

No. 18-2648

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

CITY OF PHILADELPHIA,
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 Eastern District of Pennsylvania
No. 17-cv-03894
The Honorable Michael M. Baylson, Presiding Judge

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

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AUTHORITY TO FILE

Amicus curiae Asian Americans Advancing Justice | AAJC (“Advancing Justice-AAJC”) files this brief with the written consent of the parties.¹

IDENTITY AND INTEREST OF AMICI CURIAE

This brief is submitted by Advancing Justice-AAJC, a member of a national nonprofit affiliation that routinely files amicus curiae briefs in cases in this Court and other courts. Advancing Justice-AAJC 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-AAJC 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-AAJC is joined on this brief by four additional 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

¹ Pursuant to Fed. R. App. P. 29(a)(4)(E), the undersigned counsel certifies that: counsel for amicus authored this brief in whole; no counsel for a party authored this brief in any respect; and no person or entity — other than amicus, its members, and its counsel — contributed monetarily to this brief’s preparation or submission.

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.”²

- Former San Bernardino Police Chief, and Police Foundation President Jim Buerrman.

“There’s no way in the world you’d want to come forward as a source of information or as a criminal informant if you believe that you’re in jeopardy of being deported; or not just you, your children for that matter.”

- Philadelphia Police Commissioner Richard Ross [SA55 (Oct. 26, 2017 Prelim. Inj. Hr’g Tr. at 38:4–8)]

These police chiefs are among the many who have explained that public safety depends on people being willing to report and testify about crimes they either experience or witness.³ 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

² Niyati Shah, *Sanctuary Cities: Providing Safe Communities for All*, MEDIUM (Jan. 3, 2018), <https://medium.com/advancing-justice-aajc/sanctuary-cities-providing-safe-communities-for-all-835ee8da4b9d>.

³ See, e.g., Chris Magnus, Opinion, *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> (“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.”).

commit crimes against others in the community, thereby putting *everyone* – whether they are citizens, lawful permanent residents, or undocumented immigrants – at risk. In short, in communities in which the residents trust the police, residents are more willing to come forward as victims or witnesses of crime. And those communities are safer – 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.⁴ Undocumented immigrants are even less likely to report crimes for fear of deportation⁵ 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.⁶ But 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, more willing to cooperate as a witness, more willing to provide

⁴ ROBERT C. DAVIS, SAFE HORIZON, PERCEPTIONS OF THE POLICE AMONG MEMBERS OF SIX ETHNIC COMMUNITIES IN CENTRAL QUEENS, NY (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. Dep't of Justice) May 1998, *available at* http://www.ncdsv.org/images/NIJ_ImmigrantPopulationsAsVictimsTowardAmulticulturalCJsystem_5-1998.pdf.

⁵ MATTHEW LYSAKOWSKI, ALBERT ANTONY PEARSALL III, & JILL POPE, POLICING IN NEW IMMIGRANT COMMUNITIES 1 (U.S. Dep't of Justice, 2009), *available at* <https://ric-zai-inc.com/Publications/cops-w0764-pub.pdf>.

⁶ NIK THEODORE, UNIV. OF ILL. CHI., INSECURE COMMUNITIES: LATINO PERCEPTIONS OF POLICE INVOLVEMENT IN IMMIGRATION ENFORCEMENT 17 (2013), *available at* https://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF.

information on crime conditions, and more willing to cooperate with police during an involuntary contact.⁷

This data and research represents the experience of real people. People like Saba Nafees, a Ph.D. candidate for mathematical biology in Texas where a similar welcoming city policy did not exist. Saba – despite knowing and recognizing a student who had shot a police officer on campus – would have placed herself at risk had she seen and reported him. As a result, the police had at least one fewer set of eyes and ears to help catch the perpetrator.

People like John Yang, now the Executive Director of Advancing Justice-AAJC, whose family was undocumented growing up, and did not report instances of robbery and embezzlement against them.

On the other hand, real peoples' experiences show how policies such as Philadelphia's and trust with law enforcement can lead to positive outcomes – people like Syarif Syaifulloh in Philadelphia, a formerly undocumented immigrant from Indonesia, who trusted in police in reporting an assault against him. The first-hand accounts of these and other individuals, combined with the research and data presented herein, demonstrate that *all* residents of Philadelphia and other communities – including citizens – are safer when immigrant communities trust the police and are willing to come forward and cooperate with them.

⁷ NATIONAL RESEARCH COUNCIL, FAIRNESS AND EFFECTIVENESS IN POLICING: THE EVIDENCE 291–326 (The National Academies Press 2004).

Allowing Appellant to impose the new Byrne JAG conditions 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. Community policing policies, like those implemented by the City of Philadelphia 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. These policies also help build bridges to immigrant communities that enhance the police’s ability to deter crime and protect *all* residents. Accordingly, 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 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.⁸ These barriers are made even more challenging when the victim does not have a current lawful immigration status or fears that their immigration

⁸ 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), <https://www.omicsonline.org/open-access/barriers-and-successes-in-u-visas-for-immigrant-victims-the-experiences-of-legal-assistance-for-victims-grantees-2151-6200-S1-005.php?aid=28653>.

status may be impacted by reporting.⁹ Policies like those reflected in the new Byrne JAG conditions will significantly augment those fears. By charging local police with enforcement of immigration laws, such policies contribute to the deterioration of the relationship between local police and immigrant communities, engendering distrust among the immigrant communities vis-à-vis local police. With such distrust comes distance and silence, which leads to a reduction in public safety for all and additional negative collateral consequences to immigrant communities, and indeed, to all residents.

a. Law Enforcement Officials Across the Country Have Observed a Chilling Effect on Reporting of Crimes and Cooperation with Police Among Immigrants, All of Which Has an Adverse Effect on Public Safety.

Immigrant groups often cite fear of deportation (their own or that of undocumented family members or friends) as a major barrier to building trust and partnerships with police. The effect of this fear is substantial and widespread. 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 2017.¹⁰ To be clear, this is not good news as sexual assault, robberies, and aggravated assault crimes have not gone down; rather the drop in reporting is attributable to changes in federal immigration enforcement. That is why former Police Chief Jim Bueermann believes that “[c]urrent federal immigration enforcement policies

⁹ THEODORE, *supra* note 6, at i.

¹⁰ John Burnett, *New Immigration Crackdowns Creating ‘Chilling Effect’ On Crime Reporting*, NPR (May 25, 2017 4:54 AM), <https://www.npr.org/2017/05/25/529513771/new-immigration-crackdowns-creating-chilling-effect-on-crime-reporting>.

can have the unintended consequence effect [sic] of empowering and emboldening criminals to attack immigrant communities.”¹¹ 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.¹² 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.¹³

Those in the law enforcement community see evidence of this “chilling effect” on a regular basis. For instance, in May of 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.”¹⁴ 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.¹⁵ In San Francisco, the District

¹¹ Shah, *supra* note 2 (Bueerman Statement).

¹² Burnett, *supra* note 10.

¹³ James Queally, *Latinos are Reporting Fewer Sexual Assaults Amid a Climate of Fear in Immigrant Communities, LAPD Says*, L.A. TIMES (Mar. 21, 2017 8:25 PM), <http://www.latimes.com/local/lanow/la-me-ln-immigrant-crime-reporting-drops-20170321-story.html>.

¹⁴ Burnett, *supra* note 10.

¹⁵ 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->

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.¹⁶

The adverse impact of not receiving these reports on the safety of the overall community is perhaps best shown by the value of the contributions by immigrants to law enforcement efforts to apprehend and prosecute criminals. For example, by not raising alarm through questions about immigration status, police were able to work with bystanders in a heavily immigrant area of Philadelphia to communicate with Syarif, an assault victim who does not speak English, and take him to a local hospital.¹⁷

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.¹⁸ Eventually, droves of witnesses came forward with horrific tales of abuse and intimidation. As a result of the immigrants' cooperation, the perpetrator was arrested and charged with 63 felonies and his brother was

street/news/20978764/los-angelesarea-abuse-victims-stay-silent-over-fears-of-deportation.

¹⁶ *Id.*

¹⁷ Eri Andriola, *Immigrant-friendly Cities Help Communities Thrive*, MEDIUM (Oct. 9, 2018), <https://medium.com/advancing-justice-aajc/immigrant-friendly-cities-help-communities-thrive-90fa71e59342>.

¹⁸ Lee Davidson & Marissa Lang, *Overcoming Utah Immigrants' Mistrust Aided Criminal Case*, SALT LAKE TRIBUNE (May 13, 2014 11:10 AM), <http://archive.sltrib.com/article.php?id=57921513&itype=CMSID>.

charged with witness tampering and witness retaliation, both third-degree felonies.¹⁹

Similarly, in Nashville, a young undocumented mother who was violently assaulted by a woman who had broken into her home, viciously stabbed her twelve times, and kidnapped her newborn son, overcame her deep-seated fear of calling 911. She then aided the police in apprehending the assailant, who had already crossed state lines, and recovering her child.²⁰ The assailant ultimately pled guilty to kidnapping and was sentenced to 20 years in prison.²¹ These successful prosecutions not only protect undocumented immigrants, but benefit the entire community – any one of whom could have been victimized by these criminals in the future.

The experiences described 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, and Maricopa

¹⁹ *Id.*

²⁰ Amy Braunschwiger, *Nashville Immigrants Too Scared to Call the Police*, HUMAN RIGHTS WATCH (May 19, 2014, 9:20 AM), <https://www.hrw.org/news/2014/05/19/nashville-immigrants-too-scared-call-police>.

²¹ *Id.*

County (Phoenix), Arizona.²² 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 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.²³

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.²⁴ Indeed, the same attitudes run through the Asian community as well. Given the fact that the Asian American 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 in the United States is one of the fastest growing populations in the United States, growing by an average of 46 percent between 2000 and 2010.²⁵ This is driven in large part by

²² THEODORE, *supra* note 6.

²³ *Id.*

²⁴ CMTY ORIENTED POLICE SERVS., U.S. DEPARTMENT OF JUSTICE, POLICE PERSPECTIVES: BUILDING TRUST IN A DIVERSE NATION NO. 2 (Caitline Gokey & Susan Shah eds. 2016), *available at* <https://ric-zai-inc.com/Publications/cops-p345-pub.pdf>.

²⁵ 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), *available at* <http://aapidata.com/wp-content/uploads/2015/10/AAPIData-CAP-report.pdf>.

immigration. As of 2015, there were 11.5 million foreign-born Asian Americans living in the United States,²⁶ a significant number of whom were 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 has more than tripled in the past fifteen years.²⁷ 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.²⁸

In Pennsylvania, undocumented immigrants, including those from Asia, are an important part of many American family units and their communities. Around 162,000 undocumented immigrants live in Pennsylvania, of whom approximately 33 percent are of Asian descent.²⁹ Philadelphia County is home to approximately 50,000 undocumented immigrants,³⁰ about 31 percent of the state's undocumented population. Many undocumented immigrants in Pennsylvania are of working age and participate in the state labor force in a

²⁶ Karthick Ramakrishnan & Sono Shah, *One Out of Every 7 Asian Immigrants Is Undocumented*, AAPI DATA: DATA BITS (Sept. 8, 2017), <http://aapidata.com/blog/asian-undoc-1in7/>.

²⁷ See KARTHICK RAMAKRISHNAN & SONO SHAH, *supra* note 26; see also 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/>.

²⁸ KARTHICK RAMAKRISHNAN & FARAH Z. AHMAD, *supra* note 25.

²⁹ Karthick Ramakrishnan & Sono Shah, *supra* note 26.

³⁰ *Philadelphia's Immigrants: Who They Are and How They Are Changing the City*, PEW CHARITABLE TRUSTS, <https://www.pewtrusts.org/en/research-and-analysis/reports/2018/06/07/philadelphias-immigrants> (last visited Oct. 10, 2018).

broad range of industries and occupations.³¹ Approximately 63 percent of undocumented immigrants ages 16 and over in the state of Pennsylvania are employed.³² And in Philadelphia specifically, the city has estimated that its immigrant population has been responsible for 75 percent of the workforce growth since 2000.³³

Evidence shows that the impact of local law enforcement of 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.³⁴ Saba lives in a 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 because they fear deportation.³⁵ When a student shot a campus police officer at Saba's school, Saba did not offer to cooperate with officials despite that fact that she knew what the shooter looked like. The police needed the eyes and ears of the *entire* community to catch the murderer; yet in the jurisdiction where Saba lived, she could not be assured of her own safety. Saba knew that, had she reported the

³¹ *Profile of the Unauthorized Population: Pennsylvania*, MIGRATION POLICY INSTITUTE, <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/PA> (last visited Oct. 1, 2018).

³² *Id.*

³³ *Immigration Policies*, CITY OF PHILA. (Jan. 8, 2018), <https://www.phila.gov/2018-01-08-immigration-policies/>.

³⁴ Shah, *supra* note 2 (Statement of Saba Nafees).

³⁵ *Id.*

shooter, she would have exposed herself or her family to potential immigration enforcement.³⁶

Amici's executive director's experience is similar. When John was young, his family was undocumented, though they were able to secure a pathway to citizenship. As John explains, his parents owned a second-run movie theater in the early 1980s, and then later a video store.³⁷ A robber badly injured John's father at the video store, where he came and took money straight from the cash register. Yet despite this painful experience, John explains, "my father did not feel he could contact law enforcement because he feared deportation." Not only did John's father and his family suffer; the city of Chicago was deprived of a report about an individual who undoubtedly went on to victimize others in the community. Those victims could well have included other immigrants, both documented and undocumented, but could also have included native-born or naturalized citizens.³⁸

Saba's and John's experiences reflect a pervasive reality that impacts millions of families who are undocumented or have undocumented loved ones. In Chicago, reports indicate that Devon Avenue, the artery of the vibrant West Ridge community that is home to a large population of South Asian and Arab immigrants, has become noticeably quieter as a result of rumors of federal immigration raids.³⁹ Residents have stopped shopping or venturing outside for

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Marwa Eltagouri, *On Devon Avenue in Chicago, News of Immigration Raids Intensifies Fears*, CHICAGO TRIBUNE (Feb. 11, 2017 9:02 PM),

necessary trips, let alone cooperating with law enforcement; every time the doorbell rings, they stay silent, fearful that the person at the doorbell will report them to immigration officials.⁴⁰ In Philadelphia, city officials have echoed this sentiment, confirming that an increase in federal immigration raids has led to fear and likely under-reported crimes as a result.⁴¹ 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.

In contrast, when undocumented immigrants can trust law enforcement and service providers, police are able to conduct their investigations and victims are able to receive treatment. Syarif arrived in the United States in 2001 to work and support his family, making Philadelphia his home.⁴² In 2002, Syarif was assaulted and beaten while walking in an area where many immigrant workers went to cash their hard-earned paychecks.⁴³ Someone called the police, and others at the scene assisted with language interpretation. The police never inquired about Syarif's immigration status. Syarif wanted to help the police identify his assailants to prevent others from being similarly victimized.⁴⁴ The police and fire department brought Syarif to the hospital to

<http://www.chicagotribune.com/news/local/breaking/ct-enforcement-raids-devon-avenue-20170211-story.html>.

⁴⁰ *Id.*

⁴¹ Jeff Gammage, *Philly's Sanctuary City Status on Trial*, PHILA. INQUIRER (Apr. 30, 2018), <http://www2.philly.com/philly/news/phillys-sanctuary-city-status-on-trial-20180430.html>.

⁴² Andriola, *supra* note 17.

⁴³ *Id.*

⁴⁴ *Id.*

get treatment, and a social worker was made available to help him. Because Syarif trusted and cooperated with the police, an arrest was made.⁴⁵

c. The Chilling Effect Extends Beyond Crime Reporting Causing Collateral Damage to the Health and Well-Being of Immigrant Communities.

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.⁴⁶ First, it fosters a fear of public officials and results in “high rates of fear of seeking public benefits or securing medical services.”⁴⁷ It also leads to an increase in the number of unauthorized immigrant households unable to afford basic household expenses, including payments for rent, mortgage,⁴⁸ and utilities.⁴⁹

The contrast between cases in which federal immigration laws are and are not enforced at the local level is reflected in the experiences of Hani White and Saba Nafees and her family. Several years ago, when Indonesian families in South Philadelphia noticed flooding caused by drains clogged with cooking oil, Hani, Syarif’s wife, worked with community members and the Environmental Protection Agency (“EPA”) to come up with an innovative solution.⁵⁰ Many in the community were worried about the EPA’s presence at community meetings, not knowing if they were immigration

⁴⁵ *Id.*

⁴⁶ JULIA GELATT ET AL., STATE IMMIGRATION POLICIES 6 (Urban Institute May 2017), http://www.nccp.org/publications/pdf/text_1182.pdf.

⁴⁷ *Id.* at 6.

⁴⁸ *Id.* at 10.

⁴⁹ *Id.* at 6.

⁵⁰ Andriola, *supra* note 17.

officials or might enforce the immigration laws. However, through communication and education, Hani was able to build trust between community members and the EPA, and created a program to recycle used cooking oil and avoid the clogging of drains.⁵¹

Saba's family's experience was quite different. Saba's father worked in harsh conditions that potentially violated labor laws, even while taxes were taken out of his paycheck.⁵² 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 undocumented status because they knew he wouldn't complain."⁵³

Former police chief Jim Bueermann explained how developing trust with the community helped his force when it 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.⁵⁴

⁵¹ *Id.*

⁵² Shah, *supra* note 2 (Nafees Statement).

⁵³ *Id.*

⁵⁴ *Id.*

These immigration enforcement policies have a negative impact not only undocumented individuals, but also on American citizens and lawful immigrants as well. This is particularly so in the 85 percent of immigrant families that are “mixed-status” families, with a combination of citizens, immigrants, and undocumented immigrants.⁵⁵ Saba’s family is an example: though she is undocumented, her grandparents and sister are U.S. citizens. Nationwide, approximately 16.7 million people have at least one unauthorized family member living with them in the same household (including more than 8 million U.S. citizens, more than 5.9 million of whom are children).⁵⁶ Even lawful permanent residents or U.S. citizens may hesitate to involve law enforcement, if they have family members who are undocumented. As one researcher explained:

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.⁵⁷

⁵⁵ THEODORE, *supra* note 6, at 3 (citing Nancy Morawetz & Alina Das, *Legal Issues in Local Police Enforcement of Federal Immigration Law*, in ANITA KHASHU, *THE ROLE OF LOCAL POLICE: STRIKING A BALANCE BETWEEN IMMIGRATION ENFORCEMENT AND CIVIL LIBERTIES*, APPX. B, PP. 69–90 (2009)).

⁵⁶ Silva Mathema, *Keeping Families Together*, CTR. FOR AM. PROGRESS (Mar. 16, 2017 5:00 AM), <https://www.americanprogress.org/issues/immigration/reports/2017/03/16/428335/keeping-families-together/>.

⁵⁷ *Id.*

Households with lawful immigrants also reported an increased inability to afford basic household expenses, rent or mortgage, and utilities.⁵⁸ Moreover, there was an increase in lawful immigrant households where at least one person was unable to obtain medical attention when needed.⁵⁹ The widespread impact on such a broad swath of local communities is, therefore, unsurprising.

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.

Philadelphia Police Commissioner Ross testified at length before the district court about the impact that the challenged conditions would have. The conditions:

[W]ould be stifling. It would create an environment where some of our partners in the neighborhoods would fear us, and we can ill-afford to have that happen. It is absolutely vital that we have the opportunity maintain and cultivate these relationships as much as possible. [SA53 (Oct. 26, 2017 Prelim. Inj. Hr'g Tr. at 36:10–14)].

Furthermore, he explained:

[I]f we are unable to identify crime patterns because victims along that pathway are holding back information out of fear of their status being revealed, well, now we're operating behind the eight ball. Because instead of knowing right from the outset that there's a pattern developing, we are potentially put in a position to find these things out way too late. [SA54 (Oct. 26, 2017 Prelim. Inj. Tr. at 37:8–14)].

Commissioner Ross's concerns have 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

⁵⁸ GELATT, *supra* note 46, at 11.

⁵⁹ *Id.*

Protection Act of 2000.⁶⁰ U Visas allow undocumented individuals 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. In creating the U Visa, Congress had two purposes: (1) to protect victims by providing humanitarian relief, and (2) and 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.”⁶¹ Thus, 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.⁶² For instance, in 1996, the Illegal Immigration Reform and Immigrant Responsibility Act⁶³ created the 287(g)

⁶⁰ 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).

⁶¹ *Id.*

⁶² 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 3:33 PM), <http://www.motherjones.com/politics/2017/05/immigrant-sexual-assault-domestic-violence-survivors-fear-enforcement-survey/>.

⁶³ Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208, 110 Stat. 3009-546 (1996).

program (and referred to herein as such), which allows the Department of 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.⁶⁴ However, the 287(g) program has been fraught with controversy. A DHS Inspector General report, “The Performance of 287(g) Agreements,” OIG-10-63 (Mar. 2010), found concerns related to civil rights and civil liberties in program implementation.⁶⁵ And evidence indicates that the number of states that fit the criteria for 287(g) agreements has fallen since 2010.⁶⁶

Similarly, the federal policy of sending detainers (“ICE detainers”) to local jails to hold immigrants so that Immigration and Customs Enforcement (“ICE”) can pick them up on their release has been met with increased resistance from local law governments.⁶⁷ Indeed, as recently as February 2017, DHS identified

⁶⁴ GELATT, *supra* note 46, at 3.

⁶⁵ OFFICE OF INSPECTOR GENERAL, DEPT. OF HOMELAND SECURITY, OIG-10-63, THE PERFORMANCE OF 287(g) AGREEMENTS (Mar. 2010), *available at* https://www.oig.dhs.gov/assets/Mgmt/OIG_10-63_Mar10.pdf.

⁶⁶ *Id.* at 3.

⁶⁷ LENA GRABER & NIKKI MARQUEZ, IMMIGRANT LEGAL RES. CENTER, SEARCHING FOR SANCTUARY 6 (Dec. 2016), *available at* https://www.ilrc.org/sites/default/files/resources/sanctuary_report_final_1-min.pdf.

over 140 jurisdictions across the country that have enacted policies that restrict cooperation with ICE.⁶⁸

This is not to say, however, that initiatives aimed at limiting the role of local law enforcement in immigration law are 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 (“LAPD”), for instance, instituted such a policy as early as 1979 when it issued Special Order 40, which prohibits police officers from inquiring about the immigration status of people not suspected of crimes.⁶⁹ This policy remains in effect today. 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 LAPD 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.”⁷⁰

⁶⁸ See U.S. IMMIGRATION & CUSTOMS ENF’T, WEEKLY DECLINED DETAINER OUTCOME REPORT FEB 11 – FEB 17, 2017 10, *available at* https://www.ice.gov/doclib/ddor/ddor2017_02-11to02-17.pdf.

⁶⁹ OFFICE OF THE CHIEF OF POLICE, L.A. POLICE DEP’T, SPECIAL ORDER 40, (Nov. 27, 1979), *available at* http://assets.lapdonline.org/assets/pdf/SO_40.pdf.

⁷⁰ See LYNN TRAMONTE, IMMIGRATION POLICY CENTER, DEBUNKING THE MYTH OF “SANCTUARY CITIES” 5 (April 2011), *available at* https://www.americanimmigrationcouncil.org/sites/default/files/research/Community_Policing_Policies_Protect_American_042611_update.pdf.

The LAPD's perspective is broadly shared by law enforcement organizations.⁷¹ The International Association of Chiefs of Police expressed 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.⁷²

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

⁷¹ See, e.g., Letter to the Senate from the Law Enforcement Immigration Task Force (July 6, 2016), *available at* http://immigrationforum.org/wp-content/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 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").

⁷² INT'L ASS'N OF CHIEFS OF POLICE, ENFORCING IMMIGRATION LAW: THE ROLE OF STATE, TRIBAL AND LOCAL LAW ENFORCEMENT, *available at* <https://web.archive.org/web/20180219115929/http://www.theiacp.org:80/portals/0/pdfs/publications/immigrationenforcementconf.pdf> (last accessed Oct. 10, 2018).

assistance from immigrants in solving crimes or preventing future terrorist attacks.”⁷³

The growth of community policing models and the decline of local law enforcement of immigration laws is perhaps best explained by the U.S. Department of Justice (“DOJ”) Office of Community Oriented Policing Services (“COPS”), which identified the effect of federal immigration enforcement on local trust building as one of five common challenges to providing public safety in immigrant communities.⁷⁴ Likewise, when the Police Foundation, a national, nonpartisan, nonprofit organization, surveyed law enforcement personnel, elected public officials, members of immigrant communities, and other interested groups, a majority of survey respondents reported that “aggressive enforcement of immigration law would have a negative impact on community relationships.”⁷⁵ The impacts cited by these respondents mirror those explained by Philadelphia’s witnesses, and included “decreasing: [1] the community trust of the police (74 [percent of respondents]), [2] trust between community residents (70 [percent of respondents]), and [3] reporting of both crime victimization (85 [percent of respondents]) and criminal activity (83

⁷³ MAJOR CITIES CHIEFS ASS’N, IMMIGRATION COMMITTEE RECOMMENDATIONS FOR ENFORCEMENT OF IMMIGRATION LAWS BY LOCAL POLICE AGENCIES (June 2006), *available at* http://www.houstontx.gov/police/pdfs/mcc_position.pdf.

⁷⁴ *See id.* at 4.

⁷⁵ ANITA KHASHU, POLICE FOUND., THE ROLE OF LOCAL POLICE: STRIKING A BALANCE BETWEEN IMMIGRATION ENFORCEMENT AND CIVIL LIBERTIES (Apr. 2009), *available at* <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 of respondents]].”⁷⁶ 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 percent), (5) criminal investigations (67 percent), and (6) even recruitment (31 percent), thereby impacting operations significantly.”⁷⁷

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 limited to undocumented immigrants, but extends to immigrant communities as a whole. As mentioned above, over 85 percent of immigrant families are “mixed-status” families with a combination of citizens, undocumented immigrants, and documented immigrants.⁷⁸ 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.⁷⁹ And the criminals whose crimes might go unreported and unsolved may victimize *anyone* in the community, including immigrants (whether documented or not), U.S. citizens (whether natural or foreign-born), and even tourists. By contrast, community policing policies, like those implemented by the City of Philadelphia and other jurisdictions, make it safer for immigrant crime victims and

⁷⁶ *Id.* at app. H.

⁷⁷ *Id.*

⁷⁸ THEODORE, *supra* note 6, at 3 (citing Morawetz and Das, *supra* note 55).

⁷⁹ KHASHU, *supra* note 76 at 24.

witnesses to report criminals to the police and help put them behind bars. Such policies help build bridges to immigrant communities that enhance their ability to fight crime and protect all residents.

Stories like Syarif's illustrate how police can work with immigrant communities to build trust and create safer and healthier cities for all. More than a decade after his assault, Syarif remembers the kindness of the social worker and his positive interactions with the police.⁸⁰ Syarif is now a Lawful Permanent Resident, and a cook at a local hospital, while Hani serves on the Governor's Advisory Commission on Asian Pacific American Affairs. Both are active members of their community and city who, due to the trust that government developed in them, stepped forward to protect and assist their communities, even when immigration status made their actions risky.⁸¹

Despite the recognition by many local jurisdictions of the needs and benefits of community policing, DOJ is attempting to coerce these local law enforcement entities to undermine the trusting relationships that they have built with their communities. As recently as November, DOJ sent letters to 29 different jurisdictions asking them to cooperate with federal immigration enforcement efforts.⁸² These letters are similar to those sent to the City of Philadelphia in this case. Unlike Philadelphia and other big metropolitan cities, jurisdictions included in this latest set of letters from DOJ include New

⁸⁰ Andriola, *supra* note 17.

⁸¹ *Id.*

⁸² See Letter from Alan Hanson to Katherine Sheehan (Nov. 15, 2017), *available at* https://www.justice.gov/opa/press-release/file/1011571/download?utm_medium=email&utm_source=govdelivery.

Brunswick, New Jersey or Waterbury, Vermont, jurisdictions that may not have 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.

CONCLUSION

For the foregoing reasons, and the reasons presented by the City of Philadelphia, the judgment of the district court should be affirmed.

Date: October 11, 2018

Respectfully submitted,

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CERTIFICATE OF BAR MEMBERSHIP

Pursuant to Third Circuit Local Appellate Rule 28.3(d), I certify that the undersigned counsel is a member of the Bar of the United States Court of Appeals for the Third Circuit.

Dates: October 11, 2018

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CERTIFICATE OF COMPLIANCE

This Amicus Brief complies with the type-volume limitation of Fed. R. App. 32(a)(7) because, according to the “word count” function of Microsoft Word 2010, the Amicus Brief contains 6,005 words, excluding the parts of the Brief exempted from the word count by Rule 32(f) of the Fed. R. App. P.

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Dates: October 11, 2018

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CERTIFICATE OF VIRUS CHECK

I also certify that a virus check was performed using Malwarebytes anti-virus software, and that no virus was detected.

Dates: October 11, 2018

/s/Ankur J. Goel

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CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2018, I electronically filed the foregoing BRIEF OF ASIAN AMERICANS ADVANCING JUSTICE-AAJC AND FOUR ADDITIONAL CIVIL RIGHTS AND ADVOCACY GROUPS AS AMICI CURIAE IN SUPPORT OF PLAINTIFF-APPELLEE CITY OF PHILADELPHIA with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the appellate CM/ECF system.

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.

In addition, 10 paper copies of this brief will be delivered to the Clerk within 5 days of the electronic filing.

Executed this 11th day of October, 2018.

/s/ Ankur J. Goel
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Counsel for Amici Curiae

Appendix A

IDENTITY AND INTERESTS OF AMICI

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

- **Asian Americans Advancing Justice | Chicago.** Asian Americans

Advancing Justice | Chicago (“Advancing Justice – Chicago”) is a pan-Asian non-profit organization that builds power through collective advocacy and organizing to achieve racial equity.

Founded in 1992, Advancing Justice – Chicago has worked to bring together the Asian American community and empower them to create change, as well as extend beyond our community and forge new relationships on issues that affect all marginalized communities. Advancing Justice – Chicago carries out this mission through legal advocacy, coalition-building, leadership development, education, and research. In October 2016, Advancing Justice-Chicago successfully advocated for the amendment to Chicago’s Welcoming City Ordinance, which prohibits all City employees, including Chicago Police officers, from questioning an individual’s immigration status and threatening deportation, as well as re-defining coercion and verbal abuse to include verbal threats and barring city employees from compelling a person to make statements. Based on this commitment to protecting and

empowering marginalized communities, Advancing Justice—
Chicago 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.
- **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.