

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA,

Plaintiff,

v.
STATE OF NEW JERSEY, et al.,

Defendants.

Case No. 3:20-cv-01364-FLW-TJB

**NOTICE OF MOTION OF
CURRENT AND FORMER
PROSECUTORS AND LAW
ENFORCEMENT LEADERS
FOR LEAVE TO FILE AN
AMICI CURIAE BRIEF**

PLEASE TAKE NOTICE that upon the Certification of Kyle M. Druding in support of the motion for leave to file an amici curiae brief, Current and Former Prosecutors and Law Enforcement Leaders request leave to file a brief as amici curiae and request that the proposed brief that accompanies this motion be filed.

A proposed order is submitted herewith.

June 25, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2020, I caused a copy of (1) the Notice of Motion for Leave to File an Amici Curiae Brief; (2) the Certification of Kyle M. Druding; (3) the proposed Amici Curiae Brief; and (4) a Proposed Order granting the motion, to be served electronically via ECF, whereupon all counsel of record were served.

/s/ Kyle M. Druding

Kyle M. Druding

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UNITED STATES OF AMERICA,

Plaintiff,

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STATE OF NEW JERSEY, et al.,

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Case No. 3:20-cv-01364-FLW-TJB

**CERTIFICATION OF KYLE M.
DRUDING IN SUPPORT OF
MOTION FOR LEAVE TO
APPEAR AS AMICI CURIAE**

I, Kyle M. Druding, hereby certify:

1. I am an attorney admitted to practice law in the State of New Jersey and the United States District Court for the District of New Jersey. I am an associate attorney in the Washington, DC office of Hogan Lovells US LLP. I make this certification in support of the motion of Current and Former Prosecutors and Law Enforcement Leaders to appear in the above-captioned matter as amici curiae.

2. Amici are criminal justice leaders who have extensive expertise in law enforcement, prosecution, and cooperative federal-state law enforcement activities. They are intimately familiar with the challenges of performing critical law enforcement and governance functions in communities where immigrants fear the police and are vulnerable to exploitation and crime. Amici represent jurisdictions

from across the country that understand the challenges of protecting local community needs and public safety.

3. District courts have broad discretion to permit the filing of amicus curiae briefs. *See United States v. Alkaabi*, 223 F. Supp. 2d 583, 592 (D.N.J. 2002) (“The extent, if any, to which an *amicus curiae* should be permitted to participate in a pending action is solely within the broad discretion of the district court.”). Although no rule explicitly governs the filing of amicus briefs in this District, the Third Circuit’s interpretation of Federal Rule of Appellate Procedure 29 provides useful guidance on this point. *See id.*; *see also Acra Turf Club, LLC v. Zanzuccki*, Civ. No. 12-2775, 2014 WL 5465870, at *5 (D.N.J. Oct. 28, 2014); *Martinez v. Capital Cities/ABC-WPVI*, 909 F. Supp. 283, 286 (E.D. Pa. 1995).

4. Under Rule 29, a party seeking leave to appear as amicus curiae must state “(A) the movant’s interest; and (B) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.” Fed. R. App. P. 29(3). The Third Circuit has explained that “it is preferable to err on the side of granting leave” so that a court will not “be deprived of a resource that might have been of assistance.” *Neonatology Assocs., P.A. v. Comm’r of Internal Revenue*, 293 F.3d 128, 133 (3d Cir. 2002) (Alito, J.); *see also id.* (“[O]ur court would be well advised to grant motions for leave to file amicus briefs unless it is obvious that the proposed briefs do not meet Rule 29’s criteria as broadly

interpreted.”); *Newark Branch, NAACP v. Town of Harrison*, 940 F.2d 792, 808 (3d Cir. 1991) (amicus briefs help “insur[e] a complete and plenary presentation of difficult issues so that the court may reach a proper decision”).


5. As leaders with extensive experience in keeping their communities safe, amici are ideally positioned to evaluate the practical effects of the challenged provisions of New Jersey’s Immigrant Trust Directive. When community residents live in constant fear that interactions with local law enforcement officials could result in removal, that fundamental breakdown in trust threatens public safety and impedes justice system leaders from doing their jobs. Amici are prepared to explain in great detail how this dynamic poses a major challenge to the investigation and prosecution of crime and to the proper allocation of public safety resources. *See Harris v. Pernsley*, 820 F.2d 597, 603 (3d Cir. 1987) (participation of amici “may be advisable where third parties can contribute to the court’s understanding of the consequences”).

6. Amici further seek to assist the Court by situating the Immigrant Trust Directive within a broader network of legal protections designed to foster trust between immigrant communities and justice system officials. The proposed brief provides extensive information about the real-world impact of such policies, as well as the likely ramifications of invalidating them. As a result, Amici can “provide supplementary assistance to the Court by insuring a complete and plenary

presentation of difficult and novel immigration issues.” Order, *Ocean County v. Grewal*, May 19, 2020, Civ. No. 19-18083-FLW-TJB, Dkt. No. 34, at 4.

7. No party objects to the filing of the proposed brief of Amici Current and Former Prosecutors and Law Enforcement Leaders.

Pursuant to 28 U.S.C. § 1746, I certify under the penalty of perjury that the foregoing is true and correct.



Kyle M. Druding

Dated: June 25, 2020

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FOR THE DISTRICT OF NEW JERSEY**

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Case No. 3:20-cv-01364-FLW-TJB

**[PROPOSED] BRIEF OF AMICI CURIAE CURRENT AND FORMER
PROSECUTORS AND LAW ENFORCEMENT LEADERS
IN SUPPORT OF DEFENDANTS**

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INTEREST AND IDENTITY OF AMICI CURIAE

Amici Current and Former Prosecutors and Law Enforcement Leaders file this brief as Amici Curiae in support of Defendants.¹ Amici are criminal justice leaders who have extensive expertise in law enforcement, prosecution, and cooperative federal-state law enforcement activities. They are intimately familiar with the challenges of performing critical law enforcement and governance functions in communities where immigrants fear the police and are vulnerable to exploitation and crime. Amici represent jurisdictions from across the country that understand the challenges of protecting local community needs and public safety.

Amici's experience in keeping their communities safe has underscored the critical importance of bringing immigrants and their families "out of the shadows." Community trust and cooperation are essential to public safety, and sound police work as well as successful prosecutorial efforts are undermined when undocumented immigrants and their communities fear interacting with law enforcement and the justice system. This dynamic leaves undocumented immigrants more vulnerable to crime and exploitation—and undocumented immigrant victims less likely to come forward or cooperate with investigations and

¹ No party objects to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici curiae or their counsel made a monetary contribution to this brief's preparation or submission.

prosecutions—leading to more violence in the communities amici are and have been charged with protecting.

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

A full list of amici is attached as Exhibit A.

INTRODUCTION

The lessons amici have learned in protecting their communities shed important light on the issues raised in this case. When community residents live in constant fear that interactions with local law enforcement officials could result in

removal, that fundamental breakdown in trust threatens public safety and impedes justice system leaders from doing their jobs. Extensive evidence shows that, in such circumstances, undocumented immigrants—and their lawfully present family and neighbors—fear that turning to the police and cooperating with prosecutors could bring adverse immigration consequences. As a result, immigrant communities are less willing to report crimes and cooperate with criminal investigations and prosecutions. This dynamic poses a major challenge to the investigation and prosecution of crime and to the proper allocation of public safety resources.

Current policies limiting local and state involvement in federal immigration enforcement address this issue of trust. Though they take several different forms, these policies generally aim to preserve local and state resources and improve public safety by promoting cooperation between law enforcement and the communities they serve.² Many jurisdictions—whether via ordinance,

² See *Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact of Public Safety and Honoring the Victims: Hearing Before the S. Comm. on the Judiciary*, at 2 (July 21, 2015) (statement of Tom Manger, Chief, Montgomery Cty., Md., Police Dep't & President, Major Cities Chiefs Ass'n), available at <https://perma.cc/SKM2-QKV9>.

administrative policy, or state law—limit the degree to which their officials may, for example, cooperate with ICE detainers in certain circumstances.³

New Jersey’s Immigrant Trust Directive fosters trust between immigrant communities and local law enforcement at a time when federal immigration enforcement practices have exacerbated that already-challenging task. *See Oregon v. Trump*, 406 F. Supp. 3d 940, 974 (D. Or. 2019) (“Plaintiffs would, under any of these circumstances, risk public safety by eroding trust with immigrant communities or abandoning critical law enforcement initiatives funded by the Byrne JAG Program.”); *State of New York v. Dep’t of Justice*, 343 F. Supp. 3d 213, 243–44 (S.D.N.Y. 2018), *rev’d on other grounds*, 951 F.3d 84 (2d Cir. 2020) (“Plaintiffs have . . . demonstrated that complying with the unlawful conditions would undermine trust between immigrant communities and local government, which would discourage individuals from reporting crimes [and] cooperating with investigations . . . thereby harming public safety and welfare.”); *City & Cty. of San Francisco v. Sessions*, 349 F. Supp. 3d 924, 951 (N.D. Cal. 2018) (recognizing that “[t]he harm that entanglement with enforcement does to community trust is more

³ *See* Jasmine C. Lee et al., *What Are Sanctuary Cities?*, N.Y. Times, Feb. 6, 2017, <https://perma.cc/TKU3-6USJ>; *Detainer Policies*, Immigrant Legal Res. Ctr. (Mar. 21, 2017), *available at* <https://perma.cc/6ET7-9KXM> [hereinafter *ILRC Detainer Policies*].

than theoretical”). Amici urge the Court to halt Plaintiff’s attempt to stifle state and local practices that enhance public safety.

ARGUMENT

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

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

The experience of policing cities across the country has taught law enforcement officers that doing their jobs well requires “the trust and respect of the communities [they] serve.”⁴ To combat crime, police officers “need the full cooperation of victims and witnesses.”⁵

This commonsense philosophy is sometimes called “community policing”—an approach to policing whereby local law enforcement organizations partner with communities to reduce crime and promote public safety.⁶ Community policing requires police to interact with neighborhood residents in a manner that builds trust and encourages cooperation.⁷ When that trust is missing—as it is when people believe that contacting police or cooperating with prosecutors could lead to

⁴ Statement of Tom Manger, *supra* note 2, at 2.

⁵ *Id.*

⁶ See Anita Khashu, *The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties*, Police Found. (Apr. 2009), available at <https://perma.cc/KL5A-EQWR>.

⁷ *Id.*

removal for themselves or others—community policing breaks down and the entire community suffers.

The reality of everyday life for millions of undocumented immigrants living in the United States poses significant challenges to effective community policing. According to a recent Pew survey, 66 percent of Hispanic immigrants and 43 percent of all Hispanic adults in the United States worry about removal—of themselves, family members, or close friends.⁸ This fear predictably hinders cooperation and communication with police and prosecutors. Immigrants often assume that interaction with law enforcement officials could have adverse consequences for themselves or a loved one.

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 recent study found that individuals living in communities of recent immigrants are less likely to report violent crime: in neighborhoods where 65 percent of residents are immigrants, there is only a 5-percent chance that a victim will report a violent crime, compared with a 48-percent chance in a neighborhood where only 10 percent of residents are born outside the United

⁸ *More Latinos Have Serious Concerns About Their Place in America Under Trump*, Pew Research Ctr.: Hispanic Trends, Oct. 25, 2018, <https://perma.cc/R3TE-DMAD>.

States.⁹ The authors of the study specifically noted that “the development of trusting relationships between citizens and the police is often challenged by the presence and application of local and federal immigration enforcement programs . . . that may dissuade residents from calling on the police to help address crime problems.”¹⁰

In addition, one survey of Latinos in four major cities found that 70 percent of undocumented immigrants and 44 percent of all Latinos would be less likely to contact law enforcement authorities if they were victims of a crime for fear that the police would ask them or people they know about their immigration status; and 67 percent of undocumented immigrants and 45 percent of all Latinos would be less likely to provide information about, or report, crimes because of the same fear.¹¹ And a recent survey of undocumented individuals in San Diego County found that if local law enforcement officials were working together with ICE, 61 percent of survey respondents would be less likely to report a crime they witnessed, while 43

⁹ Min Xie & Eric P. Baumer, *Neighborhood Immigrant Concentration and Violent Crime Reporting to the Police: A Multilevel Analysis of Data from the National Crime Victimization Survey*, 57 *Criminology* 237, 249 (2019), <https://perma.cc/QS5R-K867>.

¹⁰ *Id.* at 254.

¹¹ Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement* 5–6 (May 2013), available at <https://perma.cc/XEE8-P42V>; see also *id.* at 1 (“Survey results indicate that the greater involvement of police in immigration enforcement has significantly heightened the fears many Latinos have of the police, . . . exacerbating their mistrust of law enforcement authorities.”).

percent would be less likely to report being a victim of a crime.¹² These studies (among others) highlight that fears of immigration enforcement—and the resulting damage to cooperation with law enforcement—affect not just undocumented community members but also individuals with citizenship or lawful status, particularly in “mixed-status” households.¹³

This atmosphere of mistrust poses a fundamental challenge for community policing. Police cannot prevent or solve crimes if victims or witnesses are unwilling to talk to them or prosecutors because of concerns that they, their loved ones, or their neighbors will face adverse immigration consequences. Law enforcement officers participating in one recent national survey reported seeing an across-the-board decline in immigrant communities’ willingness to cooperate with law enforcement.¹⁴ Roughly one-fifth of police officers surveyed reported that, in 2017, immigrants were less willing than they were in 2016 to make police reports,

¹² Tom K. Wong, *Sanctuary Cities Don’t ‘Breed Crime.’ They Encourage People to Report Crime.*, Wash. Post., Apr. 24, 2018, <https://perma.cc/EDW3-9SEQ>.

¹³ An estimated 85 percent of immigrants live in mixed-status families. See Khashu, *supra* note 6, at 24; see also Jill Theresa Messing et al., *Latinas’ Perceptions of Law Enforcement: Fear of Deportation, Crime Reporting, and Trust in the System*, 30 J. Women & Soc. Work 328, 334 (2015) (“The results indicate that for each 1-point increase in fear of deportation [e.g., from ‘not much’ to ‘some’ worry, or from ‘some’ to ‘a lot’], Latina participants were 15% less willing to report being victim of a violent crime to police.”).

¹⁴ Nat’l Immigrant Women’s Advocacy Project, *Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey* 101 (2018), <https://perma.cc/52MV-X8TG> [hereinafter *NIWAP Report*].

less likely to help police when they arrived at the scene of the crime, less likely to assist with subsequent investigations, and less willing to work with prosecutors.¹⁵ As a result, more than half of the law enforcement officials surveyed reported that crimes such as domestic violence, human trafficking, and sexual assault became more difficult to investigate.¹⁶

These trends have continued to worsen in recent years.¹⁷ According to the Houston Police Department, sexual assault reporting by members of the Hispanic community fell over 40 percent from the first quarter of 2016 to the same period in 2017, despite an overall increase in city-wide crime reports.¹⁸ Los Angeles, San Francisco, and San Diego also witnessed lagging sexual assault and domestic violence reporting by Hispanic persons—but not other ethnic groups—in the first half of 2017.¹⁹ According to Los Angeles County Sheriff’s Deputy Marino Gonzalez, “[t]hey’re afraid of us. And the reason they’re afraid of us is because

¹⁵ *Id.* at 42.

¹⁶ *Id.* at 51.

¹⁷ See Cora Engelbrecht, *Fewer Immigrants Are Reporting Domestic Abuse. Police Blame Fear of Deportation.*, N.Y. Times, June 3, 2018, <https://perma.cc/Q4HN-N5BX>.

¹⁸ Michael Morris & Lauren Renee Sepulveda, *A New ICE Age*, Texas Dist. & Cty. Attorneys Ass’n, *The Texas Prosecutor*, Vol. 47, No. 4 (July/Aug. 2017), <https://perma.cc/J2QH-AWV7>.

¹⁹ James Queally, *Fearing Deportation, Many Domestic Violence Victims Are Steering Clear of Police and Courts*, L.A. Times, Oct. 9, 2017, <https://perma.cc/QR2S-FKX7>.

they think we're going to deport them.”²⁰ Law enforcement officials across the country have echoed that sentiment.²¹

Immigrants' fear of interacting with law enforcement and prosecutors in light of potential removal consequences is not merely theoretical. In February 2017, for example, an immigrant woman living in Texas arrived at a courthouse seeking a protective order against her abusive boyfriend, only to leave under arrest—likely due to a tip from her abuser.²² In August 2017, federal agents detained an undocumented immigrant who had provided key testimony in two

²⁰ *Id.*; see also *NIWAP Report*, *supra* note 14, at 99 (finding that, between 2016 and 2017, fear of removal was the principal reason that immigrant victims did not call the police for help or file or follow through with a court case).

²¹ See, e.g., Hannah Rappleye et al., *Immigration Crackdown Makes Women Afraid to Testify Against Abusers, Experts Warn*, NBC News, Sept. 22, 2018, <https://perma.cc/UB6S-RTE7> (“‘We rely very heavily at the local level on cooperation from our witnesses and from our victims to ensure that cases can be prosecuted,’ said Denver City Attorney Kristin Bronson. ‘What we’ve found in Denver is people are not showing up because they’re afraid that they might get apprehended in the hallways.’”); *City of Philadelphia v. Sessions*, 309 F. Supp. 3d 289, 341 (E.D. Pa. 2018) (“Police Commissioner Ross reiterated his earlier testimony that the City’s ability to fight crime is impaired when victims and witnesses are afraid to report crimes for fear of immigration consequences.”); Bret Hauff, *ICE Targets Immigrants at La Plata County Courthouse*, Durango Herald, Mar. 23, 2019, <https://perma.cc/8RFS-3YMW> (explaining that the tactic of courthouse arrests “deters people from making reports; it deters people from coming in”) (quoting Colorado 6th Judicial District Chief Judge Jeffery Wilson).

²² Katie Mettler, *“This Is Really Unprecedented”: ICE Detains Woman Seeking Domestic Abuse Protection at Texas Courthouse*, Wash. Post, Feb. 16, 2017, <https://perma.cc/33UE-WC85>.

homicide cases.²³ Weeks later, ICE agents arrested a victim of domestic violence as he left a county courthouse.²⁴ And in February 2019, ICE detained a 38-year-old mother of three who was cooperating with police in an open investigation—and almost removed her to her native Nicaragua. Asked upon her release if she would think twice before interacting with law enforcement in the future, she answered without hesitation: “Sí.”²⁵

The underreporting of crimes by recent immigrants is a problem for the entire criminal justice system.²⁶ Precisely because victims and witnesses fear removal, violent crimes have gone unreported, and pending prosecutions have disappeared from courts’ dockets. For example, a Texas district attorney confirmed that a victim of domestic violence had become uncooperative because she feared removal.²⁷ Denver prosecutors have been forced to drop 30 domestic

²³ James Fanelli, *Father of Two Who Testified in Brooklyn Homicide Cases and Is Married to a U.S. Citizen Detained by ICE*, N.Y. Daily News, Aug. 2, 2017, <https://perma.cc/SBH8-BUGH>.

²⁴ Steve Coll, *When a Day in Court Is a Trap for Immigrants*, New Yorker, Nov. 8, 2017, <https://perma.cc/VMT5-75M5>.

²⁵ Jessica Lipscomb, *Miami Crime Victim Detained by ICE Warns Others About Calling Police for Help*, Miami New Times, Apr. 23, 2019, <https://perma.cc/9GG5-BKQQ>.

²⁶ Robert C. Davis et al., *Access to Justice for Immigrants Who Are Victimized: The Perspectives of Police and Prosecutors*, 12 Crim. Just. Pol’y Rev. 183, 188 (2001).

²⁷ Philip Jankowski, *Deportation Fears Keep Victim from Cooperating in Domestic Violence Case, Travis DA Says*, The Statesman (Austin), Mar. 8, 2017, <https://perma.cc/9AYX-5FQP>

violence cases for similar reasons,²⁸ and in 2017, more than a dozen Latina women in Denver dropped their own civil cases against domestic abusers, citing fear of removal.²⁹ An immigrant mother in New Jersey, fearing that interaction with the court system could trigger removal, declined to report that her son had been assaulted on his way to school.³⁰ And a victim of domestic violence in New York City “did not think it was in her best interest” to pursue a protective order.³¹ In addition to their particular removal concerns, undocumented immigrant victims and witnesses may understandably recoil more generally from a system that allows participants to walk into a courthouse to fulfill a civic responsibility to testify, only to be detained by watchful immigration authorities.

In response to these types of incidents, the chief justices of three state supreme courts wrote to federal authorities to emphasize that preserving trust with immigrant communities is essential to the administration of justice.³² In addition,

²⁸ Rappleye et al., *supra* note 21.

²⁹ Sarah Stillman, *When Deportation Is a Death Sentence*, New Yorker, Jan. 15, 2018, <https://perma.cc/TK4U-FKMY>.

³⁰ S.P. Sullivan, *Advocates Say ICE Courthouse Arrests in N.J. Are Hurting Immigrant Crime Victims*, NJ, June 5, 2017, <https://perma.cc/8VQW-TYD7>.

³¹ Emma Whitford, *Courthouse ICE Arrests Are Making Immigrants ‘Sitting Ducks,’ Lawyers Warn*, Gothamist, June 22, 2017, <https://perma.cc/XJT4-YQ4D>.

³² Letter from Tani G. Cantil-Sakauye, Chief Justice of California, to Jeff Sessions, Att’y Gen. of the U.S., and John F. Kelly, Sec’y of Dep’t of Homeland Sec. (Mar. 16, 2017), <https://perma.cc/9C8T-QVET>; Letter from Mary E. Fairhurst, Chief Justice of the Supreme Court of Washington, to John F. Kelly, Sec’y of Dep’t of Homeland Sec. (Mar. 22, 2017), <https://perma.cc/6358-7Z3H>; Letter from Stuart

75 former state and federal judges wrote to ICE’s Acting Director to explain that “our justice system cannot function effectively . . . if victims, defendants, witnesses, and family members do not feel secure in accessing the courthouse.”³³

Three district attorneys in New York asked ICE to stop making courthouse arrests because of the “chilling effect” this practice has on witnesses.³⁴ And other leaders around the country have asserted that using local court systems as levers for federal immigration enforcement “undercuts local law enforcement’s ability to develop the critical trust needed to keep communities safe.”³⁵

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

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

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), <https://perma.cc/M2QA-FJYD>.

³³ Letter from Seventy-Five Former State and Federal Judges to Ronald D. Vitiello, Acting Director of ICE (Dec. 12, 2018), <https://perma.cc/LJE2-94P7>.

³⁴ Rappleye et al., *supra* note 21.

³⁵ Maria Cramer, *ICE Courthouse Arrests Worry Attorneys, Prosecutors*, Boston Globe, June 16, 2017, <https://perma.cc/VZZ9-J7WE> (quoting Massachusetts Attorney General Maura Healey).

abuse by unscrupulous employers.³⁶

When immigrants distrust their local police, “it creates conditions that encourage criminals to prey upon victims and witnesses alike.”³⁷ This phenomenon has been termed the “deportation threat dynamic,” whereby individuals who fear removal from the United States do not report the crimes they suffer.³⁸ Nearly two-thirds of undocumented migrant workers participating in a study in Memphis, Tennessee, reported being the victim of at least one crime, with the most common being theft and robbery.³⁹ Respondents indicated that fewer than a quarter of these crimes were reported to the police, and only one was reported by the victim himself.⁴⁰ In one especially horrific incident, a four-year-old girl in Texas suffered repeated sexual abuse at the hands of someone who threatened to cause her mother to be removed if the mother reported her daughter’s

³⁶ See Office of Cmty. Oriented Policing Servs., U.S. Dep’t of Justice, *Enhancing Community Policing with Immigrant Populations: Recommendations from a Roundtable Meeting of Immigrant Advocates and Law Enforcement Leaders* 16 (2010), <https://perma.cc/62JX-99KK>.

³⁷ Statement of Tom Manger, *supra* note 2, at 2.

³⁸ Elizabeth Fussell, *The Deportation Threat Dynamic and Victimization of Latino Migrants: Wage Theft and Robbery*, 52 Soc. Q. 593, 610 (2011).

³⁹ Jacob Bucher et al., *Undocumented Victims: An Examination of Crimes Against Undocumented Male Migrant Workers*, 7 Sw. J. Crim. Just. 159, 164, 166 tbl. 2 (2010).

⁴⁰ *Id.* at 165.

exploitation.⁴¹

Robbery and similar crimes pose a particular threat to undocumented individuals, who often do not have bank accounts.⁴² In addition, many of these immigrants live in group apartments and are unable to store valuables in a safe place at home.⁴³ As a result, undocumented immigrants are known to carry large amounts of cash, making them especially vulnerable to robbery. The risk to the perpetrators, meanwhile, is minimal because the victims are often too afraid of adverse immigration consequences to report the crimes to the police.

The targeting of undocumented immigrants for robbery has become so widespread that these individuals have been labeled “walking ATMs”—or the subjects of “amigo shopping.”⁴⁴ In a study of largely undocumented immigrants helping to rebuild New Orleans in the wake of Hurricane Katrina, the immigrants reported robbery and physical assault at more than ten times the rate experienced by the general population.⁴⁵ In another survey, 53 percent of law enforcement

⁴¹ Matthew Haag, *Texas Deputy Accused of Molesting 4-Year-Old and Threatening to Deport Her Mother*, N.Y. Times, June 18, 2018, <https://perma.cc/T3ZZ-QA3E>.

⁴² Fussell, *supra* note 38, at 604 & tbl.2, 605; S. Poverty Law Ctr., *Under Siege: Life for Low-Income Latinos in the South* 6, 25 (2009), <https://perma.cc/7GCY-V25L>.

⁴³ Khashu, *supra* note 6, at 25.

⁴⁴ See Fussell, *supra* note 38, at 604–05 (internal quotation marks omitted); S. Poverty Law Ctr., *supra* note 42, at 25 (same); Khashu, *supra* note 6, at 25.

⁴⁵ See Fussell, *supra* note 38, at 604 & tbl.2, 605.

officers held the view that undocumented immigrants were especially likely to be victims of robbery and theft.⁴⁶

Undocumented immigrants are also particularly vulnerable to domestic violence. Numerous studies have shown that abusive partners may exploit the threat of removal to maintain power and control.⁴⁷ Financial dependence on an abusive partner with stable immigration status may facilitate violence in this way.⁴⁸ Seventy percent of participants in one study of domestic violence victims said that immigration status was a major factor keeping them from seeking help or reporting their ongoing abuse to the authorities.⁴⁹ In another study, immigration status was identified as the single largest factor independently affecting the rate at which battered Latina immigrants called the police.⁵⁰

⁴⁶ See Khashu, *supra* note 6, at 25.

⁴⁷ See, e.g., Messing et al., *supra* note 13, at 330 (citing several studies); Angelica S. Reina et al., “*He Said They’d Deport Me*”: *Factors Influencing Domestic Violence Help-Seeking Practices Among Latina Immigrants*, 29 J. Interpersonal Violence 593, 601 (2013). The latter study cited a participant who explained that a partner “beat me up and I could have called the police because that was what I thought to do . . . but he threatened me [H]e told me that if I called the police I was going to lose out . . . because [police officers] would . . . take me, because I didn’t have legal documents.” Reina et. al, *supra*, at 601; see also *NIWAP Report*, *supra* note 14, at 103 (noting that 69 percent of law enforcement officers surveyed had observed a decrease in domestic violence reporting).

⁴⁸ See, e.g., Messing et al., *supra* note 13, at 330.

⁴⁹ Reina et al., *supra* note 47, at 600.

⁵⁰ Nawal H. Ammar et al., *Calls to Police and Police Response: A Case Study of Latina Immigrant Women in the USA*, 7 Int’l J. Police Sci. & Mgmt. 230, 237 (2005).

Undocumented immigrants are vulnerable in the workplace, as well. In a number of studies, between 40 and 80 percent of mostly undocumented immigrants reported being victims of wage theft.⁵¹ Many immigrants also reported other types of worksite abuse.⁵² In one study, 32 percent of respondents said that they had suffered on-the-job injuries—and most of these individuals, after being injured, were either fired, not paid lost wages, or denied medical care by their employers.⁵³

Lastly, the “deportation threat dynamic” fuels not only workplace exploitation but also outright violence. One advocate’s account is chilling: according to this report, when a worker attempted to collect wages his employer owed him, “[t]he contractor raised his shirt and showed he had a gun—and that was enough He didn’t have to say any more. The worker left.”⁵⁴

II. Policies Limiting Local and State Involvement in Federal Immigration Enforcement Are Critical to Fostering Trust Between the Community and Law Enforcement While Preserving Local Resources

In limiting local and state involvement in federal immigration enforcement,

⁵¹ See Fussell, *supra* note 38, at 604 & tbl. 2 (finding that 40 percent of respondents reported wage theft since arriving in New Orleans); Nik Theodore at al., *La Esquina (The Corner): Day Laborers on the Margins of New York’s Formal Economy*, 9 WorkingUSA: J. Lab. & Soc’y 407 (2006) (finding a wage theft rate of approximately 50 percent in New York); S. Poverty Law Ctr., *supra* note 42, at 6 (finding that 41 percent of those surveyed across the South and 80 percent surveyed in New Orleans had experienced wage theft).

⁵² Fussell, *supra* note 38, at 604 & tbl. 2.

⁵³ S. Poverty Law Ctr., *supra* note 42, at 6.

⁵⁴ *Id.* at 7 (internal quotation marks omitted).

many jurisdictions aim to enhance community trust and preserve local resources, finding that “[a] relationship of trust between [the] immigrant community and state and local agencies is central to . . . public safety.”⁵⁵ That “trust is threatened,” however, “when state and local agencies are entangled with federal immigration enforcement.”⁵⁶

Some administrative policies or laws include formal restrictions on local law enforcement’s ability to apprehend or arrest an individual for federal immigration violations, including restrictions on arrests for civil violations of federal immigration law.⁵⁷ Other policies include restrictions on local law enforcement

⁵⁵ Cal. Gov’t Code § 7284.2(b).

⁵⁶ *Id.* § 7284.2(c).

⁵⁷ See Michael John Garcia & Kate M. Manuel, Cong. Research Serv., R43457, State and Local “Sanctuary” Policies Limiting Participation in Immigration Enforcement 9 (July 10, 2015), *available at* <https://perma.cc/MK4U-C3FD>; see also Illinois Trust Act, 5 ILCS § 805/15 (prohibition on enforcing federal civil immigration laws); Or. Rev. Stat. Ann. § 181A.820 (“No law enforcement agency of the State of Oregon or of any political subdivision of the state shall use agency moneys, equipment or personnel for the purpose of detecting or apprehending persons whose only violation of law is that they are persons of foreign citizenship present in the 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://perma.cc/L9BR-KS7B> [hereinafter DC Order]; Phoenix, AZ, Police Dep’t Operations Order Manual, at 1.4 (Jan. 2011) (“The investigation and enforcement of federal laws relating to illegal entry and residence in the United States is specifically assigned to [Immigration and Customs Enforcement within DHS].”), *available at* <https://perma.cc/6ZJE-BGBW>; see also

inquiries or investigations into a person’s immigration status or the gathering of such information at the local level.⁵⁸ Additionally, many jurisdictions have adopted policies against continued detention of an individual based on immigration detainer requests for at least some categories of noncitizens.⁵⁹ Several states limit the extent to which local police can cooperate with detainer requests, and more than 400 counties have policies limiting cooperation with detainers.⁶⁰ Eliminating any of these protections and policies—all of which are embodied in New Jersey’s

Melendres v. Arpaio, 695 F.3d 990, 1001 (9th Cir. 2012) (“[The sheriff] may not detain individuals solely because of unlawful presence.”).

⁵⁸ See Cal. Gov’t Code § 7284.6(a)(1)(A) (prohibiting California law enforcement agencies from “[u]s[ing] agency or department moneys or personnel to . . . [i]nquir[e] into an individual’s immigration status”); S.F. Admin. Code § 12H.2(d) (prohibiting all agencies and agents of the City and County of San Francisco from including on certain governmental forms “any question regarding immigration status other than those required by Federal or State statute, regulation, or court decision”); see also, e.g., DC Order, *supra* note 57 (public safety employees “shall not inquire about a person’s immigration status . . . for the purpose of initiating civil enforcement of immigration proceedings that have no nexus to a criminal investigation”).

⁵⁹ See S.F. Admin. Code § 12I.3(a) (forbidding law enforcement officials from “detain[ing] an individual on the basis of a civil immigration detainer after that individual becomes eligible for release from custody,” except in certain limited circumstances); see also Garcia & Manuel, *supra* note 57, at 14.

⁶⁰ See Ill. Trust Act, 5 ILCS 805/15 (stating that a “law enforcement agency or law enforcement official shall not detain or continue to detain any individual solely on the basis of any immigration detainer or non-judicial immigration warrant”); Cal. Gov’t Code § 7284.6(a)(1)(B) (prohibiting local law enforcement agencies from “[u]s[ing] agency or department moneys or personnel to . . . [d]etain an individual on the basis of a hold request”); see also Lee et al., *supra* note 3; *ILRC Detainer Policies*, *supra* note 3.

Immigrant Trust Directive⁶¹—would substantially undermine important public safety efforts.

These policies also play an important role in preserving local law enforcement resources. As one jurisdiction has found, “[e]ntangling state and local agencies with federal immigration enforcement programs diverts already limited resources.”⁶² For example, complying with ICE detainer requests can add staggering costs—in some cases, tens of millions of dollars annually.⁶³ Requiring localities to provide notice of release and access to ICE officials to all facilities where any individual is detained would have similar effects. Communities carefully allocate resources such as funds, training, and officer duties to serve local law enforcement needs most effectively; forced redistribution to immigration enforcement would siphon limited resources away from where they are most needed while simultaneously damaging community engagement and protection.⁶⁴ It is “entirely reasonable for the State to determine that assisting immigration enforcement in any way . . . is a detrimental use of state law enforcement

⁶¹ See N.J. Att’y Gen. Directive No. 2018-6 2.0, §§ II.A.1-2, II.B.5-6.

⁶² Cal. Gov’t Code § 7284.2(d).

⁶³ 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 <https://perma.cc/M39D-JDYG>.

⁶⁴ See Letter from Law Enforcement Task Force to Hon. Trey Gowdy & Hon. Zoe Lofgren (July 20, 2015), available at <https://perma.cc/V7MX-VCAF>.

resources.”⁶⁵

Recent incidents in localities with policies limiting local involvement in federal immigration enforcement demonstrate the public safety benefits of such policies. For example, in 2016, Los Angeles Police Department officers had an encounter with a suspected gang member that resulted in a vehicle chase, a foot pursuit, and shots fired. An undocumented immigrant helped police to locate the suspect by providing a description and vehicle information.⁶⁶ In Tucson, Arizona, an undocumented man confronted and struggled with a man who tried to steal a car with children inside. The immigrant held the individual until police arrived, then cooperated with detectives in the follow-up investigation, resulting in charges of kidnapping, auto theft, and burglary.⁶⁷ These examples show why crime is significantly lower in counties that limit local involvement in federal immigration enforcement.⁶⁸

Plaintiff’s attack on New Jersey’s Immigrant Trust Directive threatens to divert local resources from effective public safety efforts and to disrupt many

⁶⁵ *United States v. California*, 314 F. Supp. 3d 1077, 1108 (E.D. Cal. 2018).

⁶⁶ Chuck Wexler, *Commentary: Why Police Support Sanctuaries*, Phila. Inquirer, Mar. 10, 2017, <https://perma.cc/42H2-5E7U>.

⁶⁷ *Id.*

⁶⁸ See Tom K. Wong, *The Effects of Sanctuary Policies on Crime and the Economy*, Center for American Progress (Jan. 26, 2017), *available at* <https://perma.cc/H47S-PC6P> (“The results of the CEM analysis show that there are, on average, 35.5 fewer crimes per 10,000 people in sanctuary counties—a result that is highly statistically significant.”).

communities' efforts to ensure that immigrants do not fear interactions with local law enforcement. Plaintiffs' suit—if successful—would also deter other states and communities from adopting trust-enhancing policies in the future. In short, inducing jurisdictions to entangle themselves further with federal immigration enforcement would send a dangerous signal to witnesses and victims within immigrant communities: cooperate with local law enforcement at your own risk.

CONCLUSION

For the foregoing reasons, as well as the reasons set forth in Defendants' motion to dismiss, this Court should dismiss Plaintiff's complaint.

June 25, 2020

Respectfully Submitted,

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EXHIBIT A

EXHIBIT A: LIST OF AMICI

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA,

Plaintiff,

v.
STATE OF NEW JERSEY, et al.,

Defendants.

Case No. 3:20-cv-01364-FLW-TJB

**PROPOSED ORDER
GRANTING LEAVE TO
APPEAR AND FILE A BRIEF
AS AMICI CURIAE**

Having considered the Motion of Current and Former Prosecutors and Law Enforcement Leaders for Leave to File an Amici Curiae Brief; and all parties, by and through counsel, having received due notice of the motion and having the opportunity to be heard; and for good cause shown,

IT IS on this _____ day of _____, 2020, **ORDERED:**

1. The Motion for Leave to File an Amici Curiae Brief is hereby **GRANTED**;
and
2. The proposed Amici Curiae Brief of Current and Former Prosecutors and Law Enforcement Leaders is hereby deemed **FILED**.

Hon. Freda L. Wolfson, U.S.D.J.