

**Case 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, Case No. 17-cv-03894 (Baylson, J.)

---

**BRIEF OF *AMICUS CURIAE* ANTI-DEFAMATION LEAGUE IN  
SUPPORT OF PLAINTIFF-APPELLEE CITY OF PHILADELPHIA**

---

LATHAM & WATKINS LLP

Robert W. Perrin (SBN 194485)

Sarah F. Mitchell (SBN 308467)

Michael A. Hale (SBN 319056)

355 South Grand Avenue, Suite 100

Los Angeles, California 90071

Telephone: (213) 485-1234

Facsimile: (213) 891-8763

Attorneys for *Amicus Curiae*  
Anti-Defamation League

**CORPORATE DISCLOSURE STATEMENT OF *AMICUS CURIAE***

Pursuant to Federal Rule of Appellate Procedure 26.1 and Third Circuit Rule 26.1, *amicus* Anti-Defamation League states that it is a nonprofit organization, it has no parent company, and it has not issued any shares of stock. *Amicus* is represented in this matter by Latham & Watkins LLP.

By         /s/ Robert W. Perrin        

Robert W. Perrin  
355 S. Grand Ave., Suite 100  
Los Angeles, CA 90071  
(213) 485-1234

**TABLE OF CONTENTS**

I. INTRODUCTION ..... 1

II. ARGUMENT..... 4

    A. Philadelphia’s Welcoming City Policies Are Aimed at  
    Protecting Victims and Witnesses of Crimes..... 4

    B. The AG’s Unlawful Imposition of Conditions on JAG Grants  
    Would Only Undermine the Effectiveness of Law Enforcement  
    and Threaten Public Safety for All..... 7

    C. The AG’s Unlawful Imposition of Conditions on JAG Grants  
    Directly and Disproportionately Harms Immigrant  
    Communities and Leaves Them More Vulnerable to  
    Hate Crimes. .... 11

III. CONCLUSION..... 18

**TABLE OF AUTHORITIES**

**Page(s)**

**CASES**

*Galarza v. Szalczyk*,  
745 F.3d 634 (3d Cir. 2014) .....8

*Mendia v. Garcia*,  
768 F.3d 1009 (9th Cir. 2014) .....8

**STATUTES**

18 U.S.C. § 249(a) .....12

**REGULATIONS**

8 C.F.R. § 245.24 .....8

**OTHER AUTHORITIES**

ADL, *Comparison of FBI Hate Crime Statistics (2016-2000)* (Nov. 2017),  
<https://www.adl.org/sites/default/files/documents/Final%20PDF%20FBI%20Hate%20Crime%20Statistics%20Comparison%202000-2016%20%282%29.pdf> .....15

ADL, *Executive Order on So-Called “Sanctuary Cities” Puts All Communities at Risk, 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> .....13

ADL, *Hate Crimes*, <https://www.adl.org/what-we-do/combat-hate/hate-crimes> (last visited Oct. 2, 2018) .....12

ADL, *Testimony of Jonathan A. Greenblatt CEO and National Director Anti-Defamation League Before the Senate Judiciary Committee Hearings on Responses to Increase in Religious 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> .....16

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>..... 15

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](http://www.huffingtonpost.com/entry/houston-police-announces-decrease-in-latinos-reporting-rape-violent-crimes_us_58ebd5fae4b0df7e204455f4)..... 10

Chris Magnus, *Tucson’s Police Chief: Sessions’s Anti-Immigrant Policies Will Make Cities More Dangerous*, N.Y. TIMES (Dec. 6, 2017), <https://nyti.ms/2nBbnTZ> ..... 9

Eyder Peralta, *You Say You’re an American, but What If You 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> ..... 8

German Lopez, *A New FBI Report Says Hate Crimes – Especially Against Muslims – Went up in 2016*, VOX (Nov. 13, 2017), <https://www.vox.com/identities/2017/11/13/16643448/fbi-hate-crimes-2016>..... 14

H.R. REP. NO. 111-86..... 12

Int’l Ass’n of Chiefs of Police, *Police Chiefs Guide to Immigration Issues* 28 (July 2007), <https://kymnradio.net/wp-content/uploads/2016/12/2-Police-Chiefs-Guide-to-Immigration.pdf> ..... 13

James Queally, *Fearing Deportation, Many Domestic Violence Victims Are Steering Clear of Police and Courts*, L.A. TIMES (Oct. 9, 2017), <http://www.latimes.com/local/lanow/la-me-ln-undocumented-crime-reporting-20171009-story.html> ..... 10

Jason McGahan, *Day Laborers Have Become an Easy Target for Anti-Immigrant Vigilantes*, LA WEEKLY (Jan. 10, 2017), <http://www.laweekly.com/news/day-laborers-have-become-an-easy-target-for-anti-immigrant-vigilantes-7803494> ..... 17

Jeanine Braud, *et al.*, *U Visas for Immigrant Victims of Hate Crimes: A Practice Guide for Advocates*, U.C. BERKELEY PUB. L. AND LEGAL THEORY RESEARCH PAPER SERIES 20 (June 26, 2014), <https://ssrn.com/abstract=2459315> ..... 13

Jennifer Medina, *Too Scared to Report Sexual Abuse. The Fear: Deportation*, N.Y. TIMES (Apr. 30, 2017), <https://nyti.ms/2qkt2wM>..... 10

Jessica Weiss, *Six Months of Hate: How Anti-immigrant Sentiment Is Affecting Latinos in the United States*, UNIVISIONNEWS (June 14, 2017), <https://www.univision.com/univision-news/united-states/six-months-of-hate-how-anti-immigrant-sentiment-is-affecting-latinos-in-the-united-states> ..... 14

Katayoun Kishi, *Assaults Against Muslims in U.S. Surpass 2001 Level*, PEW RESEARCH CENTER (Nov. 15, 2017), <http://www.pewresearch.org/fact-tank/2017/11/15/assaults-against-muslims-in-u-s-surpass-2001-level>..... 15

L.A. Cty. Comm’n on Human Relations, *2015 Hate Crime Report*, [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)..... 14

Liz Robbins, *New Weapon in Day Laborers’ Fight Against Wage Theft: A Smartphone App*, N.Y. TIMES (Mar. 1, 2016), <https://nyti.ms/2mJBnst> ..... 16

Matthew Scheider, *Community Policing Nugget*, CMTY. ORIENTED POLICING SERVS. OFFICE, U.S. DEP’T OF JUSTICE (Feb. 2008), [http://web.archive.org/web/20170311171441/https://cops.usdoj.gov/html/dispatch/february\\_2008/nugget.html](http://web.archive.org/web/20170311171441/https://cops.usdoj.gov/html/dispatch/february_2008/nugget.html) ..... 6

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-armed-robber-lobo-bandit-targets-day-laborers-promise-work/30918721> ..... 17

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>..... 14, 16

National Immigrant Women’s Advocacy Project, *Promoting Access to Justice for Immigrants and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey* (May 3, 2018), <http://library.niwap.org/wp-content/uploads/Immigrant-Access-to-Justice-National-Report.pdf>.....10

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-htmlstory.html>.....14

Ric Anderson, *Q+A: ADL Leader Says That as Trump Surged, So Did Hate Crimes*, LAS VEGAS SUN (Dec. 22, 2016), <https://lasvegassun.com/news/2016/dec/22/qa-adl-leader-says-that-as-trump-surged-so-did-hat>.....13

Ryan Lucas, *Hate Crimes up in 2016, FBI Statistics Show*, NATIONAL PUBLIC RADIO (Nov. 13, 2017), <https://www.npr.org/2017/11/13/563737883/hate-crimes-up-in-2016-fbi-statistics-show>.....15

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> .....9

Stephanie Walters, *Immigration Policies*, CITY OF PHILADELPHIA (Jan. 8, 2018), <https://www.phila.gov/2018-01-08-immigration-policies> .....4

Stephen Lee, *Policing Wage Theft in the Day Labor Market*, 4 U.C. IRVINE L. REV. 655 (2014) .....17

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>.....11

Tom K. Wong, *Sanctuary Cities Don't 'Breed Crime.' They Encourage People to Report Crime*, THE WASHINGTON POST (Apr. 24, 2018), [https://www.washingtonpost.com/news/monkey-cage/wp/2018/04/24/sanctuary-cities-dont-breed-crime-they-encourage-people-to-report-crime/?noredirect=on&utm\\_term=.2a830008f040](https://www.washingtonpost.com/news/monkey-cage/wp/2018/04/24/sanctuary-cities-dont-breed-crime-they-encourage-people-to-report-crime/?noredirect=on&utm_term=.2a830008f040).....5, 6



## **IDENTITY AND INTEREST OF *AMICUS CURIAE***

*Amicus curiae* Anti-Defamation League (“ADL”) is a non-profit organization that fights anti-Semitism and all forms of bigotry, defends democratic ideals, and protects civil rights for all. ADL has regional offices across the country, including an office in Philadelphia.

ADL is a leading organization in preventing and responding to hate crimes, having drafted the nation’s first model hate crime law and having led a large coalition advocating for the passage of the federal Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (“HCPA”). ADL has also been recognized as a leading resource on effective responses to violent bigotry and building bridges of communication, understanding, and respect among diverse communities. To support those aims, ADL trains law enforcement on issues including hate crimes and implicit bias. The *Law Enforcement and Society* (“LEAS”) training program, developed in 1998 by ADL in partnership with the U.S. Holocaust Memorial Museum, focuses on building trust between law enforcement and the communities they serve.

ADL is uniquely situated to assist the Court in evaluating the impact of the U.S. Department of Justice’s attempt to impose immigration enforcement-related conditions on the City of Philadelphia in order for it to receive federal funding pursuant to the Edward Byrne Memorial Justice Assistance Grant program.

Specifically, ADL can provide perspective on the likely suppressive effect that these conditions will have on community policing, and thus the reporting and prevention of crimes, including hate crimes. ADL's arguments thus further demonstrate, beyond the parties' briefing, why the injunction obtained by the City of Philadelphia should be affirmed.

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), ADL states that no party's counsel authored this brief in whole or in part, and no party, party's counsel, or other person contributed money intended to fund the preparation or submission of this brief.

## I. INTRODUCTION

The United States Attorney General's (the "AG") attempt to impose immigration enforcement-related conditions on the City of Philadelphia's ("Philadelphia" or the "City") receipt of federal law enforcement grants is not only unconstitutional, but appears deliberately aimed at undoing the protections that Philadelphia and other cities provide to their most vulnerable communities and residents. The AG's proposed conditions on funding seek to compel Philadelphia to either abandon critical policies it has carefully developed over time to ensure the safety and well-being of *all* residents, or otherwise face the loss of federal funding for desperately needed crime-prevention programs. Either alternative undermines public safety, and neither alternative is lawful or morally acceptable.

The AG's threats to withdraw funding apply specifically to the grants provided to Philadelphia and other communities by the Edward Byrne Memorial Justice Assistance Grant ("JAG") program. JAG grants are critical to efforts to implement community policing, which has been widely recognized by federal and state authorities as the best approach to reducing crime rates and keeping communities safe. The conditions on JAG grants sought by the AG, however, have nothing to do with keeping Philadelphia or its citizens safe, and everything to do with stigmatizing immigrants.

By contrast, Philadelphia’s “Welcoming City” policies are carefully crafted to both comply with federal immigration law and to help ensure that citizens are not deterred from reporting crimes or otherwise engaging with local law enforcement because of fears that authorities will question their immigration status. The goal is to encourage local law enforcement to focus on deterring and responding to crimes, rather than on whether the victim, witness, or offender is an immigrant. In addition to conserving limited resources, Philadelphia’s policies are thus designed to *assist* local law enforcement—*i.e.*, to advance police-community relations and encourage community members to come forward to report crimes and turn to police for protection, without the fear that their immigration or citizenship status will subject them to legal action themselves.

As law enforcement leaders in Philadelphia and around the nation have attested, there is a demonstrable risk that both documented and undocumented immigrants would be dissuaded from engaging with local enforcement efforts, including efforts to combat hate crime, if the AG’s proposed conditions on funding are enforced. In the wake of the anti-immigrant rhetoric and policies advocated by the current Administration, members of immigrant groups already justifiably fear that the police will report their immigration information—or that of a family member or friend—to Immigration and Customs Enforcement (“ICE”), thereby risking detention and/or deportation. As a consequence, many individuals are

avoiding contact with law enforcement. The conditions on JAG grants that the AG seeks to impose will significantly compound this problem by making any immigrant's visit to a police station fraught with perceived peril, regardless of their immigration status, and regardless of whether they are a victim or witness of a crime.

In the experience of ADL, which specializes in training law enforcement agencies around the nation in hate crimes, this breakdown of trust and cooperation between police and local communities leaves communities more vulnerable to such crimes. Moreover, the resulting lawlessness compromises the safety of all, as the elimination of trust in local law enforcement makes it much harder for law enforcement to get the information they need from immigrant communities to prevent crime, including, in particular, hate crimes.

The District Court correctly held that all three conditions the AG seeks to impose on JAG grants are unlawful, and correctly issued a permanent injunction prohibiting enforcement of the conditions. Indeed, only an injunction can prevent the immediate and irreparable harm that will otherwise ensue from the imposition of the AG's unlawful conditions on JAG grants. Accordingly, ADL submits this *amicus* brief in support of Plaintiff/Appellee.

## II. ARGUMENT

### A. Philadelphia's Welcoming City Policies Are Aimed at Protecting Victims and Witnesses of Crimes.

Over several years, Philadelphia has implemented “Welcoming City” policies designed to build trust between City officers and immigrant communities in Philadelphia, while also allowing City officers to engage with federal immigration enforcement when serious crime is at issue. These policies are based on the City’s recognition that “trust between officers and immigrant communities is essential to reducing crime and helping victims.”<sup>1</sup> Philadelphia accordingly enforces policies that include a number of restrictions on local law enforcement’s ability to gather immigration-related information and/or take actions to aid federal immigration enforcement.

Philadelphia has highlighted four of its Welcoming City policies in this case, which are critical to the success of community policing.<sup>2</sup> According to Philadelphia Police Commissioner Richard Ross, the overall goal of such policies is to ensure that all of Philadelphia’s residents, including immigrants, understand that the Philadelphia Police Department is “there to protect and serve them” and

---

<sup>1</sup> Stephanie Walters, *Immigration Policies*, CITY OF PHILADELPHIA (Jan. 8, 2018), <https://www.phila.gov/2018-01-08-immigration-policies>.

<sup>2</sup> See Br. for Plaintiff-Appellee City of Philadelphia (Doc. No. 003113052704) at 6-9.

“feel totally comfortable coming forth with whatever information they” have about the commission of a crime.<sup>3</sup> Commissioner Ross recognized that inquiries by the Police Department about immigration status “would create an environment where some of our partners in the neighborhoods would fear us,” and thus “would severely inhibit our ability to gain information, intel, and things that would keep the city safer.”<sup>4</sup>

These concerns are not merely speculative. Far to the contrary, there is demonstrable evidence that “enlisting local law enforcement agencies to enforce federal immigration law can drive undocumented immigrants deeper into the shadows.”<sup>5</sup> A recent survey of undocumented Mexican nationals in San Diego County, for example, found that “if local law enforcement officials were working together with ICE, 60.8 percent said they are less likely to report a crime they

---

<sup>3</sup> Joint Suppl. App’x (“SA”) (Doc. No. 003113050615) at SA2, ¶ 5 (Joint Stipulation of Facts). Commissioner Ross has further stated that the challenged City policies and practices are specifically aimed at fostering cooperation and communication between law enforcement and the public. Dist. Court Dkt. No. 65-1 at 14:15-15:3 (Oct. 26, 2017 Hr’g Tr.).

<sup>4</sup> SA53 at 36:6-25 (Oct. 26, 2017 Hr’g Tr.).

<sup>5</sup> Tom K. Wong, *Sanctuary Cities Don’t ‘Breed Crime.’ They Encourage People to Report Crime*, THE WASHINGTON POST (Apr. 24, 2018), [https://www.washingtonpost.com/news/monkey-cage/wp/2018/04/24/sanctuary-cities-dont-breed-crime-they-encourage-people-to-report-crime/?noredirect=on&utm\\_term=.2a830008f040](https://www.washingtonpost.com/news/monkey-cage/wp/2018/04/24/sanctuary-cities-dont-breed-crime-they-encourage-people-to-report-crime/?noredirect=on&utm_term=.2a830008f040).

witnessed, and 42.9 percent said they are less likely to report being a victim of crime.”<sup>6</sup>

Even the AG’s Office itself has affirmed that the value of community policing efforts depends in the first instance on establishing trust between the community and law enforcement, because “[c]itizens who do not trust the police are less likely to report crime and participate in developing solutions to problems.”<sup>7</sup> A critical element of developing this trust is creating an environment in which both victims and witnesses are willing to come forward and actively participate in criminal investigations. In communities like Philadelphia with large immigrant populations, this necessarily means establishing policies that permit residents to interact with and report crimes to the police without fear that their immigration status will be used against them. Public safety in the city and throughout the nation depends on *all* community members having this trust.

---

<sup>6</sup> *Id.*

<sup>7</sup> Matthew Scheider, *Community Policing Nugget*, CMTY. ORIENTED POLICING SERVS. OFFICE, U.S. DEP’T OF JUSTICE (Feb. 2008), [http://web.archive.org/web/20170311171441/https://cops.usdoj.gov/html/dispatch/february\\_2008/nugget.html](http://web.archive.org/web/20170311171441/https://cops.usdoj.gov/html/dispatch/february_2008/nugget.html).



**B. The AG’s Unlawful Imposition of Conditions on JAG Grants Would Only Undermine the Effectiveness of Law Enforcement and Threaten Public Safety for All.**

If the AG’s conditions on JAG funding are not enjoined, Philadelphia’s Welcoming City policies will be dead letters, and the community safety and trust that Philadelphia has fostered over two decades of community policing would be replaced by suspicion and fear. As Commissioner Ross testified, if Philadelphia were to lose the hard-won community trust it has built, the challenge of rebuilding that trust would be “almost ... insurmountable”<sup>8</sup>, undermining the safety and security of all of the City’s residents.

As a preliminary matter, the challenged JAG grant conditions conflict with multiple aspects of Philadelphia’s Welcoming City policies, particularly its restrictions on allowing ICE agents to access and use state law enforcement facilities for federal immigration enforcement purposes.<sup>9</sup> The conditions also make no distinction between convicted, accused, and innocent detainees, and give no consideration whatsoever to the rights of third parties—including victims, witnesses and family members—who may be at a police station reporting a crime or merely visiting a detainee. In short, the conditions would risk turning local police into immigration enforcement officials in the eyes of the community, if not

---

<sup>8</sup> SA62-63 at 45:23-46:6 (Oct. 26, 2017 Hr’g Tr.).

<sup>9</sup> See Br. for Plaintiff-Appellee City of Philadelphia (Doc. No. 003113052704) at 6-9.

in practice. The resulting erosion of trust between the community and the police, and the underreporting of crime that would result, is exactly what Philadelphia's Welcoming City policies, and many of the federal government's own policies,<sup>10</sup> were put in place to avoid.

If Philadelphia complies with the AG's conditions, immigrants and members of communities with large immigrant populations would reasonably fear that their interaction with law enforcement would necessarily lead to unwanted interaction with ICE. As a result, both undocumented and documented immigrants will be unwilling to assist in police investigations out of justifiable fear that contact with local police will lead to their detention and/or deportation, or that of a family member or friend.<sup>11</sup> Commissioner Ross testified to this fact, noting that in his

---

<sup>10</sup> As but one example, 8 C.F.R. § 245.24 provides an incentive for undocumented immigrants who are victims of certain enumerated crimes to report those crimes, and thereby become eligible to apply for lawful immigration status. U.S. Citizenship and Immigration Services has stated that the purpose of this provision is "to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes, while also protecting victims of crimes."

<sup>11</sup> These fears are justified regardless of immigration status. Indeed, ICE civil detainer requests have sometimes been directed towards U.S. Citizens. *See Mendia v. Garcia*, 768 F.3d 1009, 1011 (9th Cir. 2014) (U.S. citizen spent two years in pre-trial detention as a result of the detainer); *Galarza v. Szalczyk*, 745 F.3d 634, 636–38 (3d Cir. 2014) (U.S. citizen held in jail for three days pursuant to erroneous detainer); Eyder Peralta, *You Say You're an American, but What If You 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->

experience, people will not come forward if they believe that they, or their children, are at risk of being deported.<sup>12</sup> Similarly, Philadelphia First Deputy Managing Director Brian Abernathy testified that he “know[s] from speaking to advocates that people are scared. People are hesitant to report crimes, hesitant to approach the City for any reason because they’re afraid it may cause them to engage with ICE.”<sup>13</sup>

Research has confirmed that the fear of retribution following interaction with law enforcement has serious practical implications for community safety.<sup>14</sup> Indeed, this Administration’s immigration-related policies have exacerbated fears and anxieties, and thus already affected community interaction with law enforcement. Since last year, for example, there has been a notable decline in the reporting of crime by members of the Latino community.<sup>15</sup> The decline in reports

---

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”).

<sup>12</sup> SA55 at 38:4-12 (Oct. 26, 2017 Hr’g Tr.).

<sup>13</sup> SA100 at 38:16-19 (Apr. 30, 2018 Hr’g Tr.).

<sup>14</sup> 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>.

<sup>15</sup> See Chris Magnus, *Tuscon’s Police Chief: Sessions’s Anti-Immigrant Policies Will Make Cities More Dangerous*, N.Y. TIMES (Dec. 6, 2017), <https://nyti.ms/2nBbnTZ>.

of sexual assault, in particular, has led to increased difficulty in investigating and prosecuting domestic violence.<sup>16</sup> At the same time, the “decline in cooperation and [] rise in fear of law enforcement”<sup>17</sup> among immigrant communities “is leading to increased recidivism by perpetrators of a range of crimes in their communities, including domestic and sexual violence crimes.”<sup>18</sup>

---

For example, in 2017, rape reports by Latinos in Houston and Los Angeles went down by 42.8 and 25 percent, respectively, compared to 2016. 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](http://www.huffingtonpost.com/entry/houston-police-announces-decrease-in-latinos-reporting-rape-violent-crimes_us_58ebd5fae4b0df7e204455f4). Reports of spousal abuse by Latino victims in 2017 declined by 18, 13, and 3.5 percent in San Francisco, San Diego, and Los Angeles, respectively, as compared to 2016, while reporting among non-Latinos remained the same. James Queally, *Fearing Deportation, Many Domestic Violence Victims Are Steering Clear of Police and Courts*, L.A. TIMES (Oct. 9, 2017), <http://www.latimes.com/local/lanow/la-me-ln-undocumented-crime-reporting-20171009-story.html>.

<sup>16</sup> Jennifer Medina, *Too Scared to Report Sexual Abuse. The Fear: Deportation*, N.Y. TIMES (Apr. 30, 2017), <https://nyti.ms/2qkt2wM>.

Deputy Managing Director Abernathy recognized, in his testimony at the District Court, that a requirement that the City notice ICE when someone is released from custody “would have a chilling effect on the reporting of crimes, specifically around certain crimes that are the hardest to detect, like domestic violence.” SA121 at 80:17-20 (Apr. 30, 2018 Hr’g Tr.).

<sup>17</sup> National Immigrant Women’s Advocacy Project, *Promoting Access to Justice for Immigrants and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey*, at 35 (May 3, 2018), <http://library.niwap.org/wp-content/uploads/Immigrant-Access-to-Justice-National-Report.pdf>.

<sup>18</sup> *Id.* at 54.

The overall effect of the AG’s policies thus is not a reduction in crime, but rather an *increase* in crime, as the necessary trust and cooperation between the police and local communities is reduced. Indeed, one recent study, completed in early 2017, compared counties with a “sanctuary” policy—*i.e.*, counties that do not assist federal immigration enforcement officials by holding people in custody beyond their release date—with non-sanctuary counties that were similar on a broad range of demographic characteristics. The study concluded that “[t]here are, on average, 35.5 fewer crimes committed per 10,000 people in sanctuary counties compared to nonsanctuary counties.”<sup>19</sup>

If the AG’s conditions on JAG funding are not enjoined, the harms that will occur from the breakdown of community policing and crime reporting will be immediate and irreparable. And it will be difficult—if not impossible—for local police to rebuild the bonds of trust and cooperation with immigrant communities.

**C. The AG’s Unlawful Imposition of Conditions on JAG Grants Directly and Disproportionately Harms Immigrant Communities and Leaves Them More Vulnerable to Hate Crimes.**

By attempting to force Philadelphia to disregard its decades-old policies aimed at building trust between police and citizens, the AG’s actions—if not

---

<sup>19</sup> 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>.

enjoined—will leave a large segment of the population particularly vulnerable to crimes, especially hate crimes.

Forty-five states (including Pennsylvania) and the District of Columbia have shown their commitment to protecting communities against bias-motivated crimes by enacting hate crime legislation based on, or similar to, a model statute drafted by ADL.<sup>20</sup> The federal government demonstrated a similar commitment with the passage of the landmark HCPA in 2009. That statute criminalizes willfully causing bodily injury when the crime was committed because of the actual or perceived race, color, religion, or national origin of the victim, or the crime was committed because of actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability, and the crime affected interstate or foreign commerce or occurred within federal special maritime and territorial jurisdiction. 18 U.S.C. § 249(a). The purpose of the HCPA is to create more effective responses to and prevention of hate crimes, which “are disturbingly prevalent, [] pose a significant threat to the full participation of all Americans in our democratic society,” and “are significantly under-reported.”<sup>21</sup>

---

<sup>20</sup> ADL, *Hate Crimes*, <https://www.adl.org/what-we-do/combat-hate/hate-crimes> (last visited Oct. 2, 2018).

<sup>21</sup> H.R. REP. NO. 111-86 at 5.

People within immigrant communities are especially vulnerable to hate crime.<sup>22</sup> One study found that “[i]n a national survey of 464 immigration service providers conducted in 2012 [], advocates reported that 73% of hate crime victims they had served were targeted on the basis of immigration status/nationality.”<sup>23</sup> Both documented and undocumented immigrants, and even members of minority communities that may be perceived as immigrants, face an increased danger of hate crimes.

ADL has closely monitored and exposed the increasingly hateful anti-immigrant, anti-Latino, and anti-Muslim rhetoric that has surrounded the national debate on immigration reform.<sup>24</sup> During the period since the 2016 presidential election, individuals have reported increased hate incidents and hate crimes

---

<sup>22</sup> Int’l Ass’n of Chiefs of Police, *Police Chiefs Guide to Immigration Issues* 28 (July 2007), <https://kymnradio.net/wp-content/uploads/2016/12/2-Police-Chiefs-Guide-to-Immigration.pdf>.

<sup>23</sup> Jeanine Braud, *et al.*, *U Visas for Immigrant Victims of Hate Crimes: A Practice Guide for Advocates*, U.C. BERKELEY PUB. L. AND LEGAL THEORY RESEARCH PAPER SERIES 20 (June 26, 2014), <https://ssrn.com/abstract=2459315>.

<sup>24</sup> ADL, *Executive Order on So-Called “Sanctuary Cities” Puts All Communities at Risk, 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), <https://lasvegassun.com/news/2016/dec/22/qa-adl-leader-says-that-as-trump-surged-so-did-hat>.

targeting Latinos based on perceived immigration status.<sup>25</sup> Indeed, studies have shown that reported hate crimes have been on the rise.<sup>26</sup> For example, California saw an 11.2 percent increase in reported hate crimes from 2015 (before the anti-immigrant rhetoric of the election campaign) to 2016, with the majority of the reported hate crimes in California in 2016 occurring on the basis of race, ethnicity, or national origin.<sup>27</sup> The FBI reported in November 2017 that, nationally, hate

---

<sup>25</sup> Jessica Weiss, *Six Months of Hate: How Anti-immigrant Sentiment Is Affecting Latinos in the United States*, UNIVISIONNEWS (June 14, 2017), <https://www.univision.com/univision-news/united-states/six-months-of-hate-how-anti-immigrant-sentiment-is-affecting-latinos-in-the-united-states>.

<sup>26</sup> See, e.g., German Lopez, *A New FBI Report Says Hate Crimes – Especially Against Muslims – Went up in 2016*, VOX (Nov. 13, 2017), <https://www.vox.com/identities/2017/11/13/16643448/fbi-hate-crimes-2016> (according to FBI statistics, reported hate crimes in 2016 increased by nearly 5 percent); L.A. Cty. Comm’n on Human Relations, *2015 Hate Crime Report*, [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 in 2015); 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> (“From 2010 to 2011, there was a statistically significant increase in the prevalence of harassment or bullying targeting Hispanics because of their ethnicity.”).

<sup>27</sup> 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-htmlstory.html>.



crimes rose nearly 5 percent from 2015 to 2016, including a 19 percent increase in anti-Muslim hate crimes.<sup>28</sup>

While the increased number of reported hate crimes is already troubling, the data certainly *underrepresents* the number of hate crimes occurring across the U.S. Out of 15,254 law enforcement agencies that participated in FBI's Hate Crime Statistics Act data collection in 2016, less than 12 percent reported one or more hate crimes to the FBI.<sup>29</sup> Data obtained by the Bureau of Justice Statistics' National Crime Victimization Survey show that, from 2011 to 2015, the majority (54 percent) of hate crime victimizations in the U.S. were not reported to the police.<sup>30</sup>

---

<sup>28</sup> Ryan Lucas, *Hate Crimes up in 2016, FBI Statistics Show*, NATIONAL PUBLIC RADIO (Nov. 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 (Nov. 15, 2017), <http://www.pewresearch.org/fact-tank/2017/11/15/assaults-against-muslims-in-u-s-surpass-2001-level>.

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

<sup>30</sup> 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>.

Moreover, the most likely victims of hate crimes are also those least likely to report those crimes.<sup>31</sup> These individuals are often immigrants who face cultural and language barriers, along with fear of deportation or reprisal if they report incidents to the police.<sup>32</sup> Immigrant victims of crime often do not recognize the victimization they face as a crime, and even when a victim overcomes substantial barriers and reports a crime, “the crime may not be recognized as bias motivated by the local police because of lack of training or language difficulties.”<sup>33</sup>

These barriers extend beyond the fear of reporting violent crimes to infect every aspect of immigrant life. Indeed, people within immigrant communities are particularly susceptible to economic crimes, including wage theft and other employer abuses.<sup>34</sup> Day laborers are easy targets for unscrupulous employers, who

---

<sup>31</sup> ADL, *Testimony of Jonathan A. Greenblatt CEO and National Director Anti-Defamation League Before the Senate Judiciary Committee Hearings on Responses to Increase in Religious Hate Crimes* (May 2, 2017), <https://www.adl.org/sites/default/files/documents/Final%20ADL%20statement%20Senate%20Judiciary%20Committee%20on%20combating%20religious%20hate%20crime.pdf>.

<sup>32</sup> *Id.*

<sup>33</sup> 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>.

<sup>34</sup> Liz Robbins, *New Weapon in Day Laborers’ Fight Against Wage Theft: A Smartphone App*, N.Y. TIMES (Mar. 1, 2016), <https://nyti.ms/2mJBnst>.

hire them and then disappear before paying their day's wages.<sup>35</sup> Workers who are robbed of their wages are often afraid to report the theft because of their immigration status. As Professor Stephen Lee of the University of California, Irvine School of Law stated, "[D]istrust of the police effectively neutralizes the potential of wage theft statutes when enforced against employers who hire unauthorized immigrant workers."<sup>36</sup>

If the AG's imposition of JAG grant conditions is not enjoined, victims and witnesses will hesitate to contact law enforcement when doing so may subject them or their family members to possible detention or deportation in the absence of the City's protective policies. Combined with the current atmosphere surrounding the immigration debate, this lack of community engagement will leave vast portions of the population especially vulnerable to hate crimes and other criminal attacks. Offenders will feel emboldened to target victims in immigrant communities without fear of prosecution, and members of immigrant communities

---

<sup>35</sup> Stephen Lee, *Policing Wage Theft in the Day Labor Market*, 4 U.C. IRVINE L. REV. 655 (2014).

<sup>36</sup> *Id.* at 665. Day laborers are also especially vulnerable to robberies and anti-immigration vigilantes. *See, e.g.*, Jason McGahan, *Day Laborers Have Become an Easy Target for Anti-Immigrant Vigilantes*, LA WEEKLY (Jan. 10, 2017), <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-armed-robber-lobo-bandit-targets-day-laborers-promise-work/30918721>.

will fear retribution if they seek help from the police. These effects are immediate and irreparable, as law enforcement officials around the nation have spent countless hours building relationships with immigrant communities that now are being threatened or destroyed.

### III. CONCLUSION

For the foregoing reasons, ADL requests that this Court affirm the District Court's permanent injunction on the AG imposing the notice, access, and Section 1373 compliance conditions on Philadelphia's receipt of JAG grant funding.

Dated: October 11, 2018

LATHAM & WATKINS LLP

By         /s/ Robert W. Perrin        

Robert W. Perrin

Sarah F. Mitchell

Michael A. Hale

355 S. Grand Ave., Suite 100

Los Angeles, CA 90071

(213) 485-1234

ANTI-DEFAMATION LEAGUE

Steven M. Freeman

Melissa Garlick

Amy E. Feinman

605 Third Avenue

New York, NY 10158

(212) 885-7700

Attorneys for Anti-Defamation League

## **COMBINED CERTIFICATIONS**

### **I. CERTIFICATE OF BAR MEMBERSHIP**

I, Robert W. Perrin, counsel for *amicus curiae* Anti-Defamation League, hereby certify pursuant to Local Rule 23.3(d) that I am a member in good standing of the bar of the Court of Appeals for the Third Circuit.

### **II. CERTIFICATE OF WORD COUNT**

Pursuant to Federal Rule of Appellate Procedure 29(a)(5) and 32(a)(7), I hereby certify that this brief contains 4,006 words as counted using the word-count feature in Microsoft Word, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 and a 14-point Times New Roman font.

### **III. CERTIFICATE OF IDENTICAL BRIEFS**

Pursuant to Local Rule 31.1(c), I certify that the text of the electronic and hard copy forms of this brief are identical.

### **IV. CERTIFICATE OF VIRUS CHECK**

Pursuant to Local Rule 31.1(c), I certify that a virus check of the electronic PDF version of this brief was performed using McAfee Endpoint Security, which

was updated on October 11, 2018, and according to that program no virus was detected.

Dated: October 11, 2018

Respectfully submitted,

*/s/ Robert W. Perrin*

Robert W. Perrin  
355 S. Grand Ave., Suite 100  
Los Angeles, CA 90071  
(213) 485-1234

**CERTIFICATE OF SERVICE**

I hereby certify that on October 11, 2018, I caused a copy of the foregoing *amicus curiae* brief to be served by electronic means, via the Court's CM/ECF system, on all counsel registered to receive electronic notices.

Respectfully submitted,

/s/ Robert W. Perrin

Robert W. Perrin  
355 S. Grand Ave., Suite 100  
Los Angeles, CA 90071  
(213) 485-1234