

1 DECHERT LLP
NATHAN M. MCCLELLAN (SBN 291435)
2 FRED T. MAGAZINER
CHRISTOPHER S. BURRICHTER
3 Email: nathan.mcclellan@dechert.com
Email: fred.magaziner@dechert.com
4 Email: christopher.burrichter@dechert.com
US Bank Tower
5 633 West 5th Street
37th Floor
6 Los Angeles, California 90071-2013
Telephone: +1 213 808 5700
7 Facsimile: +1 213 808 5760

8 Attorneys for *Amicus Curiae*
Southern Poverty Law Center
9

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION
13

14 COUNTY OF SANTA CLARA,

Case No. 17-cv-00574 WHO

15 Plaintiff,

**BRIF OF AMICUS CURIAE SOUTHERN
POVERTY LAW CENTER AND OTHER
AMICI IN SUPPORT OF COUNTY OF
SANTA CLARA AND CITY AND COUNTY
OF SAN FRANCISCO'S MOTIONS FOR
PRELIMINARY INJUNCTION**

16 v.

Date: April 5, 2017
Time: 2:00 p.m.

17 DONALD J. TRUMP, President of the
United States of America, JOHN F.
18 KELLY, in his official capacity as
Secretary of the United States Department
19 of Homeland Security, JEFFERSON B.
SESSIONS, in his official capacity as
20 Attorney General of the United States,
JOHN MICHAEL "MICK" MULVANEY,
21 in his official capacity as Director of the
Office of Management and Budget, and
22 DOES 1-50,

23 Defendants.
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INTRODUCTION

This litigation involves the Constitutionality of Executive Order 13768, 82 Fed. Reg. 8799, issued by President Donald J. Trump on January 25, 2017 (the “Executive Order”). The

1 Francisco, and every other state and local jurisdiction in the country to accede.

2 ICE has been pushing for years to increase its access to local jurisdictions' law
 3 enforcement resources.³ When local jurisdictions have turned their police into *de facto* federal
 4 immigration agents, lasting harm has followed—to immigrant and non-immigrant residents, to
 5 local law enforcement, and to the community as a whole. First, when local police become federal
 6 immigration agents, it places them on a risky path toward racial profiling and other discriminatory
 7 and abusive police conduct. Second, when local police become federal immigration agents, it
 8 degrades trust between the police and the communities they serve; community trust is a crucial to
 9 effective law enforcement, and its absence inflicts serious and lasting harm on both the
 10 community and the local police. Third, when local police become federal immigration agents, it
 11 allows private actors to intimidate and exploit immigrant populations. Fourth, an Executive
 12 Order forcing local jurisdictions to allow federal immigration agents to commandeer their local
 13 police forces puts those local jurisdictions in the untenable position of choosing between flouting
 14 the Executive Order, on the one hand, or violating the legally protected civil and constitutional
 15 rights of their residents, on the other.

16 ARGUMENT

17 I. Turning Local Police Into Federal Immigration Agents Encourages Racial 18 Profiling and Other Law Enforcement Abuses.

19 The SPLC and other *amici* recognize that police officers have a difficult job, and that most
 20 of them want to discharge their responsibilities appropriately. Nevertheless, it is also true that
 21 some police officers and departments have engaged in racial profiling and other racially
 22 discriminatory or abusive behavior. *Amici*'s experience is that turning local police into federal
 23 immigration agents encourages such racial profiling or abusive conduct, and can increase the
 24 difficulty of uncovering and correcting such discriminatory or abusive conduct.

25 Local police who are determined to enforce immigration laws sometimes use racial

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 27 ³ See generally AMERICAN IMMIGRATION COUNCIL, THE CRIMINALIZATION OF IMMIGRATION IN
 28 THE UNITED STATES (July 2015) available at: [https://www.americanimmigrationcouncil.org/
 research/criminalization-immigration-united-states](https://www.americanimmigrationcouncil.org/research/criminalization-immigration-united-states) (last visited Mar. 21, 2017).

1 profiling to decide whom to target and how to treat those individuals. For instance, local law
2 enforcement officials may stop Latinos⁴ for purported traffic violations as a pretext for
3 investigating their immigration paperwork or status. A study of arrest data in Davidson County,
4 Tenn. shows that the arrest rates for Hispanic defendants driving without a license more than
5 doubled in the year after the county entered a 287(g) agreement to enforce immigration law.⁵ In
6 Irving, Texas, following the police department’s agreement to partner with ICE, arrest data reveal
7 an “immediate” and “dramatic” increase in “discretionary arrests of Hispanics for petty offenses –
8 particularly minor traffic offenses” consistent with “racial profiling of Hispanics in order to filter
9 them through the [federal immigration enforcement program’s] screening system.”⁶ Similar
10 conclusions resulted from analysis of data on individuals arrested nationwide under the “Secure
11 Communities” program that sends the fingerprints of individuals arrested by local law
12 enforcement to the Department of Homeland Security.⁷ These data showed that Latinos were
13 93% of individuals arrested through Secure Communities although they are only 77% of the
14 undocumented population.⁸

15 Such racial profiling is wholly unconstitutional. *See Whren v. United States*, 517 U.S.
16 806, 813 (1996) (“[T]he Constitution prohibits selective enforcement of the law based on
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1 VI of the Civil Rights Act of 1964, which bars law enforcement agencies that receive federal
2 funds from discriminating on the basis of race, color, or national origin. Beyond their
3 unconstitutionality, these pretextual stops are also a waste of local police resources and taxpayer
4 dollars.⁹

5 Perhaps more importantly, racial profiling threatens the legitimacy of local police
6 departments within their own communities. A study of Latinos perceptions of police involvement
7 in immigration enforcement found that 62% of Latinos—including citizens and documented and
8 undocumented immigrant respondents—said that police officers stop Latinos without good reason
9 or cause very or somewhat often.¹⁰ It is unsurprising that cooperation with the police drops when
10 people fear that the police will treat them differently because of the color of their skin or their
11 ethnic origin.¹¹

12 Police racial profiling of people of color is nothing new, but ICE’s willingness to deport
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1 immigration status or that of people they know.¹⁴

2 This fear holds both for people who are concerned about their own immigration status and
3 those concerned for their families or friends.¹⁵ Twenty nine percent of Latino citizens reported
4 they are less likely to voluntarily offer information about crimes they know have been committed,
5 and 26 percent said they are less likely to report a crime, due to fear that police will ask about
6 their family or friends' immigration status.¹⁶ With more than nine million people living in mixed
7 status families that include documented and undocumented members,¹⁷ it should be unsurprising
8 that fear transcends documentation status when police refuse to draw clear boundaries between
9 crime control and immigration enforcement. An undocumented woman in a physically abusive
10 relationship, for example, may be afraid to seek help from the police; a U.S citizen may fear that
11 if he provides information to the police about gang activity, it will expose his undocumented
12 mother to police attention.

13 A Department of Justice ("DOJ") finding of discriminatory policing by the New Orleans
14 Police Department ("NOPD") found that "members of the Latino immigrant worker community,
15 who are frequently victimized . . . reported a deep reluctance to report crime – either as victims
16 or witnesses . . . [because] NOPD officers questioned them about their immigration status."¹⁸ In
17 2008, a year after the Davidson County, Tennessee sheriff entered into a 287(g) agreement, the
18 National Council of La Raza and the Tennessee Immigrant and Refugee Rights Coalition
19 surveyed community members' trust of police. The survey compared the willingness of Latinos
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21 ¹⁴ See, e.g., INSECURE COMMUNITIES) at 5-6; see also ADVANCEMENT PROJECT & GEORGIA
22 LATINO ALLIANCE FOR HUMAN RIGHTS, MANUFACTURING FELONIES: HOW DRIVING BECAME A
23 FELONY FOR PEOPLE OF COLOR IN GEORGIA 3 (Mar. 2016) (finding that "[i]mmigrant
24 communities are increasingly wary of local police officers during traffic stops, desperately
25 seeking to avoid all possible interactions with police, even if and when they are in danger" and
26 "[w]here immigration is concerned, federal law enforcement cooperation with local police often
27 leads to the unjust detention and deportation of law-abiding immigrants and impacting families.")
28 available at http://b.3cdn.net/advancement/a23a889905f33b63a2_lim6bsbhf.pdf.

¹⁵ See, e.g., INSECURE COMMUNITIES at 6.

¹⁶ *Id.*

¹⁷ PEW RESEARCH CENTER, A NATION OF IMMIGRANTS (2013) available at
<http://www.pewhispanic.org/2013/01/29/a-nation-of-immigrants>.

¹⁸ DEPARTMENT OF JUSTICE, INVESTIGATION OF THE NEW ORLEANS POLICE DEPARTMENT 63 (Mar.
16, 2011) available at
https://www.justice.gov/sites/default/files/crt/legacy/2011/03/17/nopd_report.pdf.

1 Oscar Ramirez even in the unlikely event that he is not ultimately convicted and deported.

2 Jessica Ramirez and the Ramirez children (none of whom were in the car at the time of the
3 accident) have also been harmed. Jessica was five months pregnant at the time of the accident,
4 and she was forced to raise her children and deal with her pregnancy on her own while her
5 husband was held in ICE detention facilities. She struggles to care for her family because Oscar's
6 income has shrunk, because the family has had to make bond payments, and because the family
7 has had to devote its scarce resources to Oscar's criminal and immigration issues.

8 And most critically, if Oscar Ramirez is deported, his family will face a tragic choice. If
9 Jessica Ramirez stays in the United States, where her children are citizens, she will have to raise
10 the children on her own and without their father, she herself will face the threat of deportation,
11 and the family will lose its primary income-earner; if Jessica moves to Mexico with Oscar, a
12 country where she has never lived, she will leave behind all of her and her children's friends and
13 sources of community support and she will deprive her children of the opportunity to grow up in
14 the United States and receive an education in U.S. schools, even though they are citizens.

15 It is not only the Ramirez family who has been harmed—local law enforcement has been
16 harmed as well. Instead of making (at most) a routine stop to assist in resolving a minor car
17 accident, the police were required to conduct an investigation, develop evidence, and make an
18 arrest, wasting resources that could have been put to better use elsewhere, and local prosecutors
19 now must prosecute a case that would never have arisen in the first place if Oscar Ramirez felt
20 that he could trust the police.

21 The Ramirez family's situation provides only one illustration of the consequences of
22 eroding trust between local police and the communities they serve. That lack of trust undermines
23 effective law enforcement, wastes community resources, and creates serious problems out of
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27 company's requirement that they wear and pay for the cost of ankle monitors. See Michael E.
28 Miller, "This company is making millions from America's broken immigration system,"
WASHINGTON POST (Mar. 9, 2017), available at https://www.washingtonpost.com/local/this-company-is-making-millions-from-americas-broken-immigration-system/2017/03/08/43abce9e-f881-11e6-be05-1a3817ac21a5_story.html?utm_term=.1befd42af7f2.

1 issues that could have been resolved with appropriate early intervention.²²

2 **III. Turning Local Police Into Federal Immigration Agents Can Result in Private**
3 **Actors Exploiting and Abusing Immigrant Populations.**

4 Even when local police behave in accordance with the highest standards of integrity and
5 decency, turning them into immigration agents can create huge problems. When local police are
6 charged with enforcing immigration laws, it creates an opportunity for unscrupulous private
7 actors to intimidate or exploit immigrant neighbors or employees; a resident or organization with
8 a grievance against an immigrant person or community can credibly wield the threat of a phone
9 call to local police, which might lead to deportation.

10 One example of this abuse occurred at the Durrett Cheese plant (“Durrett”) in Coffee
11 County, Tennessee.²³ Durrett recruited a large number of undocumented and impoverished
12 Mixteco (an indigenous Mexican population) immigrants to work at the plant.²⁴ These
13 immigrants spoke Spanish or Mixteco, and barely any English. Durrett proceeded to mistreat
14 these employees, referring to them as “stupid Indians” and “donkeys,” and often refusing to pay
15 them minimum wage, or pay them at all. This abuse continued for over a year.

16 Eventually, the workers organized and demanded that Durrett pay them their overdue
17 and/or withheld wages. In response, Durrett called the Coffee County Sheriff’s Department
18 (“CCSD”) and had its own employees arrested for “trespassing” and turned over to ICE. Durrett
19 even provided paperwork to the CCSD to assist the Sheriff in reporting the Latino employees to
20 ICE. Here, the claimed ground for the arrests—“trespassing”—was entirely pretextual. Durrett’s
21 true motivation in having its employees arrested was to exploit local law enforcement’s
22 cooperation with federal immigration authorities. By turning its own workers over for

1 due, and to deter any other undocumented workers, whether at Durrett or elsewhere, who found
2 themselves underpaid, discriminated against, or otherwise abused. It is hard enough for an
3 individual to stand up to an employer and risk being fired; it is much harder when doing so would
4 also cause that individual to risk deportation.

5 **IV. The Executive Order Will Jeopardize Local Governments' Access To Federal**
6 **Funding Due To The Risk Of Violating Title VI.**

7 Racial discrimination can quickly spread throughout a local police force charged with
8 implementing federal immigration law, whether intentionally or simply as an unintended
9 consequence of immigration enforcement. When it does, such discrimination places counties
10 directly in conflict with Title VI of the Civil Rights Act of 1964 ("Title VI"). Cities that receive
11 federal financial assistance are obligated to comply with Title VI, which outlaws discrimination
12 on the basis of race, color, or national origin. When local police enter into immigration
13 enforcement agreements with ICE, those agreements are sometimes enforced in a manner that
14 directly violates Title VI.

15 One of the most notorious examples of this occurred outside the South, but is indicative of
16 what can happen when local police dedicate themselves to enforcing immigration law. The
17 Maricopa County, Arizona Sheriff's Office ("MCSO"), under the direction of former Sheriff Joe
18 Arpaio, decided that its highest priority was to enforce federal immigration laws. Sheriff Arpaio
19 and the MCSO had earned a reputation for cruelty against Latino residents, with Sheriff Arpaio
20 explaining that his local police enforced a "pure program to go after the illegals and not the crime
21 first."²⁵ The DOJ filed suit against the MCSO and the sheriff in 2012, arguing in part that the
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1 exceed ICE's authority to make warrantless arrests and detain individuals without a neutral
2 determination regarding the likelihood of escape. See, e.g., *Jimenez-Moreno v. Napolitano*, No.
3 1:11-cv-05452 (N.D. Ill. Sept. 30, 2016) (holding ICE detainers exceed the scope of authority
4 delegated by Congress); *Miranda-Olivares v. Clackamas County*, No. 3:12-cv-02317 (D. Or.
5 April 11, 2014) (granting summary judgment on claim of unlawful detention against county that
6 detained plaintiff pursuant to an ICE detainer) cf. *Villars v. Kubiowski*, 45 F. Supp. 3d 791, 807
7 (N.D. Ill. 2014) (no probable cause for a detainer request made to allow the federal government
8 time to investigate whether plaintiff had committed a crime).

9 Under the scheme contemplated by Executive Order, Santa Clara would be forced to make
10 an unacceptable choice every (34fm(a)3.2(t)(c)3.9(h-2(i)-2(r)3 104.3d a)4(e-11.9(a)3.8(i)sc)3(h)-10.8m)-

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