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**UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,	)	Case No. 2:18-cv-00490-JAM-KJN
	)	
<i>Plaintiff,</i>	)	<b>BRIEF OF AMICI CURIAE</b>
	)	<b>THE CITY OF NEW YORK, 20 LOCAL</b>
v.	)	<b>GOVERNMENTS, AND THE UNITED</b>
	)	<b>STATES CONFERENCE OF MAYORS</b>
STATE OF CALIFORNIA, et al.,	)	<b>IN OPPOSITION TO PLAINTIFF’S</b>
	)	<b>PRELIMINARY INJUNCTION MOTION</b>
<i>Defendants.</i>	)	<b>AND IN SUPPORT OF DEFENDANTS’</b>
	)	<b>MOTION TO DISMISS</b>
	)	
	)	Hearing Date: June 20, 2018
	)	Hearing Time: 10:00 a.m.
	)	Location: Courtroom 6
	)	
	)	Judge: Hon. John A. Mendez

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1 information with the government without fear that it will lead to their deportation or the  
2 deportation of a family member. And the federal government focuses particular attention on  
3 California’s refusal to share the release date of certain detainees, which likewise sends a clear  
4 and unmistakable signal to residents that the state government is not a mere instrument of the  
5 federal government’s deportation apparatus; such information-sharing will happen only in  
6 accordance with California’s own law enforcement needs. *See* Cal. Gov’t Code  
7 § 7284.6(a)(1)(C); DOJ Mem. in Supp. of Prelim. Inj. at 23–29.

8 Federal attempts, such as those here, to conscript local officers into providing sensitive  
9 information about local residents unconstitutionally “impress” those officers “into [federal]  
10 service” and impermissibly confuse lines of accountability, resulting in local governments  
11 “taking the blame” in immigrant communities for federal choices. *Printz v. United States*, 521  
12 U.S. 898, 922, 930 (1997); *see also* Cal. Mem. in Opp’n to Prelim. Inj. at 14–17. This is  
13 particularly so where the federal statute invoked by DOJ—8 U.S.C. § 1373(a)—cannot be seen  
14 as “anything other than a direct command” to state and local governments, invalid under the  
15 Tenth Amendment. *Murphy v. NCAA*, Nos. 16-476, 16-477, 2018 U.S. LEXIS 2805, at \*39  
16 (May 14, 2018) (also finding the distinction “empty” between a law requiring an affirmative  
17 obligation and a law imposing a prohibition on state governments).

18 The outcome would not change even if federal preemption, rather than anti-  
19 commandeering doctrine, supplied the proper framework for analysis. Contrary to the federal  
20 government’s claims, policies that clearly separate local public services from the federal  
21 immigration enforcement system—like the challenged provisions of the California Values  
22 Act—are neither “intended to uniquely impede the enforcement of the immigration laws” nor  
23 “specifically designed to obstruct federal immigration enforcement.” DOJ Mem. in Supp. of  
24 Prelim. Inj. at 31, 32. They are instead essential to fulfilling local governments’ fundamental  
25 role in serving their residents, as experience confirms that absent the trust engendered by  
26 policies protecting personal information, people simply will not seek assistance or cooperate  
27 with local governments in the provision of essential services. The basic purpose—and  
28

1 demonstrated effect—of such policies is thus to improve public health, safety and welfare, all  
2 police powers in “fields of traditional state regulation” that are not lightly to be preempted.  
3 *Riegel v. Medtronic, Inc.*, 529 U.S. 598, 618 (2008).

4 Ensuring that all of our residents, including immigrants, can and do access government  
5 services is not a minor concern, but rather indispensable to the vitality, prosperity, and safety of  
6 our communities, because immigrants play central roles in cities large and small. For example,  
7 nearly six out of every ten New York City residents are immigrants or the children of  
8 immigrants, and immigrants contributed \$195 billion to the City’s gross domestic product in  
9 2017.<sup>1</sup> In Chicago, immigrants pay \$1.6 billion in state and local taxes (and more in federal  
10 taxes); additionally, while immigrants make up 20.7 percent of Chicago’s population, they  
11 account for 36.4 percent of its entrepreneurs, a remarkable measure of economic dynamism.<sup>2</sup> In  
12 Tukwila, Washington, 41 percent of the city’s residents were born outside the country and half  
13 speak a language other than English at home. Meanwhile, in Philadelphia, immigrants make up  
14 13 percent of the City’s population but were responsible for 96 percent of the “Main Street”  
15 neighborhood business growth between 2000 and 2013 and 75 percent of the city’s workforce  
16 growth since 2000.<sup>3</sup>

17 Our concern is not—and cannot be—limited to those who have legal status in this  
18 country. In New York City alone, roughly 560,000 residents are undocumented and  
19 approximately one million residents live in a household where at least one member is  
20 undocumented.<sup>4</sup> And in broader ways, the well-being of all our residents is connected. No one  
21 benefits when large portions of the population are reluctant to obtain vaccinations against  
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23 <sup>1</sup> N.Y.C. Dep’t of City Planning, *The Newest New Yorkers*, 2013, available at  
24 <http://on.nyc.gov/2drcFH6>; Mayor’s Office of Immigrant Affairs, *State of Our Immigrant City*,  
25 March 2018, at 6, available at <https://on.nyc.gov/2Iu3Lw6>.

26 <sup>2</sup> Memorandum from City of Chicago to City of New York (May 16, 2018).

27 <sup>3</sup> Americas Society/Council of the Americas & The Fiscal Policy Institute, *Bringing Vitality*  
28 *to Main Street: How Immigrant Small Businesses Help Local Economies Grow*, available at:  
<http://www.as-coa.org/sites/default/files/ImmigrantBusinessReport.pdf>.

<sup>4</sup> Mayor’s Office of Immigrant Affairs, *supra* note 1 at 6.

1 preventable disease or are afraid to speak to the police because they worry that sharing their  
2 personal information might lead to deportation for themselves or their family members.

3 Thus, local governments have adopted policies—some going back decades—motivated  
4 by the same concerns and experiences that underlie the California Values Act’s information-  
5 sharing provisions.<sup>5</sup> These policies are diverse in approach and scope, as befitting the diverse  
6 needs of our jurisdictions, but all are based on the need to maintain trust with communities.  
7 Many of these policies, such as New York City’s, protect not only the confidentiality of  
8 residents’ immigration status, but also other sensitive information such as sexual orientation,  
9 status as a victim of domestic violence or sexual assault, or receipt of public assistance.<sup>6</sup> Others  
10 are specifically focused on information sharing by law enforcement. The valid and legitimate  
11 concerns animating these policies are as simple as they are powerful. Our experience as local  
12 governments makes plain that we must build trust with residents if we are to govern effectively.  
13 Contrary to the DOJ’s unsupported claims that states and local governments lack any  
14 “legitimate interest” in these policies, DOJ Mem. in Supp. of Prelim. Inj. at 32, the policies  
15 serve an important and lawful purpose. Indeed, they are critical to effective local governance.

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24 <sup>5</sup> See, e.g., N.Y.C. Mayoral Exec. Order 41 (2003); N.Y.C. Admin. Code § 9-131(h)(1);  
25 Chicago Mun. Code § 2-173; Cook Cty. Bd. of Comm’rs Res. 07- R-240; Cook Cty. Ill., Mun.  
26 Code § 46-37(b); Denver Rev. Mun. Code §§ 28-250 to 28-253; Denver Exec. Order 142  
27 (2017); Madison Res. 17-00125; Minneapolis Code of Ordinances Ch. 19; Or. Rev. Stat.  
28 § 181A.820; 2017 Or. Laws Ch. 724 (HB 3464); Phila. Exec. Order 8-09; Phila. Exec. Order 5-  
16; Rochester Res. No. 2017-5; Tukwila Res. 1900.

<sup>6</sup> See e.g. N.Y.C. Charter § 8(g); N.Y.C. Mayoral Exec. Order 41 (2003).



1 status: 28 percent of Latinos born in the United States—U.S. citizens—say they are less likely  
2 to contact police, as the direct *victims* of a crime, because they fear immigration consequences  
3 for those close to them.<sup>11</sup> The result is plain. “[T]he failure to obtain that victim and witness  
4 cooperation could both hinder law enforcement efforts and allow criminals to freely target  
5 communities with a large undocumented population, knowing that their crimes will be less  
6 likely to be reported.” *City of Chicago v. Sessions*, No. 17-2991, 2018 U.S. App. LEXIS 9862,  
7 at \*15 (7th Cir. Apr. 19, 2018).

8       Recent federal actions and rhetoric have worsened this problem. In January 2017, for  
9 example, President Trump issued a sweeping executive order instructing law enforcement  
10 agencies to target more immigrants for deportation, encourage state and local government  
11 participation in federal immigration enforcement, and unilaterally withdraw all federal funding  
12 from whatever jurisdictions the Attorney General deemed “sanctuary jurisdictions.” Exec.  
13 Order No. 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017). This unprecedented attempt to coerce  
14 local governments into serving as federal immigration agents has already been found  
15 unconstitutional. *County of Santa Clara v. Trump*, 275 F. Supp. 3d 1196 (N.D. Cal. 2017).  
16 Even so, it sent an unmistakable message to immigrants, raising the specter that any interaction  
17 with local authorities could risk immigration consequences. Indeed, in remarks before  
18 Congress, acting Immigration and Customs Enforcement Director Tom Homan told  
19 undocumented immigrants, “[Y]ou should be uncomfortable ... You should look over your  
20 shoulder.”<sup>12</sup>

21       This message was heard loud and clear, sending many residents into the shadows, to the  
22 detriment of their own safety and the public’s. In Houston, for example, the number of Latinos  
23 reporting rapes dropped by 40 percent compared to the year before, even as non-Latino victims  
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26 <sup>11</sup> *Id.*

27 <sup>12</sup> Dara Lind, *Fear Itself: Donald Trump’s Real Immigration Policy*, Vox (Sep. 17, 2017),  
28 <https://bit.ly/2h3IcGo>.

1 reported an increased number of rapes.<sup>13</sup> Latinos in Salt Lake City reported 36 percent fewer  
2 larcenies and thefts, even as crime reporting among other demographics stayed roughly the  
3 same.<sup>14</sup> Fears of deportation caused victims to drop their domestic violence cases in cities like  
4 Austin, San Antonio, and Denver.<sup>15</sup>

5 Public health, too, has suffered. Doctors have reported parents cancelling their  
6 children’s pediatric appointments and vaccinations over immigration fears,<sup>16</sup> or cancelling  
7 health insurance coverage altogether.<sup>17</sup> Many immigrant patients have applied for public  
8 medical coverage but withheld sensitive identifying information from their forms—precisely  
9 the kind of information many cities and the California Values Act try to keep confidential—and  
10 then are predictably denied for having submitted incomplete applications.<sup>18</sup> Nationwide, in one  
11 of the worst flu seasons in memory, eight percent fewer Hispanic adults received flu shots this  
12 year than in 2016, compared to a two percent decline among all Americans.<sup>19</sup> As one legal  
13 resident explained to the Associated Press, “We’re afraid of maybe getting sick or getting into  
14 an accident, but the fear of my husband being deported is bigger.”<sup>20</sup>

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17 <sup>13</sup> Jennifer Medina, *Too Scared to Report Sexual Abuse. The Fear: Deportation.*, N.Y.  
18 Times (Apr. 30, 2017), <https://nyti.ms/2pOOe0Q>; Brooke A. Lewis, *HPD Chief Announces*  
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23 <sup>16</sup> Nicole Rodriguez, *Trump’s Immigration Crackdown Creating a Public Health Crisis*  
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25 <sup>17</sup> Emily Bazar, *Some Immigrants, Fearful of Political Climate, Shy Away from Medi-Cal*,  
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26 <sup>18</sup> Kelli Kennedy, *Immigration Concerns Drive Legal Immigrants Away from Public Health*  
27 *Care*, Christian Sci. Monitor (Jan. 22, 2018), <https://bit.ly/2IxTi2z>.

28 <sup>19</sup> Donald G. McNeil, Jr., *Trump, Tell Us About Your Flu Shot*, N.Y. Times, Feb. 9, 2018,  
<https://nyti.ms/2KRM8EI>.

<sup>20</sup> Kennedy, *supra* note 18.

1           These trends are consistent with what local governments have long known: when states  
2 and local governments engage in immigration enforcement, immigrant communities disengage  
3 from public services. After Arizona enacted SB 1070—which among other things allowed and  
4 sometimes required state and local police officers to enforce federal immigration law<sup>21</sup>—  
5 Mexican-origin citizens and non-citizens alike avoided basic preventive health care, including  
6 for their children.<sup>22</sup> Notably, even the *message* that states will engage in immigration  
7 enforcement is enough to trigger this effect. California’s Proposition 187, for example, would  
8 have required all government officials to report any person using public services who was  
9 suspected of being an undocumented immigrant to federal immigration enforcement.<sup>23</sup> Even  
10 though Prop. 187 was immediately enjoined by a federal court, it nonetheless resulted in  
11 reduced medical care in immigrant communities—including for highly communicable diseases  
12 like tuberculosis.<sup>24</sup> Likewise, Alabama’s HB 56 required, among other things, that public  
13 schools check the immigration status of all students.<sup>25</sup> Again, although this provision was  
14 blocked from taking effect, the U.S. Department of Justice observed that 13.4 percent of  
15 Hispanic children dropped out of school as a result, while other groups of students were  
16 unaffected.<sup>26</sup> And in the public health arena, when Indiana began asking women and children  
17 receiving nutritional assistance about their immigration status, enrollment immediately  
18 plunged.<sup>27</sup>

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20           <sup>21</sup> *Arizona v. United States*, 567 U.S. 387, 394 (2012).

21           <sup>22</sup> Russell B. Toomey, et al., *Impact of Arizona’s SB 1070 Immigration Law on Utilization*  
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23           <sup>23</sup> See *LULAC v. Wilson*, 908 F.Supp. 755 (C.D. Cal. 1995).

24           <sup>24</sup> Kari White, et al., *Impact of Alabama’s Immigration Law on Access to Health Care*  
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26 *Health* 397 (2014), available at <https://bit.ly/2G2U3eS>.

25           <sup>25</sup> See *Hispanic Interest Coalition v. Governor of Ala.*, 691 F.3d 1236 (11th Cir. 2012).

26           <sup>26</sup> *Feds: Alabama immigration law caused spike in Hispanic student absences*, CNN (May  
27 4, 2012), <https://cnn.it/2IbV0U3>.

27           <sup>27</sup> Emily Baumgaertner, *Spooked by Trump Proposals, Immigrants Abandon Public*  
28 *Nutrition Services*, N.Y. Times (Mar. 6, 2018), <https://nyti.ms/2HeoMqg>.

1           **B. Local policies to limit information sharing with federal immigration authorities**  
2           **promote trust in local governments, which is necessary to protect public safety**  
3           **and health.**

4           As the data discussed above illustrates, the mere threat of local participation in federal  
5 immigration enforcement efforts drives a wedge between local governments and their residents.  
6 But state and local governments can mitigate the fear that drives people away from engaging in  
7 essential government services by sending a clear, unequivocal message that we will protect the  
8 information that immigrants and their loved ones provide to the police, the public health  
9 system, and schools. For example, unlike many other cities, in early 2017 New York City saw  
10 no decline in crime reporting associated with ZIP codes with the highest foreign-born or non-  
11 citizen populations.<sup>28</sup> This trend extended to crimes like harassment and rape, where a greater  
12 chilling effect would be expected if residents were afraid to contact the police because of  
13 immigration concerns.<sup>29</sup> Crimes continue to be reported—and therefore, dangerous criminals  
14 continue to be arrested and prosecuted. New York City clinics and hospitals reported no  
15 decrease in outpatient visits across population groups, including by immigrant communities.<sup>30</sup>  
16 Residents continue to get the medical care they need, and communicable diseases are not  
17 allowed to spread through the population unchecked. And despite the intense distress of public  
18 school students with immigrant family members,<sup>31</sup> there was no decrease in New York City  
19 school attendance.<sup>32</sup> Notably, New York City data showed immense anxiety in immigrant  
20 communities during this time period—such as huge spikes in requests for birth certificates and  
21 other vital records by families planning for the safety of their children should they be  
22 deported—but that anxiety did not cause immigrants to disengage from local service providers.

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24           <sup>28</sup> Memorandum from Sabrina Fong, N.Y.C. Mayor’s Office of Immigrant Affairs to file  
(May 8, 2018).

25           <sup>29</sup> *Id.*

26           <sup>30</sup> *Id.*

27           <sup>31</sup> Monica Disare, *Could fear of Trump’s immigration policies keep New York City students*  
*out of school?*, Chalkbeat (Mar. 1, 2017), <https://bit.ly/2rxW5iu>.

28           <sup>32</sup> Memorandum from Sabrina Fong, *supra* note 28.

1 New York City officials attribute these successes to the City’s policies protecting  
2 confidential information, including by limiting the information it shares with federal  
3 immigration authorities, and the City’s visibly demonstrated independence from immigration  
4 enforcement efforts, for instance, its refusal to share the release dates of certain detainees with  
5 immigration authorities. Local agencies have systematically communicated these policies to  
6 residents as part of sustained efforts to maintain trust with immigrant communities and other  
7 vulnerable populations.<sup>33</sup> Without such policies, New York City could not credibly assure its  
8 immigrant communities that they can confidently and safely interact with government. It has  
9 taken decades to build the trust needed to prevent the disruptions to public safety and public  
10 health on display elsewhere. The DOJ would have local governments betray that trust  
11 overnight. As the Seventh Circuit recently recognized, “[s]uch trust, once destroyed by the  
12 mandated cooperation and communication with the federal immigration authorities, would not  
13 easily be restored.” *City of Chicago*, 2018 U.S. App. LEXIS 9862, at \*45.

14 Cities and counties across the nation, likewise, have experienced the importance of  
15 these kinds of policies. In Cook County, for example, both the county’s prosecutors and its  
16 public defenders have provided sworn declarations that forcing the county to provide federal  
17 immigration officials with information like notifications of inmate release dates would reduce  
18 cooperation with the legal system and increase violent crime.<sup>34</sup> According to Philadelphia  
19 Police Commissioner Richard Ross, crime has decreased by 17 percent—including a 20 percent  
20 drop in violent crime—since 2009 when the city’s mayor issued an executive order requiring  
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22 <sup>33</sup> See, e.g., Cassi Feldman, *Despite Trump immigration crackdown, city tells students and*  
23 *families: ‘We stand with you’*, Chalkbeat (Jan. 30, 2017), <https://bit.ly/2rxttWz>; N.Y.C. Health  
24 + Hospitals, *Seek Care Without Fear*, <https://bit.ly/2G4otx1> (last visited May 7, 2018); CBS  
25 New York, *NYPD Memo Emphasizes Commitment to Immigrants* (Feb. 22, 2017),  
26 <https://cbsloc.al/2L0eD2Y>. See also Cara Buckley, *New York City Police Seek Trust Among*  
*Immigrants*, N.Y. Times (May 31, 2007) (showing length of efforts to build trust between  
police and immigrant communities).

27 <sup>34</sup> Brief of Amicus Curiae Cook County and other Amici in Support of Pl. Motion for  
28 Prelim. Injunction, *City of Chicago v. Sessions*, 264 F. Supp. 3d 933, No. 1:17-cv-5720 (N.D.  
Ill. 2017).

1 city officers and employees to maintain the confidentiality of residents' immigration  
2 information.<sup>35</sup> Philadelphia is currently experiencing its lowest crime rate in four decades for  
3 serious crimes such as murder, rape, robbery, and aggravated assault. Moreover, in separate  
4 litigation involving the Department of Justice, a federal district court in the Eastern District of  
5 Pennsylvania issued findings of fact, after an evidentiary hearing, that without Philadelphia's  
6 policies regarding the disclosure of immigration information, "the overall security and safety of  
7 many neighborhoods and communities would suffer" and there would be an increased risk of  
8 the "spread of an infectious disease." *City of Philadelphia v. Sessions*, 280 F. Supp. 3d 579, 611  
9 (E.D. Pa. 2017).

10 Drawing a bright line separating local governments' efforts to provide services from  
11 federal activities around immigration enforcement is a well-established best practice,  
12 particularly among law enforcement organizations. The International Association of Chiefs of  
13 Police has recognized the concern that state and local police cooperation with federal  
14 immigration enforcement activities "could have a chilling effect in immigrant communities and  
15 could limit cooperation with police by members of those communities," especially in the realm  
16 of domestic violence reporting.<sup>36</sup> Similarly, the Major Cities Chiefs Association—whose  
17 members include the 69 largest law enforcement agencies in the United States—concluded that  
18 local police efforts in support of enforcing federal immigration law "undermines the trust and  
19 cooperation with immigrant communities which are essential elements of community oriented  
20 policing."<sup>37</sup>

21 The President's Task Force on 21st Century Policing adopted a similar position. The  
22 Task Force—formed under the previous administration—engaged with a wide variety of  
23 stakeholders from across the country to formulate recommendations designed to "strengthen  
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25 <sup>35</sup> Memorandum from City of Philadelphia to City of New York (May 16, 2018).

26 <sup>36</sup> Int'l Ass'n of Chiefs of Police, *Enforcing Immigration Law: The Role of State, Tribal  
and Local Law Enforcement*, at 5, available at <http://bit.ly/2ksLZxb>.

27 <sup>37</sup> Major Cities Chiefs Ass'n, *Major Cities Chiefs Association Immigration Position* (Oct.  
28 2011), accessed May 4, 2018, <https://bit.ly/2IoRh91>.

1 community policing and trust among law enforcement officers and the communities they  
2 serve.”<sup>38</sup> The Task Force recognized that the ability of local law enforcement to build strong  
3 relationships with immigrant communities is necessary for public safety and community well-  
4 being. Thus, the President’s Task Force counseled, “whenever possible, state and local law  
5 enforcement should not be involved in immigration enforcement.”<sup>39</sup> The Task Force  
6 recommended, as a matter of good law enforcement practice, that agencies should “decouple”  
7 local policing from federal immigration enforcement, including by ending the use of  
8 notification requests by the Department of Homeland Security.<sup>40</sup> When California and other  
9 state and local governments decline requests to notify federal immigration authorities of certain  
10 detainees’ release dates, they are implementing policies supported by the best law enforcement  
11 thinking nationwide.

12 Congress too has recognized that keeping personal information confidential can serve  
13 important functions. For instance, the federal government has used confidentiality guarantees to  
14 encourage people to participate in the census and pay federal taxes. *See* 13 U.S.C. § 9(a);  
15 26 U.S.C. § 6103. Congress recognized that these goals could be better achieved by removing  
16 the threat that the information people share with the government will be used against them in a  
17 context wholly divorced from the reason they shared their information in the first place.

18 This, in the end, is what so-called sanctuary policies try to do. They create a zone free  
19 of immigration anxiety in which other essential government interests can be realized. In its rush  
20 to condemn the California Values Act, the DOJ misses the law’s basic purpose—a purpose that  
21 animates similar local government policies across the nation. Charged with the responsibility  
22 for protecting, teaching, and serving all of our residents, we have enacted policies to make clear  
23 to our residents that they can engage with local governments, secure in the knowledge that we  
24 will protect their confidential information and keep our services separate from federal

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26 <sup>38</sup> The President’s Task Force on 21st Century Policing, *Final Report* (May 2015), at iii, 1,  
available at <https://bit.ly/2KPn51P>.

27 <sup>39</sup> *Id.* at 18.

28 <sup>40</sup> *Id.*

1 immigration enforcement efforts to the utmost of our ability. Based on our experiences as the  
2 front-line providers of government services, we have concluded that these policies are essential  
3 to our ability to engage in good and effective governance. They create safer and more  
4 prosperous communities.<sup>41</sup> Contrary to the DOJ's suggestions, we—and the State of  
5 California—have the most compelling interests at stake: public safety, health, and education.  
6 The federal government's pursuit of its immigration enforcement objectives need not and  
7 should not cripple the ability of state and local governments to perform their core jobs serving  
8 all residents. The federalist structure of our Constitution, far from requiring that result, is meant  
9 to guard against it.

### 10 CONCLUSION

11 The Court should deny plaintiff's motion for a preliminary injunction and grant  
12 defendants' motion to dismiss.

13  
14 Respectfully submitted,

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28 <sup>41</sup> Tom K. Wong, Center for American Progress, *The Effects of Sanctuary Policies on Crime and the Economy* (Jan. 26, 2017), available at <http://ampr.gs/2kxOchX>.

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