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

**STATE OF CALIFORNIA, ex rel. XAVIER
BECERRA, Attorney General of the State of
California,**

Plaintiff,

v.

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

Defendants.

Case No. 1:17-cv-4701-WHO

**ADMINISTRATIVE MOTION FOR
LEAVE TO FILE BRIEF OF AMICI
CURIAE CURRENT AND FORMER
PROSECUTORS AND LAW
ENFORCEMENT LEADERS IN
SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

Date: December 6, 2017
Time: 2:00 PM
Judge: Hon. William H. Orrick
Courtroom: 2

1 Pursuant to the Court's November 20, 2017 Order Regarding Amicus Briefing (Dkt. No.
2 41), Movants, certain current and former prosecutors and law enforcement leaders, respectfully
3 request leave to participate as *amici curiae* and file a brief in support of Plaintiff's Motion for
4 Preliminary Injunction. The proposed brief is submitted with this motion.

5 **I. Identities and Interests of Proposed Amici**

6 *Amici* Current and Former Prosecutors and Law Enforcement Leaders file this brief as
7 *Amici Curiae* in support of the Plaintiff's Motion for Preliminary Injunction. *Amici* are criminal
8 justice leaders who have extensive expertise in law enforcement, prosecution, and cooperative
9 federal-state law enforcement activities. They are intimately familiar with the challenges of
10 performing critical law enforcement and governance functions in communities where immigrants
11 fear the police and are vulnerable to exploitation and crime.

12 The following *amici* represent jurisdictions from across the country that understand how
13 local community needs intersect with public safety:

- 14 • **Roy L. Austin**
15 Deputy Assistant to the President for Urban Affairs, Justice and Opportunity, White
16 House Domestic Policy Council (2014-17); Deputy Assistant Attorney General, Civil
17 Rights Division, U.S. Department of Justice (2010-14); Senior Assistant U.S. Attorney,
18 District of Columbia (2009-10); Assistant U.S. Attorney, District of Columbia (2002-07;
19 2009-10)
- 18 • **Chiraag Bains**
19 Trial Attorney, Criminal Section, Civil Rights Division, U.S. Department of Justice
20 (2010-14); Senior Counsel to the Assistant Attorney General, Civil Rights Division, U.S.
21 Department of Justice (2014-17)
- 21 • **Charles L. Beck**
22 Chief, Los Angeles Police Department, California (2009-Present)
- 23 • **Diana Becton**
24 District Attorney, Contra Costa County, California (2017-Present)
- 25 • **Sherry Boston**
26 District Attorney, Stone Mountain Judicial Circuit (DeKalb County), Georgia (2017-
27 Present)

- 1 • **Chris Burbank**
2 Director of Law Enforcement Engagement, Center for Policing Equity (2015-Present);
3 Chief, Salt Lake City Police Department, Utah (2006-15)
- 4 • **Jerry L. Clayton**
5 Sheriff, Washtenaw County, Michigan (2009-Present)
- 6 • **Brendan Cox**
7 Chief, Albany Police Department, New York (2015-17)
- 8 • **Mark A. Dupree, Sr.**
9 District Attorney, Wyandotte County, Kansas (2017-Present)
- 10 • **Kim Foxx**
11 State's Attorney, Cook County, Illinois (2016-Present)
- 12 • **Stanley Garnett**
13 District Attorney, 20th Judicial District (Boulder County), Colorado (2009-Present)
- 14 • **George Gascón**
15 District Attorney, San Francisco, California (2011-Present)
- 16 • **Sim Gill**
17 District Attorney, Salt Lake County, Utah (2010-Present)
- 18 • **Eric Gonzalez**
19 Acting District Attorney, Kings County, New York (2016-Present)
- 20 • **Mark Gonzalez**
21 District Attorney, Nueces County, Texas (2017-Present)
- 22 • **Michael Haley**
23 Sheriff, Washoe County, Nevada (2007-15)
- 24 • **John Hummel**
25 District Attorney, Deschutes County, Oregon (2015-Present)
- 26 • **Law Enforcement Action Partnership (LEAP)**
- 27 • **Lawrence S. Krasner**
28 District Attorney-elect, Philadelphia, Pennsylvania

- 1 • **Miriam Aroni Krinsky**
2 Assistant U.S. Attorney, Central District of California (1987-88; 1990-2002); Criminal
3 Appellate Chief and Chief, General Crimes; Former Assistant U.S. Attorney, District of
4 Maryland (1988-90); Chair, Solicitor General’s Criminal Appellate Advisory Group
5 (2000-02)
- 6 • **William Lansdowne**
7 Chief, San Diego Police Department, California (2003-14); Chief, San Jose Police
8 Department, California (1995-2003); Chief, Richmond Police Department, California
9 (1994-98)
- 10 • **Chris Magnus**
11 Chief, Tucson Police Department, Arizona (2016-Present); Chief, Richmond Police
12 Department, California (2006-15); Chief, Fargo Police Department, North Dakota (1999-
13 2005)
- 14 • **Beth McCann**
15 District Attorney, 2nd Judicial District (Denver County), Colorado (2017-Present)
- 16 • **Bill McCarthy**
17 Sheriff, Polk County, Iowa (2009-Present)
- 18 • **Marilyn J. Mosby, Esq.**
19 State’s Attorney, Baltimore City, Maryland (2015-Present)
- 20 • **Kathleen O’Toole**
21 Chief, Seattle Police Department, Washington (2014-Present)
- 22 • **Joseph K. Pelle**
23 Sheriff, Boulder County, Colorado (2003-Present)
- 24 • **Celestino Rivera**
25 Chief, Lorain Police Department, Ohio (1993-Present)
- 26 • **Daniel Satterberg**
27 Prosecuting Attorney, King County, Washington (2007-Present)
- 28 • **Ronal Serpas**
Co-Chairman, Law Enforcement Leaders to Reduce Crime & Incarceration (2015-
Present); Superintendent, New Orleans Police Department, Louisiana (2010-14); Chief,
Metropolitan Nashville Police Department, Tennessee (2004-10); Chief, Washington
State Patrol, Washington (2001-04)
- **Carol A. Siemon**
Prosecuting Attorney, Ingham County, Michigan (2017-Present)

- 1 • **John Urquhart**
2 Sheriff, King County, Washington (2012-Present)
- 3 • **Lupe Valdez**
4 Sheriff, Dallas County, Texas (2005-Present)
- 5 • **Cyrus R. Vance, Jr.**
6 District Attorney, New York County, New York (2010-Present)
- 7 • **Andrew Warren**
8 State Attorney, 13th Judicial Circuit (Hillsborough County), Florida (2017-Present)

9 A full list of *amici* is also attached as Exhibit A to the proposed brief.

10 **II. Relevance and Usefulness of Proposed Brief**

11 *Amici's* experience in keeping their communities safe has underscored the critical
12 importance to law enforcement of bringing immigrants and their families out of the shadows.
13 Community trust and cooperation are essential to public safety, and sound police work as well as
14 successful prosecutors' efforts are undermined by undocumented immigrants' fears of interacting
15 with law enforcement and the justice system. This dynamic, moreover, leaves undocumented
16 immigrants more vulnerable to crime and exploitation, and undocumented immigrant victims less
17 likely to come forward or cooperate with investigations and prosecutions, leading to more violence
18 in the communities *amici* are charged with protecting.

19 *Amici* believe that Defendants' challenged action—requiring the State and its political
20 subdivisions to certify compliance with an expansive interpretation of 8 U.S.C. § 1373 as a
21 condition of receiving funding through the Edward Byrne Memorial Justice Assistance Grant
22 (“JAG”) and Community Oriented Policing Services (“COPS”) programs—would dangerously
23 affect local communities. Defendants' interpretation of § 1373, as reflected in letters to prospective
24 JAG recipients, would require jurisdictions to prioritize civil immigration enforcement over public
25 safety and the confidentiality of victims and witnesses, or else strip them of funding for important
26 law enforcement initiatives. Defendants' apparent understanding of § 1373 threatens to undercut
27 two sets of California statutes designed to enhance public safety by instilling trust between
28

1 community members—including crime victims and witnesses—and the officials charged with
2 protecting them.

3 The loss of JAG and COPS funding would deprive local law enforcement and justice
4 system leaders of scarce resources that they draw upon in determining how best to protect their
5 communities. Jurisdictions across the country rely heavily on JAG and COPS grants to support
6 programs related to law enforcement, prosecution, corrections, courts, crime prevention and
7 education, drug and mental health treatment, and victim-witness initiatives. *Amici* believe that a
8 preliminary injunction is necessary to halt this attempt to force local law enforcement officers and
9 agencies into practices that would result in decreased public safety.

10
11 November 29, 2017

Respectfully Submitted,

/s/ Matthew J. Piers

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INTRODUCTION

1
2 The lessons amici have learned in protecting their communities shed important light on the
3 issues raised in this case. When community residents live in constant fear that interactions with
4 local law enforcement officials could result in deportation, there is a fundamental breakdown in
5 trust that threatens public safety and impedes justice system leaders from doing their jobs.
6 Extensive evidence shows that undocumented immigrants—and their lawfully present family and
7 neighbors—fear that turning to the police and cooperating with prosecutors could bring adverse
8 immigration consequences. As a result, immigrant communities are less willing to report crime
9 and assist with criminal investigations and prosecutions. This fundamental breakdown in trust
10 poses a major challenge to both the investigation and prosecution of individual crimes and to the
11 proper allocation of public safety resources.

12 Current policies limiting local and state involvement in federal immigration enforcement
13 address this issue of trust. Though they take several different forms, these policies generally aim
14 to preserve local and state resources and improve public safety by promoting cooperation between
15 law enforcement and the communities they serve.¹ Many jurisdictions—whether via ordinance,
16 administrative policy, or state law—also limit the degree to which their officials may cooperate
17 with ICE detainers in certain circumstances.² Defendants' interpretation of 8 U.S.C. § 1373 would
18 upend these policies by conditioning federal law enforcement grants on participation in federal
19 immigration enforcement, to the detriment of public safety.

20 A full list of amici is attached as Exhibit A.
21
22

23 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*, at 2 (July 21, 2015) (statement of Tom Manger, Chief, Montgomery Cty., Md., Police Dep't & President, Major Cities Chiefs Ass'n), available at <http://www.judiciary.senate.gov/imo/media/doc/07-21-15%20Manger%20Testimony.pdf>.

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27
28

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.”³ In order to stop crime, police officers “need the full cooperation of victims and witnesses.”⁴

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.⁵ It thus requires police to interact with neighborhood residents in a manner that will build trust and improve the level of cooperation with the police department.⁶ 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% of Hispanic immigrants and 47% of all Hispanic adults in the United States worry about deportation—of themselves, family members, or close friends.⁷ 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 study of

³ Statement of Tom Manger, *supra* note 1, at 2.

⁴ *Id.*

⁵ See Anita Khashu, *The Role Of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties*, Police Found. (Apr. 2009), <https://www.policefoundation.org/wp-content/uploads/2015/06/The-Role-of-Local-Police-Narrative.pdf>.

⁶ *Id.*

⁷ *Latinos and the New Trump Administration*, Pew Research Ctr.: Hispanic Trends, Feb. 23, 2017, <http://www.pewhispanic.org/2017/02/23/latinos-and-the-new-trump-administration/>.

1 Latinos in four major cities found that 70% of undocumented immigrants and 44% of all Latinos
2 are less likely to contact law enforcement authorities if they are victims of a crime for fear that the
3 police will ask them or people they know about their immigration status; and 67% of
4 undocumented immigrants and 45% of all Latinos are less likely to voluntarily offer information
5 about, or report, crimes because of the same fear.⁸

6 This study (among others) highlights that fears of immigration enforcement and the
7 resulting damage to law enforcement cooperation affect not just the undocumented community but
8 also individuals with citizenship or lawful status, particularly in “mixed-status” households.⁹

9 This problematic atmosphere of mistrust is felt by police as well. In one study, two-thirds
10 of the law enforcement officers polled expressed the view that recent immigrants reported crimes
11 less frequently than others.¹⁰ Those surveyed also indicated that the crimes underreported by
12 immigrants are most often serious ones, with domestic violence and gang violence at the top.¹¹
13 These trends have only worsened in recent months. According to the Houston Police Department,
14 rape reporting by members of the Hispanic community has fallen over 40% from the first quarter
15 of 2016, despite an overall *increase* in city-wide crime reports.¹² Los Angeles, San Francisco, and
16 San Diego have also witnessed lagging sexual assault and domestic violence reporting by Hispanic
17

18
19 ⁸ 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 ⁹ An estimated 85% of immigrants live in mixed-status families. See Khashu, *supra* note 5, at 24;
25 see also Jill Theresa Messing et al., *Latinas’ Perceptions of Law Enforcement: Fear of*
26 *Deportation, Crime Reporting, and Trust in the System*, 30 J. Women & Soc. Work 328, 334
27 (2015) (“The results indicate that for each 1-point increase in fear of deportation [e.g., from ‘not
28 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.”).

¹⁰ 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).

¹¹ *Id.* at 188-89.

¹² Michael Morris & Lauren Renee Sepulveda, *A New ICE Age*, *The Texas Prosecutor*, Vol. 47,
No. 4 (July/Aug. 2017), <https://www.tdcaa.com/journal/new-ice-age>.

1 persons—but not other ethnic groups—in the first half of 2017.¹³ According to Los Angeles
2 County Sheriff’s Deputy Marino Gonzalez, “They’re afraid of us. And the reason they’re afraid of
3 us is because they think we’re going to deport them.”¹⁴

4 Immigrants’ widely recognized fear of interacting with law enforcement and prosecutors
5 poses a fundamental challenge for community policing. Police cannot prevent or solve crimes if
6 victims or witnesses are unwilling to talk to them or prosecutors because of concerns that they or
7 their loved ones or neighbors will face adverse immigration consequences. As the president of the
8 Major Cities Chiefs Association has explained to Congress, “[c]ooperation is not forthcoming from
9 persons who see their police as immigration agents.”¹⁵ As cautioned by one official, “immigrants
10 will never help their local police to fight crime once they fear we have become immigration
11 officers.”¹⁶

12 The underreporting of crimes by recent immigrants is a problem for the entire criminal
13 justice system.¹⁷ The most immediate consequence, of course, is that serious crimes go unreported
14 and unpunished. As one official explained, when criminal behavior goes unreported, “[c]rime
15 multiplies” and “[u]nresolved resentments grow in the community.”¹⁸ Another added that the
16 underreporting of crime “keeps fear at very high levels and diminishes quality of life.”¹⁹ Even
17 beyond the underreporting of crime, undocumented immigrant victims and witnesses may refuse
18 to come to court to testify in important criminal cases because of their fear of being detained and
19 deported.

21
22 ¹³ James Queally, *Fearing Deportation, Many Domestic Violence Victims Are Steering Clear of*
23 *Police and Courts*, L.A. Times, Oct. 9, 2017, <http://www.latimes.com/local/lanow/la-me-ln-undocumented-crime-reporting-20171009-story.html>.

24 ¹⁴ *Id.*

25 ¹⁵ Statement of Tom Manger, *supra* note 1, at 2.

26 ¹⁶ *Local Law Enforcement Leaders Oppose Mandates to Engage in Immigration Enforcement*,
27 Nat’l Immigration Law Ctr. (Aug. 2013), at 2 (statement of Chief Acevedo), *available at*
28 <https://www.nilc.org/wp-content/uploads/2017/02/Law-Enforcement-Opposition-to-Mandates-2013-08-30.pdf>.

¹⁷ Davis et al., *supra* note 10, at 188.

¹⁸ *Id.*

¹⁹ *Id.*

1 These concerns are anything but hypothetical. Throughout this year, they have manifested
2 in ways that threaten long-term harm to criminal justice system operations. A Department of
3 Homeland Security official recently illustrated why many immigrants hesitate to cooperate with
4 law enforcement. In a briefing to reporters, he stated that “[j]ust because they’re a victim in a
5 certain case does not mean there’s not something in their background that could cause them to be
6 a removable alien.”²⁰ An immigrant woman living in Texas learned that lesson all too perversely
7 when she arrived at a courthouse seeking a protective order against her abusive boyfriend, only to
8 leave under arrest—likely due to a tip from her abuser.²¹ In August 2017, federal agents detained
9 an undocumented immigrant who had provided key testimony in two homicide cases.²² And weeks
10 later, ICE agents arrested a victim of domestic violence as he left a county courthouse.²³ The
11 Immigrant Defense Project reports that the number of arrests or attempted arrests by ICE agents
12 at courthouses throughout New York has risen by a staggering 900% in 2017.²⁴

13 Precisely because victims and witnesses fear similar treatment from immigration
14 authorities, some violent crimes have gone unreported, and pending prosecutions have disappeared
15 from courts’ dockets. A Texas district attorney confirmed that a victim of domestic violence had
16 become uncooperative because she feared deportation.²⁵ Denver prosecutors were forced to drop
17

18 ²⁰ Devlin Barrett, *DHS: Immigration Agents May Arrest Crime Victims, Witnesses at Courthouses*,
19 Wash. Post, Apr. 4, 2017, https://www.washingtonpost.com/world/national-security/dhs-immigration-agents-may-arrest-crime-victims-witnesses-at-courthouses/2017/04/04/3956e6d8-196d-11e7-9887-1a5314b56a08_story.html.

20 ²¹ Katie Mettler, *“This is Really Unprecedented”*: ICE Detains Woman Seeking Domestic Abuse
21 Protection at Texas Courthouse, Wash. Post, Feb. 16, 2017, <https://www.washingtonpost.com/news/morning-mix/wp/2017/02/16/this-is-really-unprecedented-ice-detains-woman-seeking-domestic-abuse-protection-at-texas-courthouse/>.

22 ²² James Fanelli, *Father of Two Who Testified in Brooklyn Homicide Cases and Is Married to a*
23 *U.S. Citizen Detained by ICE*, N.Y. Daily News, Aug. 2, 2017, <http://www.nydailynews.com/new-york/dad-2-testified-brooklyn-murder-cases-detained-ice-article-1.3378899>.

24 ²³ Steve Coll, *When a Day in Court is a Trap for Immigrants*, New Yorker, Nov. 8, 2017,
25 <https://www.newyorker.com/news/daily-comment/when-a-day-in-court-is-a-trap-for-immigrants>.

26 ²⁴ Stephen Rex Brown, *Courthouse Arrests of Immigrants by ICE Agents Have Risen 900% in New*
27 *York This Year: Immigrant Defense Project*, N.Y. Daily News, Nov. 15, 2017, <http://www.nydailynews.com/new-york/ice-courthouse-arrests-immigrants-900-n-y-2017-article-1.3633463>.

28 ²⁵ Philip Jankowski, *Deportation Fears Keep Victim from Cooperating in Domestic Violence Case*,
Travis DA Says, The Statesman (Austin), Mar. 8, 2017, <http://www.statesman.com/news/>

1 four domestic abuse cases when similar worries deterred the victims from testifying.²⁶ An
 2 immigrant mother in New Jersey, fearing that interaction with the court system could trigger
 3 removal, declined to report that her son had been assaulted on his way to school.²⁷ And a victim
 4 of domestic violence in New York City “did not think it was in her best interest” to pursue a
 5 protective order.²⁸ Deportation concerns aside, undocumented immigrant victims and witnesses
 6 may understandably recoil from a system that allows participants to walk freely into a courthouse
 7 to fulfill a civic responsibility to testify, only to be detained by immigration authorities and
 8 prevented from returning to their lives.

9 In response to these incidents, the chief justices of three state supreme courts have written
 10 top federal authorities to emphasize that preserving trust with immigrant communities is essential
 11 to the administration of justice.²⁹ As Massachusetts Attorney General Maura Healey has explained,
 12 using local court systems as levers for federal immigration enforcement “undercuts local law
 13 enforcement’s ability to develop the critical trust needed to keep communities safe.”³⁰

14
 15 [local/deportation-fears-keep-victim-from-cooperating-domestic-violence-case-travis-says/
 16 rdZAJFEAxjHWnxXV1LlpjM/.](http://www.washingtonpost.com/local/deportation-fears-keep-victim-from-cooperating-domestic-violence-case-travis-says/rdZAJFEAxjHWnxXV1LlpjM/)

17 ²⁶ Heidi Glenn, *Fear of Deportation Spurs 4 Women to Drop Domestic Abuse Cases in Denver*,
 18 NPR, Mar. 21, 2017, [http://www.npr.org/2017/03/21/520841332/fear-of-deportation-spurs-4-
 19 women-to-drop-domestic-abuse-cases-in-denver](http://www.npr.org/2017/03/21/520841332/fear-of-deportation-spurs-4-women-to-drop-domestic-abuse-cases-in-denver).

20 ²⁷ S.P. Sullivan, *Advocates Say ICE Courthouse Arrests in N.J. Are Hurting Immigrant Crime*
 21 *Victims*, NJ, June 5, 2017, [http://www.nj.com/politics/index.ssf/2017/06/advocates_say_ice_
 22 courthouse_arrests_are_hurting_i.html](http://www.nj.com/politics/index.ssf/2017/06/advocates_say_ice_courthouse_arrests_are_hurting_i.html).

23 ²⁸ Emma Whitford, *Courthouse ICE Arrests Are Making Immigrants ‘Sitting Ducks,’ Lawyers*
 24 *Warn*, Gothamist, June 22, 2017, http://gothamist.com/2017/06/22/ice_immigrants_courts.php.

25 ²⁹ Letter from Tani G. Cantil-Sakauye, Chief Justice of the Supreme Court of California, to Jeff
 26 Sessions, Att’y Gen. of the U.S., and John F. Kelly, Sec’y of Dep’t of Homeland Sec. (Mar. 16,
 27 2017), *available at* [http://newsroom.courts.ca.gov/news/chief-justice-cantil-sakauye-objects-to-
 28 immigration-enforcement-tactics-at-california-courthouses](http://newsroom.courts.ca.gov/news/chief-justice-cantil-sakauye-objects-to-immigration-enforcement-tactics-at-california-courthouses); Letter from Mary E. Fairhurst, Chief
 Justice of the Supreme Court of Washington, to John F. Kelly, Sec’y of Dep’t of Homeland Sec.
 (Mar. 22, 2017), *available at* [https://www.courts.wa.gov/content/publicUpload/
 Supreme%20Court%20News/KellyJohnDHSICE032217.pdf](https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/KellyJohnDHSICE032217.pdf); Letter from Stuart Rabner, Chief
 Justice of the Supreme Court of New Jersey, to John F. Kelly, Sec’y of Dep’t of Homeland Sec.
 (Apr. 19, 2017), *available at* [https://www.documentcloud.org/documents/3673664-Letter-from-
 Chief-Justice-Rabner-to-Homeland.html#document/p1](https://www.documentcloud.org/documents/3673664-Letter-from-Chief-Justice-Rabner-to-Homeland.html#document/p1).

³⁰ Maria Cramer, *ICE Courthouse Arrests Worry Attorneys, Prosecutors*, Boston Globe, June 16,
 2017, [https://www.bostonglobe.com/metro/2017/06/15/ice-arrests-and-around-local-courthouses-
 worry-lawyers-prosecutors/xxFH5vVJnMeggQa0NMI8gI/story.html](https://www.bostonglobe.com/metro/2017/06/15/ice-arrests-and-around-local-courthouses-worry-lawyers-prosecutors/xxFH5vVJnMeggQa0NMI8gI/story.html).

1 Distrust between immigrants and law enforcement also results in greater victimization of
2 immigrants. “When immigrants come to view their local police and sheriffs with distrust because
3 they fear deportation, it creates conditions that encourage criminals to prey upon victims and
4 witnesses alike.”³¹ This phenomenon has been termed the “deportation threat dynamic,” whereby
5 individuals who fear removal from the United States do not report the crimes they suffer.³² Nearly
6 two-thirds of undocumented migrant workers participating in a study in Memphis, Tennessee
7 reported being the victim of at least one crime, with the most common being theft and robbery.³³
8 Respondents indicated that fewer than a quarter of these crimes were reported to the police, and
9 *only one* was reported by the victim himself.³⁴

10 Undocumented immigrants are especially vulnerable to domestic violence. A number of
11 studies have shown that abusive partners may exploit the threat of deportation in order to maintain
12 power and control.³⁵ Financial dependence on an abusive partner with stable immigration status
13 may facilitate violence in this way.³⁶ Seventy percent of participants in one study of domestic
14 abuse victims said that immigration status was a major factor keeping them from seeking help or
15 reporting their abuse to the authorities—and thereby permitting the violence to continue.³⁷ In
16
17
18

19 ³¹ Statement of Tom Manger, *supra* note 1, at 2.

20 ³² Elizabeth Fussell, *The Deportation Threat Dynamic & Victimization of Latino Migrants: Wage Theft & Robbery*, 52 Soc. Q. 593, 610 (2011).

21 ³³ 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).

22 ³⁴ *Id.* at 165.

23 ³⁵ See, e.g., Messing, *supra* note 9, at 330 (citing several studies); Angelica S. Reina, Brenda J. Lohman, & Marta María Maldonado, “*He Said They’d Deport Me*”: *Factors Influencing Domestic Violence Help-Seeking Practices Among Latina Immigrants*, 29 J. Interpersonal Violence 593, 601 (2013). The latter study cited a participant who explained that a partner “beat me up and I could have called the police because that was what I thought to do . . . but he threatened me [H]e told me that if I called the police I was going to lose out . . . because [police officers] . . . would . . . take me, because I didn’t have legal documents.” Reina, Lohman, & Maldonado, *supra*, at 601.

26 ³⁶ See, e.g., Messing, *supra* note 9, at 330.

27 ³⁷ Reina, Lohman & Maldonado, *supra* note 35, at 600.

1 another study, immigration status was identified as the single largest factor independently affecting
2 the rate at which battered Latina immigrants called the police.³⁸

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

7 In limiting local and state involvement in federal immigration enforcement, many
8 jurisdictions aim to enhance community trust and preserve local resources. These policies improve
9 public safety by promoting cooperation between law enforcement and the communities they serve.
10 As the California legislature understood, “[a] relationship of trust between [the] immigrant
11 community and state and local agencies is central to the public safety.”³⁹ That “trust is threatened,”
12 however, “when state and local agencies are entangled with federal immigration enforcement.”⁴⁰

13 Some administrative policies or laws include formal restrictions on local law enforcement’s
14 ability to apprehend or arrest an individual for federal immigration violations, including
15 restrictions on arrests for civil violations of federal immigration law.⁴¹ Other policies—including
16 those codified in California’s Values Act—restrict local law enforcement’s ability to inquire into
17 or investigate a person’s immigration status.⁴² Additionally, many jurisdictions have adopted

18 ³⁸ Nawal H. Ammar et al., *Calls to Police and Police Response: A Case Study of Latina Immigrant*
19 *Women in the USA*, 7 Int’l J. Police Sci. & Mgmt. 230, 237 (2005).

20 ³⁹ Cal. Gov’t Code § 7284.2(b)

21 ⁴⁰ *Id.* § 7284.2(c).

22 ⁴¹ See Michael John Garcia & Kate M. Manuel, Cong. Research Serv., R43457, State and Local
23 “Sanctuary” Policies Limiting Participation in Immigration Enforcement 9 (July 10, 2015),
24 available at <https://www.fas.org/sgp/crs/homsec/R43457.pdf>; see also, e.g., Or. Rev. Stat. Ann.
25 § 181A.820 (“No law enforcement agency of the State of Oregon or of any political subdivision
26 of the state shall use agency moneys, equipment or personnel for the purpose of detecting or
27 apprehending persons whose only violation of law is that they are persons of foreign citizenship
28 present in the United States in violation of federal immigration laws.”); Washington, DC, Mayor’s
Order 2011-174: Disclosure of Status of Individuals: Policies and Procedures of District of
Columbia Agencies, at 2 (Oct. 19, 2011) (“No person shall be detained solely on the belief that he
or she is not present legally in the United States or that he or she has committed a civil immigration
violation.”), available at <https://www.scribd.com/document/69470234/Disclosure-Status-of-Individuals-D-C> [hereinafter DC Order].

⁴² 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”); see also, e.g., DC Order, *supra* note 41 (public safety employees “shall not

1 policies against continued detention of an individual based on immigration detainer requests for at
 2 least some categories of noncitizens.⁴³ Several states, including California, limit the extent to
 3 which local police can cooperate with detainer requests, and more than 400 counties have policies
 4 limiting cooperation with detainers.⁴⁴ California’s TRUTH Act also ensures that individuals in
 5 local law enforcement custody will be informed that any interview with ICE agents is voluntary
 6 and may be conducted with an attorney present.⁴⁵ And its Confidentiality Statutes aim to “protect
 7 the public from crime and violence by encouraging all persons who are victims of or witnesses to
 8 crimes . . . to cooperate with the criminal justice system and not to penalize these persons.”⁴⁶

9 These policies also play an important role in preserving local law enforcement resources.
 10 In the words of California’s Values Act, “[e]ntangling state and local agencies with federal
 11 immigration enforcement programs diverts already limited resources.”⁴⁷ For example, complying
 12 with ICE detainer requests can add staggering costs—in some cases, tens of millions of dollars
 13 annually.⁴⁸ Communities carefully allocate resources such as funds, training, and officer duties to
 14 best serve local law enforcement needs; forced redistribution to immigration enforcement would
 15 siphon limited resources away from where they are most needed while simultaneously damaging
 16 community engagement and protection.⁴⁹

17
 18
 19 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”).

20 ⁴³ Garcia & Manuel, *supra* note 41, at 14.

21 ⁴⁴ 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
 22 hold request”); see also Lee, Omri, and Preston, *supra* note 2; *ILRC Detainer Policies*, *supra* note
 2.

23 ⁴⁵ Cal. Gov’t Code § 7283.1(a).

24 ⁴⁶ Cal. Penal Code § 422.93(a).

25 ⁴⁷ Cal. Gov’t Code § 7284.2(d).

26 ⁴⁸ See *Legislative Threats to Undermine Community Safety Policies: The Costs of Entangling
 Local Policing and Immigration Law*, Nat’l Immigrant Justice Ctr. & Nat’l Immigration Law Ctr.
 (Aug. 2015), available at http://immigrantjustice.org/sites/immigrantjustice.org/files/201508_05_NIJC_NILC_EnforcementCosts.pdf.

27 ⁴⁹ See Letter from Law Enforcement Task Force to Hon. Trey Gowdy & Hon. Zoe Lofgren (July
 28 20, 2015), available at <https://immigrationforum.org/wp-content/uploads/2015/07/072015-LEITF-Letter-House.pdf>.

1 Recent incidents in localities with policies limiting local involvement in federal
2 immigration enforcement demonstrate the public safety benefits of such policies. For example, last
3 year, Los Angeles Police Department officers had an encounter with a suspected gang member
4 that resulted in a vehicle chase, a foot pursuit, and shots fired. An undocumented immigrant helped
5 police locate the suspect by providing a description and vehicle information.⁵⁰ In Tucson, Arizona,
6 an undocumented man confronted and struggled with a man who tried to steal a car with children
7 inside. The immigrant held the individual until police arrived, then cooperated with detectives in
8 the follow-up investigation, resulting in charges of kidnapping, auto theft, and burglary.⁵¹ These
9 examples show why crime is statistically significantly lower in counties that limit local
10 involvement in federal immigration enforcement, such as by declining to hold individuals in local
11 custody simply because ICE requests it.⁵²

12 Requiring compliance with Section 1373, as interpreted by Defendants, threatens both to
13 disrupt many communities' efforts to ensure that immigrants do not fear interactions with local
14 law enforcement, and to divert jurisdictions' resources from effective public safety efforts.
15 Conditioning JAG and COPS grants in this way would also deter other communities from adopting
16 trust-enhancing policies in the future. In short, forcing grantee jurisdictions to entangle themselves
17 further with federal immigration enforcement would send a dangerous signal to witnesses and
18 victims within immigrant communities: cooperate with local law enforcement at your own risk.

23 ⁵⁰ Chuck Wexler, *Commentary: Why Police Support Sanctuaries*, Phila. Inquirer, Mar. 10, 2017,
24 [http://www.philly.com/philly/opinion/20170310_Commentary__Why_police_support_](http://www.philly.com/philly/opinion/20170310_Commentary__Why_police_support_sanctuaries.html)
25 [sanctuaries.html](http://www.philly.com/philly/opinion/20170310_Commentary__Why_police_support_sanctuaries.html).

26 ⁵¹ *Id.*

27 ⁵² See Tom K. Wong, *The Effects of Sanctuary Policies on Crime and the Economy*, Ctr. for Am.
28 Progress (Jan. 26, 2017), <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.”).

1 **CONCLUSION**

2 For the foregoing reasons, as well as the reasons set forth in Plaintiff’s Motion, this Court
3 should grant the motion for a preliminary injunction.
4

5 November 29, 2017

Respectfully Submitted,

6 /s/ Matthew J. Piers

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Exhibit A

EXHIBIT A: LIST OF AMICI

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Law Enforcement Leaders*

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

**STATE OF CALIFORNIA, ex rel. XAVIER
BECERRA, Attorney General of the State of
California,**

Plaintiff,

v.

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

Defendants.

) Case No. 1:17-cv-4701-WHO

) **[PROPOSED] ORDER GRANTING**
) **MOTION FOR LEAVE TO FILE**
) **BRIEF OF AMICI CURIAE**
) **CURRENT AND FORMER**
) **PROSECUTORS AND LAW**
) **ENFORCEMENT LEADERS IN**
) **SUPPORT OF PLAINTIFF'S**
) **MOTION FOR PRELIMINARY**
) **INJUNCTION**

) Date: December 6, 2017
) Time: 2:00 PM
) Judge: Hon. William H. Orrick
) Courtroom: 2
)
)
)

[PROPOSED ORDER]

On November 29, 2017, pursuant to the Court’s November 20, 2017 Order Regarding Amicus Briefing (Dkt. No. 41), proposed *amici*, certain current and former prosecutors and law enforcement leaders, filed a motion seeking leave to file an *amici curiae* brief in support of Plaintiff’s motion seeking a preliminary injunction. Having considered the papers and pleadings on file, the Court GRANTS the Administrative Motion for Leave to File Brief of *Amici Curiae* Current and Former Prosecutors and Law Enforcement Leaders and ORDERS that the brief submitted by these amici be filed.

IT IS SO ORDERED.

Dated: _____, 2017

HONORABLE WILLIAM H. ORRICK
JUDGE, UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA