

No. 17-2991

**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.

On Appeal from the United States District Court
For the Northern District of Illinois, Eastern Division
No. 17-cv-05720

The Honorable Harry D. Leinenweber, Presiding Judge

**BRIEF OF ASIAN AMERICANS ADVANCING JUSTICE AND SEVEN
ADDITIONAL CIVIL RIGHTS AND ADVOCACY GROUPS AS AMICI CURIAE
IN SUPPORT OF PLAINTIFF-APPELLEE CITY OF CHICAGO**

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Short Caption: City of Chicago v. Jefferson B. Sessions III

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INTEREST OF AMICI CURIAE

This brief is submitted by Asian Americans Advancing Justice | AAJC and Asian Americans Advancing Justice | Chicago (collectively “Advancing Justice”), members of a national nonprofit affiliation that routinely file amicus curiae briefs in cases in this Court and other courts. Advancing Justice works to advance and protect civil and human rights for Asian Americans and to build and promote a fair and equitable society for all. Advancing Justice is one of the nation’s leading experts on issues of importance to the Asian American community, including immigration and immigrants’ rights. Along with its Advancing Justice affiliates, it works to promote justice and bring national and local constituencies together through community outreach, advocacy, and litigation.

Advancing Justice is joined on this brief by seven civil rights groups and advocacy organizations (collectively, “Amici”). For a list and description of the various Amici joining this brief, see Appendix A. Amici have long-standing histories of serving the interests of Asian Americans, Native Hawaiians, Pacific Islanders, and other communities of color.

The parties to this appeal have consented to the filing of this amicus brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution to fund the preparation or submission of this brief. No person other than the *amici curiae*, their members, and their counsel made any monetary contribution to its preparation and submission.

ARGUMENT

I. Introduction

"Common sense tells you that when an individual is afraid of being deported by police (who are also) enforcing immigration laws, they are less likely to speak up."¹ Indeed, public safety depends on people being willing to report and testify about crimes they either experience or witness. However, if an individual distrusts the police and does not come forward, it becomes harder to identify and prosecute persons who commit crimes. Those same perpetrators may then go on to commit crimes against others in the community, thereby putting everyone – whether they are citizens, legal permanent residents, or undocumented immigrants – at risk. In short, communities in which the residents feel they must avoid local law enforcement are less safe – for everyone.

Research has shown that immigrants' attitudes towards the police are significantly less positive than those of native-born citizens, and immigrants are less likely to initiate contact with police or report crimes.² Undocumented

¹ Niyati Shah, *Sanctuary Cities: Providing Safe Communities for All*, MEDIUM, (Jan. 3, 2018), <https://medium.com/advancing-justice-aaajc/sanctuary-cities-providing-safe-communities-for-all-835ee8da4b9d> (Statement of Jim Bueerman, former San Bernadino, California police chief and current president of the Police Foundation).

² ROBERT C. DAVIS, PERCEPTIONS OF THE POLICE AMONG MEMBERS OF SIX ETHNIC COMMUNITIES IN CENTRAL QUEENS, NY (Safe Horizon, 2000), <https://www.ncjrs.gov/pdffiles1/nij/grants/184612.pdf>; Robert C. Davis and Edna Erez, *Immigrant Populations as Victims: Toward a Multicultural Criminal Justice System*, NAT'L INSTITUTE OF JUSTICE: RESEARCH IN BRIEF (U.S. Department of Justice, 1998), http://www.ncdsv.org/images/NIJ_ImmigrantPopulationsAsVictimsTowardAmulticulturalCJsystem_5-1998.pdf.

immigrants are even less likely to report crime for fear of deportation³ and are less likely to call 911, access emergency care in life-threatening situations, or approach police as victims or witnesses of crime, for the same reasons.⁴ It has been shown, however, that the more legitimacy the police have in the eyes of those they serve, the more effective they can be in accomplishing their goals of solving and preventing crime. Residents who trust the police are more willing to call when they need help, to cooperate as a witness, to provide information on crime conditions, and to cooperate with police during an involuntary contact.⁵

This data and research is borne out from the experiences of ordinary individuals like Saba Nafees, a Ph.D. candidate for mathematical biology in Texas. Despite her numerous accomplishments, much of Saba's life, and that of her family's, has been lived in the shadows simply because they did not have proper immigration status. This research is also borne out of the experiences of law enforcement, including former Police Chief, Jim Bueermann. And the negative impact on an unengaged, afraid community is not new—as demonstrated by the experiences of John C. Yang, the Executive Director of

³ MATTHEW LYSAKOWSKI, ALBERT ANTONY PEARSALL III, & JILL POPE, POLICING IN NEW IMMIGRANT COMMUNITIES 1 (U.S. Department of Justice.2009), <https://ric-zai-inc.com/Publications/cops-w0764-pub.pdf>.

⁴ NIK THEODORE, INSECURE COMMUNITIES: LATINO PERCEPTIONS OF POLICE INVOLVEMENT IN IMMIGRATION ENFORCEMENT 17 (University of Illinois Chicago, Department of Urban Planning and Policy, 2013), https://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF.

⁵ NATIONAL RESEARCH COUNCIL, FAIRNESS AND EFFECTIVENESS IN POLICING: THE EVIDENCE 291-326 (The National Academies Press 2004).

Advancing Justice | AAJC. The first-hand accounts of these and other individuals, combined with the research and data presented herein, establish that Chicago, and indeed the United States, is enriched by immigrants from all over the world and their public health and safety are inextricably tied with the public health and safety of American citizens. Moreover, they underscore the need for a nationwide injunction.

A functional and trusting relationship between immigrant communities and law enforcement, therefore, is critical for the benefit of the community at large. Allowing Appellant to impose the new Byrne JAG conditions of “Access” and “Notice” would force jurisdictions across the country that are charged with the inherently local responsibility of assuring public safety to change their public-safety-oriented laws and law enforcement models. These conditions will adversely impact local communities by eliminating local law enforcement discretion over how to effectively serve public safety needs.⁶ Community policing policies, like those implemented by the City of Chicago and other jurisdictions, make it safer for immigrant crime victims and witnesses – including not only Latino immigrants, but also Asian immigrants – to report criminals to the police and help put them behind bars, as well as build bridges to immigrant communities that enhance their ability to deter crime and protect

⁶ See Chris Magnus, *Tucson’s Police Chief: Sessions’s Anti-Immigrant Policies Will Make Cities More Dangerous*, N.Y. TIMES, Dec. 6, 2017, https://www.nytimes.com/2017/12/06/opinion/tucson-police-immigration-jeff-sessions.html?_r=0 (“[T]he harsh anti-immigrant rhetoric and Mr. Sessions’s reckless policies ignore a basic reality known by most good cops and prosecutors: If people are afraid of the police, if they fear they may become separated from their families or harshly interrogated based on their immigration status, they won’t report crimes or come forward as witnesses.”).

all residents. Therefore the *Amici* urge the court to affirm the ruling of the district court.

II. Extensive evidence shows that undocumented immigrants—and their lawfully present family members and neighbors—fear that turning to the police will bring adverse immigration consequences.

Immigrant crime victims, including those of Asian and Pacific Islander origin, face significant linguistic, cultural, and legal barriers when reporting crimes.⁷ These barriers are made even more challenging when the victim does not have a current lawful immigration status or fears that their immigration status may be impacted by reporting.⁸ Policies like those reflected in the new Byrne JAG conditions will significantly augment those fears. Charging local police with enforcement of immigration laws, such policies contribute to the deterioration of the relationship between local police and immigrant communities by engendering distrust among the immigrant communities vis-à-vis local police. With such distrust comes distance and silence, leading to a reduction in public safety for all and additional collateral consequences to immigrant communities.

a. Law Enforcement Officials Across the Country Have Observed a Chilling Effect on Reporting of Crimes and Cooperation with Police Among Immigrants.

Immigrant groups often cite fear of deportation (their own or that of undocumented family members or friends) as a major barrier to building trust

⁷ Giselle Hass, et al, *Barriers and Successes in U Visas for Immigrant Victims: The Experiences of Legal Assistance for Victims Grantees*, Arts & Social Sci. J. (2014), <http://www.omicsonline.com/open-access/barriers-and-successes-in-u-visas-for-immigrant-victims-theexperiences-of-legal-assistance-for-victims-grantees-2151-6200-S1-005.php?aid=28653>

⁸ THEODORE, *supra* note 4 at i.

and partnerships with police. The examples are legion. In Los Angeles and Houston, for example, police departments have recorded significant drops in reporting of sexual assault, robberies, and aggravated assaults in the first three months of 2017.⁹ To be clear, this is not good news signifying that sexual assault, robberies, and aggravated assault crimes have not gone down; rather the decline in reporting is attributable to changes in federal immigration enforcement. That is why former Police Chief, and current president of the Police Foundation, Jim Bueermann, feels that "[c]urrent federal immigration enforcement policies can have the unintended consequence effect of empowering and emboldening criminals to attack immigrant communities."¹⁰ The Chief of the Houston Police Department traces this recent trend of underreporting to "a chilling effect" created by a culture of prioritizing deportation over bringing justice to the victims of a crime.¹¹ Those sentiments were echoed in March 2017 by the Los Angeles Chief of Police, who stated that reports of sexual assault and domestic violence, made in particular by the city's Latino residents, have plummeted amid concerns that immigrants in the country without status could risk deportation by interacting with police or testifying in court.¹²

⁹ John Burnett, *New Immigration Crackdowns Creating 'Chilling Effect' On Crime Reporting*, NPR, May 25, 2017, <https://www.npr.org/2017/05/25/529513771/new-immigration-crackdowns-creating-chilling-effect-on-crime-reporting>.

¹⁰ Shah, *supra* note 1 (Bueerman Statement).

¹¹ Burnett, *supra* note 9.

¹² James Queally, *Latinos are Reporting Fewer Sexual Assaults Amid a Climate of Fear in Immigrant Communities, LAPD Says*, L.A. TIMES, Mar. 21, 2017, <http://www.latimes.com/local/lanow/la-me-ln-immigrant-crime-reporting-drops-20170321-story.html>.

Those in the law enforcement community see evidence of this “chilling effect” on a regular basis. For instance, in May 2017, a Houston police officer reported that a witness to a burglary “saw the suspects run to a certain place and with items they stole from a car, but she was afraid to come to police, she was in fear they would ask for her papers.”¹³ In Denver, a City Attorney reported that women were abandoning pursuit of restraining orders against their abusers after immigration enforcement officials were filmed making an arrest in a city courthouse.¹⁴ In San Francisco, the District Attorney reported that charges against a Bay Area man accused of battery against the mother of his girlfriend were dismissed after the victim refused to cooperate as a witness at his retrial, in part, because her immigration status was raised by the defense during the first trial, which had ended in a hung jury.¹⁵

The adverse impact those lost reports have on the safety of the overall community is perhaps best shown by value added by immigrants to law enforcement efforts to apprehend and prosecute criminals. In Utah, a police investigation against a suspected child molester gained momentum after police built trust with a local immigrant community and assured them that the department would not seek deportations if victims came forward.¹⁶ Eventually, droves of witnesses came forward with horrific tales of abuse and intimidation.

¹³ Burnett, *supra* note 9.

¹⁴ James Queally, *Los Angeles-Area Abuse Victims Stay Silent Over Fears of Deportation*, L.A. TIMES, Oct. 10, 2017, <https://www.officer.com/on-the-street/news/20978764/los-angeles-area-abuse-victims-stay-silent-over-fears-of-deportation>.

¹⁵ *Id.*

¹⁶ Lee Davidson & Marissa Lang, *Overcoming Utah Immigrants' Mistrust Aided Criminal Case*, SALT LAKE TRIBUNE, May 13, 2014, <http://archive.sltrib.com/article.php?id=57921513&itype=CMSID>.

As a result of their cooperation, the perpetrator was arrested and charged with 63 felonies and his brother was charged with witness tampering and witness retaliation, both third-degree felonies.¹⁷ Successful prosecution of these criminals protects not only undocumented immigrants, but the entire community – any one of whom could be victimized by the individuals in the future.

Meanwhile, in Nashville, a young undocumented mother who was violently assaulted by a woman who broke into her home, viciously stabbed her twelve times, and kidnapped her newborn son, overcame her deep-seated fear of calling 911 and aided police in apprehending the assailant, who had already crossed state lines, and in recovering her child.¹⁸ The assailant ultimately pled guilty to kidnapping and was sentenced to 20 years in prison.¹⁹

b. The Chilling Effect Extends to the Asian American Immigrant Community.

Although much of the national conversation and anecdotal research focuses on the fear and mistrust of police within Latino communities, the chilling effect observed by law enforcement officials extends across immigrant communities, regardless of ethnic origin.²⁰ Indeed, the same attitudes run through the Asian community as well. Given the fact that the Asian American

¹⁷ *Id.*

¹⁸ Amy Braunschwiger, *Nashville Immigrants too Scared to Call the Police*, HUMAN RIGHTS WATCH, May 19, 2014, <https://www.hrw.org/news/2014/05/19/nashville-immigrants-too-scared-call-police>.

¹⁹ *Id.*

²⁰ COMMUNITY ORIENTED POLICE SERVICES, U.S. DEPARTMENT OF JUSTICE, POLICE PERSPECTIVES: BUILDING TRUST IN A DIVERSE NATION NO. 2 (Caitlin Gokey & Susan Shah eds. 2016), <https://ric-zai-inc.com/Publications/cops-p345-pub.pdf>.

immigrant community in the United States is rapidly growing, the unwillingness of Asian Americans to cooperate with police has a large impact on public safety overall.

The Asian American immigrant community is one of the fastest growing populations in the United States, growing by an average of 46 percent between 2000 and 2010.²¹ This is driven largely in part by immigration. As of 2011, there are 10 million foreign-born Asian Americans living in the United States,²² a significant number of whom are undocumented. Since 2000, the percentage of undocumented immigrants coming from Asia has grown at rates much faster than that of Mexico and Central America. And evidence indicates that undocumented immigration from Asia increased 202 percent between 2000 and 2013.²³ These undocumented immigrants come from a wide range of countries including China, the Philippines, India, the Koreas, and Vietnam. Immigrants from India account for the fastest growth among the Asian undocumented population.²⁴

In Illinois, undocumented immigrants, including those from Asia, are an important part of many American family units and their communities. Around

²¹ KARTHICK RAMAKRISHNAN & FARAH Z. AHMAD, STATE OF ASIAN AMERICANS AND PACIFIC ISLANDERS SERIES: A MULTIFACETED PORTRAIT OF A GROWING POPULATION, (Center for American Progress Sept. 2014), <http://aapidata.com/wp-content/uploads/2015/10/AAPIData-CAP-report.pdf>.

²² *Id.*

²³ See J. Weston Phippen, *Asians Now Outpace Mexicans in Terms of Undocumented Growth*, THE ATLANTIC, Aug. 20, 2015, <https://www.theatlantic.com/politics/archive/2015/08/asians-now-outpace-mexicans-in-terms-of-undocumented-growth/432603/>.

²⁴ KARTHICK RAMAKRISHNAN & FARAH Z. AHMAD, *supra* note 21.

511,000 undocumented immigrants live in Illinois.²⁵ Asian Americans make up approximately nine percent of the undocumented population in the state.²⁶ Suburban Chicago is home to 44 percent of the state's undocumented population and 36 percent live in the city.²⁷ Many of the immigrants in the state are young adults; three out of every five undocumented immigrants in Illinois are between the ages of 25 and 44.²⁸ Undocumented immigrants participate in the state labor force at high rates and work in a broad range of industries and occupations. Roughly 68 percent of the undocumented immigrants participate in the Illinois labor force, with an even higher participation rate (75 percent) in the Chicago collar counties.²⁹

Evidence shows that the impact of local law enforcement of federal immigration law threatens the safety of the Asian American community and, by extension, the larger communities in which Asian American immigrants live. Stories such as that of Saba Nafees, a 25-year-old DACA recipient of Pakistani origin, are illustrative of this threat.³⁰ Saba lives in a non-sanctuary jurisdiction that permits police officers to question her or her family about their immigration status even when they are trying to report a crime. As a result, although Saba's family has been victimized by violence and witnessed crimes in the past, they have not filed police reports or cooperated with law enforcement

²⁵ ROB PARAL, ILLINOIS' UNDOCUMENTED IMMIGRANT POPULATION: A SUMMARY OF RECENT RESEARCH, (ICIRR Feb. 2014),

http://www.icirr.org/content/documents/Illinois_undocumented_report.pdf.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Shah, *supra* note 1 (Statement of Saba Nafees).

because they fear deportation.³¹ Thus, when a shooting involving a student and a campus police officer occurred at Saba's school, Saba did not offer to cooperate with officials despite the fact that she knew what the shooter looked like. She knew that had she reported the shooter, she would have exposed herself or her family to potential immigration enforcement.³²

Similarly, in the 1980s, before he and his family secured a pathway to citizenship, Executive Director of Advancing Justice | AAJC, John C. Yang and his family were also victimized without recourse. John's parents owned a second-run movie theater in the early 1980s, and then later a video store, both in downtown Chicago.³³ At the theater, an usher embezzled money, around \$1000, and cases of candy from the concession stand. John's parents never reported it for fear of getting involved with law enforcement.³⁴ Even more horrifying, at the video store, a robber came in and took money straight from the cash register; John's father tried to stop him, and was assaulted badly. Despite this painful experience, law enforcement was not notified.³⁵

Stories like Saba's and John's are not isolated anecdotes. Whether they occurred recently or in the 1980s, they are indicative of a reality that impacts millions of families who are undocumented or have undocumented loved ones. For example, in Chicago, reports indicate that Devon Avenue, the artery of the vibrant West Ridge community that is home to a large population of South

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

Asian and Arab immigrants, has become noticeably quieter as a result of rumors of federal immigration raids.³⁶ Residents have stopped shopping or venturing outside for necessary trips, let alone cooperating with law enforcement; every time the doorbell rings, they stay silent, fearful that the person at the door will report them to immigration officials.³⁷ Without trust in law enforcement, whole communities of Asian American immigrants, like other immigrant communities comprised of both documented and undocumented individuals, are retreating to the shadows in silence.

c. Undocumented Immigrants' Distrust of Police is Well-Documented by Research and Data.

The experiences provided above are borne out by concrete research and data. Studies have shown that increased involvement of police in immigration enforcement has significantly heightened the fears many immigrants, documented and undocumented, have of the police, contributing to their social isolation and exacerbating their mistrust of law enforcement authorities. One such study, conducted by a research team from the University of Illinois, examined perceptions among Latinos in four metropolitan areas: Cook County (Chicago), Illinois; Harris County (Houston), Texas; Los Angeles County, California; and Maricopa County (Phoenix), Arizona.³⁸ The study showed that 44 percent of Latinos surveyed—and 70 percent of undocumented immigrants—reported that they are less likely to contact police officers if they

³⁶ Marwa Eltagouri, *On Devon Avenue in Chicago, News of Immigration Raids Intensifies Fears*, CHICAGO TRIBUNE, Feb. 11, 2017, <http://www.chicagotribune.com/news/local/breaking/ct-enforcement-raids-devon-avenue-20170211-story.html>.

³⁷ *Id.*

³⁸ THEODORE, *supra* note 4.

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.³⁹

Other research shows that the local criminalization of federal civil immigration laws causes negative collateral damage to the general health and well-being of immigrant communities.⁴⁰ First, it fosters a fear of public officials and results in “high rates of fear of seeking public benefits or securing medical services.”⁴¹ It also leads to an increase of unauthorized households unable to afford basic household expenses and results in an increase in unauthorized immigrant households who reported an inability to pay the full amount of their rent or mortgage.⁴² Finally, results show an increase in unauthorized immigrant households who reported an inability to pay utility bills in full or in part.⁴³

This data is further corroborated by the experiences of Saba Nafees and her family. Saba’s father worked in harsh conditions that potentially violated labor laws, even while taxes were taken out of his paycheck.⁴⁴ According to Saba, her 63-year-old father “consistently worked long 12 hour shifts and never took a break. He never complained but it has been a huge change for him. My father’s employers used to take advantage of him due to his

³⁹ *Id.*

⁴⁰ JULIA GELATT ET AL, STATE IMMIGRATION POLICIES 6 (Urban Institute May 2017), http://www.nccp.org/publications/pdf/text_1182.pdf.

⁴¹ *Id.* at 6.

⁴² *Id.* at 10.

⁴³ *Id.*

⁴⁴ Shah, *supra* note 1 (Nafees Statement).

undocumented status because they knew he wouldn't complain."⁴⁵ These experiences illustrate clearly why basic humanitarian needs are often left unmet in immigrant households.

But the collateral damage doesn't end there. According to former San Bernardino Police Chief Jim Bueermann, when his force tried to implement a version of the "broken windows" program,

"We weren't able to give money to folks in our community to fix houses so as to reduce community disorganization and to rehab dilapidated single-family residences in high crime areas. These folks were afraid that we were tricking them into taking houses and [would be] sending them back to Mexico. We wanted to slow down transiency and reduce schooling interruptions. The goal was to have kids invest in a community and have ties to an area, which they didn't have due to the high turnover rates in housing. Not until a well-known community advocate got involved, were they convinced to take the money. So no question in my mind that if we can't get them to take money to fix their homes, we can't get their help to keep the health and safety of our community in this environment."⁴⁶

Evidence indicates that these immigration enforcement policies have a negative impact on American citizens and lawful immigrants as well as undocumented individuals, particularly in "mixed-status" families that include a combination of citizens, immigrants, and undocumented immigrants. Households with lawful immigrants also reported an increased inability to afford basic household expenses, rent or mortgage, and utilities.⁴⁷ Moreover, there was an increase in lawful immigrant households where at least one person was unable to obtain medical attention when needed.⁴⁸ The widespread impact on such a broad swath of local communities is, therefore, unsurprising.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ GELATT, *supra* note 40 at 11.

⁴⁸ *Id.*

Over 85 percent of immigrant families can be characterized as mixed status families.⁴⁹ Nationwide, approximately 16.7 million people have at least one unauthorized family member living with them in the same household.⁵⁰ More than 8 million U.S. citizens have at least one unauthorized family member living with them, while more than 5.9 million citizen children live with at least one family member who is unauthorized.⁵¹ “The fact that enforcement policies targeted at unauthorized immigrants affect legal immigrant households as well suggests that such policies have impacts throughout the immigrant community. This may be because a changed relationship between the immigrant community and law enforcement authorities changes the climate for all, not only unauthorized immigrant residents.”⁵²

III. Federal and State Authorities Have Long-Recognized the Benefits of Community Policing Models that do not Permit Local Law Enforcement Personnel to Inquire about Immigration Status

The adverse impact of enforcement of immigration laws through state and local police, as well as the need to address the under-reporting of crimes among immigrant victims, has long been recognized at all levels of government. At the federal level, this is reflected in the creation and subsequent reauthorization of the U Visa under the Trafficking Victims Protection Act of

⁴⁹ THEODORE, *supra* note 4 at 3 (citing Nancy Morawetz & Alina Das, “Legal Issues in Local Police Enforcement of Federal Immigration Law,” (2009), in Anita Khashu, *The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties*, Appx. B, pp. 69-90).

⁵⁰ Silva Mathema, *Keeping Families Together*, CENTER FOR AMERICAN PROGRESS, Mar. 16, 2017, <https://www.americanprogress.org/issues/immigration/reports/2017/03/16/428335/keeping-families-together/>

⁵¹ *Id.*

⁵² *Id.*

2000.⁵³ U Visas allow undocumented nonimmigrants who are victims of certain qualifying crimes to petition for lawful status if they cooperate in the investigation or prosecution of the criminal activity, as certified by law enforcement personnel. Congress specifically legislated dual purposes of the statute: (1) to protect victims by providing humanitarian relief, and (2) to “strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes ... committed against aliens.⁵⁴ Thus, in creating the U Visa, Congress recognized the importance of encouraging victims of criminal activity, regardless of immigration status, not only to report such activity, but to participate in the investigation and prosecution of the perpetrators of crimes against them.

Of course, not every federal initiative reflects the same sensitivity that motivated the creation of the U Visa.⁵⁵ For instance, in 1996, the Illegal Immigration Reform and Immigrant Responsibility Act⁵⁶ created the 287(g) program (and referred to herein as such), which allows the Department of

⁵³ Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. No. 106-386, § 1513, 114 Stat. 1464, 1533-34 (2000) (codified at 8 U.S.C. § 1101 (2000)) (finding that immigrant women and children are often the targets of crime; these victims must be able to report crimes to law enforcement; and providing nonimmigrant visas to these victims will facilitate in the reporting of crimes).

⁵⁴ *Id.*

⁵⁵ It is also important to note that the U Visa only applies to certain, statutorily delineated crimes, and has become increasingly difficult to obtain. *See*, P.R. Lockhart, *Women Are Now Living With Fear of Deportation If They Report Domestic Violence*, MOTHER JONES, May 25, 2017, <http://www.motherjones.com/politics/2017/05/immigrant-sexual-assault-domestic-violence-survivors-fear-enforcement-survey/>.

⁵⁶ Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208, 110 Stat. 3009-546 (1996).

Homeland Security (DHS) to enter into agreements with state and local law enforcement agencies. Under these agreements, designated local law enforcement officers are trained to perform certain functions of federal immigration officials, including identifying unauthorized immigrants in jails or in the community and arresting or detaining immigrants with suspected immigration violations.⁵⁷ However, the 287(g) program has been fraught with controversy. A Department of Homeland Security Inspector General report, *The Performance of 287(g) Agreements*, OIG-10-63 (Mar. 2010), found that there were systemic problems in the program related to local law enforcement compliance with terms of the program, program oversight and supervision of officers, and concerns related to civil rights and civil liberties in program implementation.⁵⁸ And evidence indicates that the number of states that fit the criteria for 287(g) agreements has fallen since 2010.⁵⁹ Similarly, the federal policy of sending detainees (“ICE detainees”) to local jails to hold immigrants so that ICE pick them up upon their release has been met with increased resistance from local governments.⁶⁰

Indeed, as recently as February 2017, DHS identified over 140 jurisdictions across the country that have enacted policies that restrict

⁵⁷ GELATT, *supra* note 40 at 3.

⁵⁸ *The Performance of 287(g) Agreements*, OIG-10-63 (Dept. of Homeland Security Office of Inspector General, Mar. 2010), https://www.oig.dhs.gov/assets/Mgmt/OIG_10-63_Mar10.pdf.

⁵⁹ *Id.* at 3

⁶⁰ LENA GRABER & NIKKI MARQUEZ, *SEARCHING FOR SANCTUARY 6* (Immigrant Legal Resource Center Dec. 2016), https://www.ilrc.org/sites/default/files/resources/sanctuary_report_final_1-min.pdf.

cooperation with ICE.⁶¹ This is not to say, however, that initiatives aimed at limiting the role of local law enforcement in immigration law is a recent phenomenon. In fact, the concept of community policing began taking shape in the late 1970s when cities with growing immigrant populations began adapting the community policing framework to their changing communities. The Los Angeles Police Department, for instance, instituted such a policy as early as 1979 when it issued Special Order 40, which remains in effect today. Special Order 40 prohibits police officers from inquiring about the immigration status of people not suspected of crimes.⁶² By implementing this policy, the LAPD recognized that “effective law enforcement depends on a high degree of cooperation between the Department and the public it serves.” The Department also recognized that “participation and involvement of the undocumented alien community in police activities will increase the Department’s ability to protect and serve the entire community.”⁶³

The LAPD’s perspective is broadly shared by law enforcement organizations.⁶⁴ The International Association of Chiefs of Police expressed

⁶¹ See U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, 10, https://www.ice.gov/doclib/ddor/ddor2017_02-11to02-17.pdf

⁶² Los Angeles Police Department, Office of the Chief of Police, “Special Order 40,” November 27, 1979, http://assets.lapdonline.org/assets/pdf/SO_40.pdf.

⁶³ See LYNN TRAMONTE, DEBUNKING THE MYTH OF “SANCTUARY CITIES” 5 (Immigration Policy Center April 2011), https://www.americanimmigrationcouncil.org/sites/default/files/research/Community_Policing_Policies_Protect_American_042611_update.pdf.

⁶⁴ See, e.g., Letter to the Senate from the Law Enforcement Immigration Task Force, July 6, 2016, http://immigrationforum.org/wpcontent/uploads/2016/07/7_6_2016-LEITF-Letter-to-Senate.pdf (signed by 23 police chiefs, sheriffs and community safety personnel from across the country and stating, “[i]n attempting to defund “sanctuary cities” and require state and local law enforcement to carry out the federal

similar concerns in a 2004 policy paper, “Enforcing Immigration Law: The Role of State, Tribal and Local Law Enforcement,” writing that “local police agencies depend on the cooperation of immigrants, legal and illegal, in solving all sorts of crimes and in the maintenance of public order. Without assurances that they will not be subject to an immigration investigation and possible deportation, many immigrants with critical information would not come forward, even when heinous crimes are committed against them or their families.”⁶⁵ So too has the Major Cities Chiefs Association, which has warned that a divide between local police and immigrant communities, inevitably caused by the distrust and fear among immigrants of contacting or assisting the police, “would result in increased crime against immigrants and in the broader community, create a class of silent victims and eliminate the potential for assistance from immigrants in solving crimes or preventing future terrorist attacks.”⁶⁶

The growth of community policing models and the decline by local law enforcement to criminalize immigration is perhaps best explained by the United States Department of Justice Office of Community Oriented Policing Services

government’s immigration enforcement responsibilities, the federal government would be substituting its judgment for the judgment of state and local law enforcement agencies. Local control has been a beneficial approach for law enforcement for decades – having the federal government compel state and local law enforcement to carry out new and sometimes problematic tasks undermines the delicate federal balance and will harm locally-based policing”).

⁶⁵ INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, ENFORCING IMMIGRATION LAW: THE ROLE OF STATE, TRIBAL AND LOCAL LAW ENFORCEMENT (November 30, 2004), <http://www.theiacp.org/portals/0/pdfs/publications/immigrationenforcementconf.pdf>.

⁶⁶ M.C.C. IMMIGRATION COMMITTEE, IMMIGRATION COMMITTEE RECOMMENDATIONS FOR ENFORCEMENT OF IMMIGRATION LAWS BY LOCAL POLICE AGENCIES (Major Cities Chiefs Association June 2006), http://www.houstontx.gov/police/pdfs/mcc_position.pdf.

“COPS”) which found the need for effective community and immigrant policing because “[a]ccording to the 2010 Census, approximately 40 million foreign-born people now live in the United States and seven million of them arrived within the past 8 years alone.”⁶⁷ COPS identified five common challenges to providing public safety in immigrant communities, including the effect of federal immigration enforcement on local trust building.⁶⁸ Likewise, the Police Foundation, a national, nonpartisan, nonprofit organization, surveying law enforcement personnel, elected public officials, members of immigrant communities, and other interested groups, a majority of respondents reported that “aggressive enforcement of immigration law would have a negative impact on community relationships.” The risks cited by survey participants included: decreasing (1) community trust of the police (74 percent), (2) trust between community residents (70 percent), and (3) reporting of both crime victimization (85 percent) and criminal activity (83 percent).⁶⁹ Adding to those concerns are beliefs that aggressive enforcement of immigration laws would “weaken (1) public trust initiatives (77 percent), (2) community-policing efforts (77 percent), (3) youth outreach (74 percent), (4) intelligence/information gathering (63

⁶⁷ See PRADINE SAINT-FORT, ENGAGING POLICE IN IMMIGRANT COMMUNITIES: PROMISING PRACTICES FROM THE FIELD 1 (VERA Institute of Justice October 2012), <http://archive.vera.org/sites/default/files/resources/downloads/engaging-police-in-immigrant-communities.pdf>.

⁶⁸ See *id.* at 4.

⁶⁹ ANITA KHASHU, THE ROLE OF LOCAL POLICE: STRIKING A BALANCE BETWEEN IMMIGRATION ENFORCEMENT AND CIVIL LIBERTIES, (Police Foundation April 2009), <https://www.policefoundation.org/wp-content/uploads/2015/06/The-Role-of-Local-Police-Narrative.pdf> (discussing the costs of local police involvement in immigration enforcement, including that reduced trust and cooperation in immigrant communities would undermine public safety).

percent), (5) criminal investigations (67 percent), and (6) even recruitment (31 percent), thereby impacting operations significantly.”⁷⁰

These law-enforcement experts understand that the entire community suffers when a portion of the population is too fearful to cooperate with the police. That lack of trust and cooperation is not just limited to undocumented immigrants but extends to the community as a whole. Over 85 percent of immigrant families are “mixed-status” families with a combination of citizens, undocumented immigrants, and documented immigrants.⁷¹ Given this figure, the loss of cooperation resulting from local police involvement in immigration would extend to authorized immigrants living in mixed-status households who fear that contact with the police would lead to deportation of family members and other loved ones.⁷² By contrast, community policing policies, like those implemented by the City of Chicago and other “sanctuary” jurisdictions, make it safer for immigrant crime victims and witnesses to report criminals to the police and help put them behind bars, as well as build bridges to immigrant communities that enhance their ability to deter crime and protect all residents.

Despite local jurisdictions recognizing the needs and benefits of community policing, the United States Department of Justice (“DOJ”) is attempting to coerce these local law enforcement entities to turn on their communities and the trusting relationships that they have built. As recently as November, DOJ sent letters to 29 different jurisdictions asking them to

⁷⁰ *Id.*

⁷¹ THEODORE, *supra* note 4 at 3 (citing Morawetz and Das 2009).

⁷² KHASHU, *supra* note 69 at 24.

cooperate with federal immigration enforcement efforts.⁷³ These letters are similar to those sent to the City of Chicago in this case and are a blatant attempt to intimidate these jurisdictions into criminalizing unauthorized immigrants. Unlike Chicago and other big metropolitan cities, jurisdictions included in this latest set of letters from DOJ include New Brunswick, New Jersey and Waterbury, Vermont, jurisdictions that may lack the resources to challenge the federal government. And of course, there is nothing to prevent DOJ from going after other recipients of the Byrne JAG grant.

Upon consideration of the widespread negative impact of local enforcement of federal immigration law, DOJ's continued attempts at coercing jurisdictions into acting as ICE agents, as well as the long list of jurisdictions who are recipients of the Byrne JAG grant, the district court's granting of nationwide preliminary injunction is both sound and necessary.

CONCLUSION

The judgment of the district court should be affirmed.

Date: January 4, 2018

Respectfully submitted,

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⁷³ See Letter from Alan Hanson to Katherine Sheehan, U.S. Department of Justice, Nov. 15, 2017, https://www.justice.gov/opa/press-release/file/1011571/download?utm_medium=email&utm_source=govdelivery

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CERTIFICATE OF COMPLIANCE

This Amicus Brief complies with the type-volume limitation of Circuit Rule 29 because, according to the “word count” function of Microsoft Word 2010, the Reply Brief contains 5,515 words, excluding the parts of the Brief exempted from the word count by Rule 32(f) of the Fed. R. of App. Pro.

I hereby certify that this Reply Brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and Cir. R. 32(b), and the type style requirements of Fed. R. App. P. 32(a)(6) because this Reply Brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 12-point font and Bookman Old Style type style.

Dates: January 4, 2018

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing BRIEF OF ASIAN AMERICANS ADVANCING JUSTICE AND SEVEN ADDITIONAL CIVIL RIGHTS AND ADVOCACY GROUPS AS AMICI CURIAE IN SUPPORT OF PLAINTIFF-APPELLEE CITY OF CHICAGO with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system on January 4, 2018.

I certify that all parties in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Executed this 4th day of January, 2018.

/s/ Sheila M. Prendergast
Sheila Prendergast

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Appendix A

INTERESTS OF AMICI

Advancing Justice is joined on this brief by the following civil rights groups, advocacy organizations, bar associations, and business associations (collectively, “Amici”):

- **Asian Americans Advancing Justice, Los Angeles.** Asian Americans Advancing Justice | Los Angeles (“Advancing Justice—LA”), was founded in 1983 and is the nation’s largest nonprofit public interest law firm devoted to the Asian American, Native Hawaiian and Pacific Islander community. Advancing Justice—LA provides direct legal services to indigent members of our community and uses impact litigation, policy advocacy, community education and leadership development to obtain, safeguard and improve the civil rights of Asian Americans, Native Hawaiians and Pacific Islanders. Advancing Justice—LA’s civil rights litigation has covered a broad range of issues such as racial polarized voting, race and national origin discrimination, access to higher education, immigration and naturalization, language rights and garment worker rights. Advancing Justice—LA has a long history of working to protect the voting rights of historically disenfranchised communities and thus has a strong interest in the outcome of this case.
- **Asian Services in Action.** Asian Services In Action (“ASIA”) is a comprehensive health and social services agency in the State of

Ohio serving low-income, underserved Asian Americans, Pacific Islanders, immigrants and refugees. ASIA focuses on empowering communities and advocating with them. ASIA annually serves over 30,000 individuals working closely with community organizations and leaders from across the state. We address language and cultural barriers to help improve lives. Our goal is to help individuals, families, and communities achieve optimal health and wellbeing; and they are able to make meaningful contribution to society.

- **Asian Law Alliance.** The Asian Law Alliance (“ALA”), founded in 1977, is a non-profit public interest legal organization with the mission of providing equal access to the justice system to the Asian and Pacific Islander communities in Santa Clara County, California.
- **National Tongan American Society.** The National Tongan American Society (“NTAS”) is a nonprofit, nonpartisan organization that seeks to promote a fair and equitable society for all by working for civil and human rights and empowering Asian American, Native Hawaiian, and Pacific Islander (AANHPI) communities. The NTAS advances its mission through grass-roots work that include voter-registration, advocacy, public policy, and public education.. The NTAS has maintained a strong interest in the voting rights of AANHPIs and strives to protect AANHPI’s access to the polls. The

NTAS supports efforts that include poll monitoring and voter protection across the country. The NTAS have served the interests of Pacific Islander (PI) immigrants in various PI languages since 1994, and is very concerned with issues of discrimination that they might face.

- **The HANA Center.** The HANA Center is a nonprofit community based organization whose mission is to empower Korean American, immigrant, and multi-ethnic youth communities through social services, education, culture, and community organizing to advance human rights. The HANA Center supports and organizes 6,000 community members annually and provides key leadership in the Chicago area's collective work of organizing to protect and support the rights of immigrants. During 2017, for example, the HANA Center operated a 24-hour hotline for immigrants taking over 1,000 phone calls; provided 38 Know-Your-Rights trainings, and made over 650 phone calls urging Governor Bruce Rauner to sign Illinois Trust Act among other efforts to respond to the critical service and organizing needs of immigrant community.
- **Coalition For A Better Chinese American Community.** Coalition for a Better Chinese American Community (CBCAC) is a non-profit, non-partisan 501(c)3 organization in Chicago, Illinois. CBCAC's programs and activities seek to unite and engage the resources of organizations and individuals in the Chinese American community

for the political empowerment and community development and advancement. CBCAC carries out its mission through civic education, issue advocacy, communication with policy makers, and community mobilization.

- **LatinoJustice PRLDEF.** LatinoJustice PRLDEF is a national nonprofit civil rights legal defense fund that has engaged in impact law reform litigation, advocacy, and education to defend the civil and constitutional rights of Latinos since 1972. We champion an equitable society by advancing Latino civil engagement, and by protecting the civil rights of the greater pan-latino community across the country.