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8 *and Police Chiefs*

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

11 _____)
12) Case No. 3:17-cv-00485-WHO
13 CITY AND COUNTY OF SAN FRANCISCO,) **BRIEF AMICI CURIAE OF**
14 *Plaintiff,*) **INDIVIDUAL SHERIFFS AND**
15 v.) **POLICE CHIEFS IN SUPPORT OF**
DONALD J. TRUMP, et al.,) **PLAINTIFF'S MOTION FOR**
17) **PRELIMINARY INJUNCTION**
18 *Defendants.*)
19) Date: April 14, 2017
20) Time: 2:00 p.m.
21) Dep't: Courtroom 2
22) Judge: Hon. William H. Orrick
23)
24) Date Filed: March 29, 2017
25)
26 Trial Date: Not yet set
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INTEREST OF AMICICURIAE

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Amici are individual police chiefs and sheriffs from cities and counties in eleven states.

Amici have extensive expertise in local law enforcement and in cooperative federal-state law enforcement activities. They are intimately familiar with the challenges of performing critical law enforcement functions in communities where immigrants fear the police and are vulnerable to exploitation and crime. *Amici* represent some of the more than 400 jurisdictions that have policies limiting local involvement in federal immigration operations.

Amici's experience in keeping their communities safe has taught 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 is undermined by undocumented immigrants' fears of interacting with law enforcement. This dynamic, moreover, leaves undocumented immigrants more vulnerable to crime and exploitation, leading to more violence in the communities *amici* are charged with protecting.

Amici have concluded that Executive Order 13768 (the "Executive Order") is an attempt to compel jurisdictions such as the City and County of San Francisco to take part in federal immigration enforcement, including honoring 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 risk losing vital federal funding. Greater local involvement in immigration enforcement would cause community members to mistrust the police and result in a decrease in cooperation, hindering the ability of local law enforcement agencies to keep their communities safe. It would also drain scarce resources that would otherwise be used to enhance public safety. Further, detention of individuals under ICE detainers who would otherwise be released from custody has been found by federal courts across the country to violate the Fourth

1 Amendment of the United States Constitution. Thus, *amici* have concluded that a preliminary
2 injunction is necessary to halt this attempt to coerce local law enforcement officers and agencies
3 into a practice that would likely result in widespread constitutional violations and substantial civil
4 liability. A full list of *amici* is attached as Exhibit A.
5

6 INTRODUCTION

7 The lessons *amici* have learned in protecting their communities shed important light on the
8 issues raised in these cases. When community residents live in constant fear that interactions with
9 local police could result in deportation, there is a fundamental breakdown in trust that impedes the
10 police from doing their jobs and threatens public safety. Extensive evidence shows that
11 undocumented immigrants-and their lawfully present family and neighbors-fear that turning to
12 the police will bring adverse immigration consequences. As a result, immigrant communities are
13 less willing to report crime or cooperate with police investigations. This fundamental breakdown
14 in trust poses a major challenge both to investigation of individual crimes and to proper allocation
15 of public safety resources.
16

17
18 Current policies limiting local and state involvement in federal immigration enforcement
19 address this issue of trust. Though they take several different forms, these policies generally aim
20 to preserve local and state resources and improve public safety by promoting cooperation between
21 law enforcement and the communities they serve! Many jurisdictions include a policy or law
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26 ¹ See *Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact of Public Safety and Honoring the Victims: Hearing Before the S. Comm. on the Judiciary*, 2 (July 21, 2015) (statement of Tom Manger, Chief, Montgomery Cty., Md., Police Dept & President, Major Cities Chiefs Ass'n), available at
27 [http:// www.judiciary.senate.gov/imo/media/doc/07-21 -15Manger%20Testimony.pdf](http://www.judiciary.senate.gov/imo/media/doc/07-21-15MangerTestimony.pdf).
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1 limiting continued detention pursuant to an ICE detainer.² The Executive Order upends these
 2 policies, to the detriment of community safety.

3
 4 Further, the Executive Order threatens to withdraw federal funds from "sanctuary
 5 jurisdictions," which it equates with jurisdictions that refuse to comply with ICE detainer requests,
 6 among other factors.³ Detentions pursuant to ICE detainers have been held by numerous courts to
 7 violate the probable cause requirement of the Fourth Amendment. Thus, the Executive Order seeks
 8 to compel local jurisdictions to take part in conduct that could result in unconstitutional detentions
 9 and civil liability, or face the loss of federal funds. The federal government cannot force local
 10 communities into such a Robson's choice.

11 12 **ARGUMENT**

13 **I. The Executive Order Impedes Effective Law Enforcement.**

14 **A. Trust and Respect Between Communities and Police Is Essential to** 15 **Effective Law Enforcement, and is Thwarted When Local Officers are** 16 **Forced to Partake in Federal Immigration Enforcement.**

17 The experience of policing cities across the country has taught law enforcement officers
 18 that "[t]o do our job, we must have the trust and respect of the communities we serve."⁴ In order
 19 to stop crime, police officers "need the full cooperation of victims and witnesses."⁵

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21

22 ² 8 C.F.R. § 287.7; *see also* Jasmine C. Lee, Rudy Omri, and Julia Preston, *What Are Sanctuary*
 23 *Cities?*, N.Y. TIMES Feb. 6, 2017, [http://www.nytimes.com/interactive/2016/09/02/us/sanctuary-](http://www.nytimes.com/interactive/2016/09/02/us/sanctuary-cities.html)
 24 *cities.html*; *Detainer Policies*, IMMIGRANT LEGAL RESOURCE CENTER (Mar. 21, 2017), *available at*
 25 <https://www.ilrc.org/detainer-policies> [hereinafter *ILRC Detainer Policies*]

26

³ Exec. Order No. 13768, 82 Fed. Reg. 8799, 8801 at § 9(a) (Jan. 30, 2017) [hereinafter "Executive
 Order"].

27

⁴ *Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining*
 28 *the Impact of Public Safety and Honoring the Victims: Hearing Before the S. Comm. on the*
Judiciary, 2 (July 21, 2015) (statement of Tom Manger, Chief, Montgomery Cty., Md., Police

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Dep't & President, Major Cities Chiefs Ass'n), *available at* <http://www.judiciary.senate.gov/imo/media/doc/07-21-15%20Manger%20Testimony.pdf>.

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⁵ *Id.*

1 This common-sense philosophy is sometimes called "community policing." Community
 2 policing is an approach to policing where police officers engage communities in a working
 3 partnership to reduce crime and promote public safety.⁶ It thus requires police to interact with
 4 neighborhood residents in a manner that will build trust and improve the level of cooperation with
 5 the police department.⁷ When that relationship of trust is missing-as it is when people believe that
 6 contacting police could lead to deportation for themselves or others-community policing breaks
 7 down and the entire community is harmed.

8
 9 According to a Pew survey, 57% percent of Latinos in the United States indicate that they
 10 worry about deportation-of themselves, family members, or close friends-and 40% worry about
 11 it "a lot."⁸ This fear necessarily affects cooperation and communication with the police.
 12 Immigrants-and their family members and neighbors who may be U.S. citizens or lawfully
 13 present-often assume that interaction with police could have adverse consequences for themselves
 14 or a loved one.

15
 16 As a result, immigrant communities in general, and undocumented immigrants in
 17 particular, are less likely to trust and cooperate with local police. One study of Latinos in four
 18 major cities found that 70% of undocumented immigrants and 44% of all Latinos are less likely to
 19 contact law enforcement authorities if they were victims of a crime for fear that the police will ask
 20
 21

22
 23 ⁶ See Anita Khashu, *The Role Of Local Police: Striking a Balance Between Immigration*
 24 *Enforcement and Civil Liberties*, POLICE FOUND., (Apr. 2009) (citing Mark H. Moore, "Problem-
 25 Solving and Community Policing," MODERN POLICING (Michael Tonry & Norval Morris eds.,
 1992)), available at <https://www.policefoundation.org/wp-content/uploads/2015/06/The-Role-of-Local-Police-Narrative.pdf>.

26 ⁷ *Id.*

27 ⁸ Mark Hugo Lopez & Susan Minushkin, *2008 National Survey of Latinos: Hispanics See Their*
 28 *Situation in US. Deteriorating; Oppose Key Immigration Enforcement Measures*, PEW HISPANIC
 CENTER, (Sept. 18, 2008), at ii, available at <http://pewhispanic.org/reports/report.php?ReportID=93>.

1 them or people they know about their immigration status; and 67% of undocumented immigrants
 2 and 45% of all Latinos are less likely to voluntarily offer information about, or report, crimes
 3 because of the same fear⁹

4 This study (among others) highlights that fears of immigration enforcement and the
 5 resulting damage to law enforcement cooperation affects not just the undocumented community
 6 but also individuals with citizenship or lawful status, in particular in "mixed-status" households!¹⁰

8 This problematic atmosphere of mistrust is felt by police as well. In one study, two-thirds
 9 of the law enforcement officers polled held the view that recent immigrants reported crimes less
 10 frequently than others.¹¹ Those surveyed also indicated that the crimes that are underreported by
 11 immigrants most often are serious ones, with domestic violence and gang violence at the top!¹²

13 The widely-recognized fear among immigrants of interacting with law enforcement poses
 14 a fundamental challenge for community policing. Police cannot prevent or solve crimes if victims
 15 or witnesses are unwilling to talk to them because of concerns that they or their loved ones or
 16 neighbors will face adverse immigration consequences. As the president of the Major Cities Chiefs
 17

18
 19 ⁹ Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration*
 20 *Enforcement* 5-6 (May 2013), available at [www.policylink.org/sites/default/files/INSECURE](http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF)
 21 [_COMMUNITIES_REPORT_FINAL.PDF](http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF); see also *id.* at 1 ("Survey results indicate that the
 22 greater involvement of police in immigration enforcement has significantly heightened the fears

23 many Latinos have of the police, ... exacerbating their mistrust of law enforcement authorities.").

24 ¹⁰ An estimated 85% of immigrants live in mixed-status families. See Anita Khashu, *The Role Of*
 25 *Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties*, POLICE

26 FOUND., (Apr. 2009), at 24, available at [http://www.policefoundation.org/wp-content/](http://www.policefoundation.org/wp-content/uploads/2015/06/The-Role-of-Local-Police-Narrative.pdf)
 27 [uploads/2015/06/The-Role-of-Local-Police-Narrative.pdf](http://www.policefoundation.org/wp-content/uploads/2015/06/The-Role-of-Local-Police-Narrative.pdf). See also Jill Theresa Messing, et al.,

28 *Latinas' Perceptions of Law Enforcement: Fear of Deportation, Crime Reporting, and Trust in*
 29 *the System*, 30 J. Women & Soc. Work 328,334 (2015) ("The results indicate that for each 1-point
 30 increase in fear of deportation [e.g., from 'not much' to 'some' worry, or from 'some' to 'a lot'],
 31 Latina participants were 15% less willing to report being victim of a violent crime to police.").

32 ¹¹ Robert C. Davis, Edna Erez & Nancy Avitabile, *Access to Justice for Immigrants Who Are*
 33 *Victimized: The Perspectives of Police and Prosecutors*, 12 Crim. Just. Pol'y Rev. 183, 187 (Sept.
 34 2001).

35 ¹² *Id.* at 188-9.

1 Association has explained to Congress, "[c]ooperation is not forthcoming from persons who see
2 their police as immigration agents."¹³

3
4 Recent incidents in jurisdictions with policies targeted by the Executive Order demonstrate
5 the public safety benefits of these policies. For example, last year Los Angeles Police Department
6 officers had an encounter with a suspected gang member that resulted in a vehicle chase, a foot
7 pursuit, and shots fired. An undocumented immigrant helped police locate the suspect by providing
8 a description and vehicle information.¹⁴ In Tucson, Arizona, an undocumented man confronted
9 and struggled with a man who tried to steal a car with children inside. The immigrant held the
10 individual until police arrived, then cooperated with detectives in the follow-up investigation,
11 resulting in charges of kidnapping, auto theft, and burglary.¹⁵ These examples show why crime is
12 statistically significantly lower in counties that do not hold people in custody beyond their release
13 date pursuant to an ICE detainer compared to those that do!¹⁶ The Executive Order threatens to
14 penalize local agencies for developing these common sense policing policies. But as cautioned by
15 one official, "immigrants will never help their local police to fight crime once they fear we have
16 become immigration officers."¹⁷

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20 _____
21 ¹³ Statement of Tom Manger, *supra* note 1, at 2.

22 ¹⁴ Chuck Wexler, *Commentary: Why police support sanctuaries*, PHILA. INQUIRER, March 10,
2017, available at [http://www.philly.com/philly/opinion/20170310_Commentary_Why_police_](http://www.philly.com/philly/opinion/20170310_Commentary_Why_police_support_sanctuaries.html)
23 [support_sanctuaries.html](http://www.philly.com/philly/opinion/20170310_Commentary_Why_police_support_sanctuaries.html).

24 ¹⁵ *Id.*

25 ¹⁶ Tom K. Wong, "The Effects of Sanctuary Policies on Crime and the Economy," CENTER FOR
26 AMERICAN PROGRESS, (Jan. 26, 2017), available at [https://www.americanprogress.org/](https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy/)
27 [issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-](https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy/)
28 [the-economy/](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.").

¹⁷ *Local Law Enforcement Leaders Oppose Mandates to Engage in Immigration Enforcement*,
NATIONAL IMMIGRATION LAW CENTER, (Aug. 2013), at 2 (statement of Chief Acevedo), available
at [https://www.nilc.org/wp-content/uploads/2017/02/Law-Enforcement-Opposition-to-Mandates-](https://www.nilc.org/wp-content/uploads/2017/02/Law-Enforcement-Opposition-to-Mandates-2013-08-30.pdf)
2013-08-30.pdf.

1 The underreporting of crimes by recent immigrants is a problem for the criminal justice
 2 system!⁸ The most immediate consequence, of course, is that serious crimes go unreported and
 3 unpunished. At a broader level, undercounting the incidence of crime in areas where immigrant
 4 communities live leads to the under-allocation of law enforcement resources to those
 5 communities!⁹ As one official explained, when criminal behavior goes unreported "[c]rime
 6 multiplies" and "[u]nresolved resentments grow in the community."²⁰ Another added that the
 7 under-reporting of crime "keeps fear at very high levels and diminishes quality of life."²¹

9 Distrust between immigrants and the police also results in greater victimization of
 10 immigrants. "When immigrants come to view their local police and sheriffs with distrust because
 11 they fear deportation, it creates conditions that encourage criminals to prey upon victims and
 12 witnesses alike."²² This phenomenon has been termed the "deportation threat dynamic," where an
 13 individual does not report a crime of which they are the victim, fearing immigration
 14 consequences.²³ Nearly two-thirds of undocumented migrant workers participating in a study in
 15 Memphis, Tennessee reported being the victim of at least one crime, with the most common being
 16 theft and robbery.²⁴ Respondents indicated that fewer than a quarter of these crimes were reported
 17 to the police, and *only one* was reported by the victim himself.²⁵

22
 23 ¹⁸ Davis et al., *supra* note 11, at **188**.

24 ¹⁹ *Id.*

25 ²⁰ *Id.*

26 ²¹ *Id.*

27 ²² Statement of Tom Manger, *supra* note 1, at 2.

28 ²³ Elizabeth Fussell, *The Deportation Threat Dynamic & Victimization of Latino Migrants: Wage Theft & Robbery*, 52 Soc. Q. 593,610 (2011).

²⁴ 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).

²⁵ *Id.* at 165.

1 Undocumented immigrants are especially vulnerable to domestic violence. A number of
 2 studies have shown that abusive partners may utilize the threat of deportation in order to maintain
 3 power and control.²⁶ When the abusing partner has lawful status, financial dependence on a partner
 4 with stable immigration status may similarly facilitate violence.²⁷ Seventy percent of participants
 5 in one study of domestic abuse victims said that immigration status was a major reason keeping
 6 them from seeking help or reporting their abuse to the authorities-and thereby permitting the
 7 violence to continue.²⁸ In another study, the single largest factor independently affecting the rate
 8 at which battered immigrant Latina women called the police was identified as immigration status.²⁹

10 **B. Policies Limiting Local and State Involvement in Federal Immigration**
 11 **Enforcement Seek to Maintain and Build Trust Between the Community**
 12 **and the Police and Preserve Local Resources.**

13 Current policies limiting local and state involvement in federal immigration enforcement,
 14 while varying by jurisdiction, universally aim to enhance community trust and preserve local
 15 resources. These policies seek to improve public safety by promoting cooperation between law
 16 enforcement and the communities they serve.

17
 18 Some administrative policies or laws include formal restrictions on local law enforcement's
 19 ability to apprehend or arrest an individual for federal immigration violations, including

22 ²⁶ See, e.g., Messing, *supra* note 10, at 330 (citing several studies); Angelica S. Reina, Brenda J.
 23 Lohman & Marta Maria Maldonado, "He Said They'd Deport Me": Factors Influencing Domestic
 24 Violence Help-Seeking Practices Among Latina Immigrants, 29 J. Interpersonal Violence 593,601
 25 (2013). The latter study cited a participant who explained that a partner "beat me up and I could
 26 have called the police because that was what I thought to do... but he threatened me... he told me
 that if I called the police I was going to lose out... because they [police officers] ... would ... take
 me, because I didn't have legal documents." Reina, Lohman & Maldonado at 601.

²⁷ See, e.g., Messing, *supra* note 10, at 330.

²⁸ Reina, Lohman & Maldonado, *supra* note 26, at 600.

²⁹ 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).

1 restrictions on arrests for civil violations of federal immigration law.³⁰ Other policies include
 2 restrictions on local law enforcement inquiries or investigations into a person's immigration status
 3 or the gathering of such information on a local level.³¹ Additionally, many jurisdictions have
 4 adopted policies against continued detention of an individual based on immigration detainer
 5 requests for at least some categories of noncitizens.³² Several states, including California, limit the
 6 extent to which local police can cooperate with detainer requests, and more than 400 counties have
 7 policies limiting cooperation with detainers.³³

8
 9 These policies also play an important role in preserving local law enforcement resources.
 10 Complying with ICE detainer requests alone can add staggering costs-in some cases, tens of
 11

13 ³⁰ See MICHAEL JOHN GARCIA AND KATE M. MANUEL, CONG. RESEARCH SERV., R43457, STATE
 14 AND LOCAL "SANCTUARY" POLICIES LIMITING PARTICIPATION IN IMMIGRATION ENFORCEMENT, 9
 15 (July 10, 2015), *available at* <https://www.fas.org/sgp/crs/homsec/R43457.pdf>; *see also* OR. REV.
 16 STAT. ANN. § 181A.820 ("No law enforcement agency of the State of Oregon or of any political
 17 subdivision of the state shall use agency moneys, equipment or personnel for the purpose of
 18 detecting or apprehending persons whose only violation of law is that they are persons of foreign
 19 citizenship present in the United States in violation of federal immigration laws."); Washington,
 20 DC, Mayor's Order 2011-174: Disclosure of Status of Individuals: Policies and Procedures of
 21 District of Columbia Agencies (Oct. 19, 2011), at 2 ("No person shall be detained solely on the
 22 belief that he or she is not present legally in the United States or that he or she has committed a
 23 civil immigration violation."), *available at* <http://dcregs.dc.gov/Gateway/NoticeHome.aspx?NoticeID=1784041> [hereinafter *DC Order*]; Phoenix, AZ, Police Dep't Operations Order Manual,
 (Jan. 2011) at 1.4, ("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. Arpaio, 695 F.3d 990, 1001 (9th Cir. 2012) ("[the sheriff] may not detain individuals
 solely because of unlawful presence.").

24 ³¹ *See, e.g.*, DC Order, *supra* note 30 (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").

25 ³² GARCIA AND MANUEL, *supra* note 30 at 14.

26 ³³ *See* California Transparency and Responsibility Using State Tools (TRUST) Act, Cal. Gov't
 Code § 7282.5 (West 2014) (prohibiting local law enforcement agencies from honoring ICE
 27 detainer requests for individuals without specific prior criminal convictions or charges as to which
 28 a judge has made a finding of probable cause); *see also* Omri and Preston, *supra* note 2; *see also*
ILCR Detainer Policies, *supra* note 2.

1 millions of dollars annually.³⁴ Communities carefully allocate resources such as funds, training,
 2 and officer duties to best serve local law enforcement needs; forced redistribution to immigration
 3 enforcement would siphon limited resources away from where they are most needed while
 4 simultaneously damaging community engagement and protection.³⁵
 5

6 The Executive Order seeks to wholly disrupt the policies that many communities, including
 7 the City and County of San Francisco, have put in place to specifically ensure that immigrants do
 8 not fear interactions with local law enforcement and prevent diversion of resources from effective
 9 public safety efforts. Further, the Executive Order has the effect of preventing those communities
 10 that want to adopt such policies from moving forward. By forcing jurisdictions to honor detainer
 11 requests and further entangle themselves with federal immigration enforcement, the Executive
 12 Order reduces the ability of local law enforcement agencies to build trust with immigrant
 13 communities, leading the underreporting of crime and greater victimization described above.
 14

15 **II. The Executive Order Seeks to Force Local Law Enforcement Agencies to**
 16 **Engage in Conduct that Violates the Constitution and Subjects Local Law**
 17 **Enforcement Officers and Agencies to Potential Liability.**

18 The Executive Order seeks to require jurisdictions to honor ICE detainers or risk losing
 19 federal funding. However, numerous courts have found that continuing to detain an individual
 20 under an ICE detainer for longer than they otherwise would be held violates the Fourth
 21 Amendment. Cities and counties should not be faced with the stark choice of losing federal funds
 22 or committing constitutional violations for which they will be subject to civil liability.
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 25 ³⁴ See *Legislative Threats to Undermine Community Safety Policies: The Costs of Entangling*
 26 *Local Policing and Immigration Law*, NATIONAL IMMIGRANT JUSTICE CENTER AND NATIONAL
 IMMIGRATION LAW CENTER, (Aug. 2015), available at http://immigrantjustice.org/sites/immigrantjustice.org/files/201508_05_NIJC_NILC_EnforcementCosts.pdf.

27 ³⁵ See Letter from Law Enforcement Task Force to Hon. Trey Gowdy and Hon. Zoe Lofgren (July
 28 20, 2015) available at <https://immigrationforum.org/wp-content/uploads/2015/07/072015-LEITF-Letter-House.pdf>.

1 The Fourth Amendment's most basic requirement is that all arrests must be supported by
 2 probable cause.³⁶ Probable cause requires that "the facts and circumstances within ... the officers'
 3 knowledge and of which they ha[ve] reasonably trustworthy information are sufficient in
 4 themselves to warrant a man of reasonable caution in the belief that an offense has been or is being
 5 committed."³⁷ Under long-standing Fourth Amendment precedent, numerous federal courts have
 6 found that continued detention under an ICE detainer, absent probable cause, gives rise to a claim
 7 for a violation of the Fourth Amendment and subjects the detaining officer or jurisdiction to civil
 8 liability. ³⁸ These courts have found that local jails must have a warrant or probable cause of a new
 9 offense to detain a person after they would otherwise be released from custody.³⁹
 10
 11
 12

13 ³⁶ See *Dunaway v. New York*, 442 U.S. 200,213 (1979).

14 ³⁷ *Brinegar v. United States*, 338 U.S. 160, 175-76 (1949) (internal quotation marks, brackets, and citation omitted).

15 ³⁸ See *Morales v. Chadbourne*, 996 F. Supp. 2d 19 (D. R.I. 2014), *aff'd on appeal*, 793 F.3d 208
 16 (1st Cir. 2015) (plaintiff stated Fourth Amendment claim where she was held for 24 hours on ICE
 17 detainer issued without probable cause); *Galarza v. Szalczyk*, No. 10-cv-06815, 2012 WL
 18 1080020, at *10, *13 (E.D. Pa. Mar. 30, 2012) (where plaintiff was held for 3 days after posting
 19 bail based on an ICE detainer, he stated a Fourth Amendment claim against both federal and local
 20 defendants), *rev'd on other grounds*, 745 F.3d 634 (3d Cir. 2014); *Miranda-Olivares v. Clackamas*
 21 *Cnty.*, No. 12-cv-02317-ST, 2014 WL 1414305, at *10 (D. Or. Apr. 11, 2014) (plaintiffs detention
 22 on an ICE detainer after she would otherwise have been released "constituted a new arrest, and
 23 must be analyzed under the Fourth Amendment"); *Mendoza v. Osterberg*, No. 13CV65, 2014 WL
 24 3784141, at *6 (D. Neb. July 31, 2014) (recognizing that "[t]he Fourth Amendment applies to all
 25 seizures of the person," and thus, "[i]n order to issue a detainer[,] there must be probable cause")
 26 (internal quotation marks, ellipses, and citations omitted); *Villars v. Kubiowski*, 45 F.Supp.3d
 27 791 (N.D. Ill. 2014) (holding that plaintiff stated a Fourth Amendment claim where he was held
 28 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) (holding that plaintiff stated a Fourth Amendment
 claim where ICE issued his detainer without probable cause); *Vohra v. United States*, No. 04-cv-
 00972-DSF-RZ, 2010 U.S. Dist. LEXIS 34363, *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).

³⁹ See, e.g., *Morales*, 793 F.3d at 217 (1st Cir. 2015) ("Because Morales was kept in custody for a
 new purpose after she was entitled to release, she was subjected to a new seizure for Fourth

1 The Executive Order contains no guidance or directive that detainers will issue only with
2 a showing of probable cause or a judicial warrant. There is thus no lawful way for local
3 jurisdictions to comply with the Executive Order's requirement to honor ICE detainers. Further,
4 the Supreme Court has held that the federal government's spending power "may not be used to
5 induce the States to engage in activities that would themselves be unconstitutional."⁴⁰ The
6 Executive Order's attempt to strip jurisdictions of funding if they do not honor ICE detainers is
7 unlawful, and forces localities to choose between funding and committing and subjecting
8 themselves to liability for constitutional violations. As such, the Executive Order should be
9 preliminarily enjoined.
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12 **CONCLUSION**

13 For the foregoing reasons, as well as the reasons set forth in Plaintiff's Motion, this Court
14 should grant the nationwide preliminary injunction against the Executive Order.
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16 March 29, 2017

Respectfully Submitted,

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18 /s/ Matthew J. Piers

19 Matthew J. Piers
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26

27

Amendment purposes- one that must be supported by a new probable cause justification.");
28 *Vohra*, 2010 U.S. Dist. LEXIS 34363 (C.D. Cal. 2010).

⁴⁰ *South Dakota v. Dole*, 483 U.S. 203, 210-11 (1987).

EXHIBIT A

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EXHIBIT A

Amici Individual Sheriffs and Police Chiefs are:

- Chief Art Acevedo, Houston, Texas, Police Department;
- Chief Charles Beck, Los Angeles, California, Police Department;
- Chief Chris Burbank (retired), Salt Lake City, Utah, Police Department;
- Sheriff Jerry Clayton, Washtenaw County, Michigan, Sheriffs Office;
- Sheriff Mark Curran, Lake County, Illinois, Sheriffs Office;
- Sheriff Tony Estrada, Santa Cruz County, Arizona, Sheriffs Office;
- Sheriff Michael Haley (retired), Washoe County, Nevada, Sheriffs Office;
- Sheriff Bill McCarthy, Polk County, Iowa, Sheriffs Office;
- Sheriff Joe Pelle, Boulder County, Colorado, Sheriffs Office;
- Chief Celestino Rivera, Lorain, Ohio, Police Department;
- Sheriff John Urquhart, King County, Washington, Sheriffs Office;
- Sheriff Lupe Valdez, Dallas County, Texas, Sheriffs Department; and
- Sheriff Richard Wiles, El Paso County, Texas, Sheriffs Office.