

Nos. 18-17308; 18-17311

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

CITY AND COUNTY OF SAN FRANCISCO,
Plaintiff and Appellee,

v.

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

STATE OF CALIFORNIA,
Plaintiff and Appellee,

v.

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

On Appeal from the United States District Court
for the Northern District of California,
Case Nos. 3:17-cv-04642-WHO; 3:17-cv-04701-WHO,
Honorable William H. Orrick

**AMICUS CURIAE BRIEF BY IMMIGRANT LEGAL RESOURCE
CENTER AND ASIAN AMERICANS ADVANCING JUSTICE –
ASIAN LAW CAUCUS IN SUPPORT OF PLAINTIFF AND
APPELLEE STATE OF CALIFORNIA AND AFFIRMANCE**

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STATEMENT OF CORPORATE DISCLOSURE

Pursuant to Federal Rule of Appellate Procedure 26.1, *amici curiae* the Immigrant Legal Resource Center (“ILRC”) and Asian Americans Advancing Justice – Asian Law Caucus, by and through undersigned counsel, state that they are nonprofit organizations and therefore not a publicly held corporation that issues stock, or has a parent corporation.

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INTEREST OF *AMICI CURIAE*

Amici curiae submit this brief in support of the State of California's Answering Brief. *Amici* are organizations with expertise and experience in the relationship between local law enforcement and immigration enforcement in California. *Amici* include immigration-focused civil rights and legal organizations that litigate and advocate on behalf of the individuals and communities who supported the establishment of California laws and policies at issue in this case. *Amici* have a substantial, shared interest in the Court's resolution of California's claims. This Court will decide issues that have a direct impact on state and local laws and policies for which *Amici* have campaigned. These policies foster the fair administration of justice, build better relationships between law enforcement and immigrant communities, and promote public safety.

FRAP RULE 29 STATEMENT

Pursuant to FRAP Rule 29(a) and Circuit Rule 29-3, amici curiae have sought the consent of the attorneys representing the parties to file this amicus brief. Counsel for the parties consent to the filing of the brief. Pursuant to FRAP Rule 29(a) and Circuit Rule 29-3, a motion for leave to file an amicus brief is not required.

No counsel for any party authored this brief in whole or in part.

No party, person or entity other than amici curiae, its members, and their undersigned counsel contributed money that was intended to fund the preparing or submitting of the brief.

SUMMARY OF ARGUMENT

The federal government's attempt to coerce state and local participation in federal immigration enforcement poses a grave threat to California and its residents. When the federal government coopts state and local resources to advance its immigration agenda, it interferes with the fair administration of justice, imposes undue burdens on local authorities, and erodes the trust in government necessary to ensure community welfare and public safety. California enacted the TRUST Act, the TRUTH Act, and the California Values Act to protect itself and its residents from these real-world dangers. This Court recently upheld California's right to do so in *United States v. California*, 921 F.3d 865 (9th Cir. 2019). It should reaffirm that right by ruling in California's favor here too.

ARGUMENT

I. THE FEDERAL GOVERNMENT INCREASINGLY SEEKS TO COOPT STATE AND LOCAL RESOURCES FOR IMMIGRATION ENFORCEMENT.

In the last decade, the federal government has been encroaching into the realm of state and local law enforcement operations to advance its immigration agenda. Federal immigration authorities have sought the assistance of local authorities to apprehend and deport immigrants

through a variety of programs. For example, the Department of Homeland Security (“DHS”) uses 287(g) agreements to deputize local police and sheriffs to act as immigration agents.¹ Through the Criminal Alien Program, Immigration and Customs and Enforcement (“ICE”) agents seek access to local jails and state prisons to obtain records, gather information from jail and prison officials, interrogate detainees, and issue detainers.² The Secure Communities program allows ICE to detect every person taken into custody throughout the country and automatically check them against immigration databases.³

Each of these federal programs leads to the issuance of ICE detainers – requests that local agencies provide information to ICE before releasing the subject of the detainer and/or hold them in custody for ICE arrest. Immigration detainers skyrocketed after the adoption of

¹ “287(g) agreements” refer to § 287(g) of the Immigration and Nationality Act, 8 U.S.C. § 1357(g).

² *Criminal Alien Program*, U.S. Immigration and Customs Enforcement (updated Jan. 3, 2018), <https://www.ice.gov/criminal-alien-program>.

³ *See Untangling the Immigration Enforcement Web: Basic Information for Advocates About Databases and Information-Sharing Among Federal, State, and Local Agencies*, National Immigration Law Ctr. (Sept. 2017), <https://www.nilc.org/wp-content/uploads/2017/09/Untangling-Immigration-Enforcement-Web-2017-09.pdf>.

Secure Communities in 2008 when anyone taken into custody anywhere became subject to an automatic immigration check. In the decade from 2008 to 2018, ICE issued millions of detainers to local law enforcement agencies, including almost half a million detainers in California.⁴ By 2010, ICE was issuing more than 5,000 detainers in California each month. This number fell during the period between 2014 and 2016 when the federal government changed its enforcement priorities and temporarily adjusted ICE's operational posture. But detainer requests began increasing again in 2017. In 2018, they climbed to more than 177,000 nationally, with more than 40,000 requests issued in California.⁵

ICE agents have coopted local resources in other ways too. Over the past decade, they have used local jail facilities, staff time and databases to advance deportations efforts. ICE agents asked local law enforcement for access to booking lists and inmate databases to conduct

⁴ Transactional Records Access Clearinghouse (TRAC), *Latest Data: Immigration and Customs Enforcement Detainers*, <https://trac.syr.edu/phptools/immigration/detain/> (last visited May 23, 2019).

⁵ *Id.*

searches for foreign-born inmates and then screen them for immigration enforcement purposes, including deportation.⁶ ICE has sought to maintain offices in jails, where they use desks and computers, and want constant access to staff and inmates, as well as on-demand access to otherwise private county records system.⁷ Even in jurisdictions with policies against prolonged detention based on an ICE detainer, ICE has urged jails to inform them of the exact times, procedures, and location of releases, and to let ICE agents have special access to facilities so they can arrest people directly from local custody.⁸

⁶ See *Untangling the Immigration Enforcement Web*, *supra*, <https://www.nilc.org/wp-content/uploads/2017/09/Untangling-Immigration-Enforcement-Web-2017-09.pdf>.

⁷ See *Office of Inspector General, County of Los Angeles, Immigration: Public Safety and Public Trust* (Oct. 2017) at 10-12, https://oig.lacounty.gov/Portals/OIG/Reports/Immigration_Public%20Safety%20and%20Public%20Trust.pdf?ver=2017-10-08-085823-940; Vanessa Rancano, *Fresno Sheriff's ICE Partnership May Give a Glimpse of Trump-Era Deportations*, KQED (Mar. 3, 2017), <https://ww2.kqed.org/news/2017/03/03/fresno-sheriffs-ice-partnership-may-give-a-glimpse-of-trump-era-deportations>.

⁸ See *Turning the Golden State into a Sanctuary State: A Report on the Impact and Implementation of the California Values Act (SB 54)*, Asian Americans Advancing Justice-Asian Law Caucus, (Mar. 2019), https://www.advancingjustice-alc.org/wp-content/uploads/2019/03/SB54-Report_FINAL.pdf.

The risk of deep intrusion into the operations of state and local law enforcement prompted the passage of the TRUST Act, the TRUTH Act, and the California Values Act. Together, the laws seek to avoid or mitigate the substantial harm to the state and its residents from local involvement in federal immigration enforcement.

II. THE CONSCRIPTION OF STATE AND LOCAL RESOURCES FOR FEDERAL IMMIGRATION ENFORCEMENT HARMS CALIFORNIA AND ITS RESIDENTS.

A. State and Local Participation in Federal Immigration Enforcement Impedes the Fair Administration of Law.

The involvement of local and state authorities in federal enforcement authorities threatens the fair administration of justice.

First, detainer requests can entangle local authorities in the unlawful or unfair detention of California residents. In particular, courts have found that ICE detainers suffer from serious constitutional and other legal defects because they lead to arrest without probable cause and exceed ICE's statutory authority.⁹ The ICE detainer process

⁹ See *Moreno v. Napolitano*, 213 F. Supp.3d 999, 1005 (N.D. Ill. Sept. 30, 2016); *Lopez-Aguilar v. Marion Cty. Sheriff's Dep't*, 296 F. Supp. 3d 959, 969-70 (S.D. Ind. 2017); *Morales v. Chadbourne*, 793 F.3d 208, 217 (1st Cir. 2015); *Roy v. Cty. of Los Angeles*, No. CV 12-09012-AB, 2018 WL 914773, at *23 (C.D. Cal. Feb. 7, 2018); *Lunn v. Commonwealth*, 477 Mass. 517, 535-36 (2017); *Miranda-Olivares v. Clackamas Cty.*, No.

also lacks adequate procedural protections.¹⁰ Individuals may not know they are the subject of a detainer request until they are released into ICE custody. Their counsel also may not know, which impairs counsel's ability to advise noncitizen clients about the potential immigration consequences in their particular situations.¹¹

There is also no clear process to challenge a detainer's validity.¹² Numerous U.S. citizens have been held in immigration detention because of errors in ICE databases and the persistent lack of procedural protections.¹³ Recent data from Miami-Dade County, Florida show that

3:12-cv-02317-ST, 2014 WL 1414305, at *7 (D. Or. Apr. 11, 2014); *see also Ochoa v. Campbell*, 266 F. Supp. 3d 1237, 1258-59 (E.D. Wash. 2017).

¹⁰ *See, e.g., Morales v. Chadbourne*, 996 F. Supp. 2d 19, 40-41 (D.R.I. 2014) (denying motion to dismiss due process claim where a U.S. citizen was held on an ICE detainer without notice or opportunity to challenge his detention).

¹¹ *See generally Padilla v. Kentucky*, 559 U.S. 356 (2010) (defense counsel has a duty to advise noncitizen clients about the deportation risk of a guilty plea).

¹² *See Morales*, 996 F. Supp. 2d at 40-41 (plaintiff stated a procedural due process claim because the state detained her with "no opportunity to contest the ICE detainer").

¹³ *See, e.g., Creedle v. Miami-Dade Cty.*, 349 F. Supp. 3d 1276 (S.D. Fla. 2018); *Galarza v. Szalczyk*, No. 10-cv-06815, 2012 WL 1080020 (E.D. Pa. Mar. 30, 2012), *vacated and rev'd*, 745 F.3d 634 (3d Cir. 2014); *see also, e.g., Complaint* at 6-13, *Brown v. Ramsey*, No. 18-cv-010279 (S.D. Fla. Dec. 3, 2018), ECF No. 1 (ICE detainer on U.S. citizen led to

between February 2017 and February 2019, ICE sent the local jail 420 detainer requests for people listed as U.S. citizens in ICE's own database. A collection of studies suggests that ICE detainers have been issued for thousands of other U.S. citizens in the last 15 years.¹⁴

ICE detainers also lead to detention of individuals who were arrested or fingerprinted for administrative reasons and never charged with a crime. For example, Pedro Figueroa-Zarceno was handcuffed

prolonged detention and loss of employment); Complaint at 2, *Makowski v. Holder*, No. 1:12-cv-05265 (N.D. Ill. July 3, 2012), ECF No. 1 (ICE detainer on U.S. citizen prolonged incarceration for nearly two months); Complaint at 5, 10, *Castillo v. Swarski*, No. 3:08-cv-05683 (W.D. Wash. Nov. 13, 2008), ECF No. 1-2 (ICE detainer on U.S. citizen led to 226 days in immigration custody); see also Zuri Davis, *Once Again, ICE Detained an American Citizen*, <https://reason.com/2019/01/17/michigan-marine-detained-by-ice/>; Camila Domonoske, *U.S. Citizen Who Was Held By ICE For 3 Years Denied Compensation by Appeals Court*, (Aug. 1, 2017), <https://www.npr.org/sections/thetwo-way/2017/08/01/540903038/u-s-citizen-held-by-immigration-for-3-years-denied-compensation-by-appeals-court>; William Finnegan, *The Deportation Machine: A Citizen Trapped in the System*, *The New Yorker* (Apr. 22, 2013), <http://www.newyorker.com/magazine/2013/04/29/the-deportation-machine>.

¹⁴ *Citizens on Hold: A Look at ICE's Flawed Detainer System in Miami-Dade County*, ACLU Florida (March 20, 2019) at 3, https://www.aclufll.org/sites/default/files/field_documents/aclufll_report_-_citizens_on_hold_-_a_look_at_ices_flawed_detainer_system_in_miami-dade_county.pdf.

when he responded to a police call that his stolen car had been retrieved; he was then held and transferred to ICE.¹⁵

Thousands of individuals have been subject to ICE detainers upon arrest, even though charges were dropped or dismissed.¹⁶ In the words of one federal court, this creates a “risk of being swept into immigration enforcement and subjected to removal proceedings, despite never being found guilty of any criminal activity. . . . This state of affairs goes so far as to threaten the presumption of innocence.” *City of Philadelphia v. Sessions*, 280 F. Supp. 3d 579, 636 (E.D. Pa. 2017), *appeal dismissed sub nom. City of Philadelphia v. Attorney Gen. United States*, No. 18-1103, 2018 WL 3475491 (3d Cir. July 6, 2018).

Second, ICE agents interfere with the fair administration of the law by using local jails to interrogate and violate the rights of detainees.

¹⁵ Vivian Ho, *SF cops admit car-theft victim was wrongly turned over to ICE*, SF Gate (Jan. 17, 2017), <http://www.sfgate.com/bayarea/article/SF-cops-admit-car-theft-victim-was-wrongly-6810705.php>.

¹⁶ See “*Not in it for Justice*”: *How California’s Pretrial Detention and Bail System Unfairly Punishes Poor People*, Human Rights Watch (Apr. 11, 2017), <https://www.hrw.org/report/2017/04/11/not-it-justice/how-californias-pretrial-detention-and-bail-system-unfairly> (one in three individuals in California arrested for a felony is never convicted of any crime).

ICE interrogates inmates without notifying them of their right to have an attorney present or their right to remain silent. ICE agents may not identify themselves as immigration agents or explain that information they gather can be used against the interviewee in removal proceedings. ICE agents have also used threats and misstatements to pressure detainees into providing information or waiving their rights.¹⁷ For example, ICE agents have threatened immigrants with prolonged incarceration “if they do not agree to ‘voluntary departure,’” and have falsely stated that if they accept voluntary departure they can quickly and easily “fix” their papers in Mexico and then reside legally in the United States. First Amended Complaint at 2, 12, 35, *Lopez-Venegas v. Beers*, No. 13-cv-03972 (C.D. Cal. Oct. 2, 2013), ECF No. 28. ICE’s actions in such cases “put [local governments] in the position of taking the blame for [the federal immigration system’s] burdensomeness and for its defects.” *Printz v. United States*, 521 U.S. 898, 930 (1997).

¹⁷ See e.g., Vanessa Rancano, *Fresno Sheriff’s ICE Partnership May Give a Glimpse of Trump-Era Deportations*, KQED (Mar. 3, 2017); see also *Lopez-Venegas v. Beers*, No. 13-cv-03972 (C.D. Cal. Oct. 2, 2013), ECF No. 28.

Third, cooperation between local law enforcement and federal immigration authorities results in racial discrimination. ICE’s influence in the criminal justice system leads to racial profiling and undermines state and local efforts to reduce biased policing. When police officers know that an arrest can lead to immigration detention, they are more likely to stop or arrest Latinos or others who look or sound “foreign.” A 2009 study showed that “immediately after Irving, Texas law enforcement had 24-hour access (via telephone and video teleconference) to ICE in the local jail, discretionary arrests of Hispanics for petty offenses—particularly minor traffic offenses—rose dramatically.”¹⁸ Along similar lines, a 2017 study compared a County Sheriff’s Office that had entered into a 287(g) agreement with a Police Department in the same county that had no such agreement. The study found that the 287(g) program led to “a significantly higher number of arrests of Hispanics by the Sheriff’s Office than would have occurred in

¹⁸ See Trevor Gardner II & Aarti Kohli, *The C.A.P. Effect: Racial Profiling in the ICE Criminal Alien Program*, The Chief Justice Earl Warren Institute on Race, Ethnicity & Diversity (Sept. 2009) at 1, https://www.law.berkeley.edu/files/policybrief_irving_0909_v9.pdf.

its absence, indicating that attention was focused toward the Hispanic community as a result of the program.”¹⁹

The unlawful and unfair consequences of local participation in federal immigration enforcement harm California and undermine its efforts to ensure the fair administration of law within its borders.

B. Involvement in Federal Immigration Enforcement Imposes Substantial Costs and Burdens on State and Local Government.

State and local involvement in federal immigration enforcement is costly and burdensome. In particular, receiving and processing detainees consumes significant time and money. In 2012, a report analyzed the first three years that Los Angeles participated in the Secure Communities program. It estimated that participation cost Los Angeles County \$26 million annually. Statewide, it estimated the cost at \$65 million a year.²⁰

¹⁹ Michael Coon, *Local Immigration Enforcement and Arrests of the Hispanic Population*, Journal on Migration and Human Security, 5(3) 2017.

²⁰ Judith Greene, *The Cost of Responding to Immigration Detainers in California*, (August 22, 2012) <https://www.justicestrategies.org/sites/default/files/publications/Justice%20Strategies%20LA%20CA%20Detainer%20Cost%20Report.pdf>.

Local governments are also burdened by implementation policies that require layers of review for counties to assure themselves that ICE detainers are legally justified. These procedures are necessary in part because honoring an ICE detainer puts local officers and agencies at serious risk of litigation with potentially significant damages awards. Numerous local governments have faced financial liability for unlawful and erroneous detentions in recent years.²¹

Local governments are burdened by ICE detainers in other ways too. Those subject to ICE detainers are often unable to obtain bail bonds because bond agents assume that deportation is imminent. As a result, local governments bear the cost of incarcerating individuals who pose no danger to their communities.²²

ICE agents have also consumed local resources by occupying desk space in county jails, using jail computers and servers, and seeking

²¹ See, *Local jurisdictions remain legally vulnerable for honoring ICE detainers*, ACLU, <https://www.aclu.org/fact-sheet/recent-ice-detainer-damages-cases-2018> (collecting examples of settlements and judgments) (last visited May 28, 2019).

²² See, e.g., *Mendia v. Garcia*, 768 F.3d 1009, 1010-11 (9th Cir. 2014) (defendant in Contra Costa County spent additional months in detention as a result of ICE hold); *Roy v. Cty. of Los Angeles*, 114 F.

records of local inmates. Before the California Values Act, some jails employed staff who spent substantial time communicating with ICE about foreign-born individuals in custody. This was true of probation departments in particular. For example, Contra Costa employed a “Probation ICE Liaison” whose “primary role . . . is to respond to ICE requests about an individual’s citizenship or immigration status.”²³ Likewise Orange County’s probation department employed an “ICE Liaison Deputy Probation Officer” tasked with personally investigating the immigration history of every child admitted to juvenile hall.²⁴ In some cases, the Liaison’s duties included contacting ICE and providing information for ICE agents to investigate children’s removability under

Supp. 3d 1030, 1033 (C.D. Cal. 2015) (Sheriff’s Department sued for refusing to allow defendants subject to ICE detainers to post bail).

²³ *Contra Costa County Probation Department Policy Manual* No. 428, section 428.5 (Dec. 11, 2017), http://64.166.146.245/docs/2018/PBP/20181105_1096/35706_Probation%20Department%20Policy%20428%20Immigration-.pdf.

²⁴ Victoria Anderson, et al, *Second Chances for All: Why Orange County Probation Should Stop Choosing Deportation Over Rehabilitation for Immigrant Youth*, U.C. Irvine School of Law Immigrant Rights Clinic (Dec. 2013), https://www.law.uci.edu/academics/real-life-learning/clinics/UCILaw_SecondChances_dec2013.pdf.

federal immigration law.²⁵ Such Liaison positions are locally funded and the costs are not reimbursed by ICE or DHS.

Participating in federal immigration enforcement thus diverts resources away from other state and local priorities and drains government funds.

C. Participation by State and Local Authorities In Federal Immigration Enforcement Threatens Public Health, Community Welfare, and Civic Engagement.

Fear and uncertainty about which local agencies cooperate with ICE deters immigrants and their U.S. citizen relations from accessing essential public services. In 2017, California doctors reported they were seeing fewer immigrant patients because immigrants were increasingly afraid of going out in public.²⁶ This increases the risk of communicable disease transmission for all members of the community. County health and public benefit service providers have also reported an increase in individuals requesting disenrollment from health and public benefit

²⁵ *Id.*

²⁶ Denise Dador, *Fear Keeping Some Undocumented Immigrants Away From Doctor's offices*, abc7 News (Mar.16, 2017), <https://abc7.com/health/undocumented-immigrants-missing-appointments-out-of-fear-doctors-say/1805004/>.

programs, like Medi-Cal and food stamps.²⁷ The Executive Director of Early Childhood Mental Health for Contra Costa County reported to the Board of Supervisors that Latino families were cancelling appointments for their children because of concerns about being deported.²⁸

Fear of immigration enforcement also chills social engagement and harms communities by scaring children away from school,²⁹

²⁷ See Emily Bazar, *Some Immigrants, Fearful of Political Climate, Shy Away from Medi-Cal*, (Feb. 22, 2017), <https://khn.org/news/some-immigrants-fearful-of-political-climate-shy-away-from-medi-cal/>.

²⁸ Minutes, Board of Supervisors of Contra Costa County, Referral to Public Protection Committee of County Law Enforcement Participation and Interaction with Federal Immigration Authorities, p.19-20 (Feb. 7, 2017), http://64.166.146.245/docs/2017/PBP/20171106_1031/1041_November%20PPC%20Agenda%20Packet%20v2.pdf; see also S. Asch et al., *Does Fear of Immigration Authorities Deter Tuberculosis Patients from Seeking Care?*, West Journal of Medicine (Oct. 1994).

²⁹ See Randy Capps et al., *Paying the Price: The Impact of Immigration Raids on America's Children*, *The National Council of La Raza*, (2007), <https://www.urban.org/sites/default/files/publication/46811/411566-Paying-the-Price-The-Impact-of-Immigration-Raids-on-America-s-Children.PDF>; Catalina Amuedo-Dorantes et al., *Falling through the Cracks? Grade Retention and School Dropout among Children of Likely Unauthorized Immigrants*, *American Economic Review* (May 2015), <http://dx.doi.org/10.1257/aer.p20151113>; Laura Bellows, *Immigration Enforcement and Student Achievement: the Negative Spillover of Secure Communities*, Stanford Center for Education Policy Analysis, (December 2018), https://cepa.stanford.edu/sites/default/files/immigration_enforcement_and_achievement.pdf.

detering people from seeking employment, and decreasing participation in community activities where police could be present.³⁰ The potential impact is staggering. According to one study, when undocumented immigrants are told that local law enforcement is working with ICE, they are 69.6% less likely to use public services that require them to disclose personal contact information.³¹

Fear of family separation and mistrust of authorities, including community service providers, impacts both immigrants and people born in the United States. In California, over 45% of U.S. citizen children have at least one foreign-born parent.³² One in eight children in

³⁰ Tom K. Wong et al., *The Impact of Interior Immigration Enforcement on the Day-to-Day Behaviors of Undocumented Immigrants*, U.S. Immigration Policy Ctr. (Apr. 3, 2019), <http://usipc.ucsd.edu/publications/usipc-working-paper-1.pdf>; see also Shannon Gleeson, *Labor Rights for All? The Role of Undocumented Immigrant Status for Worker Claims Making*, Law & Social Inquiry, (2010), <https://digitalcommons.ilr.cornell.edu/articles/1234/>.

³¹ Tom K. Wong et al., *The Impact of Interior Immigration Enforcement on the Day-to-Day Behaviors of Undocumented Immigrants*, *supra*, <http://usipc.ucsd.edu/publications/usipc-working-paper-1.pdf>.

³² See Migration Policy Institute (MPI) data, <https://www.migrationpolicy.org/data/state-profiles/state/demographics/CA>.

California schools have an undocumented parent.³³ For children in “mixed-status families,” fear about their parents’ deportation causes stress and harms their mental health.³⁴ These harsh consequences of local involvement in immigration enforcement injure families and the public across city and state borders, and across generations.

D. Blurring the Line Between Federal Immigration Enforcement and Local Law Enforcement Threatens Public Safety.

Federal immigration entanglement with state and local legal systems deepens distrust of police and government institutions, with serious consequences for public safety. As the California courts have noted, ICE’s practice of courthouse arrests obscures the distinction between criminal justice activities and immigration enforcement. For example, ICE agents arrested a criminal defendant in a Pasadena courthouse immediately following his court appearance in March 2017.

³³ See Louis Freedberg, *1 in 8 Children in California schools have an undocumented parent*, (Apr. 23, 2017), <https://edsource.org/2017/1-in-8-children-in-california-schools-have-an-undocumented-parent/580621>.

³⁴ Luis H. Zayas, *Disrupting Young Lives: How Detention and Deportation Affect US-born Children of Immigrants*, American Psychological Association (Nov. 2016), <https://www.apa.org/pi/families/resources/newsletter/2016/11/detention-deportation>.

The California Supreme Court’s Chief Justice responded with a letter to DHS warning that the practice would discourage crime victims and defendants from going to court and could have a negative “impact on public trust and confidence in our state court system.”³⁵ Victims’ advocates and service providers report that immigrants are increasingly concerned about pressing charges and going to court.³⁶ But ICE continues its enforcement actions in California courthouses, particularly where it has close ties to local law enforcement.³⁷

³⁵ See Letter to Attorney General Sessions and Secretary Kelly from Chief Justice Cantil-Sakauye (“Chief Justice Cantil-Sakauye Objects to Immigration Enforcement Tactics at California Courthouses”) (Mar. 16, 2017), <https://newsroom.courts.ca.gov/news/chief-justice-cantil-sakauye-objects-to-immigration-enforcement-tactics-at-california-courthouses>.

³⁶ See *Key Findings: 2017 Advocate and Legal Service Survey Regarding Immigrant Survivors*, Tahirih Justice Center, <http://www.tahirih.org/wp-content/uploads/2017/05/2017-Advocate-and-Legal-Service-Survey-Key-Findings.pdf>.

³⁷ See Yesenia Amaro, *ICE still making courthouse arrests in California as sanctuary law goes unenforced*, The Fresno Bee (updated Apr. 4, 2019), <https://www.fresnobee.com/news/local/article228790219.html>; Yesenia Amaro and Pablo Lopez, *ICE making arrests at Fresno courthouse, and attorneys concerned over due process* (updated Aug. 31, 2018), <https://www.fresnobee.com/news/local/crime/article215404565.html>. Reports to ILRC suggest that in California, the most common location for courthouse arrests has been in Fresno County, where the sheriff's department actively works with ICE as much as possible, while there have been no similar reports of arrests at the San Francisco courthouse.

Cooperation between ICE and local authorities in other aspects of the criminal justice system also erodes public trust. For example, in January 2017 (before the California Values Act was signed into law), the Contra Costa County Sheriff's Office and Probation Department admitted they set up appointments with individuals on supervised release specifically so that ICE agents could take custody of these individuals.³⁸ The risks of complying with local court orders and supervision programs may vary based on an individual's location and the agency at issue. But the chilling effect of these practices reaches beyond municipal or county lines because immigrants may not know which local authorities have agreements with ICE.³⁹

³⁸ See, e.g., Darwin Bond Graham, *Ambushed: Contra Costa County law enforcement sets up surprise stings to help agents arrest and deport immigrants*, East Bay Express (Jan. 10, 2017), <http://www.eastbayexpress.com/oakland/ambushed-contra-consta-county-law-enforcement-sets-up-surprise-stings-to-help-federal-immigration-agents-arrest-and-deport-immigrants/Content?oid=5078922>. Documents ILRC received in response to a FOIA request confirm similar activity in San Jose. Case. No. 17-cv-060809-DMR, N.D. Cal., filed October 20, 2017.

³⁹ See Tom K. Wong et al., *Fractured Immigration Federalism: How Dissonant Immigration Enforcement Policies Affect Undocumented Immigrants*, U.S. Immigration Policy Center (USIPC) (Apr. 3, 2019).

Public safety and relations between immigrant communities and local law enforcement suffer as a result. A 2012 University of Illinois at Chicago survey of Cook, Harris, Los Angeles, and Maricopa Counties found 44% of Latinos (including U.S. citizens and documented immigrants) reported “they are less likely to contact police officers if they have been the victim of a crime because they fear that police officers will use this interaction as an opportunity to inquire into their immigration status or that of people they know”; that number rose to 70% for undocumented immigrants.⁴⁰ A 2019 study from San Diego County found that when undocumented immigrants are told that local law enforcement is working with ICE on immigration enforcement, they are 60.8% less likely to report crimes they witness, and 42.9% less likely to report crimes in which they were the victims.⁴¹

The experience of Houston, Texas, further illustrates the point. The Texas legislature recently passed laws that prohibit cities from

⁴⁰ Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, at i, 5 Dep’t of Urban Planning and Policy, Univ. of Illinois at Chicago (May 2013).

⁴¹ Tom K. Wong, et al., *The Impact of Interior Immigration Enforcement on the Day-to-Day Behaviors of Undocumented Immigrants*, *supra*, <http://usipc.ucsd.edu/publications/usipc-working-paper-1.pdf>.

refusing to cooperate with ICE. As the legislation neared enactment, the Houston Police Chief told reporters that the number of Hispanics reporting rape had already decreased by 42.8% compared to 2016 and that the number reporting other violent crimes decreased 13%.⁴² He observed that Hispanics were hesitant to report crimes for fear of being taken into ICE custody.⁴³

Other government agencies and police departments have also noticed this trend. In October 2017 – before the California Values Act went into effect – the Los Angeles County Office of Inspector General reviewed the Los Angeles Sheriff’s Department policies and procedures for dealing with ICE and observed, “[r]ecent changes in the federal approach to immigration enforcement have placed a strain upon an already strained relationship between the Sheriff’s Department and some communities.”⁴⁴ In 2015, the President’s Task Force on

⁴² Brooke A. Lewis, *HPD chief announces decrease in Hispanics reporting rape and violent crimes compared to last year* (Apr. 6, 2017), <https://www.chron.com/news/houston-texas/houston/article/HPD-chief-announces-decrease-in-Hispanics-11053829.php>.

⁴³ *Id.*

⁴⁴ *Office of Inspector General, County of Los Angeles, Immigration: Public Safety and Public Trust* (Oct. 2017) at 10-12,

21st Century Policing recommended that in the interest of community policing, the “U.S. Department of Homeland Security should terminate the use of the state and local criminal justice system, including through detention, notification, and transfer requests, to enforce civil immigration laws against civil and nonserious criminal offenders.”⁴⁵ ICE’s own “Task Force on Secure Communities[.]” found that ICE’s use of local police was “disrupting police-community relationships that are important to public safety and national security.”⁴⁶

The damage to public trust from cooperation with federal immigration enforcement thus interferes with state and local priorities and puts already vulnerable communities at greater risk.

[https://oig.lacounty.gov/Portals/OIG/Reports/Immigration_Public%20Safety%20and%20Public%20 Trust.pdf?ver=2017-10-08-085823-940](https://oig.lacounty.gov/Portals/OIG/Reports/Immigration_Public%20Safety%20and%20Public%20Trust.pdf?ver=2017-10-08-085823-940)

⁴⁵ *Final Report of the President’s Task Force on 21st Century Policing*, President’s Task Force on 21st Century Policing, *1.9.1 Action Item* (May 2015) at 18, https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

⁴⁶ *Task Force on Secure Communities: Findings and Recommendations*, Homeland Security Advisory Council (Sept. 2011) at 24, <https://www.dhs.gov/xlibrary/assets/hsac-task-force-on-secure-communities.pdf>.

III. CALIFORNIA SEEKS TO PROTECT ITSELF AND ITS RESIDENTS AGAINST THE DANGERS OF LOCAL PARTICIPATION IN FEDERAL IMMIGRATION ENFORCEMENT.

The TRUST Act, the TRUTH Act, and the California Values Act seek to avoid or mitigate the dangers of federal immigration authorities coopting state and local resources. For example, the legislature enacted the TRUST ACT after finding that cooperation between ICE and local law enforcement “harm[ed] community policing efforts.”⁴⁷ The TRUTH Act was intended to “promote public safety and preserve limited local resources” and increase “transparency,” “accountability” and “public oversight” of local participation in immigration enforcement.⁴⁸ And the California Values Act followed the state’s determination that “entangling” local law enforcement in federal immigration matters “diverts already limited resources,” injures trust essential to “public safety,” and deters people from “seeking basic health services[] or attending school.”⁴⁹

⁴⁷ See Cal. Stat. 2013 ch. 570, § 1(d).

⁴⁸ See Cal. Stat. 2016 ch. 768, § 2(h), (i).

⁴⁹ Cal Gov. Code § 7284.2 (b), (c), (d).

The TRUTH Act and the California Values Act advance the fair administration of the law by mitigating the risk of unlawful and unfair ICE detainers. The TRUTH Act requires a local agency that receives an ICE detainer to promptly provide a copy to the person subject to the detainer, and state whether the agency intends to comply with the request.⁵⁰ This process allows defendants to have more informed discussions with their defense counsel about the immigration consequences of their cases, and protects their Sixth Amendment rights. The TRUTH Act also ensures that detainees are notified of their rights if they speak with an immigration officer.⁵¹ The California Values Act is even more protective because it prohibits local authorities from responding to a detainer request except in certain circumstances.⁵²

Reducing immigration arrests at local jails reduces California's costs and lightens logistical burdens on the state. But the California Values Act also protects state resources in other ways. It reduces the costs of detaining and transferring people to ICE custody, ensures that

⁵⁰ See Cal. Gov. Code § 7283.1(b).

⁵¹ See Cal. Gov. Code § 7283.1(a).

⁵² See Cal Gov. Code § 7284.6.

administrative space in local jails is reserved for local staff, and prevents local police from spending their time questioning people about their immigration status.⁵³ It also saves money on jail staff because it effectively eliminates the need to have dedicated “ICE Liaisons” or similar officers on staff.⁵⁴

Even though it is still early in the experiment, evidence indicates that limiting cooperation between local law enforcement and federal immigration authorities leads to better outcomes for communities. In the five month period after implementation of the California Value’s Act, there was a 41% decrease in ICE arrests at local jails compared to the prior five month period.⁵⁵ Similar policies have also been found to reduce crime and poverty while increasing labor participation.⁵⁶ Such

⁵³ *See generally* Cal Gov. Code § 7284.2 (b), (c), (d).

⁵⁴ *See id.*

⁵⁵ *Turning the Golden State into a Sanctuary State: A Report on the Impact and Implementation of the California Values Act (SB 54)*, Asian Americans Advancing Justice-Asian Law Caucus (Mar. 2019), https://www.advancingjustice-alc.org/wp-content/uploads/2019/03/SB54-Report_FINAL.pdf.

⁵⁶ Tom K. Wong, *The Effects of Sanctuary Policies on Crime and the Economy*, Center for American 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/>.

positive results for public safety and community welfare can strengthen California's social fabric today and possibly for generations to come.

CONCLUSION

California's reasons for limiting state and local assistance in federal immigration enforcement are sound. Its policies are reasonably designed to advance the state's interests in the fair administration of law, conservation of state and local resources, protection of communities' health and welfare, and promotion of trust in government necessary for public safety. For the foregoing reasons, the Court should affirm the district court's decision in favor of California.

Dated: May 29, 2019

Respectfully submitted,

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Pursuant to Rules 32(a)(5), 32(a)(6), and 29(a)(5) of the Federal Rules of Appellate Procedure, and Ninth Circuit Rule 32-1, I certify that the attached brief is in 14-point proportionally spaced Century Schoolbook font, and contains 4,987 words, as counted by my word processing program, exclusive of the portions of the brief excepted by Rule 32(f). Pursuant to Ninth Circuit Rule 32-1(e), a signed Form 8 also accompanies the attached brief.

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