latina women in Denver dropped their own civil cases against domestic
14 abusers, citing fear of deportation.³¹ An immigrant mother in New Jersey, fearing that interaction
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17 ²⁵ Katie Mettler, *"This is Really Unprecedented": ICE Detains Woman Seeking Domestic Abuse*
18 *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/>.

19 ²⁶ James Fanelli, *Father of Two Who Testified in Brooklyn Homicide Cases and Is Married to a*
20 *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>.

21 ²⁷ Steve Coll, *When a Day in Court is a Trap for Immigrants*, New Yorker, Nov. 8, 2017,
22 <https://www.newyorker.com/news/daily-comment/when-a-day-in-court-is-a-trap-for-immigrants>.

23 ²⁸ Immigrant Defense Project, *ICE Out of Courts*, <https://www.immigrantdefenseproject.org/ice-courts/>.

24 ²⁹ Philip Jankowski, *Deportation Fears Keep Victim from Cooperating in Domestic Violence Case,*
25 *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/rdZAJFEAxjHWnxXVlLlpjM/>.

26 ³⁰ Heidi Glenn, *Fear of Deportation Spurs 4 Women to Drop Domestic Abuse Cases in Denver*,
27 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>.

28 ³¹ 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>.

1 with the court system could trigger removal, declined to report that her son had been assaulted on
2 his way to school.³² And a victim of domestic violence in New York City “did not think it was in
3 her best interest” to pursue a protective order.³³ In addition to their particular deportation concerns,
4 undocumented immigrant victims and witnesses may understandably recoil more generally from
5 a system that allows participants to walk freely into a courthouse to fulfill a civic responsibility to
6 testify, only to be detained by immigration authorities and prevented from returning to their lives.

7 In response to these incidents, the chief justices of three state supreme courts—including
8 the Supreme Court of California—have written to top federal authorities to emphasize that
9 preserving trust with immigrant communities is essential to the administration of justice.³⁴ As
10 Massachusetts Attorney General Maura Healey has explained, using local court systems as levers
11 for federal immigration enforcement “undercuts local law enforcement’s ability to develop the
12 critical trust needed to keep communities safe.”³⁵

13 Distrust between immigrants and law enforcement also results in greater victimization of
14 immigrants. “When immigrants come to view their local police and sheriffs with distrust because
15 they fear deportation, it creates conditions that encourage criminals to prey upon victims and
16

17
18 ³² S.P. Sullivan, *Advocates Say ICE Courthouse Arrests in N.J. Are Hurting Immigrant Crime*
19 *Victims*, NJ, June 5, 2017, http://www.nj.com/politics/index.ssf/2017/06/advocates_say_ice_courthouse_arrests_are_hurting_i.html.

20 ³³ Emma Whitford, *Courthouse ICE Arrests Are Making Immigrants ‘Sitting Ducks,’ Lawyers*
21 *Warn*, Gothamist, June 22, 2017, http://gothamist.com/2017/06/22/ice_immigrants_courts.php.

22 ³⁴ Letter from Tani G. Cantil-Sakauye, Chief Justice of the Supreme Court of California, to Jeff
23 Sessions, Att’y Gen. of the U.S., and John F. Kelly, Sec’y of Dep’t of Homeland Sec. (Mar. 16,
24 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
25 Justice of the Supreme Court of Washington, to John F. Kelly, Sec’y of Dep’t of Homeland Sec.
26 (Mar. 22, 2017), *available at* <https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/KellyJohnDHSICE032217.pdf>; Letter from Stuart Rabner, Chief
27 Justice of the Supreme Court of New Jersey, to John F. Kelly, Sec’y of Dep’t of Homeland Sec.
28 (Apr. 19, 2017), *available at* <https://www.documentcloud.org/documents/3673664-Letter-from-Chief-Justice-Rabner-to-Homeland.html#document/p1>.

³⁵ 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/xxFH5vVJnMeggQa0NMi8gl/story.html>.

1 witnesses alike.”³⁶ This phenomenon has been termed the “deportation threat dynamic,” whereby
 2 individuals who fear removal from the United States do not report the crimes they suffer.³⁷ Nearly
 3 two-thirds of undocumented migrant workers participating in a study in Memphis, Tennessee
 4 reported being the victim of at least one crime, with the most common being theft and robbery.³⁸
 5 Respondents indicated that fewer than a quarter of these crimes were reported to the police, and
 6 *only one* was reported by the victim himself.³⁹ And, in one especially horrific incident, a four-
 7 year-old girl suffered repeated sexual abuse at the hands of someone who threatened to cause her
 8 mother to be deported if the mother reported her daughter’s exploitation.⁴⁰

9 Undocumented immigrants are particularly vulnerable to domestic violence. A number of
 10 studies have shown that abusive partners may exploit the threat of deportation in order to maintain
 11 power and control.⁴¹ Financial dependence on an abusive partner with stable immigration status
 12 may facilitate violence in this way.⁴² Seventy percent of participants in one study of domestic
 13 abuse victims said that immigration status was a major factor keeping them from seeking help or
 14 reporting their abuse to the authorities—and thereby permitting the violence to continue.⁴³ In
 15

16 ³⁶ Statement of Tom Manger, *supra* note 1, at 2.

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

18 ³⁸ 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).

19 ³⁹ *Id.* at 165.

20 ⁴⁰ Matthew Haag, *Texas Deputy Accused of Molesting 4-Year-Old and Threatening to Deport Her Mother*, N.Y. Times, June 18, 2018, <https://www.nytimes.com/2018/06/18/us/cop-molests-girl-deport-mother.html>.

21 ⁴¹ See, e.g., Messing, *supra* note 9, 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, *supra*, at 601; see also *NIWAP Report*, *supra* note 14, at 103 (noting that 69 percent of law enforcement officers surveyed had observed a decrease in domestic violence reporting).

27 ⁴² See, e.g., Messing, *supra* note 9, at 330.

28 ⁴³ Reina, Lohman & Maldonado, *supra* note 41, at 600.

1 another study, immigration status was identified as the single largest factor independently affecting
2 the rate at which battered Latina immigrants called the police.⁴⁴

3 **II. Policies Limiting Local and State Involvement in Federal Immigration**
4 **Enforcement—Including California’s—Are Critical to Building and**
5 **Maintaining Trust Between the Community and Law Enforcement While**
6 **Preserving Local Resources.**

7 In limiting local and state involvement in federal immigration enforcement, many
8 jurisdictions aim to enhance community trust and preserve local resources. These policies improve
9 public safety by promoting cooperation between law enforcement and the communities they serve.
10 As the California legislature understood, “[a] relationship of trust between [the] immigrant
11 community and state and local agencies is central to the public safety.”⁴⁵ That “trust is threatened,”
12 however, “when state and local agencies are entangled with federal immigration enforcement.”⁴⁶

13 Some administrative policies or laws include formal restrictions on local law enforcement’s
14 ability to apprehend or arrest an individual for federal immigration violations, including
15 restrictions on arrests for civil violations of federal immigration law.⁴⁷ Other policies—such as

16 ⁴⁴ Nawal H. Ammar et al., *Calls to Police and Police Response: A Case Study of Latina Immigrant*
17 *Women in the USA*, 7 Int’l J. Police Sci. & Mgmt. 230, 237 (2005).

18 ⁴⁵ Cal. Gov’t Code § 7284.2(b); *see also* S.F. Admin. Code § 12I.1 (explaining that “public safety
19 . . . is founded on trust and cooperation of community residents and local law enforcement”).

20 ⁴⁶ Cal. Gov’t Code § 7284.2(c).

21 ⁴⁷ *See* Michael John Garcia & Kate M. Manuel, Cong. Research Serv., R43457, State and Local
22 “Sanctuary” Policies Limiting Participation in Immigration Enforcement 9 (July 10, 2015),
23 *available at* <https://www.fas.org/sgp/crs/homsec/R43457.pdf>; *see also* Or. Rev. Stat. Ann.
24 § 181A.820 (“No law enforcement agency of the State of Oregon or of any political subdivision
25 of the state shall use agency moneys, equipment or personnel for the purpose of detecting or
26 apprehending persons whose only violation of law is that they are persons of foreign citizenship
27 present in the United States in violation of federal immigration laws.”); Washington, DC,
28 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](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](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.”).

1 those codified in California’s Values Act and San Francisco’s Administrative Code—include
 2 restrictions on local law enforcement inquiries or investigations into a person’s immigration status
 3 or the gathering of such information at the local level.⁴⁸ Additionally, many jurisdictions have
 4 adopted policies against continued detention of an individual based on immigration detainer
 5 requests for at least some categories of noncitizens.⁴⁹ Several states, including California, limit the
 6 extent to which local police can cooperate with detainer requests, and more than 400 counties have
 7 policies limiting cooperation with detainees.⁵⁰ California’s TRUTH Act also ensures that
 8 individuals in local law enforcement custody will be informed that any interview with ICE agents
 9 is voluntary and may be conducted with an attorney present.⁵¹ And its Confidentiality Statutes aim
 10 to “protect the public from crime and violence by encouraging all persons who are victims of or
 11 witnesses to crimes . . . to cooperate with the criminal justice system and not to penalize these
 12 persons.”⁵²

13 These policies also play an important role in preserving local law enforcement resources.
 14 In the words of California’s Values Act, “[e]ntangling state and local agencies with federal
 15 immigration enforcement programs diverts already limited resources.”⁵³ For example, complying
 16

17 ⁴⁸ See Cal. Gov’t Code § 7284.6(a)(1)(A) (prohibiting California law enforcement agencies from
 18 “[u]s[ing] agency or department moneys or personnel to . . . [i]nquir[e] into an individual’s
 19 immigration status”); S.F. Admin. Code § 12H.2(d) (prohibiting all agencies and agents of the City
 20 and County of San Francisco from including on certain governmental forms “any question
 21 regarding immigration status other than those required by Federal or State statute, regulation, or
 22 court decision”); see also, e.g., DC Order, *supra* note 47 (public safety employees “shall not
 23 inquire about a person’s immigration status . . . for the purpose of initiating civil enforcement of
 24 immigration proceedings that have no nexus to a criminal investigation”).

25 ⁴⁹ See S.F. Admin. Code § 12I.3(a) (forbidding law enforcement officials from “detain[ing] an
 26 individual on the basis of a civil immigration detainer after that individual becomes eligible for
 27 release from custody,” except in certain limited circumstances); see also Garcia & Manuel, *supra*
 28 note 47, at 14.

⁵⁰ 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, and Preston, *supra* note 2; *ILRC Detainer Policies*, *supra* note
 2.

⁵¹ Cal. Gov’t Code § 7283.1(a).

⁵² Cal. Penal Code § 422.93(a).

⁵³ Cal. Gov’t Code § 7284.2(d).

1 with ICE detainer requests can add staggering costs—in some cases, tens of millions of dollars
2 annually.⁵⁴ Requiring localities to provide notice of release and access to ICE officials to all
3 facilities where any individual is detained would have similar effects. Communities carefully
4 allocate resources such as funds, training, and officer duties to serve local law enforcement needs
5 most effectively; forced redistribution to immigration enforcement would siphon limited resources
6 away from where they are most needed while simultaneously damaging community engagement
7 and protection.⁵⁵

8 Recent incidents in localities with policies limiting local involvement in federal
9 immigration enforcement demonstrate the public safety benefits of such policies. For example, in
10 2016, Los Angeles Police Department officers had an encounter with a suspected gang member
11 that resulted in a vehicle chase, a foot pursuit, and shots fired. An undocumented immigrant helped
12 police to locate the suspect by providing a description and vehicle information.⁵⁶ In Tucson,
13 Arizona, an undocumented man confronted and struggled with a man who tried to steal a car with
14 children inside. The immigrant held the individual until police arrived, then cooperated with
15 detectives in the follow-up investigation, resulting in charges of kidnapping, auto theft, and
16 burglary.⁵⁷ These examples show why crime is lower in statistically significant ways in counties
17 that limit local involvement in federal immigration enforcement, such as by declining to hold
18 individuals in local custody simply because ICE requests it.⁵⁸

19
20 ⁵⁴ See *Legislative Threats to Undermine Community Safety Policies: The Costs of Entangling*
21 *Local Policing and Immigration Law*, Nat'l Immigrant Justice Ctr. & Nat'l Immigration Law Ctr.
22 (Aug. 2015), available at http://immigrantjustice.org/sites/immigrantjustice.org/files/201508_05_NIJC_NILC_EnforcementCosts.pdf.

23 ⁵⁵ See Letter from Law Enforcement Task Force to Hon. Trey Gowdy and Hon. Zoe Lofgren (July
24 20, 2015), available at <https://immigrationforum.org/wp-content/uploads/2015/07/072015-LEITF-Letter-House.pdf>.

25 ⁵⁶ Chuck Wexler, *Commentary: Why Police Support Sanctuaries*, Phila. Inquirer, Mar. 10, 2017,
26 http://www.philly.com/philly/opinion/20170310_Commentary__Why_police_support_sanctuaries.html.

27 ⁵⁷ *Id.*

28 ⁵⁸ See 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->

1 Requiring compliance with Section 1373 as interpreted by Defendants threatens to disrupt
2 many communities' efforts to ensure that immigrants do not fear interactions with local law
3 enforcement and to divert jurisdictions' resources from effective public safety efforts.
4 Conditioning JAG and COPS grants in this way would also deter other communities from adopting
5 trust-enhancing policies in the future. In short, forcing grantee jurisdictions to entangle themselves
6 further with federal immigration enforcement would send a dangerous signal to witnesses and
7 victims within immigrant communities: cooperate with local law enforcement at your own risk.

8 **CONCLUSION**

9 For the foregoing reasons, as well as the reasons set forth in Plaintiffs' motions, this
10 Court should grant Plaintiffs' motions for summary judgment and deny Defendants' cross-
11 motion for summary judgment.

12
13 August 22, 2018

Respectfully Submitted,

14 /s/ Matthew J. Piers

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27 policies-on-crime-and-the-economy/ ("The results of the CEM analysis show that there are, on
28 average, 35.5 fewer crimes per 10,000 people in sanctuary counties—a result that is highly
statistically significant.").

Exhibit A

EXHIBIT A: LIST OF AMICI

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