

Nos. 20-2754, 20-2755

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

COUNTY OF OCEAN, et al.,

Plaintiffs-Appellants,

v.

GURBIR S. GREWAL, in his official capacity as Attorney General of the State of
New Jersey, et al.,

Defendants-Appellees.

ROBERT A. NOLAN, in his official capacity as Cape May County Sherriff, et al.,

Plaintiffs-Appellants,

v.

GURBIR S. GREWAL, in his official capacity as Attorney General of the State of
New Jersey, et al.,

Defendants-Appellees.

On Appeal from the United States District Court for the
District of New Jersey – No. 3:19-cv-18083 (Wolfson, C.J.)

**BRIEF OF AMICI CURIAE CURRENT AND FORMER PROSECUTORS
AND LAW ENFORCEMENT LEADERS AND FORMER ATTORNEYS
GENERAL AND DEPARTMENT OF JUSTICE OFFICIALS IN SUPPORT
OF DEFENDANTS-APPELLEES AND FOR AFFIRMANCE**

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INTEREST AND IDENTITY OF AMICI CURIAE

Amici Current and Former Prosecutors and Law Enforcement Leaders, and Former Attorneys General and U.S. Department of Justice Officials, file this brief as Amici Curiae in support of Defendants-Appellees (“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 when undocumented immigrants and their communities fear interacting with law enforcement and the justice system. This dynamic leaves undocumented immigrants more vulnerable to crime and exploitation, and undocumented immigrant victims less likely to come forward or

¹ 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.

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

Amici believe that the challenged provisions of New Jersey's Immigrant Trust Directive advance these vital law enforcement objectives. With these measures, New Jersey has opted not to facilitate federal removal actions, and it has chosen to inform detained individuals of developments that could implicate their legal rights. Invalidating two core provisions of the Immigrant Trust Directive at the behest of Plaintiffs-Appellants ("Plaintiffs") would cause community members to distrust the police and justice system officials, thereby decreasing cooperation and hindering the ability of local law enforcement and local prosecutors to keep their communities safe. Entangling these essential functions with federal immigration enforcement would also drain scarce resources otherwise allocated to improving public safety. This redistribution, in turn, would deprive local law enforcement and justice system leaders of the discretion necessary to determine how best to protect their communities.

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 dynamic poses a major challenge to both the investigation and prosecution of individual crimes as well as 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.² 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.³

New Jersey's Immigrant Trust Directive fosters trust between immigrant communities and local law enforcement at a time when federal immigration

² 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*, 114th Cong. 2 (July 21, 2015) (statement of Tom Manger, Chief, Montgomery Cty., Md., Police Dep't & President, Major Cities Chiefs Ass'n) [hereinafter Statement of Tom Manger], <https://perma.cc/SKM2-QKV9>.

³ See Jasmine C. Lee et al., *What Are Sanctuary Cities?*, N.Y. Times, Feb. 6, 2017, <https://perma.cc/TKU3-6USJ>; Lena Graber & Krsna Avila, *Growing the Resistance: How Sanctuary Policies Have Flourished During the Trump Administration* 4–6, 9–15 (Immigrant Legal Res. Ctr. Dec. 2019), <https://perma.cc/GPH5-9JEK>; see also *Detainer Policies*, Immigrant Legal Res. Ctr. (Aug. 20, 2015), <https://perma.cc/WMW7-CMKD>.

enforcement practices have exacerbated that already-challenging task. *See Oregon v. Trump*, 406 F. Supp. 3d 940, 974 (D. Or. 2019) (acknowledging that absent an injunction, the State of Oregon and City of Portland would be forced to “abandon[] critical law enforcement initiatives funded by” the federal Edward Byrne Memorial Justice Assistance Grant Program or “risk public safety by eroding trust with immigrant communities”); *New York v. Dep’t of Justice*, 343 F. Supp. 3d 213, 243–44 (S.D.N.Y. 2018) (“[C]omplying with the[se] unlawful [program] 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.”), *rev’d on other grounds*, 951 F.3d 84 (2d Cir. 2020); *City & Cty. of San Francisco v. Sessions*, 349 F. Supp. 3d 924, 951 (N.D. Cal. 2018) (“The harm that entanglement with enforcement does to community trust is more than theoretical”), *rev’d in part on other grounds*, 965 F.3d 753 (9th Cir. 2020).⁴ Amici urge the Court to halt Plaintiffs’ attempts to stifle state and local practices that enhance public safety.

⁴ *See also City of Chicago v. Barr*, 961 F.3d 882, 918 (7th Cir. 2020) (upholding a nationwide permanent injunction against the implementation of the program conditions which, per the district court, would have “damage[d] the relationship between local law enforcement and immigrant communities,” “decrease[d] the cooperation . . . that is critical to preventing and to solving crimes,” and “cause[d] irreparable harm” due to the difficulty of rebuilding trust); *Colorado v. Dep’t of Justice*, 455 F. Supp. 3d 1034, 1059–60 (D. Colo. 2020) (explaining why these conditions inevitably affect trust between undocumented immigrant communities and state law enforcement), *appeal docketed*, No. 20-1256, (10th Cir. July 13, 2020).

ARGUMENT

I. New Jersey’s Immigrant Trust Directive Is Essential to Effective Law Enforcement.

A. Trust and Respect Between Communities and Law Enforcement Officials Are Thwarted When Individuals Fear Removal as a Consequence of Cooperation.

The experience of policing cities across the country has taught law enforcement officers that doing their jobs well requires “the trust and respect of the communities [they] serve.”⁵ To combat 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 encourage cooperation.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.⁹

⁵ Statement of Tom Manger, *supra* note 2, 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), <https://perma.cc/KL5A-EQWR>.

⁸ *Id.*

⁹ See *Sanctuary Jurisdictions: The Impact on Public Safety and Victims: Hearing Before the S. Comm. on the Judiciary*, 116th Cong. 4 (Oct. 22, 2019) (statement of Andy Harvey, Former Chief of Police, Palestine, Tex., Police Dep’t), <https://perma.cc/MTS9-WZYY> (“Proposals

The reality of everyday life for millions of undocumented immigrants living in the United States poses significant challenges to effective community policing. According to a 2018 Pew survey, 66 percent of Hispanic immigrants and 43 percent of all Hispanic adults in the U.S. worry about removal—of themselves, family members, or close friends.¹⁰ This fear predictably hinders cooperation and communication with police and prosecutors. Immigrants often assume that interaction with law enforcement officials could have adverse consequences for themselves or a loved one.

Thus, immigrant communities in general—and undocumented immigrants in particular—are less likely to trust and cooperate with local police and prosecutors. Indeed, one recent study found that individuals living in communities of recent immigrants are less likely to report violent crime: in neighborhoods where 65 percent of residents are immigrants, there is only a 5 percent chance that a victim will report a violent crime, compared with a 48 percent chance in a neighborhood where only 10 percent of residents are born outside the United States.¹¹ The authors of the study specifically noted that “the development of trusting relationships between citizens and

to have state and local law enforcement assume immigration enforcement functions that historically have been the purview of the federal government risks undermining community trust. . . . Particularly in a time of ramped-up immigration enforcement and increasingly troubling rhetoric surrounding immigration, it is increasingly challenging to law enforcement to win their trust.”).

¹⁰ *More Latinos Have Serious Concerns About Their Place in America Under Trump*, Pew Research Ctr.: Hispanic Trends (Oct. 25, 2018), <https://perma.cc/R3TE-DMAD>.

¹¹ Min Xie & Eric P. Baumer, *Neighborhood Immigrant Concentration and Violent Crime Reporting to the Police: A Multilevel Analysis of Data from the National Crime Victimization Survey*, 57 *Criminology* 237, 249 (2019), <https://perma.cc/QS5R-K867>.

the police is often challenged by the presence and application of local and federal immigration enforcement programs . . . that may dissuade residents from calling on the police to help address crime problems.”¹²

In addition, 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.¹³ And a recent survey of undocumented individuals in San Diego County found that if local law enforcement officials were working together with ICE, roughly 61 percent of survey respondents would be less likely to report a crime they witnessed, while 43 percent would be less likely to report being a victim of a crime.¹⁴

¹² *Id.* at 254.

¹³ Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement* 5–6 (May 2013), <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.”).

¹⁴ 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>; *see also* Tom K. Wong et al., *How Interior Immigration Enforcement Affects Trust in Law Enforcement*, *Perspective on Politics* (Jan. 14, 2020), <https://perma.cc/2M98-J3WV> (finding that if local law enforcement officials were working with ICE, respondents were roughly 35 percent less likely “to trust ‘a great deal’ or ‘a lot’ that police officers and sheriffs would keep them and their families safe,” and roughly 30 percent less likely to “to trust ‘a great deal’ or ‘a lot’” that their confidentiality as witnesses would be protected).

These studies (among others) highlight how fear of immigration enforcement and the resulting damage to cooperation with law enforcement affect not just undocumented community members¹⁵ but also individuals with citizenship or lawful status, particularly in “mixed-status” households.¹⁶

This atmosphere of mistrust poses a fundamental challenge for effective 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. Law enforcement officers participating in one national survey reported seeing an across-the-board decline in immigrant communities’ willingness to cooperate with law enforcement.¹⁷ Roughly one-fifth of police officers surveyed reported that, in 2017, immigrants were less willing than they were in 2016 to make police reports, less likely to help police when they arrived at the scene of the crime, less likely to assist with subsequent investigations, and

¹⁵ See, e.g., 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.”).

¹⁶ “Many adults and children who are U.S. citizens, lawful permanent residents (LPRs), or other legal immigrants live in mixed-status families with unauthorized immigrants.” Julia Gelatt et al., *Nearly 3 Million U.S. Citizens and Legal Immigrants Initially Excluded under the CARES Act Are Covered under the December 2020 COVID-19 Stimulus*, Migration Pol’y Inst. (Jan. 2021), <https://perma.cc/9WLR-LLNY>.

¹⁷ 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* 101 (May 3, 2018) [hereinafter *NIWAP Report*], <https://perma.cc/52MV-X8TG>.

less willing to work with prosecutors.¹⁸ As a result, more than half of the law enforcement officials surveyed reported that crimes such as domestic violence, human trafficking, and sexual assault became more difficult to investigate.¹⁹

These trends are borne out by tragic statistics in cities with large Latino populations.²⁰ According to the Houston Police Department, sexual assault reporting by members of the Latino 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.²¹ Los Angeles, San Francisco, and San Diego also witnessed lagging sexual assault and domestic violence reporting by Latino residents—but not other ethnic groups—in the first half of 2017.²² As Los Angeles County Sheriff's Deputy Marino Gonzalez put it, “[t]hey’re afraid of us . . . because they think we’re going to deport them.”²³ Law enforcement officials across the country have echoed that sentiment.²⁴

¹⁸ *Id.* at 42.

¹⁹ *Id.* at 51.

²⁰ 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>; Jennifer Medina, *Too Scared to Report Sexual Abuse. The Fear: Deportation.*, N.Y. Times, Apr. 30, 2017, <https://perma.cc/YQC6-MFUP>.

²¹ 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>.

²² 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>.

²³ *Id.*; see also *NIWAP Report*, *supra* note 17, at 99 (finding that, between 2016 and 2017, fear of removal was the principal reason that immigrant victims did not call the police for help or file or follow through with a court case).

²⁴ See, e.g., Hannah Rappleye et al., *Immigration Crackdown Makes Women Afraid to Testify Against Abusers, Experts Warn*, NBC News, Sept. 22, 2018, <https://perma.cc/UB6S->

Immigrants’ fear of interacting with police and prosecutors in light of potential removal consequences is not merely theoretical. The following examples illustrate why:

- In February 2017, an immigrant woman living in Texas 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.²⁵
- In August 2017, federal agents detained an undocumented immigrant who had provided key testimony in two homicide cases.²⁶

RTE7 (“We rely very heavily at the local level on cooperation from our witnesses and from our victims to ensure that cases can be prosecuted,” said Denver City Attorney Kristin Bronson. “What we’ve found in Denver is people are not showing up because they’re afraid that they might get apprehended in the hallways.”); *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.”); 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)).

²⁵ 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>. A woman living in North Carolina told a similar story in July 2018. Rappleye et al., *supra* note 24. And today, even undocumented women who survived situations of domestic abuse by working with police admit that “they would [not] take the same action” now. See Rebecca Tan, *Amid Immigration Crackdown, Undocumented Abuse Victims Hesitate to Come Forward*, Wash. Post, June 30, 2019, <https://perma.cc/HWR4-FL67>.

²⁶ 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>.

- Weeks later, ICE agents arrested a victim of domestic violence as he left a county courthouse.²⁷
- In February 2018, an undocumented immigrant called 911 to report a trespasser at his family home where he and his three children lived; within the hour, he was hand delivered by police into ICE custody.²⁸
- Several months later, a mother of four and longtime Michigan resident was deported to Mexico after reporting her rape to the police—despite having helped convict her former partner by testifying against him in court with regard to the assault.²⁹
- And in early 2019, ICE detained a 38-year-old mother of three who was cooperating with police in an open investigation and almost removed her to her native Nicaragua. Asked upon her release if she would think twice before interacting with law enforcement in the future, she answered without hesitation: “Sí.”³⁰

²⁷ Steve Coll, *When a Day in Court Is a Trap for Immigrants*, New Yorker, Nov. 8, 2017, <https://perma.cc/VMT5-75M5>.

²⁸ Samantha Schmidt, *An Immigrant Called 911 to Report a Crime. Police Took Him to ICE in Handcuffs.*, Wash. Post, Feb. 14, 2018, <https://perma.cc/8GXM-YHRA>.

²⁹ Isabela Dias, *She Helped Convict Her Rapist. ICE Deported Her Anyway.*, The Nation, Apr. 1, 2019, <https://perma.cc/F4VP-5DWU>.

³⁰ Jessica Lipscomb, *Miami Crime Victim Detained by ICE Warns Others About Calling Police for Help*, Miami New Times, Apr. 23, 2019, <https://perma.cc/9GG5-BKQQ>.

What is more, the fear that drives the underreporting of crimes by recent immigrants is a problem for the *entire* criminal justice system.³¹ Precisely because victims and witnesses fear removal, violent crimes have gone unreported, and pending prosecutions have disappeared from courts' dockets.

For example, a Texas district attorney confirmed that a victim of domestic violence had become uncooperative because she feared removal.³² In Denver, prosecutors have been forced to drop 30 domestic violence cases for similar reasons,³³ and in 2017, more than a dozen Latina women there dropped their own civil cases against domestic abusers, citing fear of removal.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 removal concerns, undocumented immigrant victims and witnesses may understandably recoil more generally from a

³¹ Robert C. Davis et al., *Access to Justice for Immigrants Who Are Victimized: The Perspectives of Police and Prosecutors*, 12 *Crim. Just. Pol'y Rev.* 183, 188 (2001).

³² 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>.

³³ Rappleye et al., *supra* note 24.

³⁴ Sarah Stillman, *When Deportation Is a Death Sentence*, *New Yorker*, Jan. 15, 2018, <https://perma.cc/TK4U-FKMY>.

³⁵ 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>.

³⁶ Emma Whitford, *Courthouse ICE Arrests Are Making Immigrants 'Sitting Ducks,' Lawyers Warn*, *Gothamist*, June 22, 2017, <https://perma.cc/XJT4-YQ4D>.

system that allows participants to walk into a courthouse to fulfill a civic responsibility to testify, only to be detained by watchful immigration authorities.

In response to these types of incidents, the chief justices of five state supreme courts wrote to federal authorities to emphasize that preserving trust with immigrant communities is essential to the administration of justice,³⁷ and several state and local court systems even issued orders limiting ICE enforcement at courthouses.³⁸ In addition, 75 former state and federal judges 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."³⁹ Three district attorneys in New York asked ICE to stop making courthouse arrests because of the

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 Homeland Sec. (Mar. 16, 2017), <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 Homeland Sec. (Mar. 22, 2017), <https://perma.cc/6358-7Z3H>; Letter from Thomas A. Balmer, Chief Justice of the Oregon Supreme Court, to Jeff Sessions, Att'y Gen. of the U.S., and John F. Kelly, Sec'y of Homeland Sec. (Apr. 6, 2017), <https://perma.cc/LH7Z-X3WZ>; Letter from Stuart Rabner, Chief Justice of the Supreme Court of New Jersey, to John F. Kelly, Sec'y of Homeland Sec. (Apr. 19, 2017), <https://perma.cc/M2QA-FJYD>; Letter from Chase T. Rogers, Chief Justice of the Connecticut Supreme Court, to Jeff Sessions, Att'y Gen. of the U.S., and John F. Kelly, Sec'y of Homeland Sec. (May 15, 2017), <https://perma.cc/KMR9-FNK8>; *see also* News Advisory, Rhode Island Judiciary, Courts Must Remain Open and Accessible to All, Chief Justice Tells Lawyers, Judges (June 16, 2017), <https://perma.cc/68TB-N7WQ> (quoting Chief Justice Paul Suttell).

³⁸ Douglas Keith, *States Push Back Against ICE Courthouse Arrests*, Brennan Ctr. for Just. (Nov. 22, 2019), <https://perma.cc/U7LU-C569>.

³⁹ Letter from Seventy-Five Former State and Federal Judges to Ronald D. Vitiello, Acting Director of ICE (Dec. 12, 2018), <https://perma.cc/LJE2-94P7>.

“chilling effect” this practice has on witnesses.⁴⁰ Prosecutors in Massachusetts sued to make them stop.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

B. Trust-Based Community Policing Protects Vulnerable Individuals from Crime and Exploitation.

Effective community policing yields another vital public safety benefit: protecting individuals who are particularly vulnerable to crime and thus attractive targets for criminals. As discussed above, undocumented immigrants and their families are reluctant to report crimes for fear of removal. Because predators who seek to victimize vulnerable immigrant communities also know this, these communities face a range of unlawful conduct, including domestic and gang violence as well as abuse by unscrupulous employers.⁴³

When immigrants distrust their local police, “it creates conditions that encourage criminals to prey upon victims and witnesses alike.”⁴⁴ This phenomenon has been

⁴⁰ Rappleye et al., *supra* note 24.

⁴¹ Alanna Durkin Richer, *Prosecutors Sue ICE to Stop Courthouse Immigration Arrests*, PBS News Hour (Apr. 29, 2019), <https://perma.cc/7RB5-BEXQ>.

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).

⁴³ See Office of Cmty. Oriented Policing Servs., U.S. Dep’t of Justice, *Enhancing Community Policing with Immigrant Populations: Recommendations from a Roundtable Meeting of Immigrant Advocates and Law Enforcement Leaders* 16 (2010), <https://perma.cc/62JX-99KK>.

⁴⁴ Statement of Tom Manger, *supra* note 2, at 2.

termed the “deportation threat dynamic,” whereby individuals who fear removal from the United States do not report the crimes they suffer.⁴⁵ 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.⁴⁶ Respondents indicated that fewer than a quarter of these crimes were reported to the police, and only one was reported by the victim himself.⁴⁷ In one especially horrific incident, a four-year-old girl in Texas suffered repeated sexual abuse at the hands of someone who threatened to cause her mother to be removed if the mother reported her daughter’s exploitation.⁴⁸

Robbery and similar crimes pose a particular threat to undocumented individuals, who often do not have bank accounts.⁴⁹ In addition, many of these immigrants live in group apartments and are unable to store valuables in a safe place at home.⁵⁰ As a result, undocumented immigrants are known to carry large amounts of cash, making them especially vulnerable to robbery. The risk to the perpetrators, meanwhile, is

⁴⁵ Elizabeth Fussell, *The Deportation Threat Dynamic and Victimization of Latino Migrants: Wage Theft and Robbery*, 52 Soc. Q. 593, 610 (2011).

⁴⁶ Jacob Bucher et al., *Undocumented Victims: An Examination of Crimes Against Undocumented Male Migrant Workers*, 7 Sw. J. Crim. Just. 159, 164, 166 tbl.2 (2010).

⁴⁷ *Id.* at 165.

⁴⁸ 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>.

⁴⁹ Fussell, *supra* note 45, at 604 & tbl.2, 605; S. Poverty Law Ctr., *Under Siege: Life for Low-Income Latinos in the South* 6, 25 (2009), <https://perma.cc/7GCY-V25L>.

⁵⁰ Khashu, *supra* note 7, at 25.

minimal because the victims are often too afraid of adverse immigration consequences to report the crimes to the police.

In fact, the targeting of undocumented immigrants for robbery has become so widespread that these individuals have been labeled “walking ATMs”—or the subjects of “amigo shopping.”⁵¹ In a study of largely undocumented immigrants helping to rebuild New Orleans in the wake of Hurricane Katrina, the immigrants reported robbery and physical assault at more than ten times the rate experienced by the general population.⁵² In another survey, 53 percent of law enforcement officers held the view that undocumented immigrants were especially likely to be victims of robbery and theft.⁵³

Undocumented immigrants are also particularly vulnerable to domestic violence. Numerous studies have shown that abusive partners may exploit the threat of removal to maintain power and control.⁵⁴ Financial dependence on an abusive partner with

⁵¹ See Fussell, *supra* note 45, at 604–05 (internal quotation marks omitted); S. Poverty Law Ctr., *supra* note 49, at 25 (same); Khashu, *supra* note 7, at 25.

⁵² See Fussell, *supra* note 45, at 604 & tbl.2, 605.

⁵³ See Khashu, *supra* note 7, at 25.

⁵⁴ See, e.g., Messing et al., *supra* note 15, at 330 (citing several studies); Angelica S. Reina et al., “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 et. al, *supra*, at 601; see also *NIWAP Report*, *supra* note 17, at 103 (noting that 69 percent of law enforcement officers surveyed had observed a decrease in domestic violence reporting).

stable immigration status may facilitate violence in this way.⁵⁵ Seventy percent of participants in one study of domestic violence victims said that immigration status was a major factor keeping them from seeking help or reporting their ongoing abuse to the authorities.⁵⁶ In another study, immigration status was identified as the single largest factor independently affecting the rate at which battered Latina immigrants called the police.⁵⁷

Undocumented immigrants are vulnerable in the workplace as well. In a number of studies, between 40 and 80 percent of mostly undocumented immigrants reported being victims of wage theft.⁵⁸ Many immigrants also reported other types of worksite abuse.⁵⁹ In one study, 32 percent of respondents said that they had suffered on-the-job injuries—and most of these individuals, after being injured, were either fired, not paid lost wages, or denied medical care by their employers.⁶⁰

Lastly, the “deportation threat dynamic” fuels not only workplace exploitation but also outright violence. One advocate’s account is chilling: according to this report,

⁵⁵ See, e.g., Messing et al., *supra* note 15, at 330.

⁵⁶ Reina et al., *supra* note 54, at 600.

⁵⁷ 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).

⁵⁸ See Fussell, *supra* note 45, at 604 & tbl.2 (finding that 40 percent of respondents reported wage theft since arriving in New Orleans); Nik Theodore et al., *La Esquina (The Corner): Day Laborers on the Margins of New York’s Formal Economy*, 9 WorkingUSA: J. Lab. & Soc’y 407 (2006) (finding a wage theft rate of approximately 50 percent in New York); S. Poverty Law Ctr., *supra* note 49, at 6 (finding that 41 percent of those surveyed across the South and 80 percent surveyed in New Orleans had experienced wage theft).

⁵⁹ Fussell, *supra* note 45, at 604 & tbl.2.

⁶⁰ S. Poverty Law Ctr., *supra* note 49, at 6.

when a worker attempted to collect wages his employer owed him, “[t]he contractor raised his shirt and showed he had a gun—and that was enough He didn’t have to say any more. The worker left.”⁶¹

II. Policies Limiting Local and State Involvement in Federal Immigration Enforcement Are Critical to Fostering 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, finding that “[a] relationship of trust between [the] immigrant community and state and local agencies is central to . . . public safety.”⁶² That “trust is threatened,” however, “when state and local agencies are entangled with federal immigration enforcement.”⁶³

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.⁶⁴ Other policies include restrictions on local law enforcement inquiries or

⁶¹ *Id.* at 7 (internal quotation marks omitted).

⁶² Cal. Gov’t Code § 7284.2(b).

⁶³ *Id.* § 7284.2(c).

⁶⁴ *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), <https://perma.cc/MK4U-C3FD>; *see also* Illinois Trust Act, 5 ILCS § 805/15 (prohibition on enforcing federal civil immigration laws); Or. Rev. Stat. Ann. § 181A.820 (“No law enforcement agency of the [state or any of its political subdivisions] 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 [U.S.] in violation of federal immigration laws.”);

investigations into a person’s immigration status or the gathering of such information at the local level.⁶⁵ Additionally, several states and more than 700 counties have policies limiting the extent to which local police can cooperate with detainer requests.⁶⁶

Eliminating any of these protections and policies—all of which are embodied in New Jersey’s Immigrant Trust Directive⁶⁷—would substantially undermine important public safety efforts. Indeed, several recent studies suggest that such policies have a positive impact on crime reporting among the Latino community, which is vital to

Washington, D.C., Mayor’s Order 2011-174: Disclosure of Status of Individuals: Policies and Procedures of D.C. Agencies, at 2 (Oct. 19, 2011) [hereinafter DC Order], <https://perma.cc/L9BR-KS7B> (“No person shall be detained solely on the belief that [they are] not present legally in the [U.S.] or [have] committed a civil immigration violation.”); Phoenix, AZ, Police Dep’t Operations Order Manual § 1.4, at 8 (revised Oct. 2015), <https://perma.cc/4XQ6-Z3AG> (“The investigation and enforcement of federal laws relating to illegal entry and residence in the [U.S.] is specifically assigned to [ICE].”); *cf. Melendres v. Arpaio*, 695 F.3d 990, 1001 (9th Cir. 2012) (“[The sheriff] may not detain individuals solely because of unlawful presence.”).

⁶⁵ 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] into an individual’s immigration status”); S.F. Admin. Code § 12H.2(d) (prohibiting city and county agencies and agents 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 64 (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”).

⁶⁶ See Ill. Trust Act, 5 ILCS § 805/15 (stating that law enforcement agencies and officials “shall not detain or continue to detain any individual solely on the basis of any immigration detainer or non-judicial immigration warrant”); 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”); Graber & Avila, *supra* note 3, at 9–14; *Detainer Policies*, *supra* note 3.

⁶⁷ See N.J. Att’y Gen. Directive No. 2018-6 2.0, §§ II.A.1-2, II.B.5-6.

public safety for the same reasons discussed in Part I. One study of the 40 largest U.S. metropolitan areas between 1980 and 2004 found that Latinos were 12 percent more likely to report violent crime victimization to law enforcement after a so-called “sanctuary policy” was adopted within their county of residence.⁶⁸ And another study found that although President Trump’s 2017 executive order scaling up partnerships between ICE and local law enforcement led to a decline in reported crimes in counties with higher Hispanic populations, the “effect [was] not uniform” across the United States: Total reported crime fell more in counties that cooperated with ICE than in counties with existing policies limiting such cooperation.⁶⁹

Recent incidents in localities with policies limiting local involvement in federal immigration enforcement demonstrate the public safety benefits of these policies. For example, in 2016, Los Angeles Police Department officers had an encounter with a

⁶⁸ See Ricardo D. Martínez-Schuldt & Daniel E. Martínez, *Immigrant Sanctuary Policies and Crime-Reporting Behavior: A Multilevel Analysis of Reports of Crime Victimization to Law Enforcement, 1980 to 2004*, 86 Am. Socio. Rev. 154, 176 (2021). It is important to note that while the authors used the term “sanctuary policy” to denote the broad array of policies that we discuss above, *see id.* at 159–60, these policies do not actually provide any “sanctuary” from federal immigration laws. That is, they do not interfere with “the federal government’s lawful pursuit of its civil immigration activities, and presence in such localities will not immunize anyone to the reach of the federal government.” *City of Chicago v. Sessions*, 888 F.3d 272, 281 (7th Cir. 2018) (“Th[e] term [‘sanctuary’] is commonly misunderstood. . . . The federal government can and does freely operate in ‘sanctuary’ localities.”).

⁶⁹ Reva Dhingra et al., *Immigration Polices and Access to the Justice System: The Effect of Enforcement Escalations on Undocumented Immigrants and Their Communities*, Political Behavior (Jan. 2, 2021), <https://perma.cc/G858-ED2W>; *see also id.* (finding an “identical pattern of results for reported crime rates as enforcement activity intensified” during the 2008–2014 roll-out of the Secure Communities Program).

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.⁷⁰ 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.⁷¹ And in the wake of some of our country's deadliest mass shootings—including those motivated by hatred towards the Latino community—undocumented-immigrant survivors have stepped forward and offered to help law enforcement.⁷² These examples help explain why crime is significantly lower in counties that limit local involvement in federal immigration enforcement.⁷³

⁷⁰ Chuck Wexler, *Commentary: Why Police Support Sanctuaries*, Phila. Inquirer, Mar. 10, 2017, <https://perma.cc/42H2-5E7U>.

⁷¹ *Id.*

⁷² See Arelis R. Hernández, *Witness to El Paso Mass Shooting Deported After Federal Judge Blocks Biden Deportation Pause*, Wash. Post, Feb. 1, 2021, <https://perma.cc/RV6F-GR7F> (noting that “[a]n El Paso woman who witnessed the mass shooting of Latinos at a Walmart in 2019, and provided critical information to state and federal investigators, was deported” after a federal judge temporarily blocked President Biden’s 100-day pause on deportations); see also Lauren Villagran, *‘Living in the Shadows’: Visa Could Give Undocumented Mass Shooting Victims Chance to Help*, El Paso Times, Aug. 19, 2019, <https://perma.cc/5A74-XNAN> (also discussing Las Vegas shooting).

⁷³ See Tom K. Wong, *The Effects of Sanctuary Policies on Crime and the Economy*, Ctr. for Am. Progress (Jan. 26, 2017), <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.”).

These policies also play an important role in preserving local law enforcement resources. As one jurisdiction has found, “[e]ntangling state and local agencies with federal immigration enforcement programs diverts already limited resources.”⁷⁴ For example, complying with ICE detainer requests can add staggering costs—in some cases, tens of millions of dollars annually.⁷⁵ 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.⁷⁶ 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.”⁷⁷

Plaintiffs’ attack on New Jersey’s Immigrant Trust Directive threatens to divert local resources from effective public safety efforts and to disrupt many communities’ efforts to ensure that immigrants do not fear interactions with local law enforcement.

⁷⁴ Cal. Gov’t Code § 7284.2(d).

⁷⁵ 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), <https://perma.cc/M39D-JDYG>.

⁷⁶ See Letter from Law Enforcement Immigration Task Force to Hon. Trey Gowdy & Hon. Zoe Lofgren (July 20, 2015), <https://perma.cc/V7MX-VCAF>.

⁷⁷ *United States v. California*, 314 F. Supp. 3d 1077, 1108 (E.D. Cal. 2018), *aff’d in part*, 921 F.3d 865 (9th Cir. 2019).

If successful, their suit would also deter other states and communities from adopting trust-enhancing policies in the future. In short, inducing 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 Defendants' Response Brief, this Court should affirm the judgment of the district court.

February 15, 2021

Respectfully Submitted,

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COMBINED CERTIFICATIONS

I hereby certify the following:

1. I am a member of the bar of this Court.
2. This brief complies with the type-volume limitations of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B)(i) because, excluding the parts of the brief exempted by Fed. R. App. P. 32(f), it contains 6,499 words.
3. This brief complies with the typeface requirements of Fed. R. App. P. (32)(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Garamond 14-point font.
4. On February 15, 2021, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.
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/s/ Mary B. McCord

Mary B. McCord

EXHIBIT A

EXHIBIT A: LIST OF AMICI*

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Former Chief, Largo Police Department, Florida

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