
**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

CITY OF PHILADELPHIA

Plaintiff-Appellee,

v.

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

Defendant-Appellant.

On Appeal from the United States District Court for the
Eastern District of Pennsylvania – No. 17-cv-3894 (Baylson, J.)

**BRIEF OF AMICI CURIAE CURRENT AND FORMER PROSECUTORS
AND LAW ENFORCEMENT LEADERS IN SUPPORT OF
PLAINTIFF-APPELLEE 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 Plaintiff-Appellee.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 protecting local community needs and public safety.

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 essential to public safety, and sound police work as well as successful prosecutorial efforts are undermined by undocumented immigrants' and their communities' 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

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.

to come forward or cooperate with investigations and prosecutions, leading to more violence in the communities amici are and have been charged with protecting.

Amici believe that the conditions imposed on federal law enforcement grants under the Edward Byrne Memorial Justice Assistance Grant (“Byrne JAG”) program would dangerously impact local communities, both by requiring jurisdictions to prioritize civil immigration enforcement over public safety and by potentially stripping jurisdictions of funding for important public safety and community initiatives. Two of those conditions at issue on appeal—requiring at least 48 hours’ notice prior to the release of an individual in custody (“notice condition”),² and requiring that local jurisdictions provide immigration agents with unlimited access to detention facilities to inquire about immigration status (“access condition”)—seek to compel local involvement in immigration enforcement.

These requirements 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. The conditions 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

² The Government now represents that this condition requires notice only “as early as practicable.” *See* Br. of Appellant at 12.

are in the best position to know what policing and law enforcement policies work best for their communities.

Jurisdictions across the county rely heavily on Byrne JAG grants 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 preliminary injunction issued by the district court is necessary to halt the Justice Department’s attempt to force local law enforcement officers and agencies to engage in practices detrimental to public safety.

A full list of amici is attached as Exhibit A.

INTRODUCTION

The lessons amici have learned in protecting their communities shed important light on the issues raised in this case. 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, in such circumstances, 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 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.³ Many jurisdictions—whether via ordinance, administrative policy, or state law—limit the degree to which their officials may, for example, cooperate with ICE detainers in certain circumstances.⁴

The Byrne JAG conditions at issue in this appeal would upend these policies, to the detriment of community safety. The access and notification conditions seek to compel local jurisdictions to 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.

³ 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>.

⁴ 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 Polices*, Immigrant Legal Res. Ctr. (Mar. 21, 2017), available at <https://www.ilrc.org/detainer-policies> [hereinafter *ILRC Detainer Policies*].

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.”⁵ In order to stop crime, police officers “need the full cooperation of victims and witnesses.”⁶

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.⁷ 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.⁸ 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.

⁵ Statement of Tom Manger, *supra* note 3, at 2.

⁶ *Id.*

⁷ 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>.

⁸ *Id.*

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.⁹ 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.

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.¹⁰

⁹ *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/>.

¹⁰ 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.”).

These studies (among others) highlight 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.¹¹

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.¹² Those surveyed also indicated that the crimes underreported by immigrants are most often serious ones, with domestic violence and gang violence at the top.¹³ These trends have only worsened in recent months. According to the Houston Police Department, rape reporting by members of the Hispanic community fell by over 40 percent from the first quarter of 2016 to the same period in 2017, despite an overall *increase* in city-wide crime reports.¹⁴ Los Angeles, San Francisco, and San Diego also witnessed lagging sexual assault and domestic

¹¹ An estimated 85 percent 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 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.”).

¹² 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).

¹³ *Id.* at 188–89.

¹⁴ 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>.

violence reporting by Hispanic persons—but not other ethnic groups—in the first half of 2017.¹⁵ 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.”¹⁶ Philadelphia Police Commissioner Richard Ross recently echoed these concerns in sworn testimony.¹⁷

Immigrants’ widely recognized fear of interacting with law enforcement and prosecutors poses a fundamental challenge for 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, their loved ones, or their neighbors will face adverse immigration consequences. According to a recent national survey, law enforcement officers have seen an across-the-board decline in immigrant communities’ willingness to cooperate with law enforcement.¹⁸ As the president of the Major Cities

¹⁵ 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>.

¹⁶ *Id.*; see also Nat’l Immigrant Women’s Advocacy Project, *Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey*, at 99 (May 3, 2018), available at <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).

¹⁷ See *City of Philadelphia v. Sessions*, 309 F. Supp. 3d 289, 341 (E.D. Pa. 2018) (“Police 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.”).

¹⁸ *NIWAP Report*, *supra* note 16, at 101.

Chiefs Association has explained to Congress, “[c]ooperation is not forthcoming from persons who see their police as immigration agents.”¹⁹ And, as cautioned by one official, “immigrants will never help their local police to fight crime once they fear we have become immigration officers.”²⁰

The underreporting of crimes by recent immigrants is a problem for the entire criminal justice system.²¹ In a recent national survey, a majority of participating law enforcement officers reported that such barriers to cooperation have “le[d] to greater numbers of perpetrators at large,”²² thereby threatening officer safety and the safety of entire communities.²³ 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 multiplies,” and “[u]nresolved resentments grow in the community.”²⁴ Another added that the underreporting of crime “keeps fear at very high levels and diminishes quality of life.”²⁵ Even beyond the underreporting of crime, undocumented immigrant victims and witnesses may refuse to come to court to testify

¹⁹ Statement of Tom Manger, *supra* note 3, at 2.

²⁰ *Local Law Enforcement Leaders Oppose Mandates to Engage in Immigration Enforcement*, Nat’l Immigration Law Ctr., at 2 (Aug. 2013) (statement of Chief Acevedo), *available at* <https://www.nilc.org/wp-content/uploads/2017/02/Law-Enforcement-Opposition-to-Mandates-2013-08-30.pdf>.

²¹ Davis et al., *supra* note 12, at 188.

²² *NIWAP Report*, *supra* note 16, at 103.

²³ *Id.* at 104.

²⁴ Davis et al., *supra* note 12, at 188.

²⁵ *Id.*

in important criminal cases because of their fear of being detained and deported.

These concerns are anything but hypothetical. Over the past two years, the trends generating such concerns have escalated 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.”²⁶ An immigrant woman living in Texas learned that lesson all too 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.²⁷ In August 2017, federal agents detained an undocumented immigrant who had provided key testimony in two homicide cases.²⁸ And, weeks later, ICE agents arrested a victim

²⁶ 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.

²⁷ 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/>.

²⁸ 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>.

of domestic violence as he left a county courthouse.²⁹ The Immigrant Defense Project reports that the number of arrests or attempted arrests by ICE agents at courthouses throughout New York rose by a staggering 1200 percent from 2016 to 2017.³⁰

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.³¹ Denver prosecutors were forced to drop four domestic abuse cases when similar worries deterred the victims from testifying;³² in 2017, more than a dozen Latina women in Denver dropped their own civil cases against domestic abusers, citing fear of deportation.³³ 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

²⁹ 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>.

³⁰ Immigrant Defense Project, *ICE Out of Courts*, <https://www.immigrantdefenseproject.org/ice-courts/> (last accessed Sept. 28, 2018).

³¹ 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/>.

³² 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>.

³³ 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>.

on his way to school.³⁴ And a victim of domestic violence in New York City “did not think it was in her best interest” to pursue a protective order.³⁵ 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.

In response to these incidents, the chief justices of three state supreme courts have written to top federal authorities to emphasize that preserving trust with immigrant communities is essential to the administration of justice.³⁶ As Massachusetts Attorney General Maura Healey has explained, using local court systems as levers for

³⁴ 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.

³⁵ 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.

³⁶ 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>.

federal immigration enforcement “undercuts local law enforcement’s ability to develop the critical trust needed to keep communities safe.”³⁷

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.”³⁸ 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.³⁹ 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.⁴⁰ Respondents indicated that fewer than a quarter of these crimes were reported to the police, and *only one* was reported by the victim himself.⁴¹ And, in one especially horrific incident, a four-year-old girl suffered repeated sexual abuse at the hands of someone who threatened to cause her mother to be deported if the mother

³⁷ 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>.

³⁸ Statement of Tom Manger, *supra* note 3, at 2.

³⁹ Elizabeth Fussell, *The Deportation Threat Dynamic & Victimization of Latino Migrants: Wage Theft & Robbery*, 52 Soc. Q. 593, 610 (2011).

⁴⁰ 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).

⁴¹ *Id.* at 165.

reported her daughter's exploitation.⁴²

Undocumented immigrants are particularly 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.⁴³ Financial dependence on an abusive partner with stable immigration status may facilitate violence in this way.⁴⁴ 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.⁴⁵ In another study, immigration status was identified as the single largest factor independently affecting the rate at which battered Latina immigrants called the police.⁴⁶

⁴² 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>.

⁴³ See, e.g., Messing et al., *supra* note 11, 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 16, at 103 (noting that 69 percent of law enforcement officers surveyed had observed a decrease in domestic violence reporting).

⁴⁴ See, e.g., Messing et al., *supra* note 11, at 330.

⁴⁵ Reina, Lohman & Maldonado, *supra* note 43, at 600.

⁴⁶ 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).

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 the City of Philadelphia’s “welcoming city” policy—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.⁴⁷ Other policies include restrictions on local law enforcement inquiries or

⁴⁷ See Michael John Garcia & Kate M. Manuel, Cong. Research Serv., R43457, State and Local “Sanctuary” Policies Limiting Participation in 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*

investigations into a person’s immigration status or the gathering of such information at the local level.⁴⁸ Additionally, many jurisdictions have adopted policies against continued detention of an individual based on immigration detainer requests for at least some categories of noncitizens.⁴⁹ 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.⁵⁰

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.⁵¹ Requiring localities to provide notice of release and access to ICE officials to all facilities where any individual

<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.”).

⁴⁸ *See, e.g.*, DC Order, *supra* note 47 (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”).

⁴⁹ *See* S.F. Admin. Code § 12I.3(a) (forbidding law enforcement officials from “detain[ing] an individual on the basis of a civil immigration detainer after that individual becomes eligible for release from custody,” except in certain limited circumstances); *see also* Garcia & Manuel, *supra* 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 4; *ILRC Detainer Policies*, *supra* note 4.

⁵¹ *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.

is detained would have similar effects. Communities carefully allocate resources such as funds, training, and officer duties to serve local law enforcement needs most effectively; forced redistribution to immigration enforcement would siphon limited resources away from where they are most needed while simultaneously damaging community engagement and protection.⁵²

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 to locate the suspect by providing a description and vehicle information.⁵³ In Tucson, Arizona, an undocumented man confronted and 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.⁵⁴ These examples show why crime is lower in statistically significant ways in counties that limit local involvement in federal immigration enforcement, such as by

⁵² 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>.

⁵³ 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.

⁵⁴ *Id.*

declining to hold individuals in local custody simply because ICE requests it.⁵⁵

The Byrne JAG conditions at issue threaten 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 Byrne JAG grants in this way would also deter other communities from adopting trust-enhancing policies in the 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.

⁵⁵ 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-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.”).

CONCLUSION

For the foregoing reasons, as well as the reasons set forth in Plaintiff-Appellee's Brief, this Court should affirm the judgment of the district court.

October 11, 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 October 11, 2018 via this Court's ECF filing system, whereupon all counsel of record were served.

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Nicolas Y. Riley

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EXHIBIT A

EXHIBIT A: LIST OF AMICI*

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