No. 17-2991

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

CITY OF CHICAGO,
Plaintiff-Appellee,

v.

JEFFERSON B. SESSIONS III,
ATTORNEY GENERAL OF THE UNITED STATES,
Defendant-Appellant.

BRIEF *AMICI CURIAE* NATIONAL IMMIGRANT JUSTICE CENTER, AMERICAN CIVIL LIBERTIES UNION FOUNDATION, ET AL. IN SUPPORT OF PLAINTIFF-APPELLEE

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APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 17-2991

Short Caption: City of Chicago v. Sessions

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

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Northwest Immigrant Rights Project; Southern Poverty Law Center; Washington Defender Association

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Wilmer Cutler Pickering Hale and Dorr LLP, Riley Safer Holmes & Cancila LLP,
National Immigrant Justice Center, American Civil Liberties Union Foundation

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

National Immigrant Justice Center--The Heartland Alliance for Human Needs and Human Rights

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

None.

Attorney's Signature: s/ Mark Fleming Date: January 4, 2018

Attorney's Printed Name: Mark Fleming

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** X **No** ____

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(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

None.

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

None.

Attorney's Signature: s/ Lee Gelernt Date: 01/04/2018

Attorney's Printed Name: Lee Gelernt

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** X **No** ____

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INTEREST OF AMICI CURIAE

Amici curiae, listed in an addendum to this brief,[1] respectfully submit this brief in support of the City of Chicago. *Amici* include immigration-focused civil rights and legal organizations, who litigate and advocate on behalf of the individuals and communities who are the ultimate targets of the policies being challenged in this case. *Amici* have a substantial, shared interest in the Court's resolution of Chicago's claims. This Court will decide issues that have a direct impact on the "welcoming city" laws and policies that *Amici* have campaigned for in states and municipalities across the country. These policies promote public safety, reduce biased policing, foster trust between law enforcement and immigrant communities, and ensure that limited law enforcement resources are allocated to local public-safety priorities. After years of advocating for these policies and litigating against Immigration and Customs Enforcement (ICE) for its efforts to conscript local law enforcement, *Amici* are well-positioned to explain the broader legal and policy context surrounding the Department of Justice's (DOJ) new and unprecedented Byrne JAG funding conditions.

[1] *Amici curiae* certify that no party or counsel for a party authored any portion of this brief or made a monetary contribution intended to fund its preparation or submission. Fed. R. App. P. 29(c)(5). No person other than *amici curiae*, their members, or their counsel have made such a monetary contribution. *Id*.

SUMMARY OF THE ARGUMENT

Amici submit this brief to explain the recent history of federal efforts to coerce local police to help enforce federal immigration law, of which DOJ's new Byrne JAG conditions are the latest chapter. This historical backdrop is critical to understanding the federal-local dynamics in which "welcoming city" laws like Chicago's arise. These policies restore local autonomy, focus law enforcement resources on serving local needs, and promote effective policing strategies that foster trust between police and the communities they serve.

For the past decade, federal immigration officials have employed a number of means to co-opt the work of local police to further federal immigration priorities, often to the detriment of local interests. These attempts have taken many forms, from browbeating to outright compulsion. Nonetheless, hundreds of communities and law enforcement officials across the country have asserted their constitutional prerogative to not enforce federal law, *see Printz v. United States*, 521 U.S. 898, 930-31 & n.15 (1997), and have refused to lend their services to federal deportation efforts. In response, the Administration's efforts to coerce local assistance have accelerated this past year, leading to DOJ's new JAG conditions.

These federal efforts are deeply offensive to "the etiquette of federalism," *United States v. Lopez*, 514 U.S. 549, 583 (1995) (Kennedy, J., concurring), and to the individual liberties that federal structure is meant to protect. *See Gregory v. Ashcroft*, 501 U.S. 452, 458-59 (1991). Indeed, Congress has embedded federalist principles throughout the Immigration and Nationality Act (INA). Those principles—and the Administration's ongoing campaign against them—provide crucial context for the claims in this case, including the question of whether Congress has delegated to DOJ the authority to use criminal-justice funds as a means to bully local police into taking immigration actions they have determined would hurt their own communities.

DOJ has identified no statutory provision to support that unprecedented expansion of its authority over states and localities—much less an "unmistakably clear" statement "in the language of the statute." *Id.* at 460. The provision it invokes, 34 U.S.C. § 10102(a)(6), at most envisions authority to impose "special conditions," which have long been understood as a narrow term of art, referring to conditions that ensure a grantee complies with *existing* grant conditions. That comes nowhere near a clear statement of authority to impose *new* substantive conditions.

Amici therefore urge the Court to affirm the nationwide preliminary injunction against DOJ's newly-invented JAG conditions.

ARGUMENT

I. The JAG Conditions Represent a Major Escalation in the Administration's Efforts to Coerce State and Local Participation in Immigration Enforcement.

A. ICE's expanding use of local criminal justice systems.

For decades, federal immigration agents' interactions with local law enforcement agencies (LEAs) were sporadic and ad hoc. But starting in 2006, ICE began to systematically target individuals encountered by LEAs and to use local criminal justice systems as a platform for civil immigration enforcement. One program ICE uses is called the "Criminal Alien Program" (CAP), in which ICE agents closely monitor state and local prisons and jails to identify individuals who may be deportable. By July 2012, CAP officers were screening 100% of reported foreign-born individuals in federal and state prisons, a total of over 4,300 facilities.[2]

[2] See American Immigration Council, "The Criminal Alien Program: Immigration Enforcement in Prisons and Jails," at 5 (Aug. 2013) (citing Deposition of Jamison Matuszewski, Unit Chief for Criminal Alien Program), https://www.americanimmigrationcouncil.org/sites/default/files/research/cap_fact_sheet_8-1_fin_0.pdf.

The scale of local conscription began to increase dramatically in 2008, when ICE rolled out a fingerprint-sharing program called Secure Communities. Through Secure Communities, every time an LEA sends an individual's fingerprints to the FBI to check for any criminal warrants and history, those fingerprints and booking information (including country of birth and citizenship, if collected) automatically are shared with ICE to check for possible removability.[3] ICE championed the program as a "force-multiplier" by which it could "leverage" local police forces nationwide.[4]

ICE originally sold the program as voluntary.[5] The State of Illinois initially entered into a Memorandum of Agreement (MOA) with ICE to share information through Secure Communities.[6] However, on May 4, 2011, citing serious concerns that the program was disproportionately targeting individuals with limited or no criminal histories, Illinois Governor Pat Quinn sought to terminate the state's MOA.[7] Instead of honoring Illinois' decision, ICE reversed course and decided to force the state to participate in Secure Communities.[8] In August

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[3] ICE, "Secure Communities: Standard Operating Procedures" (2009), https://www.ice.gov/doclib/foia/secure_communities/securecommunitiesops93009.pdf.

[4] ICE, Press Release, Secretary Napolitano and ICE Assistant Secretary Morton Announce That the Secure Communities Initiative Identified More Than 111,000 Criminal Aliens in Its First Year (Nov. 12, 2009), https://www.dhs.gov/news/2009/11/12/secure-communities-initiative-identified-more-111000-criminal-aliens-its-first-year; Supra note 3.

[5] *See supra* note 3; ICE, FOIA Library, "Secure Communities-Memorandums of Agreement," https://www.ice.gov/foia/library.

[6] ICE, FOIA Library, MOA between ICE and Illinois State Police (dated Nov. 2, 2009), https://www.ice.gov/doclib/foia/secure_communities-moa/r_illinois_11-2-09.pdf.

[7] Letter from Pat Quinn, Governor of Illinois, to Marc Rapp, Acting ICE Asst. Director for Secure Communities (dated May 4, 2011), http://big.assets.huffingtonpost.com/Quinn_DHS.pdf.

[8] Elise Foley, *DHS Overrides State, Says Illinois Must Share Fingerprint Data For Deportations*, Huff. Post (May 6, 2011), http://www.huffingtonpost.com/2011/05/06/dhs-secure-communities-illinois_n_858528.html.

2011, ICE informed every state that Secure Communities was now mandatory—despite its explicit prior representations that the program was optional—forcing all LEAs nationwide to contribute to civil immigration enforcement if they wanted access to the FBI's criminal database, which is an essential tool for law enforcement.[9]

Because states and localities cannot effectively opt out of Secure Communities, its fingerprint-sharing regime has involuntarily transformed local officers across the country into frontline immigration agents. By February 28, 2015, when ICE's public reporting ended, ICE had screened over 47 million LEA fingerprint checks.[10]

B. The proliferation of ICE detainers.

Once ICE officials learn of a person in a state or local jail through CAP or Secure Communities, they ask the jail to hold the person. ICE's principal tool for seeking the custody of an individual in local custody has been the immigration detainer. A detainer is a checkbox form that requests advance notice of release and asks LEAs detain the person for up to an additional 48 hours after local detention authority expires (for reasons such as posting of bail, dismissal of charges, or completion of sentence).[11] ICE lodges these detention requests despite having acknowledged in litigation that the detainer does not in fact authorize the civil arrest as a matter

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[9] Example letter sent to States Governors available at *City of Chicago v. Sessions*, Case No. 17-5720, Dkt. 62-1, Ex. C (N.D. Ill.); Elise Foley, *Secure Communities Agreements Canceled, Participation Still Required*, Huff. Post (Aug. 5, 2011), http://www.huffingtonpost.com/entry/secure-communities-update-department-of-homeland-security_n_919651.html.

[10] ICE, "Secure Communities Nationwide Interoperability Statistics-Year to Date FY2015" (Feb. 28, 2015), https://www.ice.gov/sites/default/files/documents/FOIA/2015/sc_stats_YTD2015.pdf.

[11] *See* Detainer Form I-247A (Mar. 2017), https://www.ice.gov/sites/default/files/documents/Document/2017/I-247A.pdf. Until June 2015, the immigration detainer form requested detention for up to 48 hours, excluding weekends and holidays, thus up to 5 days.

of federal law. *Gonzalez v. ICE*, Case No. 13-4466 (C.D. Cal.), *consolidated with Roy v. Los Angeles Sheriff's Dep't*, 12-9012 (C.D. Cal.), Dkt. 272-1, ¶¶ 64-65, 162 [hereinafter "*Gonzalez*, Dkt. 272-1"]; *see Lunn v. Commonwealth*, 78 N.E.3d 1143, 1146 (Mass. 2017) ("There is no Federal statute that confers on State officers the power to make [an arrest based on an immigration detainer]."); *Villars v. Kubiatowski*, 45 F.Supp.3d 791, 807 (N.D. Ill. 2014) ("[N]owhere does [8 C.F.R. § 287.7(d)] authorize the detention of an alien for 48 hours after local custody over the detainee would otherwise end.").

Over the last decade, the number of detainers sent to local jails has skyrocketed. In FY 2005, ICE issued 7,090 detainers; by FY 2012, that number had shot up by a factor of 40, to 276,181.[12] As a result, law enforcement could no longer credibly say that contact with them would not lead to immigration consequences. Immigrant communities across the country began to live in fear of their own police.

ICE stoked this fear by placing detainers on people with little to no criminal record. According to ICE's own data, nearly half of all detainers in 2012 targeted people with no criminal record at all, and almost two-thirds targeted people with very minor offenses, if any, such as traffic offenses.[13] In Cook County (which accounts for most Chicago detainers), a full *95 percent* of ICE detainers in 2012 were issued against individuals with no criminal

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[12] Transactional Record Access Clearinghouse (TRAC), "Detainer Use Stabilizes Under Priority Enforcement Program," Tbl. 1 (Jan. 21, 2016), http://trac.syr.edu/immigration/reports/413/. In November 2014, DHS announced the Priority Enforcement Program (PEP), which continued the Secure Communities fingerprint and information-sharing but limited the categories of individuals that ICE could target with detainers. Accordingly, the number of detainers issued to LEAs in 2015 and 2016 declined. The Trump administration has eliminated the PEP restrictions, such that ICE's detainer use has again climbed. TRAC, "Use of ICE Detainers Obama v. Trump" (Aug. 30, 2017), http://trac.syr.edu/immigration/reports/479/.

[13] TRAC, "Few ICE detainers Target Serious Criminals," Tbl. 3 (Sept. 17. 2013), http://trac.syr.edu/immigration/reports/330/.

convictions.[14] Detainers were also expensive for local governments themselves, because ICE refused to reimburse them for the cost of detention, *see* 8 C.F.R. § 287.7(e), and because localities faced steep civil liability when ICE made mistakes, such as issuing detainers for U.S. citizens. *See, e.g.*, *Morales v. Chadbourne*, 235 F. Supp. 3d 388 (D.R.I. 2017); *Gonzalez Goodman v. Penzone*, Case No. 16-4388, Dkt. 32-1 (D. Ariz. filed Dec. 14, 2016).

Despite these problems, ICE carefully cultivated the perception that they were mandatory, even though a mandate to detain a person would have been a blatant violation of the anti-commandeering rule. *See Printz*, 521 U.S. at 931-32 & n. 15 (federal government cannot force even "a minimal and only temporary" regulatory burden on local officers); *New York v. United States*, 505 U.S. 144 (1992) (federal government cannot force states to regulate). In spite of the clarity of that rule, ICE wrote on the detainer request form, "This request flows from federal regulation 8 C.F.R. § 287.7, which provides that a law enforcement agency 'shall maintain custody of an alien' once a detainer has been issued by DHS." [Detainer Form I-247 (Dec. 2011), http://bit.ly/2yS50Qf].[15] In fact, the regulation provided no such command, only a time limit. 8 C.F.R. § 287.7(d). But even though many sheriffs and police chiefs understood the detainer to be a command, ICE declined to correct the record until years later. *Rios-Quiroz v.*

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[14] TRAC, "Targeting of ICE Detainers Varies Widely by State and by Facility," Tbl. 3 (Feb. 11, 2014), http://trac.syr.edu/immigration/reports/343/.

[15] ICE has changed the detainer form multiple times since 2010 due to repeated court defeats or conceded constitutional problems. For example, from 1997 through 2012, ICE's detainer forms permitted an ICE agent to request detention based solely on the "initiation of an investigation" in clear violation of the Fourth Amendment. *Morales v. Chadbourne*, 996 F.Supp.2d 19, 29 (D. R.I. 2014), *aff'd* 793 F.3d 208 (1st Cir. 2015) ("One needs to look no further than the detainer itself to determine that there was no probable cause to support its issuance. . . . The fact that an investigation had been initiated is not enough to establish probable cause because the Fourth Amendment does not permit seizures for mere investigations."). ICE data on immigration detainers show that between October 2011 and January 2013, ICE based seventy-four percent of detainers requests on the "initiation of an investigation." *Supra* note 13, Tbl. 1.

Williamson County, Tenn., Case No. 11-1168 (M.D. Tenn.), Dkt. No. 40 & 41 (federal judge requests ICE file an amicus brief regarding its position on whether detainers are mandatory; ICE declines the judge's request); *see* Defts' Answer, *Jimenez Moreno*, Case No. 11-5452, Dkt. 61, ¶ 24 (N.D. Ill. Dec. 27, 2012) (ICE concedes detainers are voluntary); *see Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014) (holding detainers are voluntary).

C. ICE's enlistment of local police has eroded community policing strategies.

Not surprisingly, the threat of immigration enforcement injected into every police encounter has had deleterious effects on community policing. For example, a 2012 University of Illinois-Chicago (UIC) survey found that 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."[16] That number rose to 70% for undocumented immigrants surveyed.[17] Even ICE's "Task Force on Secure Communities" warned that the federal-local collaboration ushered in by Secure Communities was "disrupting police-community relationships that are important to public safety and national security."[18] The President's Task Force on 21st Century Policing went further in recommending that, in the strong interest of community policing, "[t]he U.S. Department of Homeland Security

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[16] UIC, Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, at i, 5 (May 2013), http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF.

[17] Id.

[18] Homeland Security Advisory Council, "Task Force on Secure Communities: Findings and Recommendations," Ch. IV (Sept. 2011), https://www.dhs.gov/xlibrary/assets/hsac-task-force-on-secure-communities.pdf.

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."[19] Yet ICE continues to issue thousands of immigration detainers monthly to LEAs, close to 70% against individuals with minor or no criminal records.[20] And the entanglement of local police in civil immigration enforcement continues to harm community policing strategies.[21]

It is against this backdrop that in 2012 Chicago amended its Welcoming City ordinance to restore the historic and constitutional line between the criminal justice system and civil immigration enforcement. *See Arizona v. United States*, 567 U.S. 387, 407 (2012) ("[I]t is not a crime for a removable alien to remain present in the United States. If the police stop someone based on nothing more than possible removability, the usual predicate for an arrest is absent.").[22] The Welcoming City Ordinance, and its companion Cook County ordinance, protect local

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[19] DOJ, The President's Task Force on 21st Century Policing, Final Report, 1.9 Recommendation (May 2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

[20] TRAC, "Reforms of ICE Detainer Program Largely Ignored by Field Officers" (Aug. 9, 2016), *available at* http://trac.syr.edu/immigration/reports/432/; TRAC, "Use of ICE Detainers Obama v. Trump" (Aug. 30, 2017), http://trac.syr.edu/immigration/reports/479/.

[21] Five Thirty Eight, "Latinos In Three Cities Are Reporting Fewer Crimes Since Trump Took Office" (May 18, 2017), https://fivethirtyeight.com/features/latinos-report-fewer-crimes-in-three-cities-amid-fears-of-deportation/.

[22] *See also Jimenez Moreno v. Napolitano*, Case No. 11-5452 (N.D. Ill.), Dkt. 219, ¶¶ 18-19 (ICE concession that detainers are never supported by a judicial determination of probable cause, whether before in the form of a warrant or promptly after a detainer arrest); *Arias v. Rogers,* 676 F.2d 1139, 1142-43 (7th Cir. 1982) (explaining that the Fourth Amendment and "the immigration laws, specifically 8 U.S.C. § 1357(a)(2)[,] . . . require[] that an alien arrested without a warrant 'be taken without unnecessary delay before an'" immigration judge, who functions as the equivalent to a "committing magistrate in a criminal proceeding").

resources, ensure that residents' constitutional rights are not violated, and foster community policing by assuring residents that interactions with police will not lead to deportation.

D. Federal efforts to conscript local assistance have proliferated over the last year.

In the past year, the Executive Branch has stepped up its attempts to withhold federal grant monies to impel local jurisdictions to help deport their residents. During his first week in office, President Trump signed Executive Order 13768, "Enhancing Public Safety in the Interior of the United States."[23] That Order states that the Attorney General and DHS Secretary:

> shall ensure that [sanctuary jurisdictions] are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary. . . . The Attorney General shall take appropriate enforcement action against any entity . . . which has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law.

This was a dire threat, because states and localities receive billions of dollars in federal funding each year. But it was also a dubious threat, because the spending power is Congress's, U.S. Const. art. I, § 8, cl. 1, and because the Supreme Court has been clear that the federal government cannot use financial leverage to railroad states and localities into enforcing federal priorities. *See NFIB v. Sebelius*, 567 U.S. 519, 575-85 (2015).

When cities sued, DOJ took the position that in fact the Order only applied to law enforcement grant programs (which is hard to reconcile with its text), and that DOJ would not seek to place new conditions on any federal funds under the Order. *Santa Clara v. Trump*, -- F. Supp. 3d --, 2017 WL 1459081, at *7 (N.D. Cal. Apr. 25, 2017), *reconsideration denied*, *Santa Clara v. Trump*, -- F. Supp. 3d --, 2017 WL 3086064, at *1-2 (N.D. Cal. July 20, 2017). Indeed,

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[23] The White House, "Executive Order 13768: Enhancing Public Safety in the Interior of the United States" (Jan. 25, 2017), https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united.

the DOJ "argued that to the extent the Order directs the Attorney General and Secretary to newly condition federal funds on compliance with Section 1373, it could not lawfully do so and so it does not." *Santa Clara*, 2017 WL 1459081, at *7. The court, nevertheless, correctly found that the Administration's new interpretation of the Executive Order was "not legally plausible" and enjoined the Order. *Santa Clara*, 2017 WL 3086064, at *1; *Santa Clara v. Trump*, -- F. Supp. 3d --, 2017 WL 5569835 (N.D. Cal. Nov. 20, 2017) (entering permanent injunction).

The Trump administration is apparently undaunted by its failed efforts to hector, threaten, and trick localities into signing up for its deportation force.[24] Within days of the denial of its motion for reconsideration of the preliminary injunction in *Santa Clara*, DOJ turned around and issued the FY 2017 Byrne JAG Program application materials, which added three new immigration conditions—including 48 hours' notice of release and access to local jails and detention centers.[25] This is the first time DOJ has tried to use the JAG Program as a way to extract unrelated policy concessions from local governments.

Its current efforts to conscript local enforcement assistance extend beyond the notice and access conditions. While claims regarding DOJ's third immigration condition (certification of compliance with 8 U.S.C. § 1373) are not currently before the Court, DOJ is now peddling an unprecedented, expansive, and implausible interpretation of § 1373—that it prohibits local

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[24] *See* David Post, *The "Sanctuary Cities" Executive Order: Putting the Bully Back into "Bully Pulpit"*, Wash. Post (May 2, 2017), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/05/02/the-sanctuary-cities-executive-order-putting-the-bully-back-into-bully-pulpit/?utm_term=.844e58710403.

[25] DOJ, Attorney General Sessions Announces Immigration Compliance Requirements for Edward Byrne Memorial Justice Assistance Grant Programs (July 25, 2017), https://www.justice.gov/opa/pr/attorney-general-sessions-announces-immigration-compliance-requirements-edward-byrne-memorial; DOJ, Office of Justice Programs, "Edward Byrne Memorial Justice Assistance Grant Program: FY 2017 Local Solicitation," at 29-30 (released Aug. 3, 2017), https://www.bja.gov/Funding/JAGLocal17.pdf.

policies that restrict the sharing of nearly *any* information about immigrants, including their home addresses, custody status, and release dates. Section 1373 says no such thing. It provides that state or local government entities or officials may not prohibit or restrict the exchange of "information regarding the citizenship or immigration status . . . of any individual."[26] The statute is clear that it applies only to discrete information-sharing about immigration status and citizenship. *See Steinle v. San Francisco*, 230 F. Supp.3d 994, 1015-16 (N.D. Cal. 2017) (holding "[n]othing in 8 U.S.C. § 1373[] addresses information concerning an inmate's release date."). Yet in an October 11, 2017 letter to the City, DOJ now claims the Welcoming City ordinance's provision—which prohibits "communicating with ICE regarding a person's custody status or release date"—violates § 1373, and as a consequence DOJ intends to claw back Chicago's FY2016 JAG grant.[27] That same day, DOJ made similar threats against four other jurisdictions.[28] Then on November 15, 2017, DOJ threatened 29 additional jurisdictions with similar specious claims of non-compliance with 8 U.S.C. § 1373.[29]

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[26] As the district court conceded, 8 U.S.C. § 1373 may violate the anti-commandeering principle of the Tenth Amendment. *City of Chicago*, 2017 WL 4081821, at * 9-12.

[27] Letter from Alan Hanson, Acting Asst. Attorney General, to Eddie T. Johnson, Chicago Superintendent of Police (dated Oct. 11, 2017), https://www.justice.gov/opa/press-release/file/1003016/download.

[28] *See* DOJ, *Justice Department Provides Last Chance for Cities to Show 1373 Compliance* (Oct. 12, 2017), https://www.justice.gov/opa/pr/justice-department-provides-last-chance-cities-show-1373-compliance.

[29] *See* DOJ, *Justice Department Sends Letters to 29 Jurisdictions Regarding Their Compliance with 8 U.S.C. 1373* (Nov. 15, 2017), https://www.justice.gov/opa/pr/justice-department-sends-letters-29-jurisdictions-regarding-their-compliance-8-usc-1373.

As an example, DOJ sent a legally frivolous, harassing letter to the State of Illinois claiming the Illinois TRUST Act of 2017 (S.B. 31) may be in violation of § 1373. *See* Letters from Alan Hanson, Acting Asst. Attorney General, to 29 jurisdictions, at pp. 53-54, https://www.justice.gov/opa/press-release/file/1011571/download. The Illinois TRUST Act has express provisions that it shall not be construed in any manner that would be in violation of § 1373 and another provision, which states:

In short, without court intervention, there is seemingly no end to DOJ's efforts to invent new spending threats in order to badger and coerce as many criminal justice agencies as possible to capitulate to the Trump Administration's civil immigration enforcement agenda.

II. DOJ Has No Statutory Authority to Impose the Notice and Access Conditions.

No statutory provision authorizes DOJ to impose the "notice" and "access" requirements. If Congress wanted to empower DOJ to use JAG funds as pure leverage to force localities to adopt DOJ's preferred immigration policies, it would at least need to do so with unmistakable clarity. *See Solid Waste of N. Cook Cty. v. U.S. Army Corps of Eng'rs*, 531 U.S. 159, 172-73 (2001) ("Congress does not casually authorize administrative agencies to interpret a statute" in a way that "alters the federal-state framework by permitting federal encroachment upon a traditional state power"); *see also Bond v. United States*, 134 S. Ct. 2077, 2089 (2014); *Gregory*, 501 U.S. at 460; *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981).

Here, Congress has, at most, allowed the Office of Justice Programs (OJP) to be vested with the authority to impose "special conditions" on certain grants. 42 U.S.C. § 3712(a)(6). But, contrary to DOJ's limitless interpretation of that phrase, "special conditions" has long been understood as a narrow term of art: It refers to grantee-specific conditions designed to ensure that the grantee complies with *existing* conditions. And it is well-settled that "if a statute uses a legal term of art, [courts] must presume Congress intended to adopt the term's ordinary legal meaning." *Eaves v. Cty. of Cape May*, 239 F.3d 527, 532 (3d Cir. 2001) (quotation marks omitted); *see Sullivan v. Stroop*, 496 U.S. 478, 482-83 (1990); *Buckhannon Bd. & Care Home,*

(continued...)

"Nothing in this [Act] prohibits communication between federal agencies or officials and law enforcement agencies or officials." *See* http://www.ilga.gov/legislation/100/SB/PDF/10000SB0031lv.pdf.

Inc. v. West Va. Dep't of Health & Human Res., 532 U.S. 598, 615-16 (2001) (Scalia, J., concurring) (explaining the term-of-art rule).

The term-of-art meaning of "special conditions" is amply established by DOJ's own regulations, those of multiple other agencies, government-wide guidance published for decades by the Office of Management and Budget, and all treatises on federal grant law of which *Amici* are aware.

When Congress enacted the current version of § 10102(a)(6) in 2006, the Department of Justice's own regulations governing "[s]pecial grant or subgrant conditions" described them as intended for "'high-risk' grantees" who might have problems adhering to existing grant requirements. 28 C.F.R. § 66.12(a) (in effect from Mar. 11, 1988 until Dec. 25, 2014) (listing possible problems, including that the grantee "[i]s not financially stable" or "[h]as not conformed to terms and conditions of previous awards"). The regulation provided a list of the "[s]pecial conditions or restrictions" that could be imposed, and provided that "corrective actions" by the grantee could lead to the special conditions being removed. *Id.* § 66.12(b), (c)(3) (2006). DOJ's regulation was based on the Office of Management and Budget's Circular A.102—a government-wide guidance document for grant-making agencies—which defined "special conditions" in the exact same way. *See* OMB, Circular A-102, § 1(g) (Aug. 29, 1997).[30] Other agencies' regulations did the same. *See, e.g.*, 7 C.F.R. § 550.10 (Department of Agriculture); 34 C.F.R § 80.12 (Department of Education); 45 C.F.R. § 74.14 (Department of Health and Human Services); *see also* 20 U.S.C. § 1416(e)(1)(C) (directing agency to "impose special conditions" on "a high-risk grantee").

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[30] *Available at* https://www.whitehouse.gov/omb/circulars_a102.

"Special conditions" have been understood as a narrow term of art for many decades. Both of the leading treatises on federal grant law define them as conditions intended to ensure that a grantee complies with existing requirements. One of them describes "special conditions" as those imposed on a "'high risk' recipient" to ensure that the recipient "will successfully execute [the] grant." ALLEN, FEDERAL GRANT PRACTICE § 25:4 (2017 ed.); *see also id.* §§ 25:1 (defining "'specific' or 'special' conditions"), 25:2, 25:5, 25:10, 47:6. The other treatise contrasts "special conditions"—which address "special risks" of non-compliance—with "general conditions" and "cross-cutting conditions," both of which involve substantive requirements applicable to all grantees. *Compare* DEMBLING & MASON, ESSENTIALS OF GRANT LAW PRACTICE (1991), at 125-36 (special conditions), *with id.* at 121-24 (general conditions); *id.* at 107-19 (cross-cutting conditions). And as early as 1988, OMB itself warned that "[s]pecial [c]onditions"—intended for "[h]igh [r]isk" recipients only—should not be used as "loopholes" to "circumvent" normal grant-making rules and "impose additional or unwarranted requirements." OMB, *Grants and Cooperative Agreements with State and Local Governments*, 53 Fed. Reg. 8028-01, 8028 (Mar. 11, 1988). When Congress incorporated this term into § 10102(a)(6), it "br[ought] the old soil with it." *Sekhar v. United States*, 133 S. Ct. 2720, 2724 (2013).

Federal grant law continues to define special conditions narrowly. Government-wide OMB regulations allow agencies to impose "special conditions that can appropriately mitigate the effects of the non-Federal entity's risk." 2 C.F.R. § 200.205. The same regulations restrict the imposition of "specific conditions" to particular "circumstances" where there is a risk of non-

compliance with existing requirements. 2 C.F.R. § 200.207.[31] DOJ has adopted these regulations to govern the grants it administers. *See* 2 C.F.R. § 2800.101.

III. ICE's FY2017 Arrest Statistics Reveal That It Is Principally Targeting Individuals with No or Minimal Criminal Records, Not Purported "Dangerous Criminal Aliens."[32]

In announcing the new Byrne JAG immigration conditions, DOJ stated that "[a]s part of accomplishing the Department of Justice's top priority of reducing violent crime, we must encourage these 'sanctuary' jurisdictions to change their policies and partner with federal law enforcement to remove criminals."[33] The Attorney General has likewise suggested that gun violence in the City of Chicago is caused by the City's Welcoming City ordinance.[34]

Yet ICE's recently released FY2017 administrative arrest statistics contradict the DOJ's rhetoric and instead reveal that the government is indiscriminately targeting anyone that may be removable, irrespective of their criminal record or any other public safety factors.[35] Of ICE's

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[31] The terms "special conditions" and "specific conditions" are used interchangeably. *See, e.g.*, OMB, *Federal Awarding Agency Regulatory Implementation of OMB's Uniform Administration Requirements*, 79 Fed. Reg. 75871-01, 75874 (Dec. 19, 2014) (explaining that prior "standards for imposing special conditions on grantees" are "virtually identical" to current standards for imposing "specific conditions" pursuant to 2 C.F.R. §§ 200.205 and 200.207); ALLEN, FEDERAL GRANT PRACTICE § 25:1 (2017 ed.) (stating that "'specific' or 'special' conditions" are the same), § 25:3 (discussing "the imposition of special/specific conditions"); OMB, *Uniform Guidance Crosswalk from Existing Guidance to Final Guidance*, at 3, 4 (2013) (noting OMB's transition between the two phrases).

[32] DOJ, Attorney General Jeff Sessions Delivers Remarks on Sanctuary Jurisdictions (Washington, D.C., Mar. 27, 2017), https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-sanctuary-jurisdictions.

[33] DOJ, Attorney General Sessions Announces Immigration Compliance Requirements for Edward Byrne Memorial Justice Assistance Grant Programs (July 25, 2017), https://www.justice.gov/opa/pr/attorney-general-sessions-announces-immigration-compliance-requirements-edward-byrne-memorial.

[34] *See* DOJ, *Attorney General Sessions Delivers Remarks on Sanctuary Policies* (Miami, Fl., Aug. 16, 2017), https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-sanctuary-policies.

[35] ICE, *Fiscal Year 2017 ICE Enforcement and Removal Operations Report* (last updated Dec. 13, 2017), https://www.ice.gov/sites/default/files/documents/Report/2017/iceEndOfYearFY2017.pdf.

143,470 administrative arrests in FY2017,[36] twenty-six percent (26%) had no criminal offenses,[37] and of the remaining individuals over fifty-six percent (56%) of the criminal convictions involved non-violent convictions like traffic offenses and immigration violations.[38] In short, ICE's own statistics reveal that the Administration's immigration enforcement strategy is to deport anyone and everyone, not those who are convicted of serious crimes—a core reason jurisdictions like Chicago passed "welcoming city" ordinances in the first place.

IV. DOJ's New Coercive Tactics Are Antithetical to the Federalist Principles Embedded in the Immigration and Nationality Act.

In enacting and amending the INA, Congress has repeatedly strove to respect local autonomy and not unduly burden local criminal justice systems. In authorizing state and local officers to perform certain immigration functions, Congress has acknowledged the Tenth Amendment's reservation of power to the States in two important ways. First, nowhere in the INA has Congress attempted to compel state and local officials' participation in immigration enforcement. Second, where Congress has granted limited authority for state and local officials to participate in immigration enforcement, it has recognized that such participation is subject to state and local law.

A. The INA does not seek to compel any non-federal participation in immigration enforcement.

In *Printz v. United States,* 521 U.S. 898 (1997), the Court held that the Tenth Amendment's reservation of powers to the states creates a separation of federal and state spheres

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[36] Most of these individuals would have been first encountered by local law enforcement. *Compare id.* at Tbl. 1 (total administrative arrests), *with id.* at Fig. 5 (at-large administrative arrests).

[37] *Id.* at Tbl. 1.

[38] *See id.* at Tbl. 2 (the top four categories for criminal convictions—DUIs, drugs, immigration, traffic—account for over 56% of the offenses committed).

of authority constituting one of "the Constitution's structural protections of liberty." *Id.* at 921. The Tenth Amendment prevents the federal government from "impress[ing] into its service—and at no cost to itself—the police officers of the 50 States." *Id.* at 922.

Consistent with the Tenth Amendment, some INA provisions authorize state and local participation in immigration enforcement, but nowhere does the INA require such participation. Examples of such grants of authority are the three "limited circumstances in which state officers may perform the functions of an immigration officer" discussed by the Supreme Court in *Arizona*. 567 U.S. at 408.

Section 287(g) of the INA, 8 U.S.C. § 1357(g), authorizes federal officials to enter into cooperative agreements with state and local law enforcement agencies, whereby state and local officials are essentially deputized to perform certain immigration enforcement functions. 8 U.S.C. § 1357(g)(1). Such state-federal agreements resemble earlier federal-state agreements, which did not "mandate [any] duties, but merely empowered the [federal government] . . . 'to enter into contracts'" with local officials. *Printz*, 521 U.S. at 916. In fact, Congress has explicitly stated that "[n]othing" in Section 287(g) "shall be construed to require any State or political subdivision of a State to enter into [such] an agreement." 8 U.S.C. § 1357(g)(9).

The other INA provisions cited in *Arizona* similarly permit, but do not compel (and do not authorize federal agencies to compel), state and local participation in immigration enforcement. 8 U.S.C. § 1103(a)(10) permits the Attorney General to "authorize" state or local law enforcement officers to perform the functions of an immigration officer in the event of a

mass immigration influx;[39] 8 U.S.C. § 1252c similarly grant "authority" to state and local officials but does not require participation.

B. The INA makes clear that state and local officials' participation in immigration enforcement is subject to state and local law.

Another common thread running through the INA is that each grant of immigration authority to non-federal officers is made subject to state or local law governing the duties and authorities of such officers.

Under Section 287(g), for example, Congress permitted federal-state agreements to authorize non-federal officials to perform immigration enforcement functions, but only "to the extent consistent with State and local law." 8 U.S.C. § 1357(g)(1). Under 8 U.S.C. § 1103(a)(10), the Attorney General is permitted to delegate enforcement authority to a local officer in the case of a mass immigration influx, but only "with the consent of the head of the department, agency, or establishment under whose jurisdiction the individual is serving." *Id.*[40] Title 8 U.S.C. § 1252c grants authority to state and local law enforcement to make civil arrests of a convicted felon who illegally reenters the United States, but only "to the extent permitted by relevant State and local law."

The proposition that state or local officers enforcing federal law must also have local authority for their actions is well established in the criminal law context. In an unbroken line of decisions dating back to 1948, the Supreme Court has held that even where federal law does not preclude enforcement by local officers, authority for enforcement must nonetheless be found in

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[39] Like INA § 287(g), the implementing regulations for 8 U.S.C. § 1103(a)(10) contemplate a written agreement. 28 C.F.R. § 65.84(a).

[40] The implementing regulations for § 1103(a)(10) state: "Attorney General shall negotiate the terms and conditions of that assistance with the State or local government." 28 C.F.R. § 65.84(a).

state or local law. *United States v. Di Re,* 332 U.S. 581 (1948); *see also Miller v. United States,* 357 U.S. 301 (1958); *Ker v. California,* 374 U.S. 23 (1963).

Local officials thus must ascertain first whether federal authority for enforcement exists, and next whether state or local law also authorizes the action. Even during the period when it was hotly contested whether state and local law enforcement had authority to enforce *civil* immigration laws, *criminal* immigration laws, or both,[41] there was nonetheless consistent, decades-long agreement among the Department of Justice and the Supreme Court on one point: Whatever federal authority state officials had to enforce immigration law was subject to state-law restrictions on those officials' authority. Memorandum for the Att'y Gen., from Jay S. Bybee, Ass't Att'y Gen'l, Office of Legal Counsel, *Non-preemption of the authority of state and local law enforcement officials to arrest aliens for immigration violations* 8 (April 3, 2002), https://www.aclu.org/files/FilesPDFs/ACF27DA.pdf (assuming for purposes of the memo that "States have conferred on state police the *necessary* state-law authority . . . .") (emphasis added); *see supra* note 41.[42]

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[41] The Supreme Court's decision in *Arizona* effectively ended the debate as to local officers' authority to conduct *civil* immigration enforcement, holding that the INA "specifies limited circumstances in which state officers may perform the functions of an immigration officer" and rejecting the notion that state officers had "inherent authority" to enforce civil immigration laws beyond the "system Congress created." *Arizona,* 567 U.S. at 407-10. The Court left open the question of whether local enforcement of *criminal* immigration laws is similarly preempted, *id.* at 413-15, but tellingly cited *Di Re* for the proposition that the "authority of state officers to make arrests for federal crimes is, absent federal statutory instruction, a matter of state law." *Id.* (citing *Di Re,* 332 U.S. at 589).

[42] *See also* Memorandum for Joseph R. Davis, Ass't Director, FBI, from Douglas W. Kmiec, Ass't Att'y Gen'l, Office of Legal Counsel, *Re: Handling of INS Warrants of Deportation in Relation to NCIC Wanted Person File* (Apr. 11, 1989), https://www.scribd.com/document/24732201/DOJ-Memo-on-INS-Warrants-of-Deportation-in-Relation-to-NCIC-Wanted-Person-File-4-11-89; Memorandum for Ass't U.S. Att'y, S.D. Cal., from Teresa Wynn Roseborough, Dep. Ass't Att'y Gen'l, Office of Legal Counsel, *Re: Assistance by State and Local Police in Apprehending Illegal Aliens* (Feb. 5, 1996), https://www.justice.gov/file/20111/download; *see also Lunn*, 78 N.E.3d at 1146.

V. Conclusion

DOJ's unprecedented addition of immigration conditions to Byrne JAG is just the latest chapter in the Executive Branch's aggressive attempts to coerce and conscript local law enforcement over the last ten years, eroding the important federalist principles embedded in the INA. *Amici* ask the Court to affirm the district court's injunction and hold unlawful these conditions to preserve trust between law enforcement and immigrant communities.

Dated: January 4, 2018

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), the undersigned attorney for Petitioner certifies that the foregoing brief

(i) complies with the type-volume limitation in Fed. R. App. P. 29 (a)(5) & 32(a)(7)(B) because it contains 6139 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii); and

(ii) complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6), as supplemented by Circuit Rule 32(b), because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2007 in 12-point Times New Roman font, except that footnotes are in 11-point Times New Roman font.

Dated: January 4, 2018

s/ Mark Fleming

Mark Fleming

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of January 2018, I electronically filed the foregoing with the Clerk of the Court of the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Mark Fleming

Mark Fleming

ADDENDUM

No. 17-2991

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

CITY OF CHICAGO,
Plaintiff-Appellee,

v.

JEFFERSON B. SESSIONS III,
ATTORNEY GENERAL OF THE UNITED STATES,
Defendant-Appellant.

LIST OF *AMICI CURIAE* IN SUPPORT OF PLAINTIFF-APPELLEE

The **American Civil Liberties Union (ACLU)** is a nationwide, nonprofit, nonpartisan organization dedicated to the principles of liberty and equality embodied in the Constitution and this nation's civil rights laws. The ACLU, through its Immigrants' Rights Project and state affiliates, engages in a nationwide program of litigation, advocacy, and public education to enforce and protect the constitutional and civil rights of noncitizens. In particular, the ACLU has a longstanding interest in enforcing the constitutional and statutory constraints on the federal government's use of state and local police to enforce civil immigration laws. The ACLU has been counsel and amicus in a variety of cases involving immigration detainers and anti-sanctuary laws, including *Morales v. Chadbourne*, 793 F.3d 208 (1st Cir. 2015); *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014); *Gonzalez v. ICE*, No. 13-cv-4416 (C.D. Cal. filed June 19, 2013); and *City of El Cenizo v. State of Texas*, No. 17-cv-404 (W.D. Tex. filed May 8, 2017).

The **American Civil Liberties Union of Illinois (ACLU of Illinois)** is a statewide, non-profit, non-partisan organization of more than 65,000 members and is an affiliate of the American Civil Liberties Union. The ACLU of Illinois is dedicated to the defense and promotion of the principles embodied in the U.S. Constitution, the Illinois Constitution, and state and federal civil rights laws. In particular, the ACLU of Illinois has been a strong proponent of laws and policies on the state and local level that safeguard the rights of immigrants in Illinois by limiting local participation in immigration enforcement.

The **American Immigration Council (Council)** is a non-profit organization established to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of America's immigrants. The Council monitors trends in immigration enforcement and has a substantial interest in the issues presented in this case, which implicate the scope of state and local law enforcement officers' authority to enforce federal immigration law. The Council's recent publications include a special report, *Enforcement Overdrive: A Comprehensive Assessment of ICE's Criminal Alien Program* (Nov. 1, 2015), and the following fact sheets: *Immigration Detainers: An Overview* (Mar. 21, 2017), *The 287(g) Program: An Overview* (Mar. 15, 2017), *"Sanctuary" Policies: An Overview* (Feb. 23, 2017), *Immigration Detainers Under the Priority Enforcement Program* (Jan. 25, 2017), and *Understanding Trust Acts, Community Policing, and "Sanctuary Cities"* (Oct. 10, 2015). The Council also provides practice advisories, mentoring, and other support to attorneys representing noncitizens who have been the target of immigration enforcement efforts.

The **Immigrant Legal Resource Center (ILRC)** is a national organization that provides legal trainings, educational materials, and advocacy to advance immigrant rights. ILRC works with grassroots immigrant organizations to promote civic engagement and social change, and trains attorneys, paralegals, and community-based advocates who work with immigrants around the country. ILRC also maintains a comprehensive national map of the extent to which counties are involved in immigration enforcement: www.ilrc.org/local-enforcement-map. Critically, the ILRC advises organizations and elected officials around the country on crafting local policies to protect their immigrant residents from unlawful detention and discrimination. ILRC publishes legal and policy analyses on ICE detainers and the authority of local law enforcement agencies to be involved in immigration enforcement. ILRC also works with law enforcement agencies, public defenders, prosecutors, and various actors in the criminal justice system to protect the rights of immigrants. ILRC provides numerous public resources to explain the complex issues around immigration enforcement and the importance of local policies in protecting immigrant communities.

The **National Immigrant Justice Center (NIJC)** is a program of Heartland Alliance, which provides resettlement services to refugees and mental health services for immigrants and refugees. NIJC, through its staff of attorneys, paralegals and a network of over 1,500 pro bono attorneys, provides free or low-cost legal services to immigrants, including detained non-citizens. NIJC's direct representation, as well as its immigration advisals to criminal defense attorneys, has informed its strategic policy and litigation work around the myriad legal and policy problems of entangling local law enforcement in civil immigration enforcement. NIJC is counsel on a host of immigration enforcement cases including *Jimenez Moreno v. Napolitano*, 11-5452 (N.D. Ill.) (class action); *Gonzalez v. ICE*, Case No. 13-4416 (C.D. Cal.) (class action); *Roy v. Los Angeles County Sheriff's Dep't*, Case No. 12-9012 (C.D. Cal.) (class action); *Lunn v. Commonwealth*, Docket No. SJC-12276 (Mass.); *Gonzalez Goodman v. Maricopa County*, Case No. 16-4388 (D.

Ariz.); *Makowski v. United States*, Case No. 12-5265 (N.D. Ill.); *Mayorov v. United States*, Case No. 13-5249 (N.D. Ill.); *Ocampo v. Harrington, et al.*, Case No. 13-3134 (C.D. Ill.). NIJC has also submitted amicus briefs in *Galarza v. Szalczyk*, Case No. 12-3991 (3d Cir.), *City of Chicago v. Sessions*, Case No. 17-5720 (N.D. Ill.), *City of El Cenizo, et al. v. State of Texas, et al.*, Case No. 17-50762 (5th Cir.), and *Sanchez Ochoa v. Campbell*, Case No. 17-35679 (9th Cir.). NIJC also advocated for the amendments to the Welcoming City Ordinance (Ch 2-173) in 2012, the Cook County detainer ordinance (11-O-73) in 2011, and the recently enacted Illinois TRUST Act (S.B. 31).

The **National Immigration Law Center (NILC)** is the primary national organization in the United States exclusively dedicated to defending and advancing the rights and opportunities of low-income immigrants and their families. Over the past 35 years, NILC has won landmark legal decisions protecting fundamental rights, and advanced policies that reinforce the values of equality, opportunity, and justice. NILC has earned a national leadership reputation for its expertise in the rights of immigrants, including litigating key due process cases to protect the rights of noncitizens.

The **Northwest Immigrant Rights Project (NWIRP)** is a non-profit legal organization dedicated to the defense and advancement of the rights of noncitizens in the United States. NWIRP provides direct representation to low-income immigrants who are applying for immigration and naturalization benefits and to persons who are placed in removal proceedings. In addition, NWIRP engages in community education to immigrant communities who interact both with federal immigration enforcement and local law enforcement agencies. Thus, NWIRP has a direct interest in the issues presented in this case.

The **Southern Poverty Law Center (SPLC)** fights all forms of discrimination and works to protect society's most vulnerable members through litigation, education, and monitoring organizations that promote hate. SPLC addresses the unique legal needs of immigrant communities, including immigrants affected by law enforcement abuse and immigration detention, as well as immigrant workers in administrative, state, and federal courts throughout the southern United States, including Alabama, Florida, Georgia, Louisiana, and Mississippi.

The **Washington Defender Association (WDA)** is a statewide non-profit association of over 1,300 public defenders, criminal defense attorneys, and investigators across Washington State. WDA is the voice of the public defense community and provides support for zealous and high-quality legal representation by advocating for change, educating defenders, and collaborating with other justice system stakeholders and the broader community to bring about just solutions. WDA works to improve the administration of justice and stimulate efforts to remedy inadequacies in substantive and procedural law that contribute to injustice. For nearly 20 years, WDA's Immigration Project has provided support, training and advocacy to stakeholders in the criminal justice system and the immigration system. WDA has participated as amici and has

been granted leave to file amicus briefs at all levels of state and federal courts in Washington and throughout the United States.