

18-17308; 18-17311

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CITY AND COUNTY OF SAN FRANCISCO,

Plaintiff-Appellee,

v.

WILLIAM P. BARR, *et al.*,

Defendants-Appellants.

STATE OF CALIFORNIA *ex rel.*
XAVIER BECERRA, Attorney General,

Plaintiff-Appellee,

v.

WILLIAM P. BARR, *et al.*,

Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of California

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

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INTEREST AND IDENTITY OF AMICI CURIAE

Amici Current and Former Prosecutors and Law Enforcement Leaders file this brief as Amici Curiae in support of Plaintiffs-Appellees.¹ Amici are criminal justice leaders who have extensive expertise in law enforcement, prosecution, and cooperative federal-state law enforcement activities. They are intimately familiar with the challenges of performing critical law enforcement and governance functions in communities where immigrants fear the police and are vulnerable to exploitation and crime. Amici represent jurisdictions from across the country that understand the challenges of 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 the conditions imposed on federal law enforcement grants under the Edward Byrne Memorial Justice Assistance Grant (“Byrne JAG”) and Community Oriented Policing Services (“COPS”) programs would dangerously impact local communities, both by requiring jurisdictions to prioritize civil immigration enforcement over public safety and by threatening to strip jurisdictions of funding for important public safety and community initiatives. Two of the conditions attached to Byrne JAG grants—requiring advance notice prior to the release of an individual in custody (“notice condition”), 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

² American Immigration Council, *Immigrants in California*, at 1 (2017), available at <https://perma.cc/2S6H-VTYF> (in 2015 immigrants comprised 27.3 percent of California’s population).

discretion necessary to determine how best to protect their communities. Local officials are in the best position to know what policing and law enforcement policies work best for their communities.

Jurisdictions across the county rely heavily on Byrne JAG and COPS 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 urge the Court to halt Defendants’ attempt to force local law enforcement officers and agencies into practices that would result in decreased 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 Defendants-Appellants would upend these policies by conditioning federal law enforcement grants on participation in federal immigration enforcement, to the detriment of public safety.

The injunction sought by Plaintiffs-Appellees would safeguard protections deemed necessary for state and local 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 State of New York v. Dep't of Justice*, 343 F. Supp. 3d 213, 243–44 (S.D.N.Y. 2018) (“Plaintiffs have . . .

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 <https://perma.cc/SKM2-QKV9>.

⁴ *See* Jasmine C. Lee, Rudy Omri, & Julia Preston, *What Are Sanctuary Cities?*, N.Y. Times, Feb. 6, 2017, <https://perma.cc/TKU3-6USJ>; *Detainer Policies*, Immigrant Legal Res. Ctr. (Mar. 21, 2017), available at <https://perma.cc/6ET7-9KXM> [hereinafter *ILRC Detainer Policies*].

demonstrated that complying with the unlawful conditions would undermine trust between immigrant communities and local government, which would discourage individuals from reporting crimes [and] cooperating with investigations . . . thereby harming public safety and welfare.”); *City & Cty. of San Francisco v. Sessions*, 349 F. Supp. 3d 924, 951 (N.D. Cal. 2018) (recognizing that “[t]he harm that entanglement with enforcement does to community trust is more than theoretical”).

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 commonsense 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

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://perma.cc/KL5A-EQWR>.

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.

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

⁸ *Id.*

⁹ *Latinos and the New Trump Administration*, Pew Research Ctr.: Hispanic Trends, Feb. 23, 2017, <https://perma.cc/65NM-QAQT>.

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 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

¹⁰ Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement* 5-6 (May 2013), available at <https://perma.cc/XEE8-P42V>; 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.”).

¹¹ Tom K. Wong, *Sanctuary Cities Don’t ‘Breed Crime.’ They Encourage People to Report Crime.*, Wash. Post., Apr. 24, 2018, <https://perma.cc/EDW3-9SEQ>.

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.”).

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 violence and gang violence at the top.¹⁴

These trends have only worsened in recent months.¹⁵ 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.¹⁶ 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 2017.¹⁷ 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.”¹⁸ Denver City

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).

¹⁴ *Id.* at 188-89.

¹⁵ See Cora Engelbrecht, *Fewer Immigrants Are Reporting Domestic Abuse. Police Blame Fear of Deportation.*, N.Y. Times, June 3, 2018, <https://perma.cc/Q4HN-N5BX>.

¹⁶ 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://perma.cc/J2QH-AWV7>.

¹⁷ James Queally, *Fearing Deportation, Many Domestic Violence Victims Are Steering Clear of Police and Courts*, L.A. Times, Oct. 9, 2017, <https://perma.cc/QR2S-FKX7>.

¹⁸ *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 <https://perma.cc/52MV-X8TG> [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).

Attorney Kristin Bronson has similarly claimed that victims and witnesses “are not showing up [in court] because they’re afraid that they might get apprehended in the hallways.”¹⁹ Philadelphia Police Commissioner Richard Ross recently echoed these concerns in sworn testimony.²⁰

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.²¹ 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.”²² And, as cautioned by one official,

¹⁹ Hannah Rappleve et al., *Immigration Crackdown Makes Women Afraid to Testify Against Abusers, Experts Warn*, NBC News, Sept. 22, 2018, <https://perma.cc/UB6S-RTE7>.

²⁰ 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.”); see also Bret Hauff, *ICE Targets Immigrants at La Plata County Courthouse*, Durango Herald, Mar. 23, 2019, <https://perma.cc/8RFS-3YMW> (explaining that the tactic of courthouse arrests “deters people from making reports; it deters people from coming in”) (quoting Colorado 6th Judicial District Chief Judge Jeffery Wilson).

²¹ *NIWAP Report*, *supra* note 18, at 101.

²² Statement of Tom Manger, *supra* note 3, at 2.

“immigrants will never help their local police to fight crime once they fear we have become immigration officers.”²³

The underreporting of crimes by recent immigrants is a problem for the entire criminal justice system.²⁴ 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,”²⁵ thereby threatening officer safety and the safety of entire communities.²⁶ 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.”²⁷ Another added that the underreporting of crime “keeps fear at very high levels and diminishes quality of life.”²⁸ 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

²³ *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://perma.cc/Z63G-YUPS>.

²⁴ Davis et al., *supra* note 13, at 188.

²⁵ *NIWAP Report*, *supra* note 18, at 103.

²⁶ *Id.* at 104.

²⁷ Davis et al., *supra* note 13, at 188.

²⁸ *Id.*

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.”²⁹ 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.³⁰ In August 2017, federal agents detained an undocumented immigrant who had provided key testimony in two homicide cases.³¹ And weeks later, ICE agents arrested a victim of domestic violence as he left a county courthouse.³² The Immigrant Defense Project reports that annual sightings of ICE agents at courthouses throughout New York (including for purposes of arrest) rose by a staggering 1700 percent from 2016 to 2018.³³

Precisely because victims and witnesses fear similar treatment from immigration authorities, some violent crimes have gone unreported, and pending prosecutions have

²⁹ Devlin Barrett, *DHS: Immigration Agents May Arrest Crime Victims, Witnesses at Courthouses*, Wash. Post, Apr. 4, 2017, <https://perma.cc/XUM9-99FX>.

³⁰ Katie Mettler, *“This Is Really Unprecedented”: ICE Detains Woman Seeking Domestic Abuse Protection at Texas Courthouse*, Wash. Post, Feb. 16, 2017, <https://perma.cc/33UE-WC85>.

³¹ 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, <https://perma.cc/SBH8-BUGH>.

³² Steve Coll, *When a Day in Court Is a Trap for Immigrants*, New Yorker, Nov. 8, 2017, <https://perma.cc/VMT5-75M5>.

³³ Immigrant Defense Project, *The Courthouse Trap: How ICE Operations Impacted New York’s Courts in 2018*, at 6, available at <https://perma.cc/E6V8-3VZL>.

disappeared from courts' dockets. A Texas district attorney confirmed that a victim of domestic violence had become uncooperative because she feared deportation.³⁴ Denver prosecutors have been forced to drop 30 domestic abuse cases for similar reasons,³⁵ and in 2017, more than a dozen Latina women in Denver dropped their own civil cases against domestic abusers, citing fear of deportation.³⁶ 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.³⁷ And a victim of domestic violence in New York City “did not think it was in her best interest” to pursue a protective order.³⁸ 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—including the Supreme Court of California—have written top federal authorities to

³⁴ Philip Jankowski, *Deportation Fears Keep Victim from Cooperating in Domestic Violence Case, Travis DA Says*, The Statesman (Austin), Mar. 8, 2017, <https://perma.cc/9AYX-5FQP>.

³⁵ Rappleye et al., *supra* note 19.

³⁶ Sarah Stillman, *When Deportation Is a Death Sentence*, New Yorker, Jan. 15, 2018, <https://perma.cc/TK4U-FKMY>.

³⁷ S.P. Sullivan, *Advocates Say ICE Courthouse Arrests in N.J. Are Hurting Immigrant Crime Victims*, NJ, June 5, 2017, <https://perma.cc/8VQW-TYD7>.

³⁸ Emma Whitford, *Courthouse ICE Arrests Are Making Immigrants 'Sitting Ducks,' Lawyers Warn*, Gothamist, June 22, 2017, <https://perma.cc/XJT4-YQ4D>.

emphasize that preserving trust with immigrant communities is essential to the administration of justice.³⁹ 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.”⁴⁰ Seventy-five former state and federal judges recently wrote to ICE’s Acting Director to explain that “our justice system cannot function effectively . . . if victims, defendants, witnesses, and family members do not feel secure in accessing the courthouse.”⁴¹ And other leaders around the country have asserted 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.”⁴²

Distrust between immigrants and law enforcement also results in greater victimization of immigrants. “When immigrants come to view their local police and

³⁹ 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* <https://perma.cc/9C8T-QVET>; 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://perma.cc/6358-7Z3H>; 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://perma.cc/M2QA-FJYD>.

⁴⁰ Cantil-Sakauye Letter, *supra* note 39.

⁴¹ Letter from Seventy-Five Former State and Federal Judges to Ronald D. Vitiello, Acting Director of ICE (Dec. 12, 2018), *available at* <https://perma.cc/LJE2-94P7>.

⁴² Maria Cramer, *ICE Courthouse Arrests Worry Attorneys, Prosecutors*, Boston Globe, June 16, 2017, <https://perma.cc/VZZ9-J7WE> (quoting Massachusetts Attorney General Maura Healey).

sheriffs with distrust because they fear deportation, it creates conditions that encourage criminals to prey upon victims and witnesses alike.”⁴³ 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.⁴⁴ 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.⁴⁵ Respondents indicated that fewer than a quarter of these crimes were reported to the police, and *only one* was reported by the victim himself.⁴⁶ 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.⁴⁷

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.⁴⁸ Financial dependence on an

⁴³ Statement of Tom Manger, *supra* note 3, at 2.

⁴⁴ Elizabeth Fussell, *The Deportation Threat Dynamic & Victimization of Latino Migrants: Wage Theft & Robbery*, 52 Soc. Q. 593, 610 (2011).

⁴⁵ 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).

⁴⁶ *Id.* at 165.

⁴⁷ Matthew Haag, *Texas Deputy Accused of Molesting 4-Year-Old and Threatening to Deport Her Mother*, N.Y. Times, June 18, 2018, <https://perma.cc/T3ZZ-QA3E>.

⁴⁸ 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

abusive partner with stable immigration status may facilitate violence in this way.⁴⁹ 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.⁵⁰ In another study, immigration status was identified as the single largest factor independently affecting the rate at which battered Latina immigrants called the police.⁵¹

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

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.”⁵² That “trust is

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 18, at 103 (noting that 69 percent of law enforcement officers surveyed had observed a decrease in domestic violence reporting).

⁴⁹ *See, e.g.*, Messing et al., *supra* note 12, at 330.

⁵⁰ Reina, Lohman, & Maldonado, *supra* note 48, at 600.

⁵¹ 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).

⁵² Cal. Gov’t Code § 7284.2(b).

threatened,” however, “when state and local agencies are entangled with federal immigration enforcement.”⁵³

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.⁵⁴ Other policies—such as those codified in California’s Values Act and San Francisco’s Administrative Code—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.⁵⁵ Additionally, many jurisdictions have adopted policies

⁵³ *Id.* § 7284.2(c).

⁵⁴ 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://perma.cc/MK4U-C3FD>; 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://perma.cc/L9BR-KS7B> [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://perma.cc/6ZJE-BGBW>; see also *Melendres v. Arpaio*, 695 F.3d 990, 1001 (9th Cir. 2012) (“[The sheriff] may not detain individuals solely because of unlawful presence.”).

⁵⁵ See Cal. Gov’t Code § 7284.6(a)(1)(A) (prohibiting California law enforcement agencies from “[u]s[ing] agency or department moneys or personnel to . . . [i]nquir[e]

against continued detention of an individual based on immigration detainer requests for at least some categories of noncitizens.⁵⁶ 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.⁵⁷ California’s TRUTH Act also ensures that individuals in local law enforcement custody will be informed that any interview with ICE agents is voluntary and may be conducted with an attorney present.⁵⁸ And its Confidentiality Statutes aim to “protect the public from crime and violence by encouraging all persons who are victims of or witnesses to crimes . . . to cooperate with the criminal justice system and not to penalize these persons.”⁵⁹ Eliminating these protections would substantially undermine important public safety efforts. As one federal district court recognized, “[e]ven perceived collaboration with

into an individual’s immigration status”); S.F. Admin. Code § 12H.2(d) (prohibiting all agencies and agents of the City and County of San Francisco from including on certain governmental forms “any question regarding immigration status other than those required by Federal or State statute, regulation, or court decision”); *see also, e.g.*, DC Order, *supra* note 54 (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”).

⁵⁶ *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 54, at 14.

⁵⁷ *See* Cal. Gov’t Code § 7284.6(a)(1)(B) (prohibiting local law enforcement agencies from “[u]sing agency or department moneys or personnel to . . . [d]etain an individual on the basis of a hold request”); *see also* Lee, Omri, & Preston, *supra* note 4; *ILRC Detainer Policies*, *supra* note 4.

⁵⁸ Cal. Gov’t Code § 7283.1(a).

⁵⁹ Cal. Penal Code § 422.93(a).

immigration enforcement could upset the balance California aims to achieve.”⁶⁰

These policies also play an important role in preserving local law enforcement resources. In the words of California’s Values Act, “[e]ntangling state and local agencies with federal immigration enforcement programs diverts already limited resources.”⁶¹ For example, complying with ICE detainer requests can add staggering costs—in some cases, tens of millions of dollars annually.⁶² Requiring localities to provide notice of release and access to ICE officials to all facilities where any individual 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.⁶³ 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.”⁶⁴

Recent incidents in localities with policies limiting local involvement in federal

⁶⁰ *United States v. California*, 314 F. Supp. 3d 1077, 1108 (E.D. Cal. 2018).

⁶¹ Cal. Gov’t Code § 7284.2(d).

⁶² 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 <https://perma.cc/M39D-JDYG>.

⁶³ See Letter from Law Enforcement Task Force to Hon. Trey Gowdy and Hon. Zoe Lofgren (July 20, 2015), available at <https://perma.cc/V7MX-VCAF>.

⁶⁴ *California*, 314 F. Supp. 3d at 1108.

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.⁶⁵ 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.⁶⁶ 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.⁶⁷

The challenged conditions on Byrne JAG and COPS funds threaten to divert jurisdictions' resources from effective public safety efforts and to disrupt many communities' efforts to ensure that immigrants do not fear interactions with local law enforcement. Conditioning federal grants in this way would also deter other communities from adopting trust-enhancing policies in the future. In short, forcing

⁶⁵ Chuck Wexler, *Commentary: Why Police Support Sanctuaries*, Phila. Inquirer, Mar. 10, 2017, <https://perma.cc/42H2-5E7U>.

⁶⁶ *Id.*

⁶⁷ See Tom K. Wong, *The Effects of Sanctuary Policies on Crime and the Economy*, Center for American Progress (Jan. 26, 2017), *available at* <https://perma.cc/H47S-PC6P> (“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.”).

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

CONCLUSION

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

May 28, 2019

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 May 28, 2019 via this Court's ECF filing system, whereupon all counsel of record were served.

/s/ Nicolas Y. Riley

Nicolas Y. Riley

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 5,194 words, exclusive of the portions of the brief that are exempted by Rule 32(f).

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