

Case Nos. 18-17308 & 18-17311

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

CITY AND COUNTY OF SAN FRANCISCO,
Plaintiff-Appellee,

v.

WILLIAM P. BARR, et al.,
Defendants-Appellants.

STATE OF CALIFORNIA,
Plaintiff-Appellee,

v.

WILLIAM P. BARR, et al.,
Defendants-Appellants.

On Appeal from the United States District Court for the Northern District of
California, Case Nos. 17-cv-04642 & 17-cv-04701 (Orrick, J.)

**BRIEF OF *AMICUS CURIAE* ANTI-DEFAMATION LEAGUE IN
SUPPORT OF PLAINTIFFS-APPELLEES, AFFIRMANCE**

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CORPORATE DISCLOSURE STATEMENT OF *AMICUS CURIAE*

Pursuant to Federal Rule of Appellate Procedure 26.1, amicus Anti-Defamation League states that it is a nonprofit organization, it has no parent company, and it has not issued any shares of stock. Amicus is represented in this matter by Latham & Watkins LLP.

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TABLE OF CONTENTS

	Page
IDENTITY AND INTEREST OF <i>AMICUS CURIAE</i>	1
I. INTRODUCTION	3
II. ARGUMENT.....	6
A. The California and San Francisco Statutes at Issue Are Aimed at Protecting Victims and Witnesses of Hate Crimes.	6
1. California’s Protective Statutes	6
2. San Francisco’s “City and County of Refuge” Law	9
B. The AG’s Unlawful Imposition of Conditions on JAG and COPS/CAMP Grants Would Only Undermine the Effectiveness of Law Enforcement and Threaten Public Safety for All.....	11
C. The AG’s Unlawful Imposition of Conditions on JAG and COPS/CAMP Grants Directly and Disproportionately Harms Immigrant Communities and Leaves Them More Vulnerable to Hate Crimes.	15
III. CONCLUSION	21

TABLE OF AUTHORITIES

Page(s)

CASES

<i>Galarza v. Szalczyk</i> , 745 F.3d 634 (3d Cir. 2014).....	12
<i>Mendia v. Garcia</i> , 768 F.3d 1009 (9th Cir. 2014).....	12

STATUTES

8 U.S.C.	
§§ 1101(a)(15)(T)-(U)	8
§ 1373.....	6
18 U.S.C. § 249(a)	15
28 U.S.C. § 534	19
2017 Cal. S.B. 54.....	6, 7
Cal. Code Civ. P. § 155(c)	8
Cal. Gov’t Code	
§§ 7282 <i>et seq.</i>	7
§§ 7283 <i>et seq.</i>	7
§ 7283.1	7
§ 7284.2(b)-(c).....	7
§ 7284.6(a)(1)(A).....	6
§ 7284.6(e).....	6
Cal. Pen. Code	
§ 422.93(a).....	7
§ 422.93(b)	7
§ 679.10(k)	7
§ 679.11(k)	7

Cal. Welf. & Inst. Code	
§ 827	8
§ 831(a)	8
§ 831(e)	8

S.F. Admin. Code	
§ 12H	9
§ 12H.2	9
§ 12I	9
§ 12I.1	9, 10
§§ 12I.3(c)-(e)	9
§ 12I.4	9

RULES

Fed. R. App. P.	
29(a)(2)	2
29(a)(4)(E)	2

REGULATIONS

8 C.F.R. § 245.24	11
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Chris Magnus, <i>Tuscon's Police Chief: Sessions's Anti-Immigrant Policies Will Make Cities More Dangerous</i> , N.Y. TIMES (Dec. 6, 2017), https://nyti.ms/2nBbnTZ	13
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H.R. REP. NO. 111-86.....	16
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IDENTITY AND INTEREST OF *AMICUS CURIAE*

Amicus curiae Anti-Defamation League (“ADL”) is a non-profit organization that fights anti-Semitism and all forms of bigotry, defends democratic ideals, and protects civil rights for all. ADL has regional offices across the country, including five offices in California.

ADL is a leading organization in preventing and responding to hate crimes, having drafted the nation’s first model hate crime law and having led a large coalition advocating for the passage of the federal Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (“HCPA”). ADL has also been recognized as a leading resource on effective responses to violent bigotry and building bridges of communication, understanding, and respect among diverse communities. To support those aims, ADL trains law enforcement on issues including hate crimes and implicit bias. The *Law Enforcement and Society* (“LEAS”) training program, developed in 1998 by ADL in partnership with the U.S. Holocaust Memorial Museum, focuses on building trust between law enforcement and the communities they serve.

ADL is uniquely situated to assist the Court in evaluating the impact of the U.S. Department of Justice’s attempt to impose immigration-related conditions on California and San Francisco in order for them to receive federal funding pursuant to the Edward Byrne Memorial Justice Assistance Grant (“JAG”) program,

Community Oriented Policing Services (“COPS”) program, and COPS Anti-Meth Program (“CAMP”). Specifically, ADL can provide perspective on the suppressive effect that imposing these conditions will have on community policing, and thus the reporting and prevention of crimes, including hate crimes. ADL’s arguments thus further demonstrate, beyond the parties’ briefing, why this Court should affirm the district court’s sound grant of summary judgment and entry of a permanent injunction.

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), ADL states that no party’s counsel authored this brief in whole or in part, and no party, party’s counsel, or other person contributed money intended to fund the preparation or submission of this brief.

Pursuant to Federal Rule of Appellate Procedure 29(a)(2), ADL states that all parties have consented to the filing of this brief.

I. INTRODUCTION

The United States Attorney General's (the "AG's") attempt to impose immigration enforcement-related conditions on the State of California's ("California's" or the "State's") and the City and County of San Francisco's ("San Francisco's" or the "City's") receipt of federal law enforcement grants is not only unconstitutional, but appears deliberately aimed at undoing the protections that California, San Francisco, and other states and cities provide to their most vulnerable communities and residents. The AG's proposed conditions on funding seek to compel California and San Francisco to either abandon critical policies they have carefully developed over time to ensure the safety and well-being of *all* residents, or otherwise face the loss of federal funding for desperately needed crime-prevention programs. Either alternative undermines public safety, and neither alternative is lawful or morally acceptable.

The AG's threats to withdraw funding apply specifically to the grants provided to California, San Francisco, and other communities by the Edward Byrne Memorial Justice Assistance Grant ("JAG") program, and to California by the Community Oriented Policing Services ("COPS") program and COPS Anti-Meth Program ("CAMP"). JAG and COPS/CAMP grants are critical to efforts to implement community policing, which have been widely recognized by federal and state authorities as the best approach to reducing crime rates and keeping

communities safe. The conditions on JAG and COPS/CAMP grants sought by the AG have *nothing* to do with keeping California and San Francisco or its citizens safe, and everything to do with stigmatizing immigrants.

By contrast, California's and San Francisco's laws are carefully crafted to both comply with federal immigration law and to help ensure that citizens are not deterred from reporting crimes or otherwise engaging with local law enforcement because of fears that authorities will question their immigration status. In addition to conserving limited resources, California's and San Francisco's policies are thus designed to *assist* local law enforcement—*i.e.*, to advance police-community relations and encourage community members to come forward to report crimes and turn to police for protection, without the fear that their immigration or citizenship status will subject them to legal action themselves.

As California officials and law enforcement leaders around the nation have attested, there is a demonstrable risk that both documented and undocumented immigrants would be dissuaded from engaging with local enforcement efforts, including efforts to combat hate crime, if the AG's proposed conditions on funding are enforced. In the wake of the anti-immigrant rhetoric and policies advocated by the current Administration, immigrants already justifiably fear that the police will report their immigration information—or that of a family member or friend—to Immigration and Customs Enforcement (“ICE”), thereby risking detention and/or

deportation. As a consequence, many individuals are already avoiding contact with law enforcement. The conditions on JAG and COPS/CAMP grants that the AG seeks to impose will significantly compound this problem by making any immigrant's visit to a police station fraught with perceived peril, regardless of their immigration status, and regardless of whether they are a victim or witness of a crime.

In the experience of ADL, which specializes in training law enforcement agencies around the nation in hate crimes, this breakdown of trust and cooperation between police and local communities leaves communities more vulnerable to such crimes. Moreover, the resulting lawlessness compromises the safety of all, as the elimination of trust in local law enforcement makes it much harder for law enforcement to prevent crime, including, in particular, hate crimes.

The District Court correctly held that a nationwide permanent injunction restraining the AG from imposing its unlawful conditions on JAG and COPS/CAMP funding is warranted. Indeed, only an injunction can prevent the immediate and irreparable harm that will otherwise ensue from the imposition of the AG's unlawful conditions on JAG and COPS/CAMP grants. Accordingly, ADL submits this *amicus* brief in support of Plaintiffs/Appellees.

II. ARGUMENT

A. The California and San Francisco Statutes at Issue Are Aimed at Protecting Victims and Witnesses of Hate Crimes.

Contrary to the AG's assertions, the California and San Francisco statutes and policies at issue were not adopted to prevent the enforcement of federal immigration law, but instead to *ensure* the enforcement of state criminal law, in particular by encouraging victims and witnesses to come forward and report crime.

1. California's Protective Statutes

California's Values Act was specifically enacted to facilitate the reporting of crimes and strengthen community policing efforts. The Values Act in pertinent part prohibits law enforcement agencies ("LEAs") from inquiring about an individual's immigration status for immigration enforcement purposes, subject to a savings clause that expressly permits compliance with 8 U.S.C. § 1373. Cal. Gov't Code §§ 7284.6(a)(1)(A), 7284.6(e). The Legislature enacted the statute after finding that the trust between the immigrant community and state is central to public safety and that "[t]his trust is threatened when state and local agencies are entangled with federal immigration enforcement, with the result that immigrant community members fear approaching police when they are victims of, and

witnesses to, crimes, . . . to the detriment of public safety and the well-being of all Californians.” *Id.* § 7284.2(b)-(c).¹

The California confidentiality statutes at issue also provide critical protections. California Penal Code Section 422.93(b) protects victims of and witnesses to hate crimes by prohibiting peace officers from detaining and reporting such individuals exclusively for any “actual or suspected immigration violation,” when those individuals are not charged with or convicted of committing any state crimes. The statute reflects California’s public policy “to protect the public from crime and violence by encouraging all persons who are victims of or witnesses to crimes . . . to cooperate with the criminal justice system and not to penalize these persons for being victims or for cooperating with the criminal justice system.” Cal. Pen. Code § 422.93(a). Again, the goal of the law is to ensure that LEAs are focused on community safety, not enforcing federal immigration law.

California Penal Code §§ 679.10(k) and 679.11(k) implement federal U- and T-visa programs by restricting state and local LEAs “from disclosing the

¹ The Values Act builds upon the policies embodied in California’s TRUST and TRUTH Acts. Cal. Gov’t Code §§ 7282 *et seq.*, 7283 *et seq.* The TRUST Act defines the limited circumstances when LEAs can inform immigration authorities of an individual’s release date, *see id.* §§ 7282.5, 7284.6, and the TRUTH Act increases transparency when federal government authorities seek to interview an individual in local LEA custody by requiring LEAs to notify the individual that such interviews are voluntary and the individual has the right to seek counsel. *See id.* § 7283.1.

immigration status of a victim or person requesting . . . certification, except to comply with federal law or legal process, or if authorized by the victim or person requesting . . . certification.” Federal U- and T-visas provide protection and benefits to those who have cooperated with law enforcement in investigating and prosecuting human trafficking and other enumerated crimes. *See* 8 U.S.C. §§ 1101(a)(15)(T)-(U). Critical to such protections, and the associated goal of fostering trust between the state and those who cooperate with law enforcement in prosecuting crimes, is the assurance that the immigration status of victims remains confidential.

And, California Welfare and Institutions Code §§ 827 and 831(e), and California Code of Civil Procedure § 155(c), protect the confidentiality of information about juveniles’ immigration status. By safeguarding this sensitive information, these statutes protect vulnerable youth and foster the trust needed for juveniles to provide necessary and accurate information to the State and LEAs. California’s statutes thus encourage not only adults, but also youth victims and witnesses to come forward and report crimes, which is critical to community policing. These statutes are based on the Legislature’s recognition that “[c]onfidentiality is integral to the operation of the juvenile justice system in order to avoid stigma and promote rehabilitation for all youth, regardless of immigration status.” Cal. Welf. & Inst. Code § 831(a).

2. San Francisco's "City and County of Refuge" Law

Similarly, San Francisco's sanctuary city laws codified in Chapters 12H and 12I of the San Francisco Administrative Code were specifically enacted to facilitate the reporting of crimes and strengthen community policing efforts. Chapter 12H prohibits the use of City funds or resources to assist in the enforcement of federal immigration law or in the gathering and sharing of information about individuals (e.g., release status), except where required by federal or state law. *See* S.F. Admin. Code § 12H.2. Chapter 12I prohibits law enforcement officials from responding to federal immigration notification requests, subject to exceptions for certain individuals who have committed felonies and are suspected of committing felonies. *See id.* § 12I.3(c)-(e). Neither provision restricts cooperation between local and federal LEAs in criminal law enforcement; indeed, local LEAs are expressly permitted "to collaborate with federal authorities to protect public safety," including "participation in joint criminal investigations that are permitted under local policy or applicable city or state law." *Id.* § 12I.4.

The purpose of these San Francisco laws is "to protect limited local resources, to encourage cooperation between residents and City officials, including especially law enforcement and public health officers and employees, and to ensure community security, and due process for all." *Id.* § 12I.1. Further, these policies are based on San Francisco's recognition that "local law enforcement

depends on the cooperation of all City residents” and “[i]nformation gathering and cooperation may be jeopardized if release of personal information results in a person being taken into immigration custody.” *Id.*

* * *

The express goal of California’s, San Francisco’s, and other similar policies throughout the country is to foster cooperation and communication between law enforcement and the public. This is the cornerstone of “community policing,” which is based on forging partnerships between law enforcement and community members and groups. The U.S. Department of Justice itself has affirmed that the value of community policing efforts depends in the first instance on establishing trust between the community and law enforcement, because “[c]itizens who do not trust the police are less likely to report crime and participate in developing solutions to problems.”² A critical element of developing this trust is creating an environment in which both victims and witnesses are willing to come forward and actively participate in criminal investigations. California’s and San Francisco’s “sanctuary” and protective policies are designed to do just that; *i.e.*, to encourage community members—regardless of their immigration or citizenship status—to

² Matthew Scheider, *Community Policing Nugget*, CMTY. ORIENTED POLICING SERVS. OFFICE, U.S. DEP’T OF JUSTICE (Feb. 2008), http://web.archive.org/web/20170311171441/https://cops.usdoj.gov/html/dispatch/february_2008/nugget.html.

contact and cooperate with local police without fear of deportation or other immigration consequences. Public safety throughout this nation depends on *all* community members having this trust.

B. The AG's Unlawful Imposition of Conditions on JAG and COPS/CAMP Grants Would Only Undermine the Effectiveness of Law Enforcement and Threaten Public Safety for All.

If the injunction on JAG and COPS/CAMP funding conditions is vacated, and California and San Francisco are forced to modify their laws to ensure compliance with these conditions, the community safety and trust these laws seek to foster would be replaced by suspicion and fear. By undermining critical protective statutes and coercing local law enforcement agencies to enforce a federal immigration program, the AG's imposition of these conditions seeks to drive a wedge between police officers and the residents they protect. In short, the conditions would risk turning local police into immigration enforcement officials in the eyes of the community, if not in practice. The resulting erosion of trust between the community and the police, and the underreporting of crime that would result, is exactly what California's and San Francisco's statutes, and many of the federal government's own policies,³ were put in place to avoid.

³ As but one example, 8 C.F.R. § 245.24 provides an incentive for undocumented immigrants who are victims of certain enumerated crimes to report those crimes, and thereby become eligible to apply for lawful immigration status. U.S. Citizenship and Immigration Services ("USCIS") has stated that the purpose of this provision is "to strengthen the ability of law enforcement agencies to investigate

If California and San Francisco comply with the AG's conditions, immigrants and members of communities with large immigrant populations would reasonably fear that their interaction with law enforcement would necessarily lead to unwanted interaction with ICE. As a result, both undocumented and documented immigrants will be unwilling to assist in police investigations out of justifiable fear that contact with local police will lead to their detention and/or deportation, or that of a family member or friend.⁴

Research has confirmed that the fear of retribution following interaction with law enforcement has serious practical implications for community safety.⁵

and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes, while also protecting victims of crimes.” USCIS, *Victims of Criminal Activity: U Nonimmigrant Status*, <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>.

⁴ These fears are justified regardless of immigration status. Indeed, ICE civil detainer requests have sometimes been directed towards U.S. Citizens. *See Mendia v. Garcia*, 768 F.3d 1009, 1011 (9th Cir. 2014) (U.S. citizen spent two years in pre-trial detention as a result of the detainer); *Galarza v. Szalczyk*, 745 F.3d 634, 636–38 (3d Cir. 2014) (U.S. citizen held in jail for three days pursuant to erroneous detainer); Eyder Peralta, *You Say You're an American, but What If You Had to Prove It or Be Deported?*, NPR (Dec. 22, 2016), <http://www.npr.org/sections/thetwo-way/2016/12/22/504031635/you-say-you-re-an-american-butwhat-if-you-had-to-prove-it-or-be-deported#foot1> (from October 2007 through July 2015, 693 detainers issued to local LEAs were lifted or resolved with the outcome “United States Citizen Interviewed”).

⁵ *See, e.g.,* Sefano Camino, Giovanni Mastrobuoni, & Antonio Nicolo, *Silence of the Innocents: Illegal Immigrants' Underreporting of Crime and Their Victimization*, IZA (Oct. 2016), <https://ssrn.com/abstract=2861091>.

Indeed, this Administration's immigration-related policies have exacerbated fears and anxieties, and thus already affected community interaction with law enforcement. Since 2017, for example, there has been a notable decline in the reporting of crime by members of the Latino community.⁶ The decline in reports of sexual assault, in particular, has led to increased difficulty in investigating and prosecuting domestic violence.⁷ At the same time, the "decline in cooperation and [] rise in fear of law enforcement" among immigrant communities "is leading to increased recidivism by perpetrators of a range of crimes in their communities, including domestic and sexual violence crimes."⁸

⁶ See Chris Magnus, *Tuscon's Police Chief: Sessions's Anti-Immigrant Policies Will Make Cities More Dangerous*, N.Y. TIMES (Dec. 6, 2017), <https://nyti.ms/2nBbnTZ>. For example, in 2017, rape reports by Latinos in Houston and Los Angeles went down by 42.8 and 25 percent, respectively, compared to 2016. Carolina Moreno, *Houston Police Announce Decrease in Latinos Reporting Rape, Violent Crimes* (Apr. 10, 2017), http://www.huffingtonpost.com/entry/houston-police-announces-decrease-in-latinos-reporting-rape-violent-crimes_us_58ebd5fae4b0df7e204455f4. Reports of spousal abuse by Latino victims in 2017 declined by 18, 13, and 3.5 percent in San Francisco, San Diego, and Los Angeles, respectively, as compared to 2016, while reporting among non-Latinos remained the same. James Queally, *Fearing Deportation, Many Domestic Violence Victims Are Steering Clear of Police and Courts*, L.A. TIMES (Oct. 9, 2017), <http://www.latimes.com/local/lanow/la-me-ln-undocumented-crime-reporting-20171009-story.html>.

⁷ Jennifer Medina, *Too Scared to Report Sexual Abuse. The Fear: Deportation*, N.Y. TIMES (Apr. 30, 2017), <https://nyti.ms/2qkt2wM>.

⁸ National Immigrant Women's Advocacy Project, *Promoting Access to Justice for Immigrants and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey*,

The overall effect of the AG’s policies thus is not a reduction in crime, but rather an *increase* in crime, as the necessary trust and cooperation between the police and local communities is reduced. Indeed, one study completed in 2017 compared counties with a “sanctuary” policy—*i.e.*, counties that do not assist federal immigration enforcement officials by holding people in custody beyond their release date—with non-sanctuary counties that were similar on a broad range of demographic characteristics. The study concluded that “[t]here are, on average, 35.5 fewer crimes committed per 10,000 people in sanctuary counties compared to nonsanctuary counties.”⁹

If the AG’s conditions on JAG and COPS/CAMP funding are not enjoined, the harms that will occur to both the immigrant community and the general public from the breakdown of community policing and crime reporting will be immediate and irreparable. And it will be difficult—if not impossible—for local police to rebuild the bonds of trust and cooperation with immigrant communities.

at 35, 54 (May 3, 2018), <http://library.niwap.org/wp-content/uploads/Immigrant-Access-to-Justice-National-Report.pdf>.

⁹ Tom K. Wong, *The Effects of Sanctuary Policies on Crime and the Economy*, CTR. FOR AM. 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>.

C. The AG’s Unlawful Imposition of Conditions on JAG and COPS/CAMP Grants Directly and Disproportionately Harms Immigrant Communities and Leaves Them More Vulnerable to Hate Crimes.

By attempting to force California and San Francisco to disregard the critical protections for victims, witnesses, and other individuals contained in their statutes and policies, or face the devastating loss of JAG and COPS/CAMP funding for crime prevention and law enforcement programs, the AG’s actions will leave a large segment of the population particularly vulnerable to crimes, especially hate crimes.

Forty-five states and the District of Columbia—including California—have shown their commitment to protecting communities against bias-motivated crimes by enacting hate crime legislation based on, or similar to, a model statute drafted by ADL.¹⁰ The federal government demonstrated a similar commitment with the passage of the landmark Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (“HCPA”) in 2009.¹¹ The purpose of the HCPA is to create more effective responses to and prevention of hate crimes, which “are disturbingly

¹⁰ ADL, *Hate Crimes*, <https://www.adl.org/what-we-do/combat-hate/hate-crimes> (last visited May 29, 2019).

¹¹ The HCPA, 18 U.S.C. § 249(a), criminalizes willfully causing bodily injury when the crime was committed because of the actual or perceived race, color, religion, or national origin of the victim, or the crime was committed because of actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability, and the crime affected interstate or foreign commerce or occurred within federal special maritime and territorial jurisdiction.

prevalent, [] pose a significant threat to the full participation of all Americans in our democratic society,” and “are significantly under-reported.”¹²

People within immigrant communities are especially vulnerable to hate crime.¹³ One study found that “[i]n a national survey of 464 immigration service providers conducted in 2012 [], advocates reported that 73% of hate crime victims they had served were targeted on the basis of immigration status/nationality.”¹⁴ Both documented and undocumented immigrants, and even members of minority communities that may be perceived as immigrants, face an increased danger of hate crimes.

ADL has closely monitored and exposed the increasingly hateful anti-immigrant, anti-Latino, and anti-Muslim rhetoric that has surrounded the national debate on immigration reform and has been increasingly mainstreamed.¹⁵ During

¹² H.R. REP. NO. 111-86 at 5.

¹³ Int’l Ass’n of Chiefs of Police, *Police Chiefs Guide to Immigration Issues* 28 (July 2007), <https://kymnradio.net/wp-content/uploads/2016/12/2-Police-Chiefs-Guide-to-Immigration.pdf>.

¹⁴ Jeanine Braud, *et al.*, *U Visas for Immigrant Victims of Hate Crimes: A Practice Guide for Advocates*, U.C. BERKELEY PUB. L. AND LEGAL THEORY RESEARCH PAPER SERIES 20 (June 26, 2014), <https://ssrn.com/abstract=2459315>.

¹⁵ *Mainstreaming Hate: The Anti-Immigrant Movement in the U.S.*, ADL CENTER ON EXTREMISM (2018), <https://www.adl.org/the-anti-immigrant-movement-in-the-us>; *Executive Order on So-Called “Sanctuary Cities” Puts All Communities at Risk*, ADL Says, ADL (Jan. 25, 2017), <https://www.adl.org/news/press-releases/executive-order-on-so-called-sanctuary-cities-puts-all-communities-at-risk-adl>; Ric Anderson, *Q+A: ADL Leader Says That as Trump Surged, So Did*

the period since the 2016 presidential election, individuals have reported increased hate incidents and hate crimes targeting Latinos based on perceived immigration status.¹⁶ Indeed, studies have shown that reported hate crimes have been on the rise.¹⁷ For example, California saw an 11.2 percent increase in reported hate crimes from 2015 (before the anti-immigrant rhetoric of the election campaign) to 2016, with the majority of the reported hate crimes in California in 2016 occurring on the basis of race, ethnicity, or national origin.¹⁸ In Seattle, the total number of

Hate Crimes, LAS VEGAS SUN (Dec. 22, 2016), <https://lasvegassun.com/news/2016/dec/22/qa-adl-leader-says-that-as-trump-surged-so-did-hat>.

¹⁶ Jessica Weiss, *Six Months of Hate: How Anti-immigrant Sentiment Is Affecting Latinos in the United States*, UNIVISIONNEWS (June 14, 2017), <https://www.univision.com/univision-news/united-states/six-months-of-hate-how-anti-immigrant-sentiment-is-affecting-latinos-in-the-united-states>.

¹⁷ See, e.g., German Lopez, *A New FBI Report Says Hate Crimes – Especially Against Muslims – Went up in 2016*, VOX (Nov. 13, 2017), <https://www.vox.com/identities/2017/11/13/16643448/fbi-hate-crimes-2016> (according to FBI statistics, reported hate crimes in 2016 increased by nearly 5 percent); L.A. Cty. Comm’n on Human Relations, *2015 Hate Crime Report*, [http://www.lahumanrelations.org/hatecrime/reports/2015%20Hate%20Crime%20Report%20PDF%20\(1\).pdf](http://www.lahumanrelations.org/hatecrime/reports/2015%20Hate%20Crime%20Report%20PDF%20(1).pdf) (finding that crimes targeting Latino/as jumped 69 percent in Los Angeles County in 2015); Michael Shively, et al., *Understanding Trends in Hate Crimes Against Immigrants and Hispanic-Americans*, NAT’L INST. OF JUSTICE (Dec. 27, 2013), <https://www.ncjrs.gov/pdffiles1/nij/grants/244755.pdf> (“From 2010 to 2011, there was a statistically significant increase in the prevalence of harassment or bullying targeting Hispanics because of their ethnicity.”).

¹⁸ Patrick McGreevy, *Hate Crimes Rise in California, State Report Says*, L.A. TIMES (July 3, 2017), <http://www.latimes.com/politics/essential/la-pol-ca-essential-politics-updates-hate-crimes-rise-in-california-with-1499106658-htmlstory.html>.

reported hate crimes, crimes with bias elements, and noncriminal bias incidents rose nearly 400 percent from 2012 to 2018, and nearly 25% from 2017 to 2018.¹⁹ And, in the first quarter of 2019 hate crimes in New York City were up 67 percent compared to the first quarter of 2017.²⁰ The FBI reported in November 2018 that, nationally, hate crimes rose 17 percent from 2016 to 2017, including a 24 percent increase in hate crimes against Latinos, and a 100 percent increase in hate crimes against Arab Americans.²¹

While the increased number of reported hate crimes is already troubling, the data certainly *underrepresents* the number of hate crimes occurring across the U.S.²² Out of 16,149 law enforcement agencies that participated in the FBI's Hate

¹⁹ Daniel Beekman, *Reported Hate Crimes and Incidents Up Nearly 400% in Seattle Since 2012*, SEATTLE TIMES (May 9, 2019), <https://www.seattletimes.com/seattle-news/crime/reported-hate-crimes-and-incidents-up-nearly-400-in-seattle-since-2012>

²⁰ *NYPD Says Anti-Semitic Hate Crimes Up Staggering 82 Percent*, CBS NEW YORK (May 2, 2019), <https://newyork.cbslocal.com/2019/05/02/nypd-crime-stats-hate-crimes-anti-semitic-crimes>.

²¹ *FBI Releases 2017 Hate Crime Statistics*, FBI NATIONAL PRESS OFFICE (Nov. 13, 2018), <https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-2017-hate-crime-statistics>; *ADL Calls on Leaders to Redouble Efforts to Counter Hate After FBI Reports Hate Crimes Jumped 17 Percent*, ADL (Nov. 13, 2018), <https://www.adl.org/news/press-releases/adl-calls-on-leaders-to-redouble-efforts-to-counter-hate-after-fbi-reports-hate>.

²² *See Mainstreaming Hate: The Anti-Immigrant Movement in the U.S.*, ADL CENTER ON EXTREMISM, 26-27 (2018), <https://www.adl.org/the-anti-immigrant-movement-in-the-us>.

Crime Statistics Act most recent data collection in 2017, less than 13 percent reported one or more hate crimes to the FBI.²³ Data obtained by the Bureau of Justice Statistics' National Crime Victimization Survey show that, from 2011 to 2015, the majority (54 percent) of hate crime victimizations in the U.S. were not reported to the police.²⁴

Moreover, the most likely victims of hate crimes are also those least likely to report those crimes. These individuals are often immigrants who face cultural and language barriers, along with fear of deportation or reprisal if they report incidents to the police.²⁵ Immigrant victims of crime often do not recognize the victimization they face as a crime, and even when a victim overcomes substantial

²³ *Hate Crime by Jurisdiction*, FBI UNIFORM CRIME REPORT HATE CRIME STATISTICS 2017 (Fall 2018), <https://ucr.fbi.gov/hate-crime/2017/topic-pages/jurisdiction.pdf>.

²⁴ Bureau of Justice Statistics, *Majority of Hate Crime Victimizations Go Unreported to Police* (June 29, 2017), <https://www.bjs.gov/content/pub/press/hcv0415pr.cfm>.

²⁵ ADL, *Testimony of Jonathan A. Greenblatt CEO and National Director Anti-Defamation League Before the Senate Judiciary Committee Hearings on Responses to Increase in Religious Hate Crimes* (May 2, 2017), <https://www.adl.org/sites/default/files/documents/Final%20ADL%20statement%20Senate%20Judiciary%20Committee%20on%20combatting%20religious%20hate%20crime.pdf>.

barriers and reports a crime, “the crime may not be recognized as bias motivated by the local police because of lack of training or language difficulties.”²⁶

These barriers extend beyond the fear of reporting violent crimes to infect every aspect of immigrant life. Indeed, people within immigrant communities are particularly susceptible to economic crimes, including wage theft and other employer abuses.²⁷ Day laborers are easy targets for unscrupulous employers, who hire them and then disappear before paying their day’s wages.²⁸ Workers who are robbed of their wages are often afraid to report the theft because of their immigration status. As Professor Stephen Lee of the University of California, Irvine School of Law stated, “[D]istrust of the police effectively neutralizes the potential of wage theft statutes when enforced against employers who hire unauthorized immigrant workers.”²⁹

²⁶ Michael Shively, *et al.*, *Understanding Trends in Hate Crimes Against Immigrants and Hispanic-Americans*, NAT’L INST. OF JUSTICE (Dec. 27, 2013), <https://www.ncjrs.gov/pdffiles1/nij/grants/244755.pdf>.

²⁷ Liz Robbins, *New Weapon in Day Laborers’ Fight Against Wage Theft: A Smartphone App*, N.Y. TIMES (Mar. 1, 2016), <https://nyti.ms/2mJBnst>.

²⁸ Stephen Lee, *Policing Wage Theft in the Day Labor Market*, 4 U.C. IRVINE L. REV. 655 (2014).

²⁹ *Id.* at 665. Day laborers are also especially vulnerable to robberies and anti-immigration vigilantes. *See, e.g.*, Jason McGahan, *Day Laborers Have Become an Easy Target for Anti-Immigrant Vigilantes*, LA WEEKLY (Jan. 10, 2017), <http://www.laweekly.com/news/day-laborers-have-become-an-easy-target-for-anti-immigrant-vigilantes-7803494>; Megan Cassidy, *Phoenix Police: Armed Robber Targets Day Laborers with Promise of Work*, THE REPUBLIC (July 30, 2015),

If the injunction on JAG and COPS/CAMP funding conditions is not affirmed, victims and witnesses will hesitate to contact law enforcement when doing so may subject them or their family members to possible detention or deportation in the absence of the State's and City's protective policies. Combined with the current atmosphere surrounding the immigration debate, this lack of community engagement will leave vast portions of the population especially vulnerable to hate crimes and other criminal attacks. Offenders will feel emboldened to target victims in immigrant communities without fear of prosecution, and members of immigrant communities will fear retribution if they seek help from the police. These effects are immediate and irreparable, as law enforcement officials around the nation have spent countless hours building relationships with immigrant communities that now are being threatened or destroyed.

III. CONCLUSION

For the foregoing reasons, ADL requests that this Court affirm the District Court's grant of summary judgment and entry of a permanent injunction prohibiting the AG's imposition of unlawful conditions on JAG and COPS/CAMP grant funding.

<http://www.azcentral.com/story/news/local/phoenix/2015/07/30/phoenix-police-armed-robber-lobo-bandit-targets-day-laborers-promise-work/30918721>.

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CERTIFICATION OF COMPLIANCE

This brief complies with the type-volume limitations of Federal Rule of Appellate Procedure (“Rule”) 29(a)(5) because it contains 4,569 words, excluding the parts exempted by Rule 32(f).

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CERTIFICATION OF SERVICE

I hereby certify that I electronically filed the foregoing *amicus curiae* brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on May 29, 2019.

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