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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

12 STATE OF CALIFORNIA, ex rel, XAVIER
13 BECERRA, in his official capacity as
Attorney General of the State of California,

14 Plaintiff,

15 v.

16 JEFFERSON B. SESSIONS, in his official
17 capacity as Attorney General of the United
18 States; ALAN R. HANSON, in his official
19 capacity as Acting Assistant Attorney
General; UNITED STATES DEPARTMENT
20 OF JUSTICE; and DOES 1-100,

21 Defendants.
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Case No. 17-cv-04701-WHO

The Honorable William H. Orrick

**BRIEF OF AMICUS CURIAE ANTI-
DEFAMATION LEAGUE IN SUPPORT
OF PLAINTIFF'S AMENDED MOTION
FOR PRELIMINARY INJUNCTION**

Date: December 13, 2017

Time: 2:00 p.m.

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1 **I. INTRODUCTION**

2 Defendants' interpretation and intended application of 8 U.S.C. § 1373 is not only
3 unconstitutional, but deliberately seeks to undo the protections that California law provides to its
4 most vulnerable communities and residents. Under the guise of enforcing federal immigration
5 law, the U.S. Department of Justice has made clear its intention to force jurisdictions to either
6 cease obeying state statutes that encourage reporting and preventing crime without regard to
7 immigration status, or otherwise face the loss of federal funding for desperately needed crime-
8 prevention programs. These federal threats to withdraw funding apply specifically to the grants
9 provided by the Edward Byrne Memorial Justice Assistance Grant ("JAG") program and
10 Community Oriented Policing Services ("COPS") – both of which are critical to California's
11 efforts to implement community policing, which time and again has been recognized by federal
12 and state authorities as the best approach to reducing crime rates and keeping communities safe.
13 But Defendants' agenda has nothing to do with keeping the country or its citizens safe, and
14 everything to do with stigmatizing immigrant communities. The choice presented by Defendants
15 is between accepting a legal regime that requires state agents to prioritize monitoring
16 immigration status above community safety, or accepting diminished resources. Either choice
17 fosters an environment that undermines public safety, and neither choice is lawful or morally
18 acceptable.

19 Indeed, the California laws implicated by Defendants' interpretation of § 1373 do not
20 exist to thwart federal immigration law, including § 1373; to the contrary, they expressly require
21 *compliance* with it. California has adopted a set of laws that are carefully crafted to comply with
22 § 1373, yet ensure that residents are not deterred from reporting crimes because of fears that the
23 authorities will question their immigration status. Their goal is to ensure that local law
24 enforcement is focused on deterring and punishing crimes rather than on whether the victim,
25 witness or offender is an immigrant. In addition to conserving limited resources, these statutes
26 and policies are thus designed to *assist* local law enforcement – *i.e.*, to encourage community
27 members to come forward to report crimes to local police without the fear that their immigration
28 or citizenship status will subject them to legal action themselves.

1 As California officials and law enforcement leaders around the nation have attested, there
 2 is already a demonstrable risk that undocumented immigrants and other non-citizens are being
 3 dissuaded from aiding local enforcement efforts, including efforts to combat hate crimes and
 4 terrorism. In the wake of the anti-immigrant rhetoric and policies advocated by the current
 5 Administration, both undocumented and documented immigrants justifiably fear that the police
 6 will report their immigration information (or that of a family member or friend) to Immigration
 7 and Customs Enforcement (“ICE”), thereby resulting in detention and/or deportation. As a
 8 consequence, many individuals are avoiding contact with law enforcement, causing immediate
 9 irreparable harm to communities in California and across the country. The interpretation and
 10 enforcement of § 1373 threatened by Defendants here will exponentially compound this problem
 11 by coercing state and local law enforcement to enforce Administration immigration policies.

12 In the experience of the Anti-Defamation League (“ADL”), this break-down of trust and
 13 cooperation between police and minority communities leaves communities more vulnerable to
 14 hate crimes. ADL’s long-standing history of advocating for and training law enforcement on the
 15 implementation of hate crime laws and counter-terrorism efforts makes it uniquely situated to
 16 understand the importance of community cooperation in effective policing efforts. (Motion for
 17 Leave to File Brief of *Amicus Curiae* ADL in Support of Plaintiff’s Motion, concurrently filed,
 18 at 1–2.) Accordingly, ADL submits this *amicus* brief in support of Plaintiff’s Amended Motion
 19 for Preliminary Injunction (“Motion”). Only an injunction can prevent the immediate and
 20 irreparable harm that will otherwise ensue from Defendants’ wrongful interpretation of § 1373.

21 **II. ARGUMENT**

22 **A. The California Statutes at Issue Are Aimed at Protecting Victims and** 23 **Witnesses of Hate Crimes.**

24 In their Opposition to Plaintiff’s Motion, Defendants affirm their view that California law
 25 – including California’s recently enacted Values Act (California Government Code § 7284 *et*
 26 *seq.*) – conflicts with their expansive view of § 1373. Section 1373 requires that states may not
 27 restrict state or local governmental or law enforcement officials from (1) sending information
 28 regarding an individual’s citizenship or immigration status to the Immigration and Naturalization
 Service (“INS”), (2) requesting or receiving such information from the INS, (3) maintaining such

1 information, or (4) exchanging such information with other government entities. *Id.* Contrary to
 2 Defendants’ assertion, however, the Values Act and other California laws were not adopted to
 3 prevent the enforcement of § 1373 (or any other federal immigration law), but instead to *secure*
 4 the enforcement of state criminal law, in particular by encouraging victims and witnesses to
 5 come forward and report crime.

6 Indeed, the Values Act was specifically enacted to facilitate the reporting of crimes and
 7 strengthen community policing efforts. The Values Act in pertinent part prohibits law
 8 enforcement agencies (“LEAs”) from inquiring about an individual’s immigration status for
 9 immigration enforcement purposes, subject to a savings clause that expressly permits compliance
 10 with § 1373. Cal. Gov’t Code §§ 7284.6(a)(1)(A), 7284.6(e). The Legislature enacted the
 11 statute after finding that the trust between the immigrant community and state is central to public
 12 safety and that “[t]his trust is threatened when state and local agencies are entangled with federal
 13 immigration enforcement, with the result that immigrant community members fear approaching
 14 police when they are victims of, and witnesses to, crimes, . . . to the detriment of public safety
 15 and the well-being of all Californians.” *Id.* § 7284.2(b)-(c).¹

16 Other parts of California law provide similar protections. California Penal Code Section
 17 422.93(b) provides critical protection to victims of and witnesses to hate crimes, by prohibiting
 18 peace officers from detaining and reporting such individuals exclusively for any “actual or
 19 suspected immigration violation,” when those individuals are not charged with or convicted of
 20 committing any state crimes. The statute reflects California’s public policy “to protect the public
 21 from crime and violence by encouraging all persons who are victims of or witnesses to crimes
 22 . . . to cooperate with the criminal justice system and not to penalize these persons for being
 23 victims or for cooperating with the criminal justice system.” *Id.* § 422.93(a). Again, the goal is
 24 not to deny the federal government immigration-related information, but to make clear that

25
 26 ¹ The Values Act builds upon the policies embodied in California’s TRUST and TRUTH
 27 Acts. Cal. Gov’t Code §§ 7282 *et seq.*, 7283 *et seq.* The TRUST Act defines when LEAs may
 28 detain an individual past his ordinary release date on the basis of a federal detainer request, *see*
 Cal. Gov’t Code § 7282.5, and the TRUTH Act increases transparency when federal government
 authorities seek to interview an individual in local LEA custody by requiring LEAs to notify the
 individual that such interviews are voluntary and the individual has the right to seek counsel.
See id. § 7383.1.

1 gathering such information is not the proper province of LEAs, who must instead be focused on
2 community safety.

3 Similarly, California Penal Code §§ 679.10(k) and 679.11(k) implement the state and
4 local LEA role in the federal U- and T-visa programs by prohibiting entities “from disclosing the
5 immigration status of a victim or person requesting . . . certification, except to comply with
6 federal law or legal process, or if authorized by the victim or person requesting . . . certification.”
7 Federal U- and T-visas provide protection and benefits to those who have cooperated with law
8 enforcement in investigating and prosecuting human trafficking and other enumerated crimes.
9 *See* 8 U.S.C. §§ 1101(a)(15)(T)-(U). Critical to such protections, and the associated goal of
10 fostering trust between the state and those who cooperate with law enforcement in prosecuting
11 crimes, is the assurance that the immigration status of victims remains confidential.

12 These statutes, along with other policies and statutes in California, are thus expressly
13 aimed at fostering cooperation and communication between law enforcement and the public.
14 This is the cornerstone of “community policing,” which is based on forging partnerships between
15 law enforcement and community members and groups. The U.S. Department of Justice itself has
16 affirmed that the value of community policing efforts depends in the first instance on
17 establishing trust between the community and law enforcement, because “[c]itizens who do not
18 trust the police are less likely to report crime and participate in developing solutions to
19 problems.”² A critical element of developing this trust – and the animating purpose behind the
20 adoption of the state laws that Defendants now challenge – is creating an environment in which
21 both victims and witnesses are willing to come forward and actively participate in criminal
22 investigations.

23 **B. Defendants’ Interpretation of § 1373 Undermines Law Enforcement and**
24 **Threatens Public Safety.**

25 If Defendants’ interpretation of § 1373 is not enjoined, the California statutes discussed
26 above would be dead letters, and the community safety and trust they seek to foster would be

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28 ² Matthew Scheider, *Community Policing Nugget*, COPS OFFICE, USDOJ (Feb. 2008),
[http://web.archive.org/web/20170311171441/https://cops.usdoj.gov/html/dispatch/february_2008/
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1 replaced by suspicion and fear. By undermining critical protective statutes and coercing local
 2 law enforcement agencies to enforce a federal immigration program, Defendants' interpretation
 3 of § 1373 seeks to drive a wedge between police officers and the residents they protect.

4 Without the injunction sought by the state, immigrants and members of communities with
 5 large immigrant populations will reasonably fear that their interaction with law enforcement will
 6 lead to unwanted interaction with ICE. Undocumented individuals (and their families) will be
 7 unwilling to report crimes and to assist in police investigations out of fear that contact with local
 8 police will lead to their deportation. Nor will these effects be limited to those who are
 9 undocumented: U.S. citizens and lawful residents who live among immigrant communities
 10 and/or belong to ethnic groups that include many immigrants similarly will hesitate to report
 11 crimes or assist in the investigation of crimes absent an injunction. Instead, they will fear
 12 mistakenly being treated as undocumented and/or the consequences of drawing additional law
 13 enforcement attention to their friends and neighbors.³

14 Research has confirmed that the fear of retribution following interaction with law
 15 enforcement has serious practical implications for community safety. Empirical data and
 16 analysis show that undocumented immigrants are significantly less likely to report a crime
 17 committed against them.⁴ This natural reluctance is now being compounded exponentially by a
 18 federal requirement that local law enforcement effectively act as immigration agents, leading to
 19 decreased crime reporting in the Latino community since last year. For example, in Houston and
 20 Los Angeles, rape reports by Latinos went down by 42.8 and 25 percent, respectively, from

22 ³ Fears of being treated as undocumented are well-founded. At times, ICE civil detainer
 23 requests have been directed towards U.S. Citizens. *See Mendia v. Garcia*, 768 F.3d 1009, 1011
 24 (9th Cir. 2014) (U.S. citizen spent two years in pre-trial detention as a result of the detainer);
 25 *Galarza v. Szalczyk*, 745 F.3d 634, 636–38 (3d Cir. 2014) (U.S. citizen held in jail for three days
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 27 Had to Prove It or Be Deported?*, NPR (Dec. 22, 2016), <http://www.npr.org/sections/thetwo-way/2016/12/22/504031635/you-say-you-re-an-american-butwhat-if-you-had-to-prove-it-or-be-deported#foot1> (from October 2007 through July 2015, 693 detainers issued to local LEAs were lifted or resolved with the outcome "United States Citizen Interviewed").

28 ⁴ *See, e.g.,* Sefano Camino, Giovanni Mastrobuoni, & Antonio Nicolo, *Silence of the Innocents: Illegal Immigrants' Underreporting of Crime and Their Victimization*, IZA (Oct. 2016), <https://ssrn.com/abstract=2861091>.

1 2016.⁵ Reports of spousal abuse by Latino victims have declined by 18, 13, and 3.5 percent in
 2 San Francisco, San Diego, and Los Angeles, respectively, as compared to 2016, while reporting
 3 among non-Latinos has remained the same.⁶ The decline in reports of sexual assault, in
 4 particular, has led to increased difficulty in investigating and prosecuting domestic violence.⁷

5 The overall effect of Defendants' interpretation of § 1373 is not a reduction in crime, but
 6 rather an increase in crime because the necessary trust and cooperation between the police and
 7 local communities is reduced. For example, one study completed in early 2016 compared
 8 counties with a "sanctuary" policy – *i.e.*, counties that do not assist federal immigration
 9 enforcement officials by holding people in custody beyond their release date – with non-
 10 sanctuary counties that were similar on a broad range of demographic characteristics. The study
 11 concluded that "[t]here are, on average, 35.5 fewer crimes committed per 10,000 people in
 12 sanctuary counties compared to nonsanctuary counties."⁸

13 California's recognition that enforcement of state criminal law should be delinked (to the
 14 extent possible) from the enforcement of federal immigration law simply echoes what the federal
 15 government itself has previously acknowledged. Indeed, federal agencies have expressly
 16 affirmed the importance of encouraging undocumented victims to report criminal activity and
 17 cooperate in the prosecution of crimes. As but one example, 8 C.F.R. § 245.24 provides an
 18 incentive for undocumented immigrants who are victims of certain enumerated crimes to report
 19 those crimes, and thereby become eligible to apply for lawful immigration status. U.S.

20 _____
 21 ⁵ Carolina Moreno, *Houston Police Announce Decrease in Latinos Reporting Rape, Violent Crimes* (Apr. 10, 2017), http://www.huffingtonpost.com/entry/houston-police-announces-decrease-in-latinos-reporting-rape-violent-crimes_us_58ebd5fae4b0df7e204455f4.

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 23 ⁶ James Queally, *Fearing Deportation, Many Domestic Violence Victims Are Steering Clear of Police and Courts*, L.A. TIMES (October 9, 2017), <http://www.latimes.com/local/lanow/la-me-ln-undocumented-crime-reporting-20171009-story.html>.

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 25 ⁷ Jennifer Medina, *Too Scared to Report Sexual Abuse. The Fear: Deportation*, N.Y. TIMES (Apr. 30, 2017), <https://www.nytimes.com/2017/04/30/us/immigrants-deportation-sexual-abuse.html>.

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 27 ⁸ Tom K. Wong, *The Effects of Sanctuary Policies on Crime and the Economy*, CTR. FOR AM. PROGRESS (Jan. 26, 2017), <https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy>.

1 Citizenship and Immigration Services has stated that the purpose of this provision is “to
 2 strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic
 3 violence, sexual assault, trafficking of aliens and other crimes, while also protecting victims of
 4 crimes.”⁹ The federal government has itself thus openly acknowledged that the participation of
 5 immigrant communities in law enforcement practices is essential to public safety.

6 **C. Defendants’ Interpretation of § 1373 Directly and Disproportionately**
 7 **Harms Immigrant Communities and Leaves Them More Vulnerable to**
 8 **Hate Crimes.**

8 By forcing California to disregard the statutory protections for victims, witnesses and
 9 other individuals contained in the Values Act and the pertinent provisions of California’s Penal
 10 Code, or face the devastating loss of JAG and COPS funding for crime prevention and law
 11 enforcement programs, Defendants’ interpretation and application of § 1373 would either way
 12 leave a large segment of the population particularly vulnerable to crimes, especially hate crimes.

13 The federal government and 45 states around the country – including California, in part
 14 through the statutes discussed above – have shown their commitment to protecting minority
 15 groups by enacting hate crime legislation based on, or similar to, a model statute drafted by
 16 ADL.¹⁰ Recently, the landmark Matthew Shepard and James Byrd Jr. Hate Crimes Prevention
 17 Act of 2009 (“HCPA”) created a new federal criminal law which criminalizes willfully causing
 18 bodily injury when the crime was committed because of the actual or perceived race, color,
 19 religion, or national origin of the victim, or the crime was committed because of actual or
 20 perceived religion, national origin, gender, sexual orientation, gender identity, or disability, and
 21 the crime affected interstate or foreign commerce or occurred within federal special maritime
 22 and territorial jurisdiction. 18 U.S.C. § 249(a). The purpose of the HCPA is to create more
 23 effective response to and prevention of hate crimes, which “are disturbingly prevalent, [] pose a
 24

25 ⁹ USCIS, *Victims of Criminal Activity: U Nonimmigrant Status* (Aug. 2017),
 26 <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status> (last visited
 27 Nov. 28, 2017).

28 ¹⁰ ADL, *Hate Crimes*, <https://www.adl.org/what-we-do/combat-hate/hate-crimes> (last
 visited Nov. 28, 2017).

1 significant threat to the full participation of all Americans in our democratic society,” and
 2 “are significantly under-reported.”¹¹

3 ADL has closely monitored and exposed the increasingly hateful anti-immigrant, anti-
 4 Latino, and anti-Muslim rhetoric that has surrounded the national debate on immigration
 5 reform.¹² Studies have shown that hate crimes have been on the rise.¹³ For example, California
 6 LEAs saw an 11.2 percent increase in reported hate crimes from 2015 to 2016, and more than
 7 half of the reported hate crimes in California in 2016 occurred on the basis of race, ethnicity, or
 8 national origin.¹⁴ The FBI recently reported that, nationally, hate crimes rose nearly 5 percent
 9 from 2015 to 2016, including a 19 percent increase in anti-Muslim hate crimes.¹⁵

10 People within immigrant communities are especially vulnerable to hate crime.¹⁶ Indeed,
 11 one study found that “[i]n a national survey of 464 immigration service providers conducted in
 12

13 ¹¹ H.R. REP. NO. 111-86 at 5.

14 ¹² ADL, *Executive Order on So-Called “Sanctuary Cities” Puts All Communities at Risk*,
 15 *ADL Says* (Jan. 25, 2017), <https://www.adl.org/news/press-releases/executive-order-on-so-called-sanctuary-cities-puts-all-communities-at-risk-adl>; Ric Anderson, *Q+A: ADL Leader Says That as Trump Surged, So Did Hate Crimes*, LAS VEGAS SUN (Dec. 22, 2016),
 16 <https://lasvegassun.com/news/2016/dec/22/qa-adl-leader-says-that-as-trump-surged-so-did-hat>.

17 ¹³ See, e.g., German Lopez, *A New FBI Report Says Hate Crimes – Especially Against Muslims – Went up in 2016*, VOX (Nov. 13, 2017),
 18 <https://www.vox.com/identities/2017/11/13/16643448/fbi-hate-crimes-2016> (according to FBI
 19 statistics, reported hate crimes in 2016 increased by nearly 5 percent); L.A. Cty. Comm’n on
 20 Human Relations, *2015 Hate Crime Report*,
 21 [http://www.lahumanrelations.org/hatecrime/reports/2015%20Hate%20Crime%20Report%20PDF%20\(1\).pdf](http://www.lahumanrelations.org/hatecrime/reports/2015%20Hate%20Crime%20Report%20PDF%20(1).pdf) (finding that crimes targeting Latino/as jumped 69 percent in Los Angeles County
 22 in 2015); Michael Shively, et al., *Understanding Trends in Hate Crimes Against Immigrants and Hispanic-Americans*, NAT’L INST. OF JUSTICE (Dec. 27, 2013),
 23 <https://www.ncjrs.gov/pdffiles1/nij/grants/244755.pdf> (“From 2010 to 2011, there was a statistically significant increase in the prevalence of harassment or bullying targeting Hispanics because of their ethnicity.”).

24 ¹⁴ Patrick McGreevy, *Hate Crimes Rise in California, State Report Says*, L.A. TIMES (July 3, 2017), <http://www.latimes.com/politics/essential/la-pol-ca-essential-politics-updates-hate-crimes-rise-in-california-with-1499106658-htmllstory.html>.

25 ¹⁵ Ryan Lucas, *Hate Crimes up in 2016, FBI Statistics Show*, NATIONAL PUBLIC RADIO (November 13, 2017), <https://www.npr.org/2017/11/13/563737883/hate-crimes-up-in-2016-fbi-statistics-show>; Katayoun Kishi, *Assaults Against Muslims in U.S. Surpass 2001 Level*, PEW RESEARCH CENTER (November 15, 2017), <http://www.pewresearch.org/fact-tank/2017/11/15/assaults-against-muslims-in-u-s-surpass-2001-level>.

28 ¹⁶ Int’l Ass’n of Chiefs of Police, *Police Chiefs Guide to Immigration Issues* 28 (July 2007), <http://www.theiacp.org/Portals/0/pdfs/Publications/PoliceChiefsGuidetoImmigration.pdf>.

1 2012 [], advocates reported that 73% of hate crime victims they had served were targeted on the
 2 basis of immigration status/nationality.”¹⁷ Both documented and undocumented immigrants, and
 3 even members of minority communities that may be perceived as immigrants, face an increased
 4 danger of hate crimes.

5 While the increased number of reported hate crimes is already troubling, the data
 6 certainly *underrepresents* the number of hate crimes occurring across the U.S. Out of 15,254
 7 LEAs that participated in FBI’s Hate Crime Statistics Act data collection in 2016, less than 12%
 8 reported one or more hate crimes to the FBI.¹⁸ Data obtained by the Bureau of Justice Statistics’
 9 National Crime Victimization Survey show that, from 2011 to 2015, the majority (54 percent) of
 10 hate crime victimizations in the U.S. were not reported to the police.¹⁹

11 Moreover, the most likely victims of hate crimes are also those least likely to report those
 12 crimes.²⁰ These individuals are often immigrants who face cultural and language barriers, along
 13 with fear of deportation or reprisal if they report incidents to the police.²¹ Immigrant victims of
 14 crime often do not recognize the victimization they face as a crime and, even when a victim
 15 overcomes substantial barriers and reports a crime, “the crime may not be recognized as bias
 16 motivated by the local police because of lack of training or language difficulties.”²² These
 17 barriers extend beyond the fear of reporting violent crimes to infect every aspect of immigrant
 18

19 ¹⁷ Jeanine Braud, *et al.*, *U Visas for Immigrant Victims of Hate Crimes: A Practice Guide*
 20 *for Advocates*, U.C. BERKELEY PUB. L. AND LEGAL THEORY RESEARCH PAPER SERIES 20 (June
 26, 2014), <https://ssrn.com/abstract=2459315>.

21 ¹⁸ ADL, *Comparison of FBI Hate Crime Statistics (2016-2000)* (Nov. 2017),
 22 <https://www.adl.org/sites/default/files/documents/Final%20PDF%20FBI%20Hate%20Crime%20Statistics%20Comparison%202000-2016%20%282%29.pdf>.

23 ¹⁹ Bureau of Justice Statistics, *Majority of Hate Crime Victimization Go Unreported to*
Police (June 29, 2017), <https://www.bjs.gov/content/pub/press/hcv0415pr.cfm>.

24 ²⁰ ADL, *Testimony of Jonathan A. Greenblatt CEO and National Director Anti-Defamation*
 25 *League Before the Senate Judiciary Committee Hearings on Responses to Increase in Religious*
 26 *Hate Crimes* (May 2, 2017),
<https://www.adl.org/sites/default/files/documents/Final%20ADL%20statement%20Senate%20Judiciary%20Committee%20on%20combatting%20religious%20hate%20crime.pdf>.

27 ²¹ *Id.*

28 ²² Michael Shively, *et al.*, *Understanding Trends in Hate Crimes Against Immigrants and*
Hispanic-Americans, NAT’L INST. OF JUSTICE (Dec. 27, 2013),
<https://www.ncjrs.gov/pdffiles1/nij/grants/244755.pdf>.

1 life. Indeed, people within immigrant communities are particularly susceptible to economic
 2 crimes, including wage theft and other employer abuses.²³ Day laborers are easy targets for
 3 unscrupulous employers, who hire them and then disappear before paying their day's wages.²⁴
 4 Workers who are robbed of their wages are often afraid to report the theft because of their
 5 immigration status. As Professor Stephen Lee of the University of California, Irvine School of
 6 Law stated, "[D]istrust of the police effectively neutralizes the potential of wage theft statutes
 7 when enforced against employers who hire unauthorized immigrant workers."²⁵

8 Defendants' interpretation of § 1373 requires California LEAs to be complicit in allowing
 9 such information as to victims, witnesses and accused individuals – in short, anyone who
 10 encounters law enforcement in any capacity – to be used for unrelated immigration enforcement
 11 purposes. Absent an injunction, victims and witnesses will hesitate to contact law enforcement
 12 when doing so may subject them or their family members to possible detention or deportation in
 13 the absence of statutory protections. Combined with the current atmosphere surrounding the
 14 immigration debate, this lack of community engagement will leave vast portions of the
 15 population especially vulnerable to hate crimes and other criminal attacks. Offenders will
 16 specifically target victims in immigrant communities without fear of prosecution. These effects
 17 are immediate and irreparable, and will severely undermine the relationships that LEAs have
 18 spent countless hours building with the very communities that they are charged with policing.

22 _____
 23 ²³ Liz Robbins, *New Weapon in Day Laborers' Fight Against Wage Theft: A Smartphone*
 24 *App*, N.Y. TIMES (Mar. 1, 2016), [https://www.nytimes.com/2016/03/02/nyregion/new-weapon-](https://www.nytimes.com/2016/03/02/nyregion/new-weapon-in-day-laborers-fight-against-wage-theft-a-smartphone-app.html)
 25 [in-day-laborers-fight-against-wage-theft-a-smartphone-app.html](https://www.nytimes.com/2016/03/02/nyregion/new-weapon-in-day-laborers-fight-against-wage-theft-a-smartphone-app.html).

24 ²⁴ Stephen Lee, *Policing Wage Theft in the Day Labor Market*, 4 U.C. IRVINE L. REV. 655
 25 (2014).

26 ²⁵ *Id.* at 665. Day laborers are also especially vulnerable to robberies and anti-immigration
 27 vigilantes. *See, e.g.*, Jason McGahan, *Day Laborers Have Become an Easy Target for Anti-*
 28 *Immigrant Vigilantes*, LA WEEKLY (Jan. 10, 2017), [http://www.laweekly.com/news/day-](http://www.laweekly.com/news/day-laborers-have-become-an-easy-target-for-anti-immigrant-vigilantes-7803494)
[laborers-have-become-an-easy-target-for-anti-immigrant-vigilantes-7803494](http://www.laweekly.com/news/day-laborers-have-become-an-easy-target-for-anti-immigrant-vigilantes-7803494); Megan Cassidy,
Phoenix Police: Armed Robber Targets Day Laborers with Promise of Work, THE REPUBLIC
 (July 30, 2015), [http://www.azcentral.com/story/news/local/phoenix/2015/07/30/phoenix-police-](http://www.azcentral.com/story/news/local/phoenix/2015/07/30/phoenix-police-armed-robber-lobo-bandit-targets-day-laborers-promise-work/30918721)
[armed-robber-lobo-bandit-targets-day-laborers-promise-work/30918721](http://www.azcentral.com/story/news/local/phoenix/2015/07/30/phoenix-police-armed-robber-lobo-bandit-targets-day-laborers-promise-work/30918721).

1 **D. Defendants’ Interpretation of § 1373 Hinders Counter-Terrorism Efforts**

2 In addition to hindering local police and law enforcement activities, Defendants’
 3 interpretation of § 1373 would harm national counter-terrorism efforts – another cornerstone of
 4 contemporary public safety. Engagement with the community is essential for effective homeland
 5 security. Since September 11th, law enforcement agencies actively have sought to develop
 6 relationships with Arab, Middle Eastern, Muslim and South Asian communities, which have
 7 been both targets in need of protection and potential sources of information. These partnerships
 8 are analogous to community policing efforts and have led to numerous terrorism prosecutions.²⁶
 9 Tips from Muslim-Americans have helped thwart 27 percent of 126 known potential domestic
 10 terrorist attacks since 2001.²⁷ For example, an imam in Queens, New York provided tips that led
 11 to the arrest of Najibullah Zazi, who was sentenced to life in prison in 2010 for conspiring to
 12 bomb the New York subway system.²⁸

13 For this reason, Homeland Security experts have spoken out against measures – such as
 14 the interpretation of § 1373 proffered by Defendants here – that lead to a loss of trust and
 15 cooperation between law enforcement and the community. For example, John Cohen, who
 16 worked for the Office of National Intelligence under President Bush and the Department of
 17 Homeland Security under President Obama, said about another anti-immigration measure, “[i]t
 18 may drive a wedge between law enforcement authorities and members of the Arab-American or
 19 Muslim-American community at the very time we need cooperation and partnership . . . It’s
 20 certainly going to impact the relationship with federal authorities as they seek to reach out to
 21 Muslim community leaders in an effort to have them work together.”²⁹ Implementation of

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 23 ²⁶ David A. Harris, *Law Enforcement and Intelligence Gathering in Muslim and Immigrant*
 24 *Communities After 9/11*, U. PITTSBURGH LEGAL STUDIES RESEARCH PAPER SERIES (Jan. 1, 2009),
<https://ssrn.com/abstract=1330023>.

25 ²⁷ Charles Kurzman, *Muslim-American Terrorism: Declining Further*, TRIANGLE CTR. ON
 26 TERRORISM AND HOMELAND SECURITY (Feb. 1, 2013),
[https://kurzman.unc.edu/files/2011/06/Kurzman_Muslim-](https://kurzman.unc.edu/files/2011/06/Kurzman_Muslim-American_Terrorism_February_1_2013.pdf)
[American_Terrorism_February_1_2013.pdf](https://kurzman.unc.edu/files/2011/06/Kurzman_Muslim-American_Terrorism_February_1_2013.pdf).

27 ²⁸ Josh Sanburn, *President Trump’s Immigration Order Could Harm the Fight Against*
 28 *Domestic Terror Some Experts Warn*, TIME (Jan. 31, 2017), [http://time.com/4655229/president-](http://time.com/4655229/president-trump-immigration-executive-order-muslims-terrorism-police..)
[trump-immigration-executive-order-muslims-terrorism-police..](http://time.com/4655229/president-trump-immigration-executive-order-muslims-terrorism-police..)

²⁹ *Id.*

1 Defendants' interpretation of § 1373 would force California to abandon statutes aimed at
2 fostering trust with immigrant communities, thus removing an important layer of protection
3 against terrorist attacks. Defendants' unlawful and misguided immigration policies do not and
4 cannot justify such a result.

5 **III. CONCLUSION**

6 For the foregoing reasons, Defendants' interpretation and intended enforcement of § 1373
7 will inflict irreparable harm if its enforcement is not enjoined, and the public interest dictates
8 entry of a preliminary injunction.

9 DATED: November 29, 2017

LATHAM & WATKINS LLP

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