

18-16496

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

STATE OF CALIFORNIA, *et al.*,

Defendants-Appellees.

On Appeal from the United States District Court for the
Eastern District of California – No. 18-cv-490 (Mendez, J.)

**BRIEF OF AMICI CURIAE CURRENT AND FORMER PROSECUTORS
AND LAW ENFORCEMENT LEADERS IN SUPPORT OF
DEFENDANTS-APPELLEES**

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City & Cty. of San Francisco v. Sessions, No. 17-cv-4642, 2018 WL 4859528 (N.D. Cal. Oct. 5, 2018) 4

City of Philadelphia v. Sessions, 309 F. Supp. 3d 289 (E.D. Pa. 2018) 8–9

Galarza v. Szalczyk, No. 10-cv-06815, 2012 WL 1080020 (E.D. Pa. Mar. 30, 2012)..... 16

Melendres v. Arpaio, 695 F.3d 990 (9th Cir. 2012) 18

Mendoza v. Osterberg, No. 13CV65, 2014 WL 3784141 (D. Neb. July 31, 2014)..... 16

Miranda-Olivares v. Clackamas Cnty., No. 12-cv-02317-ST, 2014 WL 1414305 (D. Or. Apr. 11, 2014)..... 16

Morales v. Chadbourne, 996 F. Supp. 2d 19 (D. R.I. 2014), *aff'd on appeal*, 793 F.3d 208 (1st Cir. 2015) 16

United States v. California, 314 F. Supp. 3d 1077 (E.D. Cal. 2018)..... 17–18

Uroza v. Salt Lake Cnty., No. 11CV713DAK, 2013 WL 653968 (D. Ut. Feb. 21, 2013) 17

Vobra v. United States, No. 04-cv-00972-DSF-RZ, 2010 U.S. Dist. LEXIS 34363 (C.D. Cal. Feb. 4, 2010), *adopted*, 2010 U.S. Dist. LEXIS 34088 (C.D. Cal. Mar. 29, 2010) 17

Villars v. Kubiатовski, 45 F. Supp. 3d 791 (N.D. Ill. 2014) 16

Statutes

Cal. Gov’t Code § 7282 et seq. 19

Cal. Gov’t Code § 7284 et seq. 2, 4, 16, 19

Cook County, IL Code § 46-37(b) 16

Or. Rev. Stat. Ann. § 181A.820 18

Other Authorities

American Immigration Council, *Immigrants in California* (2017) available at https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_california.pdf (2017)2

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 (2005)15

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.....10

Jacob Bucher, Michelle Manasse, & Beth Tarasawa, *Undocumented Victims: An Examination of Crimes Against Undocumented Male Migrant Workers*, 7 Sw. J. Crim. Just. 159 (2010)14

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>13

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>11

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>.....13

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 (2001) 7–10

Detainer Policies, Immigrant Legal Res. Ctr. (Mar. 21, 2017), available at <https://www.ilrc.org/detainer-policies>19

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> 13

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> 11

Elizabeth Fussell, *The Deportation Threat Dynamic & Victimization of Latino Migrants: Wage Theft & Robbery*, 52 Soc. Q. 593, 610 (2011) 14

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>..... 18–19

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> 12

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>..... 14

Immigrant Defense Project, *ICE Out of Courts*, <https://www.immigrantdefenseproject.org/ice-courts/> 11

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/> 11

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> 5, 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/>6

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) 17

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>..... 17

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>..... 19

Local Law Enforcement Leaders Oppose Mandates to Engage in Immigration Enforcement, Nat’l Immigration Law Ctr. (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>..... 9

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) 7, 14–15

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/> 11

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>..... 8

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* (May 3, 2018), *available at* <http://library.niwap.org/wp-content/uploads/Immigrant-Access-to-Justice-National-Report.pdf> 8–10, 15

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 (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>.....4–5, 9, 13

Phoenix, AZ, Police Dep’t Operations Order Manual (Jan. 2011) available at <https://www.phoenix.gov/policesite/Documents/089035.pdf>18

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> 8

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>13

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 (2013) 14–15

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>..... 12

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.....12

Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement* 5-6 (May 2013), available at http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF 6

Washington, DC, Mayor’s Order 2011-174: Disclosure of Status of Individuals: Policies and Procedures of District of Columbia Agencies (Oct. 19, 2011) available at <https://www.scribd.com/document/69470234/Disclosure-Status-of-Individuals-D-C>..... 18–19

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 19–20

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 12

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/> 20

Tom K. Wong, *Sanctuary Cities Don’t ‘Breed Crime.’ They Encourage People to Report Crime.*, Wash. Post., Apr. 24, 2018, <https://www.washingtonpost.com/news/monkey-cage/wp/2018/04/24/sanctuary-cities-dont-breed-crime-they-encourage-people-to-report-crime> 7

INTEREST AND IDENTITY OF AMICI CURIAE

Amici Current and Former Prosecutors and Law Enforcement Leaders file this brief as Amici Curiae in support of Defendants.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 to come forward or cooperate with investigations and prosecutions, leading to more

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.

violence in the communities amici are and have been charged with protecting. In the State of California, where more than a quarter of the population are immigrants,² these problems have a particularly profound impact.

Amici believe that enjoining Senate Bill 54, commonly known as the “California Values Act,” Cal. Gov’t Code § 7284 *et seq.* (“SB 54”), would precariously impact public safety in California. By ensuring that jurisdictions throughout the state uniformly prioritize public safety over civil immigration enforcement, SB 54 aims to reduce fear and uncertainty in California communities regarding engagement with law enforcement and preserve limited state and local resources.

Local involvement in immigration enforcement, including honoring transfer requests or civil detainers—requests from Immigration and Customs Enforcement (“ICE”) to hold an individual in local governmental custody to allow ICE to take the individual into federal custody—or providing information about release dates and custody status, causes community members to distrust the police and justice system officials. This dwindling of trust results in a decrease in cooperation, hindering the ability of local law enforcement and local prosecutors to keep their communities safe. Such involvement also drains scarce resources that would otherwise be used to enhance public safety measures. SB 54 ensures that localities throughout the state will refrain

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

from adopting certain policies that could jeopardize public safety in their own and neighboring jurisdictions, or that could subject them to liability for unconstitutional practices.

Amici believe that the injunction sought by the federal government is misguided and would eliminate important public safety protections established by the State of California after having carefully evaluated the needs of its residents.

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.

SB 54 is one of many policies designed to address this issue of trust by limiting local and state involvement in federal immigration enforcement. Under SB 54, local law enforcement entities cannot ask an individual about his or her immigration status for

immigration enforcement purposes, cannot hold individuals past their release dates pursuant to a warrantless detainer request, and are limited in providing release date information for individuals or transferring such individuals in local custody.³ Like similar policies, SB 54 aims to preserve state and local resources and improve public safety by promoting cooperation between law enforcement and the communities they serve.⁴ SB 54's uniform approach enhances its effectiveness by reducing the fear and confusion that exist when neighboring jurisdictions employ varying practices that the public does not fully understand.

The injunction sought by the federal government, if granted, would upend important protections the State of California has deemed necessary for its residents at a time when federal immigration enforcement practices have exacerbated the already-challenging task of cultivating trust between immigrant communities and local law enforcement. *See City & Cty. of San Francisco v. Sessions*, No. 17-cv-4642, 2018 WL 4859528, at *15 (N.D. Cal. Oct. 5, 2018) (recognizing that “[t]he harm that entanglement with enforcement does to community trust is more than theoretical”).

³ Cal. Gov't Code § 7284 *et seq.*

⁴ *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>.

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 *Id.* 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 And a recent survey of

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.”).

undocumented individuals in San Diego County found that if local law enforcement officials were working together with ICE, 60.8 percent of survey respondents would be less likely to report a crime they witnessed, and 42.9 percent would be less likely to report being a victim of a crime.¹¹

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.¹²

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.¹³ Those surveyed also indicated that the crimes underreported by immigrants are most often serious ones, with domestic

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

¹² 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.”).

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

violence and gang violence at the top.¹⁴ These trends have only worsened in recent months. According to the Houston Police Department, rape reporting by members of the Hispanic community fell over 40 percent from the first quarter of 2016 to the same period in 2017, despite an overall *increase* in city-wide crime reports.¹⁵ Los Angeles, San Francisco, and San Diego also witnessed lagging sexual assault and domestic violence reporting by Hispanic persons—but not other ethnic groups—in the first half of 2017.¹⁶ 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.”¹⁷ Philadelphia Police Commissioner Richard Ross recently echoed these concerns in sworn testimony.¹⁸

¹⁴ *Id.* at 188–89.

¹⁵ 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>.

¹⁶ 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>.

¹⁷ *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).

¹⁸ 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.”).

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.¹⁹ As the president of the Major Cities Chiefs Association has explained to Congress, “[c]ooperation is not forthcoming from persons who see their police as immigration agents.”²⁰ And, as cautioned by one official, “immigrants will never help their local police to fight crime once they fear we have become immigration officers.”²¹

The underreporting of crimes by recent immigrants is a problem for the entire criminal justice system.²² 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,”²³ thereby threatening officer safety and the safety of

¹⁹ *NIWAP Report*, *supra* note **Error! Bookmark not defined.**, at 101.

²⁰ Statement of Tom Manger, *supra* note 4, at 2.

²¹ *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>.

²² Davis et al., *supra* note 13, at 188.

²³ *NIWAP Report*, *supra* note **Error! Bookmark not defined.**, at 103.

entire communities.²⁴ 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.”²⁵ Another added that the underreporting of crime “keeps fear at very high levels and diminishes quality of life.”²⁶ Even beyond the underreporting of crime, undocumented immigrant victims and witnesses may refuse to come to court to testify in important criminal cases because of their fear of being detained and deported.

These concerns are anything but hypothetical. Over the past 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.”²⁷ An immigrant woman living in Texas learned that lesson all too perversely when she arrived at a courthouse seeking a protective order against her

²⁴ *Id.* at 104.

²⁵ Davis et al., *supra* note 13, at 188.

²⁶ *Id.*

²⁷ 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-a5314b56a08_story.html.

abusive boyfriend, only to leave under arrest—likely due to a tip from her abuser.²⁸ In August 2017, federal agents detained an undocumented immigrant who had provided key testimony in two homicide cases.²⁹ And weeks later, ICE agents arrested a victim of domestic violence as he left a county courthouse.³⁰ 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 2017.³¹

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.³² Denver prosecutors were forced to drop four domestic abuse cases when similar worries

²⁸ 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/>.

²⁹ 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>.

³⁰ 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>.

³¹ Immigrant Defense Project, *ICE Out of Courts*, <https://www.immigrantdefenseproject.org/ice-courts/> (last accessed Sept. 28, 2018).

³² 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/>.

deterred the victims from testifying;³³ in 2017, more than a dozen Latina women in Denver dropped their own civil cases against domestic abusers, citing fear of deportation.³⁴ An immigrant mother in New Jersey, fearing that interaction with the court system could trigger removal, declined to report that her son had been assaulted on his way to school.³⁵ And a victim of domestic violence in New York City “did not think it was in her best interest” to pursue a protective order.³⁶ 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 top federal authorities to emphasize that preserving trust with immigrant

³³ 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>.

³⁴ 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>.

³⁵ 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.

³⁶ 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.

communities is essential to the administration of justice.³⁷ As the Chief Justice of California has explained, enforcement policies that include arresting immigrants at courthouses, “the vast majority of whom pose no risk to public safety, are neither safe nor fair.”³⁸ Other leaders around the country have stated that using local court systems as levers for federal immigration enforcement “undercuts local law enforcement’s ability to develop the critical trust needed to keep communities safe.”³⁹

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.”⁴⁰ This phenomenon has been termed the “deportation threat dynamic,” whereby individuals who fear removal from

³⁷ 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>.

³⁸ Cantil-Sakauye Letter, *supra* note 33.

³⁹ 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> (citing Massachusetts Attorney General Maura Healey).

⁴⁰ Statement of Tom Manger, *supra* note 4, at 2.

the United States do not report the crimes they suffer.⁴¹ 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.⁴² Respondents indicated that fewer than a quarter of these crimes were reported to the police, and *only one* was reported by the victim himself.⁴³ 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 reported her daughter's exploitation.⁴⁴

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.⁴⁵ Financial dependence on an

⁴¹ Elizabeth Fussell, *The Deportation Threat Dynamic & Victimization of Latino Migrants: Wage Theft & Robbery*, 52 Soc. Q. 593, 610 (2011).

⁴² 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).

⁴³ *Id.* at 165.

⁴⁴ 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>.

⁴⁵ See, e.g., Messing et al., *supra* note 12, 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;

abusive partner with stable immigration status may facilitate violence in this way.⁴⁶ 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.⁴⁷ In another study, immigration status was identified as the single largest factor independently affecting the rate at which battered Latina immigrants called the police.⁴⁸

SB 54 aims to improve public safety by reducing fear of immigration enforcement and promoting cooperation between law enforcement and the communities they serve. Moreover, in a state where more than a quarter of its residents are immigrants, statewide uniformity enhances the impact of individual communities' policies by reducing the uncertainty and fear created when localities adopt varying approaches to immigration enforcement requests.

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

see also NIWAP Report, supra note Error! Bookmark not defined., at 103 (noting that 69 percent of law enforcement officers surveyed had observed a decrease in domestic violence reporting).

⁴⁶ *See, e.g.,* Messing et al., *supra* note 12, at 330.

⁴⁷ Reina, Lohman, & Maldonado, *supra* note 45, at 600.

⁴⁸ 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).

In limiting local and state involvement in federal immigration enforcement, many jurisdictions aim to enhance community trust and preserve local resources. As the California legislature understood, “[a] relationship of trust between [the] immigrant community and state and local agencies is central to the public safety.”⁴⁹ That “trust is threatened,” however, “when state and local agencies are entangled with federal immigration enforcement.”⁵⁰

Policies like SB 54 improve public safety by promoting cooperation between law enforcement and the communities they serve. Many states and localities have sought to limit local involvement in immigration enforcement by prohibiting local law enforcement from providing release date information or holding individuals after their release date based on an ICE detainer request for purposes of transfer to ICE custody.⁵¹

⁴⁹ Cal. Gov’t Code § 7284.2(b).

⁵⁰ *Id.* § 7284.2(c).

⁵¹ *See, e.g.*, Cook County, IL Code § 46-37(b): Policy for Responding to ICE Detainers. Under long-standing Fourth Amendment precedent, numerous federal courts have found that continued detention under an ICE detainer gives rise to a claim for a violation of the Fourth Amendment, and subjects the detaining officer or jurisdiction to civil liability. *See Morales v. Chadbourne*, 996 F. Supp. 2d 19, 29 (D. R.I. 2014), *aff’d on appeal*, 793 F.3d 208 (1st Cir. 2015) (plaintiff stated Fourth Amendment claim where she was held for 24 hours on ICE detainer issued without probable cause); *Galarza v. Szalczysk*, No. 10-cv-06815, 2012 WL 1080020, at *10, *13 (E.D. Pa. Mar. 30, 2012) (plaintiff stated a Fourth Amendment claim against both federal and local defendants where he was held for 3 days after posting bail based on an ICE detainer), *rev’d on other grounds*, 745 F.3d 634 (3d Cir. 2014); *Miranda-Olivares v. Clackamas Cnty.*, No. 12-cv-02317-ST, 2014 WL 1414305, at *10 (D. Or. Apr. 11, 2014) (plaintiff’s detention on an ICE detainer after she would otherwise have been released “constituted a new arrest, and must be analyzed under the Fourth Amendment”); *Mendoza v. Osterberg*, No. 13CV65, 2014 WL 3784141, at *6 (D. Neb. July 31, 2014) (recognizing that “[t]he

Eliminating these protections would substantially undermine important public safety efforts. As the court below recognized, “[e]ven perceived collaboration with immigration enforcement could upset the balance California aims to achieve.”⁵²

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.⁵³ 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

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. Kubiatski*, 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); *Vobra v. United States*, No. 04-cv-00972-DSF-RZ, 2010 U.S. Dist. LEXIS 34363, at *25 (C.D. Cal. Feb. 4, 2010) (magistrate’s report and recommendation) (“Plaintiff was kept in formal detention for at least several hours longer due to the ICE detainer. In plain terms, he was subjected to the functional equivalent of a warrantless arrest” to which the “‘probable cause’ standard . . . applies”), *adopted*, 2010 U.S. Dist. LEXIS 34088 (C.D. Cal. Mar. 29, 2010).⁵² *United States v. California*, 314 F. Supp. 3d 1077, 1108 (E.D. Cal. 2018).

⁵³ 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.

simultaneously damaging community engagement and protection.⁵⁴ It is “entirely reasonable for the State to determine that assisting immigration enforcement in any way . . . is a detrimental use of state law enforcement resources.”⁵⁵

Policies limiting local law enforcement involvement in federal immigration matters are not limited to California, and the policies embedded in SB 54 and challenged in this suit can be found in jurisdictions around the country. 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.⁵⁶ Other policies

⁵⁴ 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>.

⁵⁵ *California*, 314 F. Supp. at 1108.

⁵⁶ 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/homesec/R43457.pdf>; see also Or. Rev. Stat. Ann. § 181A.820 (“No law enforcement agency of the State of Oregon or of any political subdivision of the state shall use agency moneys, equipment or personnel for the purpose of detecting or apprehending persons whose only violation of law is that they are persons of foreign citizenship present in the United States in violation of federal immigration laws.”); Washington, DC, Mayor’s Order 2011-174: Disclosure of Status of Individuals: Policies and Procedures of District of Columbia Agencies, at 2 (Oct. 19, 2011) (“No person shall be detained solely on the belief that he or she is not present legally in the United States or that he or she has committed a civil immigration violation.”), *available at* <https://www.scribd.com/document/69470234/Disclosure-Status-of-Individuals-D-C> [hereinafter DC Order]; Phoenix, AZ, Police Dep’t Operations Order Manual, at 1.4 (Jan. 2011) (“The investigation and enforcement of federal laws relating to illegal entry and residence in the United States is specifically assigned to [Immigration and Customs Enforcement within DHS].”), *available at* <https://www.phoenix.gov/policesite/Documents/089035.pdf>; see also *Melendres v.*

include restrictions on local law enforcement inquiries or investigations into a person's immigration status or the gathering of such information at the local level.⁵⁷ Additionally, many jurisdictions have adopted policies against continued detention of an individual based on immigration detainer requests for at least some categories of noncitizens.⁵⁸ 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.⁵⁹

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

Arpaio, 695 F.3d 990, 1001 (9th Cir. 2012) (“[The sheriff] may not detain individuals solely because of unlawful presence.”).

⁵⁷ See, e.g., DC Order, *supra* note 56 (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”).

⁵⁸ Garcia & Manuel, *supra* note 56, at 14.

⁵⁹ 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>; *Detainer Polices*, Immigrant Legal Res. Ctr. (Mar. 21, 2017), *available at* <https://www.ilrc.org/detainer-policies>. The California TRUST Act, Cal. Gov’t Code § 7282 *et seq.*, enacted in 2013, placed limitations on local jurisdictions’ compliance with detainer requests. SB 54, recognizing that many courts have held that ICE detainers can give rise to Fourth Amendment violations, prohibits detention on the basis of a detainer request. *Id.* §§ 7284.2(e), 7284.6(a)(1)(b).

description and vehicle information.⁶⁰ 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.⁶¹ These examples show why crime is lower in statistically significant ways in counties that limit local involvement in federal immigration enforcement, as by declining to hold individuals in local custody simply because ICE requests it.⁶²

The injunction sought by the federal government would disrupt the California legislature's effort to ensure that immigrants do not fear interactions with local law enforcement or face unconstitutional treatment, and that jurisdictions within the state do not divert resources from effective public safety efforts. In short, eliminating SB 54's protections would send a dangerous signal to witnesses and victims within immigrant communities: cooperate with local law enforcement at your own risk.

⁶⁰ 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.

⁶¹ *Id.*

⁶² 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 Appellees' Brief, this Court should affirm the district court's judgment declining to enjoin SB 54.

November 12, 2018

Respectfully Submitted,
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CERTIFICATE OF SERVICE

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

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CERTIFICATE OF COMPLIANCE

I certify that this document complies with the type-volume limitation set forth in Federal Rules of Appellate Procedure 29(a)(5) & 32(a)(7)(B) because it contains 5,250 words, exclusive of the portions of the brief that are exempted by Rule 32(f).

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

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