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#### UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

#### MOTION INFORMATION STATEMENT

Docket Number(s): 18-1597	Caption [use short title]
Motion for: Leave to File Amicus Curiae Brief	Ravidath Lawrence Ragbir, et al., v. Thomas D. Homan, et al.
Set forth below precise, complete statement of relief sought:	
Leave to File The Attached Amicus Brief on Behalf of 24 Immigrants'	
Rights Advocacy Organizations In Support Of Plaintiffs-Appellants	
MOVING PARTY: See Addendum	DPPOSING PARTY: See Addendum
PlaintiffDefendant	
Appellant/Petitioner Appellee/Respondent	
MOVING ATTORNEY: Yosef J. Riemer, P.C.	OPPOSING ATTORNEY: See Addendum
[name of attorney, with firm, addre	
Kirkland & Ellis LLP	
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212-446-4800; yosef.riemer@kirkland.com	
Court- Judge/ Agency appealed from: United States District Court	, Southern District of New York
Please check appropriate boxes:	FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND
Has movant notified opposing counsel (required by Local Rule 27.1):  ✓ Yes No (explain):	INJUCTIONS PENDING APPEAL:  Has this request for relief been made below?  Has this relief been previously sought in this court?  Requested return date and explanation of emergency:
Opposing counsel's position on motion:  Unopposed Opposed Don't Know  Does opposing counsel intend to file a response:  Yes No Don't Know	
	s for oral argument will not necessarily be granted)
Has argument date of appeal been set?   ✓ Yes No If yes, en	nter date: October 29, 2018 at 10:00am
Signature of Moving Attorney:	
/s/ Yosef J. Riemer, P.C. Date: 9/7/18	Service by: CM/ECF Other [Attach proof of service]

#### Addendum to Form T-1080 Motion Information Sheet

#### Moving Parties

Center for Community Change

Illinois Coalition for Immigrant and Refugee Rights

Make the Road Connecticut

Make the Road New Jersey

Make the Road Nevada

Make the Road New York

Make the Road Pennsylvania

OneAmerica

Progressive Leadership Alliance of Nevada

Services Immigrant Rights & Education Network

Adelante Alabama Worker Center

Coalition for Humane Immigrant Rights

Migrant Justice

New Mexico Faith Coalition for Immigrant Justice

Colorado Immigrant Rights Coalition

Pineros y Campesinos Unidos del Noroeste

Pennsylvania Immigration and Citizenship Coalition

Workers Defense Project

Tennessee Immigrant and Refugee Rights Coalition

Mujeres Latinas en Accion

National Immigration Law Center

Service Employees International Union, Local 32BJ

The Center for Popular Democracy and the Center for Popular

**Democracy Action** 

Citizen Action of New York

#### Opposing Parties

Thomas D. Homan, in his official capacity as Deputy Director and Senior Official Performing the duties of the Director of U.S. Immigration and Customs Enforcement Thomas Decker, in his official capacity as New York Field Office Director for U.S. Immigration and Customs Enforcement

Scott Mechkowski, in his official capacity as Assistant New York Field Office Directorfor U.S. Immigration and Customs Enforcement

United States Immigration and Customs Enforcement

Kirstjen M. Nielsen, in her official capacity as Secretary of Homeland Security

United States Department of Homeland Security

Jefferson B. Sessions III, in his official capacity as Attorney General of the United States

United States Department of Justice

#### Opposing Counsel

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# 18-1597

IN THE

# United States Court of Appeals

FOR THE SECOND CIRCUIT

RAVIDATH LAWRENCE RAGBIR, NEW SANCTUARY COALITION OF NEW YORK CITY, CASA DE MARYLAND, INC., DETENTION WATCH NETWORK, NATIONAL IMMIGRATION PROJECT OF THE NATIONAL LAWYERS GUILD, NEW YORK IMMIGRATION COALITION,

Plaintiffs-Appellants,

-against-

THOMAS D. HOMAN, IN HIS OFFICIAL CAPACITY AS DEPUTY DIRECTOR AND SENIOR OFFICIAL PERFORMING THE DUTIES OF THE DIRECTOR OF U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, THOMAS DECKER, IN HIS OFFICIAL CAPACITY AS NEW YORK FIELD OFFICE DIRECTOR FOR

(Caption continued on inside cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

MOTION OF 24 IMMIGRANTS' RIGHTS ADVOCACY ORGANIZATIONS FOR LEAVE TO FILE BRIEF AS *AMICI* CURIAE IN SUPPORT OF PLAINTIFFS-APPELLANTS

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Defendants-Appellees.

#### CORPORATE DISCLOSURE STATEMENT

- Center for Community Change has no parent company, and no publicly held company owns 10% or more of Center for Community Change.
- 2. Illinois Coalition for Immigrant and Refugee Rights has no parent company, and no publicly held company owns 10% or more of Illinois Coalition for Immigrant and Refugee Rights.
- 3. Make the Road Connecticut has no parent company, and no publicly held company owns 10% or more of Make the Road Connecticut.
- 4. Make the Road New Jersey has no parent company, and no publicly held company owns 10% or more of Make the Road New Jersey.
- 5. Make the Road Nevada has no parent company, and no publicly held company owns 10% or more of Make the Road Nevada.
- 6. Make the Road New York has no parent company, and no publicly held company owns 10% or more of Make the Road New York.
- 7. Make the Road Pennsylvania has no parent company, and no publicly held company owns 10% or more of Make the Road Pennsylvania.

- 8. OneAmerica has no parent company, and no publicly held company owns 10% or more of OneAmerica.
- 9. Progressive Leadership Alliance of Nevada has no parent company, and no publicly held company owns 10% or more of Progressive Leadership Alliance of Nevada.
- 10. Services Immigrant Rights & Education Network has no parent company, and no publicly held company owns 10% or more of Services Immigrant Rights & Education Network.
- 11. Adelante Alabama Worker Center has no parent company, and no publicly held company owns 10% or more of Adelante Alabama Worker Center.
- 12. Coalition for Humane Immigrant Rights has no parent company, and no publicly held company owns 10% or more of Coalition for Humane Immigrant Rights.
- 13. Migrant Justice has no parent company, and no publicly held company owns 10% or more of Migrant Justice.
- 14. New Mexico Faith Coalition for Immigrant Justice has no parent company, and no publicly held company owns 10% or more of New Mexico Faith Coalition for Immigrant Justice.

- 15. Colorado Immigrant Rights Coalition has no parent company, and no publicly held company owns 10% or more of Colorado Immigrant Rights Coalition.
- 16. Pineros y Campesinos Unidos del Noroeste has no parent company, and no publicly held company owns 10% or more of Pineros y Campesinos Unidos del Noroeste.
- 17. Pennsylvania Immigration and Citizenship Coalition has no parent company, and no publicly held company owns 10% or more of Pennsylvania Immigration and Citizenship Coalition.
- 18. Workers Defense Project has no parent company, and no publicly held company owns 10% or more of Workers Defense Project.
- 19. Tennessee Immigrant and Refugee Rights Coalition has no parent company, and no publicly held company owns 10% or more of Tennessee Immigrant and Refugee Rights Coalition.
- 20. Mujeres Latinas en Accion has no parent company, and no publicly held company owns 10% or more of Mujeres Latinas en Accion.
- 21. National Immigration Law Center has no parent company, and no publicly held company owns 10% or more of National Immigration Law Center.

- 22. Service Employees International Union, Local 32BJ, has no parent company and no publicly held company owns 10% or more of Service Employees International Union, Local 32BJ.
- 23. The Center for Popular Democracy and the Center for Popular Democracy Action have no parent company, and no publicly held company owns 10% or more of the Center for Popular Democracy or the Center for Popular Democracy Action.
- 24. Citizen Action of New York has no parent company, and no publicly held company owns 10% or more of Citizen Action of New York.

#### INTRODUCTION

Pursuant to Federal Rule of Appellate Procedure 29(b) and Second Circuit Local Rule 29.1, Center for Community Change, Illinois Coalition for Immigrant and Refugee Rights, Make the Road Connecticut, Make the Road New Jersey, Make the Road Nevada, Make the Road New York, Make the Road Pennsylvania, OneAmerica, Progressive Leadership Alliance of Nevada, Services Immigrant Rights & Education Network, Adelante Alabama Worker Center, Coalition for Humane Immigrant Rights, Migrant Justice, New Mexico Faith Coalition for Immigrant Justice, Colorado Immigrant Rights Coalition,

Pineros y Campesinos Unidos del Noroeste, Pennsylvania Immigration and Citizenship Coalition, Workers Defense Project, Tennessee Immigrant and Refugee Rights Coalition, Mujeres Latinas en Accion, National Immigration Law Center, Service Employees International Union, Local 32BJ, the Center for Popular Democracy and the Center for Popular Democracy Action, and Citizen Action of New York (collectively "Amici") respectfully move this Court for leave to file the attached amici curiae brief in support of Plaintiffs-Appellants.

The Proposed Amici, who filed a similar brief in the District Court, have received Plaintiffs-Appellants' consent to file this Motion.

Defendants-Appellants have advised the Proposed Amici that they do not oppose this Motion.

#### STATEMENT OF INTEREST OF AMICI CURIAE

Amici are 24 civil rights organizations from 16 states and the District of Columbia dedicated to advocating on behalf of people who face serious burdens because of the current immigration laws. A crucial way that amici engage in such advocacy is by giving immigrants the opportunity to have a voice—to speak publicly about their experiences. When immigrants speak, it allows their neighbors to see in the flesh the

injustices that immigrants face, and reminds people who ordinarily hear about immigrants merely as abstractions or statistics that the immigration system is harming real people.

Defendants, through their deliberate targeting for removal, detention, or other adverse immigration action of immigrants who speak out, are chilling *amici*'s political speech and depriving the public debate over immigration of the voices of those most affected by the immigration system. Already, amici have canceled speeches or press appearances by immigrants because those immigrants fear that if they speak out, they will be locked up, shackled, and placed on an airplane to a distant land, forbidden to return, even as Congress actively debates immigration. Several of amici's advocacy includes encouraging the citizen relatives of people affected by the immigration system to register to vote, and to encourage those eligible to seek to naturalize—but fear of reprisals against vulnerable relatives has deterred even many citizens from exercising their voice. Amici seek leave to file the proposed brief in order to inform this Court of the effects Defendants' actions have had on their advocacy and the public debate about the immigration laws.

Amici's work focuses on advancing the rights of people affected by the immigration laws and their enforcement. Each organization is uniquely positioned to offer its expertise on this exceptionally important legal issue and offers the Court the experiences of their respective members, many of whom will be irreparably harmed if the retaliatory actions of Defendants are allowed to continue.

#### DESIRABILITY & RELEVANCE OF AMICI CURIAE BRIEF

There is undoubtedly profound public interest in this case, which concerns retaliatory enforcement actions taken by U.S. Immigration and Customs Enforcement (ICE) against immigrant activists. These targeted activities chill and stifle the constitutionally protected free speech of millions across the nation—both of non-citizens who fear retaliation, and of citizens whose loved ones are at risk.

The District Court's decision, unless overturned, only validates fear of retaliation for exercising Constitutional rights, chills First Amendment activities, and limits information available to the public. By endorsing the retaliatory exercise of ICE's enforcement and removal powers, shielded from judicial review by the Immigration and Nationality Act, even by means of *habeas corpus* and even if in violation

of the Constitution, the District Court's decision puts millions of people at the unreviewable whim of the executive. If permitted to stand, it would create an extraordinary realm of power contrary to our history and traditions.

Amici, for the reasons set forth above, can present first-hand evidence of that chill and the dangers it presents to the values protected by the First Amendment of free and open debate immune from official reprisals. As amici can show, these are not mere theoretical concerns. Rather, every day, people fear to speak about abuses of power by government officials and matters at the center of political debate lest they or their loved ones become targets.

#### CONCLUSION

For these reasons, and those more fully expressed in the proposed brief appended to this Motion, *Amici* respectfully request leave to file their brief in support of Plaintiffs-Appellants.

### Respectfully submitted,

#### /s/ Yosef J. Riemer, P.C.

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Counsel for Amici Curiae Twenty-Four Immigrants' Rights Advocacy Organizations

# 18-1597

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Plaintiffs-Appellants,

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THOMAS D. HOMAN, IN HIS OFFICIAL CAPACITY AS DEPUTY DIRECTOR AND SENIOR OFFICIAL PERFORMING THE DUTIES OF THE DIRECTOR OF U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, THOMAS DECKER, IN HIS OFFICIAL CAPACITY AS NEW YORK FIELD OFFICE DIRECTOR FOR

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#### BRIEF OF 24 IMMIGRANTS' RIGHTS ADVOCACY ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLANTS

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#### INTEREST OF AMICI AND SUMMARY OF ARGUMENT<sup>1</sup>

*Amici curiae* are twenty-four organizations from across the United States dedicated to organizing communities that struggle with burdens imposed by immigration laws and policies. Individual statements of interest are set forth in Appendix A attached hereto. A core part of amici's advocacy is amplifying the voices of immigrants, including noncitizens—by organizing public speeches, media interviews, and online campaigns in which immigrants tell their stories. When the public and elected officials hear directly from those who have been marginalized, immigrant community members have the opportunity to contest misconceptions about immigrants and bring a human face to the immigration debate. This allows immigrants to be viewed as people, not just statistics. Amici and their members and clients thus hope to inform the ongoing public debate on immigration. And by organizing voter registration and naturalization drives in immigrant communities, some

Counsel for the parties have not authored this brief. The parties and counsel for the parties have not contributed money that was intended to fund preparing or submitting the brief. No person other than the *amici curiae* contributed money that was intended to fund preparing or submitting this brief.

of *amici* hope to give immigrants and their loved ones a greater voice in government too.

*Amici* submit this brief to assist the Court in understanding that the retaliatory enforcement by Defendants, the departments, agencies, and officials responsible for administering the immigration laws, places a severe chill on amici's advocacy—and on the public's ability to hear from people with first-hand experience of injustices imposed by the immigration laws and policies. This chill extends far beyond amici. Just recently, for example, the Washington Post reported that a U.S. citizen who is an Army veteran and former Border Patrol cadet and correctional officer was denied a passport (because the Government refused, without proof, to believe the authenticity of his birth certificate). He felt he could only speak to journalists "on the condition that his last name not be used so that he wouldn't be targeted by immigration enforcement."2

<sup>&</sup>lt;sup>2</sup> Kevin Sieff, U.S. Is Denying Passports to Americans Along the Border, Throwing Their Citizenship into Question, Washington Post, Aug. 29, 2018, <a href="https://www.washingtonpost.com/world/the\_americas/us-is-denying-passports-to-americans-along-the-border-throwing-their-citizenship-into-question/2018/08/29/1d630e84-a0da-11e8-a3dd-2a1991f075d5\_story.html">https://www.washingtonpost.com/world/the\_americas/us-is-denying-passports-to-americans-along-the-border-throwing-their-citizenship-into-question/2018/08/29/1d630e84-a0da-11e8-a3dd-2a1991f075d5\_story.html</a>. This Court has also recently dealt with numerous instances of extended wrongful detention of U.S. citizens by

First-hand narratives are one of the oldest forms of political advocacy. Perhaps the most effective use of narratives in American history was the abolitionist movement's use of narratives of enslaved people, most famously the Narrative of the Life of Frederick Douglass, the Narrative of William W. Brown, a Fugitive Slave, Written by Himself, and Solomon Northup's Twelve Years a Slave. People sharing their own experiences with the public have played a similar role in almost every political movement in modern history. Yet because immigrants fear to speak up as a result of Defendants' retaliatory targeting, the public discourse about immigration has been profoundly chilled.

The decision below exacerbates that chill, by not only finding no constitutional bar to deporting political opponents based on their speech but also by holding that the Immigration and Nationality Act strips the

immigration authorities. *E.g.*, *Jaen v. Sessions*, No. 17-1512, 2018 WL 3826019 (2d Cir. Aug. 13, 2018) (ordering immediate release of U.S. citizen held in immigration detention for nearly two years, long after it became clear that his claims of citizenship were colorable); *id.* at \*6 n.2 (noting reports that ICE alone has wrongfully detained at least 1480 U.S. citizens since 2012); *Watson v. United States*, 865 F.3d 123 (2d Cir. 2017) (tort claims of citizen held in immigration detention for 3 ½ years).

courts of the power to scrutinize unconstitutional detention by means of habeas corpus. That is plainly wrong. Indeed, the Father of the Constitution, James Madison, explained the unconstitutionality of the Alien and Sedition Acts by pointing to the excessive and unreviewable executive discretion the Acts granted to the "banish[]" of non-citizens and their suspension of the writ of habeas corpus for people the President ordered to depart.<sup>3</sup> And the Third Circuit recently held that similar jurisdiction-stripping provisions of the INA were an unconstitutional suspension of the writ, at least as applied to the constitutional claims of non-citizens who have developed substantial connections with the United States since their arrival.<sup>4</sup>

In order to protect political advocacy by and alongside immigrants, this District Court's decision should be reversed. The First Amendment protects *amici*'s speech, and the speech of their members, citizens or not. The notion that in the United States, a person can be

James Madison, Report on the Virginia Resolutions (Jan. 7, 1800), in 17 Papers of James Madison 318 (David B. Mattern ed. 1991); see Sessions v. Dimaya, 138 S. Ct. 1204, 1230 & n.2 (2018) (opinion of Gorsuch, J.) (discussing Madison's Report and dubbing the Alien Friends Act "one of the most notorious laws in our country's history.").

<sup>&</sup>lt;sup>4</sup> Osorio-Martinez v. Attorney General, 893 F.3d 153 (3d Cir. 2018).

locked up and exiled by the Government for criticizing its policies—without the benefit of judicial review—is anathema to the Constitution.

#### **ARGUMENT**

"Among the most serious allegations a federal court can address are that an Executive agency has targeted citizens for mistreatment based on their political views." The right to criticize the government and its policies is fundamental to the First Amendment—so much so that the Supreme Court has held that "[t]he freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state." The framers of the Constitution established a "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open."

<sup>&</sup>lt;sup>5</sup> In re United States, 817 F.3d 953, 955 (6th Cir. 2016) (addressing allegations of I.R.S. targeting of organizations that advocated conservative political viewpoints).

<sup>&</sup>lt;sup>6</sup> City of Houston, Tex. v. Hill, 482 U.S. 451, 462–63 (1987).

N.Y. Times Co. v. Sullivan, 376 U.S. 254, 270 (1964). See also Mills v. State of Ala., 384 U.S. 214, 218 (1966) ("Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that

Indeed, as Judge Werker once wrote on behalf of a three-judge panel of the Southern and Eastern Districts, "[f]ree debate on public issues is essential to the survival of the Republic."<sup>8</sup>

In this Circuit, in order to establish a retaliatory enforcement claim, a plaintiff must prove that "(1) he has a right protected by the First Amendment; (2) the defendant's actions were motivated or substantially caused by his exercise of that right; and (3) the defendant's actions caused him some injury."

The first prong is simple: the First Amendment protects Plaintiffs, amici, and their members, both citizens and non-citizens, alike. It is settled law that organizations and associations have the right to engage

Amendment was to protect the free discussion of governmental affairs.").

<sup>&</sup>lt;sup>8</sup> Vanasco v. Schwartz, 401 F. Supp. 87, 97 (E.D.N.Y. & S.D.N.Y. 1975), aff'd, 423 U.S. 1041 (1976) (summary affirmance); see also Citizens United v. Fed. Election Comm'n, 558 U.S. 310, 339 (2010) ("Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people. . . . The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it.").

<sup>9</sup> Dorsett v. Cnty. of Nassau, 732 F.3d 157, 160 (2d Cir. 2013) (per curiam)

in political speech, fully protected by the First Amendment. <sup>10</sup> Similarly, the Supreme Court has long recognized that "Freedom of speech and of press is accorded aliens residing in this country." <sup>11</sup> Indeed, people with substantial connections to this country have constitutional rights even if they are subject to removal under the immigration laws. <sup>12</sup> And for good reason. Were that not so, the Government could identify meddlesome journalists or political dissidents who are not citizens, search for an obscure and technical statutory ground of removal—say, the grievous sin of submitting a written notice of a change of address eleven days after moving rather than ten <sup>13</sup>—and upend their lives with

<sup>&</sup>lt;sup>10</sup> *E.g.*, *Citizens United*, 558 U.S. at 342 (holding that non-profit political organization had First Amendment rights, and collecting cases).

<sup>&</sup>lt;sup>11</sup> Bridges v. Wixon, 326 U.S. 135, 148 (1945).

See, e.g., United States v. Verdugo-Urquidez, 494 U.S. 259, 271 (1990) ("[A]liens receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country."); Plyler v. Doe, 457 U.S. 202, 210 (1982) ("Whatever his status under the immigration laws, an alien is surely a 'person' in any ordinary sense of that term. Aliens, even aliens whose presence in this country is unlawful, have long been recognized as 'persons' guaranteed due process of law by the Fifth and Fourteenth Amendments.").

<sup>&</sup>lt;sup>13</sup> 8 U.S.C. §§ 1305(a) & 1306(b).

the courts forced to stand idly by. If that were the law, then by the "principal characteristics by which we distinguish a free nation from a police state," tens of millions of non-citizens, including lawful permanent residents, would live in the latter. <sup>14</sup> It should thus be uncontroversial that that is not the law.

As for the second and third prongs, *amici* set forth below their experience of targeting by Defendants and of how it has suppressed the ability of people affected by the immigration system to speak out about the injustice they have experienced.

Finally, in light of the District Court's holding that it lacked jurisdiction to review allegations of the government unconstitutionally targeting critics for deportation, *amici* explain why executive targeting of critics is at the heart of the right protected by the Suspension Clause, and why it is a constitutional necessity to let people who fear unconstitutional targeting know that they will have a judicial forum in which they can be heard if they are targeted for their speech.

<sup>&</sup>lt;sup>14</sup> *Hill*, 482 U.S. at 462–63.

A. Defendants' Targeting of Immigrant Speech Chills Public Debate By Silencing The Most Effective and Relevant Spokespeople Against The Injustices of the Immigration System.

Defendants' conduct has chilled and continues to chill speech about the immigration system. Amici have first-hand experience of the burdens imposed by Defendants' retaliatory conduct against those who dare to criticize them. For example, at least one amicus has experienced retaliatory detention of one of its members after he spoke at a press conference. Amici have repeatedly found their members and people in need of their help—even people with lawful immigration status—fearful that they will be detained or deported or have applications denied if they speak out. Amici have incurred substantial costs in preparing to protect themselves and their members against retaliatory enforcement. And many of amici have noticed apparent surveillance, and possibly electronic surveillance, of their public events.

The core of amici's work is providing platforms for immigrants to make their voices heard in the political and legal systems. <sup>15</sup> At the

Declaration of Javier Valdes on behalf of Make The Road New York ("MRNY Decl.") ¶ 5. Each of the Declarations appended hereto was previously filed in the District Court.

heart of this is facilitating opportunities for immigrants to speak publicly about their lived experiences. 16 Amici organize public speeches by immigrants in which they explain their experiences. 17 Amici coordinate interviews with media outlets, allowing immigrants to, in their own words, reveal the injustices they face to print, radio, and television audiences. 18 Increasingly, amici work on online organizing too, using social media to persuade and educate—for example, through the Twitter campaign #UndocumentedAndUnafraid. 19 And while the medium may sometimes be new, the technique is anything but: it is the same reason why Abolitionist publishers before the Civil War sought to disseminate narratives of enslaved people, like Frederick Douglass's Narrative, the same reason why Harvey Milk implored gay people to "come out" to their friends and families, and the same reason why Black Lives Matter encouraged victims of police violence to directly share their stories with the public. Personal stories encourage others

<sup>&</sup>lt;sup>16</sup> *Id*. ¶ 8.

<sup>&</sup>lt;sup>17</sup> *Id*. ¶ 12.

<sup>&</sup>lt;sup>18</sup> *Id*. ¶ 11.

<sup>&</sup>lt;sup>19</sup> See id. ¶ 33.

experiencing similar injustices to join the movement and expose truths to the public and decision makers.<sup>20</sup>

Defendants' retaliatory targeting chills that speech. For example, "Jose," a member of the Coalition for Humane Immigrant Rights, arrived in the United States as a child who fled his home country alone. <sup>21</sup> He spoke at a press conference co-organized by CHIRLA at ICE's headquarters in Los Angeles, and told his story to the media while wearing a CHIRLA t-shirt. <sup>22</sup> Soon after he spoke, ICE officers suddenly appeared at his home. <sup>23</sup> CHIRLA and "Jose" believe that he was targeted by ICE because he had spoken out against them. ICE arrested "Jose" and detained him in the Adelanto detention facility. <sup>24</sup> A CHIRLA staff attorney had to drop most of her other work for two

<sup>&</sup>lt;sup>20</sup> *Id*. ¶ 8.

Declaration of Angelica Salas on behalf of CHIRLA ("CHIRLA Decl.")  $\P$  5.

<sup>&</sup>lt;sup>22</sup> *Id*.

<sup>&</sup>lt;sup>23</sup> *Id*.

<sup>&</sup>lt;sup>24</sup> *Id*.

months to work on his case, including representing him at a bond hearing.  $^{25}$ 

Unsurprisingly, experiences like this one and those that Plaintiffs identify have made many immigrants fearful about speaking up. For example, in February 2017, a church-based immigrants' rights group, the New Mexico Faith Coalition for Immigrant Justice (the "Faith Coalition"), was launching an anti-deportation campaign for a community member who had been detained. The Faith Coalition planned a press conference with his family, in which his wife, "Lilian," committed to speak to hopefully raise public awareness of his situation. However, on the day of the press conference, fearful that showing her face or making her name public would cause ICE to retaliate against her family, "Lilian" made the gut-wrenching decision not to appear. The Faith Coalition is aware of many other volunteers

<sup>&</sup>lt;sup>25</sup> *Id*.

Declaration of Justin Remer-Thamert on behalf of the Faith Coalition ("Faith Coalition Decl.") ¶ 8.

<sup>&</sup>lt;sup>27</sup> *Id*.

<sup>&</sup>lt;sup>28</sup> *Id*.

and members who have similarly decided not to speak to the press, at Albuquerque City Council meetings, or with other elected officials because of fear that doing so will make them a target for ICE.<sup>29</sup>

The Faith Coalition's experience is typical. One of Make the Road New York's immigrant youth organizers in Queens reports meeting with at least one youth member or staffer *every week* who is scared to speak out for fear of retaliation against themselves, their loved ones, or both.<sup>30</sup> "Sarahi," a green card holder and active Make the Road New York member for years, frequently spoke publicly in the past; since ICE has increased its targeting of activists, she has not given speeches or made media appearances because she fears that her undocumented mother will be put at risk if she does so.<sup>31</sup> Similarly, "Maria," an entrepreneur and member of CHIRLA who has been fighting deportation since she was defrauded by a person falsely claiming to be an immigration attorney, was one of CHIRLA's most active and

<sup>&</sup>lt;sup>29</sup> *Id*.

<sup>&</sup>lt;sup>30</sup> MRNY Decl. ¶ 27.

<sup>&</sup>lt;sup>31</sup> *Id*. ¶ 28.

compelling spokes people for years—but fearing retaliation, she has "gone dark."  $^{32}$ 

"Maria" also exemplifies another aspect of the chill on debate over immigration. She had posted publicly on social media about her experiences with the immigration system and those of other immigrants for years.<sup>33</sup> She sought to inform her community and the broader public about the challenges she faced. But based on reports that ICE has contracted for social media monitoring and other forms of online surveillance, including leaked audio indicating that ICE intends to search social media by "tone,"<sup>34</sup> "Maria" feared being targeted because of her prior political speech about immigration and about government officials.<sup>35</sup> Consequently, she deleted her past posts, wiped her social media pages, and even changed her screen name on social media to try

 $<sup>^{32}</sup>$  CHIRLA Decl.  $\P$  6.

 $<sup>^{33}</sup>$  *Id*.

<sup>&</sup>lt;sup>34</sup> MRNY Decl. ¶ 32.

<sup>&</sup>lt;sup>35</sup> CHIRLA Decl. ¶ 6.

to avoid association with her past political advocacy.<sup>36</sup> Thus, even speech she had *previously* made has been silenced.

Indeed, CHIRLA and other organizations have been forced to advise their members to self-censor to reduce the chances of retaliation. For example, when DACA recipients speak out about the urgency of a Congressional solution to their status, CHIRLA commonly advises them not to state when their own deferred action status and work authorization expires because it reveals when they are most vulnerable to targeted retaliation. The CHIRLA has also diverted two attorneys' time to assess the risk of retaliatory enforcement against members before they speak to media or at public events. Similarly, Make the Road New York has had to devote resources to counseling its members and their communities about the threat of surveillance of their political speech online.

<sup>&</sup>lt;sup>36</sup> *Id*. ¶ 7.

<sup>&</sup>lt;sup>37</sup> *Id.* ¶¶ 9, 11.

<sup>&</sup>lt;sup>38</sup> *Id.* ¶ 9.

<sup>&</sup>lt;sup>39</sup> MRNY Decl. ¶ 33.

Multiple amici have noticed that fewer immigrants are attending public speeches and protests. 40 That is understandable: Make the Road New York's Long Island office has noticed unidentified law enforcement lurking at the edges of the crowds at its rallies and taking photographs. It has also noticed sudden disruption to cellphone service and draining of cellphone batteries, tell-tale signs that a "stingray"—a device that obliges cellphones to send identifying information—is present. 41 In addition, the New Mexico Faith Coalition for Immigrant Justice has observed ICE agents questioning attendees at press conferences and other events in Albuquerque about what organization they are affiliated with. 42 This causes apprehension that attendees who are associated with pro-immigrant organizations may face retaliation. There is thus credible reason to fear that federal immigration enforcement officers are

 $<sup>^{40}</sup>$  E.g., CHIRLA Decl.  $\P$  12; MRNY Decl.  $\P$  35; Faith Coalition Decl.  $\P\P$  14, 15.

<sup>&</sup>lt;sup>41</sup> MRNY Decl. ¶ 34.

<sup>&</sup>lt;sup>42</sup> Faith Coalition Decl. ¶ 17.

surveilling protests and gathering identifying information about attendees.  $^{43}$ 

These are just a few examples of the chilling effects of Defendants' retaliatory enforcement. There are far more—amici have, for example, had to divert money they would have spent on advocacy and outreach to security consultants and assessments of the risk of retaliation for every event where an immigrant speaks. 44 Because so many advocates have been silenced due to fear, the burden of speaking up falls disproportionately on the few willing to risk Defendants' retaliation. These individuals are forced to re-live their traumatic experiences more often which takes a psychological toll. 45 Amici have had their speech chilled in numerous different ways, and when one of amici's members is detained shortly after speaking out, that chill becomes even greater.

Nor would this be the first time that courts in this Circuit have had to step in to address unlawful targeted surveillance of political or religious groups. *E.g.*, *Handschu v. Police Dep't of the City of N.Y.*, 241 F. Supp. 3d 433 (S.D.N.Y. 2017) (recounting 46-year history of lawsuit challenging unlawful surveillance of wide range of political and religious groups).

<sup>&</sup>lt;sup>44</sup> E.g., CHIRLA Decl. ¶ 15; Declaration of Sara Cullinane on behalf of Make The Road New Jersey ("MRNJ Decl.") ¶ 8.

<sup>&</sup>lt;sup>45</sup> MRNJ Decl. ¶ 10.

Correspondingly, elected officials and the broader public lose the ability to learn from *amici*'s members' stories. Public debate and policymaking have suffered as a result.

B. The District Court Erred By Permitting Defendants to Target Critics For Deportation Without Judicial Oversight.

The District Court's ruling exacerbates that chill by immunizing politicized targeting from judicial scrutiny. As Appellants observed in their Opening Brief, if an immigrant is targeted for removal because of her criticism of the Government, she cannot have that claim heard in administrative removal proceedings; those proceedings, within the executive branch, merely determine whether the Immigration and Nationality Act and its implementing regulations permit removal. <sup>46</sup> She cannot raise that claim for the first time on a Petition for Review; that proceeding neither permits new grounds to challenge the order of removal nor permits new evidence to be taken—and in any event must be filed within 30 days of the order of removal becoming administratively final, making it impossible to use it to challenge later

<sup>&</sup>lt;sup>46</sup> Brief of Plaintiffs-Appellants, No. 18-1597, Doc. 92, at 25–26.

misconduct.<sup>47</sup> And, according to the District Court, she cannot raise it as part of a separate action on any basis, including as a *habeas corpus* petition, because of section 1252(g) and because the challenge would not negate the existence of the statutory basis for removal.

Appellants' Opening Brief explains at length why the District Court's conclusion is plainly wrong, both as a matter of statutory interpretation and as a matter of constitutional law under the Suspension Clause and the First Amendment itself. *Amici* would further note that those contentions are not some modern invention, but are of ancient stature. James Madison's strident critique of the constitutionality of the Alien and Sedition Acts specifically identified the denial of the right of *habeas corpus* as a reason why Congress could not give the Executive expansive discretionary power over the removal of non-citizens. <sup>48</sup> And Thomas Jefferson similarly wrote that "*Habeas*"

<sup>&</sup>lt;sup>47</sup> *Id.* at 26–27.

<sup>&</sup>lt;sup>48</sup> James Madison, Report on the Virginia Resolutions, *in* 17 Papers of James Madison at 318 (David B. Mattern ed. 1991) ("All these principles of the only preventive justice known to American jurisprudence, are violated by the alien act. . . . [A]s the President may limit the time of departure as he pleases, the benefit of the writ of habeas corpus, may be suspended with respect to the party, although the constitution ordains, that it shall not be suspended, unless when

corpus secures every man here, alien or citizen, against every thing which is not law, whatever shape it may assume."<sup>49</sup> Indeed, politicized maladministration of the immigration laws was cited in Declaration of Independence itself as one of the "repeated injuries and usurpations" that justified casting off the yoke of King George.<sup>50</sup> In short, weaponization of the immigration laws against political opponents is not some novel concern, but is older than the Republic itself. It is thus

the public safety may require it in case of rebellion or invasion, neither of which existed at the passage of the act: And the party being, under the sentence of the President, either removed from the United States, or being punished by imprisonment, or disqualification ever to become a citizen on conviction of not obeying the order of removal, he cannot be discharged from the proceedings against him, and restored to the benefits of his former situation, although the *highest judicial authority* should see the most sufficient cause for it.")

<sup>&</sup>lt;sup>49</sup> Letter from Thomas Jefferson to Archibald Hamilton Rowan (Sept. 26, 1798), in 30 The Papers of Thomas Jefferson 1798–1799, 528 (Barbara B. Oberg ed. 2003).

The Declaration of Independence paras. 2 & 9 (U.S. 1776) ("The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world. . . . He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.").

precisely the sort of abuse of power that the Framers would have been mindful of in drafting the First Amendment and the Suspension Clause.

Tellingly, even during the "Second Red Scare" of the 1940s and 1950s, the same Supreme Court that had upheld Congress's power to pass the Smith Act, used to prosecute and deport suspected communists and anarchists, recognized the existence of an irreducible minimum level of judicial review of immigration decisions for their constitutionality. There, the Court recognized that the limited regime of judicial review of decisions under the Immigration Act of 1917 "had the effect of precluding judicial intervention in deportation cases except insofar as it was required by the Constitution."51 That is, review "by habeas corpus."52 Indeed, almost half a century later, the Supreme Court cited *Heikkila* to hold that "[b]ecause of that Clause, some 'judicial intervention in deportation cases' is unquestionably 'required by the Constitution."53 Holding that challenging the legality of executive detention by federal officials was at the heart of the Great

<sup>&</sup>lt;sup>51</sup> Heikkila v. Barber, 345 U.S. 229, 234–35 (1953) (emphasis added).

<sup>&</sup>lt;sup>52</sup> *Id.* at 235.

<sup>&</sup>lt;sup>53</sup> I.N.S. v. St. Cyr, 533 U.S. 289, 300 (2001).

Writ's protections at the Founding, the Court exercised the constitutional avoidance doctrine to interpret statutory text to preserve *habeas* jurisdiction. <sup>54</sup> And, tellingly, when in 2005 Congress amended the review procedures for orders of removal, it expressly *preserved* the right to judicial review of questions of law and the Constitution, which in most circumstances courts have found adequate as an alternative procedure to protect the rights protected by the restriction on suspending the writ. *See Xiao Ji Chen v. U.S. Dep't of Justice*, 471 F.3d 315, 324 (2d Cir. 2006).

This case, however, involves claims that could not have been brought on petition for review of an order of removal, because they involve unconstitutional conduct *after* the order of removal was final and review of the order itself was complete. And it involves allegations of a "basis of discrimination" that is "outrageous," namely peaceable criticism of the executive. *Reno v. Am.-Arab Anti-Discrimination*Comm., 525 U.S. 471, 491 (1999). Indeed, it is precisely this fear of executive overreach to quash dissent that prompted the Framers of the

<sup>&</sup>lt;sup>54</sup> *Id.* at 305.

Constitution to include the Suspension Clause,<sup>55</sup> and the Framers of the Bill of Rights to include the First Amendment.<sup>56</sup> These claims, then, are linked intricately with the reasons why the Constitution protects the right to criticize government policy and the conduct of executive officers and why it protects the right to judicial review of the legality of executive deprivations of liberty.



A great many people today—non-citizens with and without lawful status, naturalized citizens, and even native-born citizens whose loved ones are immigrants—fear to speak out on the subject of immigration because they fear unconstitutional retaliation by immigration authorities. See supra Part A. Whether by construing the statute to align with Congress's intent to preserve judicial review of these claims or under the Suspension Clause directly, these are weighty claims, and

<sup>&</sup>lt;sup>55</sup> See Boumediene v. Bush, 553 U.S. 723, 744 (2008) (quoting The Federalist No. 84 (Alexander Hamilton)).

See, e.g., W. Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 638 (1943) ("The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts.").

the Constitution requires that they have a forum in which they can be heard.

#### **CONCLUSION**

For the foregoing reasons, and the reasons stated in Appellants'

Opening Brief, the decision below should be reversed.

Respectfully submitted,

/s/ Yosef J. Riemer, P.C.

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#### CERTIFICATE OF COMPLIANCE

This document complies with the word limit of Fed. R. App. P. 29(a)(5) and 32(a)(7) and Second Circuit Local Rules 29.1(c) and 32.1(a)(4)(A), which set the limitation for an *amicus* brief at one half of the maximum length authorized for a party's principal brief, because excluding the parts of the brief exempted by Fed. R. App. P. 32(f), the brief contains 4,448 words on the basis of a count made by the word processing system used to prepare the brief, which is less than 7,000 words (i.e., half of the maximum length of 14,000 words authorized for a principal brief pursuant to Local Rule 32.1(a)(4)(A)).

Pursuant to Fed. R. App. P. 32(a)(5) and 6, I hereby certify that this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Century Schoolbook 14-point font.

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#### CERTIFICATE OF SERVICE

I hereby certify that on September 7, 2018, a copy of the foregoing is being filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Respectfully submitted,

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### APPENDIX A

#### APPENDIX A

The mission of the Center for Community Change is to build the power and capacity of low-income people, especially low-income people of color, to change their communities and public policies for the better. CCC's focus areas include jobs and wages, retirement security, affordable housing, racial justice, barriers to employment for formerly incarcerated individuals, and immigration. CCC has housed the Fair Immigration Reform Network (FIRM) since its inception in 2003. FIRM is the nation's largest coalition of immigrant rights groups, fighting for immigrant rights at the local, state, and federal levels.

The Illinois Coalition for Immigrant and Refugee Rights (ICIRR) is a non-profit, nonpartisan statewide organization dedicated to promoting the rights of immigrants and refugees in Illinois to full and equal participation in the civic, cultural, social, and political life of our diverse society. In partnership with member organizations, ICIRR educates and organizes immigrant and refugee communities to assert our rights; promotes citizenship and civic participation; monitors, analyzes, and advocates on immigrant-related issues; and informs the general public about the contributions of immigrants and refugees. ICIRR has advocated for policy changes that protect immigrant families from deportation and separation, and uphold our rights to due process and equal protection under the law.

Make the Road Connecticut (MRCT) is a nonprofit membership-based community organization that works to support immigrants to be active in their communities and to lift themselves out of poverty through legal support services, civic engagement, transformative education, and policy innovation. In its short history, MRCT has grown to 6 staff, more than 250 members, and located in Hartford and Bridgeport which are majority-minority cities. Our members believe that those directly impacted by injustice are the best positioned to create change.

Make the Road New Jersey (MRNJ) is a community-based organization that strengthens immigrant communities to achieve dignity and respect through high quality legal services, community organizing, transformative education, and policy advocacy. Founded in late 2014 in Elizabeth, New Jersey, MRNJ serves thousands of immigrant families

each year. MRNJ works on many fronts to uplift the stories of our members who have experienced navigating through and often defending themselves against unjust immigration enforcement.

Make the Road Nevada (MRNV) works with working class and immigrant communities to provide emergency relief services alongside relentless and effective advocacy.

Make the Road New York (MRNY) is a nonprofit membership-based community organization that integrates adult and youth education, legal and survival services, and community organizing in order for low-income immigrant New Yorkers to improve their lives and neighborhoods. MRNY has 197staff, over 21,000 members, and five offices spread throughout New York City, Long Island, and Westchester. Since MRNY believes that those directly impacted by injustice are the best positioned to create change, our immigrant members and staff regularly speak out against the inhumane deportation system at rallies and hearings as well as via social media and in the press and courtrooms.

Make the Road Pennsylvania (MRPA) is a nonprofit community member organization that integrates adult and youth education, survival services, and community organizing in order for low-income immigrant Pennsylvanians to improve their lives and neighborhoods. MRPA has 14 staff, 7,000 members, and four offices spread throughout Eastern Pennsylvania. Since MRPA believes that those directly impacted by injustice are the best positioned to create change, our immigrant members and staff regularly speak out against the inhumane deportation system at rallies and hearings as well as via social media and in the press and courtrooms.

OneAmerica is Washington State's largest non-profit immigrant advocacy organization working to build power in immigrant and refugee communities and shift policy at the local, state, and federal level. Founded in the aftermath of the 9/11 terrorist attacks, and resulting backlash against Muslim, immigrant and refugee communities, OneAmerica works to organize immigrant communities of color across Washington to advance justice and democracy. OneAmerica's core programmatic work includes building leadership with immigrant members to stand up and speak out publically against injustice and the

issues most impacting their lives, including ending deportations, ensuring family unity, and advocating for comprehensive immigration reform. Many OneAmerica leaders with vulnerable immigration status have disclosed their stories publicly at events, rallies, marches, press conferences and legislative hearings as part of a statewide and national immigrant rights movement.

The Progressive Leadership Alliance of Nevada (PLAN) is a coalition of nearly 30 organizations in Nevada that are aimed at achieving social and environmental justice in the state. PLAN provides substantial immigrants' rights services and works to change policy to protect immigrant families.

Services Immigrant Rights & Education Network (SIREN) is an organization that seeks to empower low-income immigrants and refugees in Northern and Central California through community education and organizing, leadership development, policy advocacy, and legal services. To achieve this goal, SIREN engages immigrant and refugee community members to engage in campaigns and speak out regarding immigration-related policies and practices that affect their lives.

The Adelante Alabama Worker Center (Adelante) is a non-profit organization based in Birmingham, Alabama that unites day laborers, domestic workers, and other low-wage and immigrant workers and their families in the Birmingham area to defend their rights, promote their dignity, and pursue justice for all. Adelante engages in campaign-based organizing, media advocacy, community education, and legal representation and litigation to challenge wage theft, workplace exploitation, deportation, prolonged detention, racial profiling, and other unlawful practices that affect immigrant workers in Alabama.

The Coalition for Humane Immigrant Rights (CHIRLA) was founded in 1986. CHIRLA is a California leader with national impact made of diverse immigrant families and individuals who act as agents of social change to achieve a world with freedom of mobility, full human rights, and true participatory democracy. CHIRLA's mission is to achieve a just society fully inclusive of immigrants. CHIRLA organizes and serves individuals, institutions and coalitions to build power, transform public opinion, and change policies to achieve full human, civil and labor rights.

Guided by the power, love, and vision of our community, CHIRLA embraces and drives progressive social change. CHIRLA was formed in response to the Immigration Reform and Control Act (IRCA) of 1986 which made hiring undocumented workers illegal, thus creating a situation ripe for worker exploitation and abuse which have increased since that time.

The Colorado Immigrant Rights Coalition (CIRC) is a statewide, membership-based coalition of immigrant, faith, labor, community, business and ally organizations founded in 2002 to improve the lives of immigrants and refugees by making Colorado a more welcoming, immigrant-friendly state. CIRC achieves this mission non-partisan civic engagement, public education. advocating for workable, fair and humane immigration policies. CIRC believes in the inherent dignity and human rights of every person, regardless of immigration status. CIRC envisions a society in which all people are treated with dignity and respect and have equal access to fair and just work, housing, health care, and education and the opportunity to live united with family members. Immigrant leaders of our member organizations regularly speak out against ICE policies, share their stories at the capitol to affect legislative change, and challenge ICE leadership with rallies and press conferences to stop deportations.

Migrant Justice works to build the voice, capacity, and power of the farmworker community and engage community partners to organize for economic justice and human rights. As part of this focus, Migrant Justice works with a broad coalition to pass legislation affecting immigrant rights.

The Pennsylvania Immigration and Citizenship Coalition (PICC) is a diverse coalition of over 50 member organizations, including community groups, social, health and legal service providers, advocacy organizations, labor unions, and faith communities. Our mission is to advance immigrants' rights and promote immigrants' full integration into society by advocating with a unified voice for greater public understanding and welcoming public policies throughout Pennsylvania. PICC staff, board, and leaders regularly speak at public events, with media, and with public officials about the need to end unjust deportations and to advocate for policy changes at the local, state, and federal levels.

The New Mexico Faith Coalition for Immigrant Justice strives to serve the immigrant community through compassionate accompaniment. Volunteer teams walk with families facing the threat of deportation or the hardship of immigration detention. Its advocacy work focuses on local, statewide and national laws that affect immigrant families.

Workers Defense Project (WDP) is a nonprofit member-based organization that empowers low-income workers to achieve fair employment through education, direct services, organizing, and strategic partnerships. Founded in 2002, WDP has offices in Austin, Dallas, and Houston, Texas. WDP staff and members organize in support of policies to improve the living and working conditions for immigrants and workers throughout Texas, and regularly speak publicly against anti-immigrant policies including during direct actions such as protests and vigils, on social media, and to the press.

The Tennessee Immigrant and Refugee Rights coalition (TIRRC) is a statewide, immigrant and refugee-led collaboration whose mission is to empower immigrants and refugees throughout Tennessee to develop a unified voice, defend their rights, and create an atmosphere in which they are recognized as positive contributors to the state. TIRRC believes that real and lasting change must be led by those directly affected by injustice, and for this reason community organizing and leadership development are the core strategies they use to realize their vision.

Pineros y Campesinos Unidos del Noroeste (PCUN) is Oregon's farmworkers union and the largest Latino organization in the state. Founded in 1985 by 80 farmworkers, PCUN has since registered more than 6,000 members, 98% of which are Mexican and Central American immigrants. PCUN's fundamental goal is to empower farmworkers to understand and take action against systematic exploitation and all of its effects. To achieve this end, PCUN is involved in community and workplace organizing, including on immigration and immigrants' rights issues.

Mujeres Latinas en Accion is a non-profit organization that empowers Latinas through providing services which reflect their values and culture and being an advocate on the issues that make a difference in their lives. We offer culturally relevant services including domestic violence services, sexual assault services, parenting classes, supervised visitation and safe exchange, entrepreneurship classes, citizenship outreach, leadership development, community education and opportunities for civic engagement. Programs are designed to lead a client from crisis to leadership and empower women to make a difference in their lives and communities.

The National Immigration Law Center (NILC) is one of the leading organizations in the United States dedicated to defending and advancing the rights of immigrants with low income. NILC engages in lawsuits, policy advocacy, and communications work to defend the fundamental and constitutional rights of all Americans, including low-income immigrants and their families. This work has included working with individuals who have been directly affected by immigration policy, including enforcement, and supporting them in speaking out against unjust policies. NILC engages in this work to help empower these communities to be able to influence public policy in ways that ensure that all people who live in the United States have the opportunity to achieve their full potential.

SEIU 32BJ represents over 155,000 men and women in 11 states along the East Coast and Washington DC. Our members maintain and provide security for buildings in leading industries including commercial office and residential real estate, financial services, higher education, public schools, health care, biotech, high tech, and transportation and tourism. Local 32BJ members come from 64 different countries and speak 28 different languages. Some of our members are U.S. citizens, while others are lawful permanent residents or hold some other type of immigrant status. The union has been actively engaged in advocating for immigrant rights and comprehensive immigration reform via legislation, education, public advocacy, and litigation. The Union also assists union members facing deportation with legal representation and other advocacy. Our members speak out about their personal experiences as immigrants, joining litigation as plaintiffs challenging recent changes to immigration policies, testifying in support of pro-immigrant state, local, and federal initiatives, and turning out votes for pro-immigrant candidates. Local 32BJ has a strong interest in protecting the rights of its members

to continue to speak out on these issues that so profoundly impact them and their families.

The Center for Popular Democracy and the Center for Popular Democracy Action promote equity, opportunity, and a dynamic democracy in partnership with innovative base-building organizations, organizing networks and alliances, and progressive unions across the country. We currently work with more than 40 partner organizations in more than 35 states, D.C., and Puerto Rico to build the strength and capacity of democratic organizations to envision and advance a proworker, pro-immigrant, racial and economic justice agenda.

Citizen Action of New York ("Citizen Action") is a non-profit, grassroots membership organization that advocates for social, racial, economic and environmental justice with tens of thousands of members and supporters throughout New York State. Citizen Action has chapters or affiliates throughout New York State, including in Long Island, New York City, the Hudson Valley (Kingston), the Capital District (Albany), the Southern Tier (Binghamton) and Western New York (Buffalo). Among our priorities are advocating for the right of immigrants, irrespective of immigration status, to have adequate services in order to function as full participants in our community, including quality health coverage. We have also joined with others in communities throughout New York State to oppose the unjust and inhumane policies of the current federal administration in regard to immigration and family separation in particular. Through our work, we have become aware of the critical importance of ensuring that undocumented immigrants and their families feel free to speak out and to access services without the fear of retaliation by immigration authorities.

### APPENDIX B

# UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Ravidath Lawrence Ragbir, et al.,

CASE NO. 18 Civ. 1159 (PKC)

Plaintiffs,

V.

Thomas D. Homan, et al.,

Defendants.

# DECLARATION OF ANGELICA SALAS IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Pursuant to Title 28 U.S.C. Section 1746, I, Angelica Salas, hereby declare and state as follows:

- 1. My name is Angelica Salas, and I have been the Executive Director of the Coalition for Humane Immigrant Rights ("CHIRLA") since 1999.
- 2. CHIRLA was founded in 1986 in response to passage of the Immigration Reform and Control Act, which made hiring undocumented workers illegal, thus pushing undocumented workers underground and creating a situation ripe for worker exploitation and abuse. CHIRLA seeks to ensure that immigrant communities are fully integrated into our society with full rights and access to resources. CHIRLA is proudly supported by 12,970 dues-paying and active members. Furthermore, our information and referral hotline and walk-in service is

responsible for answering questions on immigration, labor law, fraud, social services, and other topics to over 18,900 individuals per year.

- 3. We have various offices throughout the state, with our headquarters in Los Angeles, and offices in the Inland Empire, South Los Angeles, Lincoln Heights, Pacoima, Porterville, and Sacramento. We also have "committees" that are not physical office locations but are composed of full-time staff located in Victorville, Orange County, and Fresno, California. CHIRLA is nationally recognized as an organization that is guided by the power, love, and vision of our community to drive progressive social change through civic engagement, community education, organizing, legal and immigration services, and policy advocacy.
- 4. Throughout the past year and a half, our organization and our members have been severely impacted by immigration enforcement conducted in retaliation for the exercise of noncitizens' First Amendment rights to free speech. We have been affected by direct retaliation in the form of immigration enforcement and have also been impacted by the chilling effect that comes from seeing other community members face retaliation.
- 5. For example, "Jose," a member of CHIRLA, testified about his experience as an unaccompanied minor who came to the United States alone in a press conference that CHIRLA co-organized outside of the Los Angeles Immigration and Customs Enforcement ("ICE") headquarters. "Jose" wore a CHIRLA t-shirt as he told his story to the media. We found out later that after "Jose" spoke, ICE arrived at his house, arrested him, and detained him at the Adelanto detention

facility, approximately three hours away from his home. We believe this was in direct retaliation for speaking publicly. One of CHIRLA's staff attorneys had to put aside most of her other work for approximately two months in order to represent "Jose" in deportation proceedings, including representation at his bond hearing and through pursuit of additional avenues for relief.

- 6. Because of direct retaliation in cases such as "Jose's," other members of CHIRLA who were once outspoken activists against immigration enforcement have silenced themselves out of fear that they could face the same sort of immigration targeting and retaliation. For example, CHIRLA member "Maria" was one of our most active and strongest spokespeople for years. For years she had been fighting a deportation order because she had been the victim of *notario* fraud many years ago. Under the previous presidential administration, she was granted stays of deportation. Because of the stays, she felt confident engaging in activism and speaking out publicly. However, under the Trump Administration, she was so concerned that she would be targeted for her activism and denied an ongoing stay of deportation that she stopped speaking out publicly altogether. She is an entrepreneur and businesswoman and did not want to lose everything she had built as a result of speaking out.
- 7. Not only did "Maria" cease to engage in activism and media work with CHIRLA, she also completely changed her social media profile by wiping her information and changing her profile name, for fear that ICE would use the

information posted on her account, and the political speech she had once posted there, to retaliate against her.

- 8. One of CHIRLA's attorneys provided a legal consultation with "Maria" because her absence from our organizing and media work caused concern and left a void. But Maria confirmed that she feared retaliatory enforcement given how active she had been in protest and media work around immigration, so she felt obligated to "go dark" to avoid deportation.
- 9. The situations of "Jose" and "Maria," and others who experienced similar tangible consequences for their speech in the last year and a half, made us realize as an organization that we needed to divert organizational resources to protect our members from retaliatory enforcement. We had to create a new internal vetting system to counsel members about immigration risk before they speak to the media. Now, before any CHIRLA member speaks to any media source, they have to do a full consultation with one of our in-house immigration attorneys, and often the attorney will recommend that they do not speak because they would be at risk for retaliatory enforcement. This means that we are preventing our members from exercising their First Amendment rights because we feel the responsibility to protect our members from this harm. In addition, this additional work uses our limited resources and diverts time from other work. The two attorneys that do these consultations must set aside their normal case load and delay taking on new cases in order to conduct these consultations.

- 10. Many of our members have reported that they have changed their behavior on social media in a similar manner to "Maria." Because of awareness through media reports and stories of DHS and its sub-agencies utilizing social media as a way to locate noncitizens, many of our members fear that speaking out about immigration enforcement on their social media could make them a target for ICE enforcement.
- 11. For members of CHIRLA who undergo our attorneys' consultation before speaking to media, CHIRLA now also provides specialized media training about minimizing immigration risks and protecting themselves, for example, by not disclosing sensitive information such as the expiration date of their work permit and how they arrived to this country. This means that even for individuals who our attorneys deem low risk enough to speak to media, the content of their speech is still chilled, and this has affected their ability to advocate for change. For example, after the Trump Administration rescinded DACA, all of our youth leaders who spoke with media to urge a swift and permanent solution did not state when their work permit expired, which may have taken away some of the urgency from their message.
- 12. In the last year and a half, CHIRLA's organizers have experienced difficulty in getting our normal levels of people to attend events, political protests, and actions because noncitizen community members are afraid that by participating in the event, they could be at risk for deportation. We have noticed an especially sharp decline in engagement by undocumented people over 40 years old, while there

has been an *increase* in engagement by U.S. citizen youth who are not at risk for deportation.

- 13. In the past, undocumented CHIRLA members were more willing to engage in direct actions, and now they are more hesitant to come out publicly and make their voices heard. This has an impact on the organization because now that the undocumented community is less willing to attend protests and actions out of fear of ICE retaliation, we try to convince U.S. citizens to engage in those direct actions. Especially for direct actions that may lead to greater publicity or may have ICE presence, we want to ensure the safety of our members and encourage only U.S. citizens to publicly participate in those instances, because anyone without citizenship may be at risk for retaliatory enforcement.
- 14. For example, recently in Los Angeles, ICE conducted enforcement actions in the form of I-9 audits against 7-Eleven stores and other local businesses.

  Over the past few weeks, CHIRLA's organizers have been trying to organize public protests at those locations to protest ICE activities as they are happening. However, member attendance has been low because of fear of retaliatory immigration arrests at those sites.
- 15. CHIRLA has shifted its organizational resources to respond to retaliatory immigration enforcement and the chilling effect it has created in our community. For example, as discussed above, staff attorneys have had their work diverted from immigration cases to screening members before they speak with media, and in defending the cases of members who have been retaliated against,

Angelica Salas

### UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Ravidath Lawrence Ragbir, et al.,

CASE NO. 18 Civ. 1159 (PKC)

Plaintiffs,

v.

Thomas D. Homan, et al.,

Defendants.

# DECLARATION OF SARA CULLINANE IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Pursuant to Title 28 U.S.C. Section 1746, I, Sara Cullinane, hereby declare and state as follows:

- 1. My name is Sara Cullinane and I am the Director at Make the Road New Jersey (MRNJ). I have been in this role since the organization's founding in 2014.
- 2. MRNJ is a community-based organization with offices in Elizabeth, and Passaic New Jersey, that strengthens immigrant communities to achieve dignity and respect through high quality legal services, community organizing, transformative education, and policy advocacy.
- 3. MRNJ serves thousands of immigrant families each year, with a staff of approximately five people. We support our members to develop as leaders.

  MRNJ works on many fronts to lift up the voices of our members, particularly as

they navigate through and defend themselves against unjust immigration enforcement.

- 4. In the past year, our members have been called on to share their stories approximately a dozen times each month, speaking to publications such as the New York Times, the Star Ledger, Univision, and WNYC.
- 5. Some of the key policy issues our organization has sought to change or impact include minimum-wage increases and earned sick days for New Jersey residents, access to legal representation for immigrants in detention, and ending unjust immigration enforcement that separates families.
- 6. Our organization has mobilized community members in actions demanding a clean DREAM Act and drivers' licenses for all qualified New Jersey drivers, and has engaged dozens of members to speak publicly at rallies, vigils, legislative hearings, information sessions, and other community events.
- 7. MRNJ members have felt the impact of increased ICE enforcement and have been less likely to share their stories, whether in the press, through social media, or pursuing litigation. One MRNJ member, "Heidi", who is a long-time New Jersey resident, was caught up in an unlawful sweep by ICE, and was ultimately put in deportation proceedings. A number of civil rights organizations decided to file a complaint against the government for these particular unlawful sweeps and constitutional violations. MRNJ was eager to participate both organizationally and on behalf of "Heidi" as an individual. Although "Heidi" wanted to participate in the complaint, she feared retaliation for speaking out. Ultimately, after much

consultation with our legal team and outside attorneys, she decided that she could only participate in the complaint anonymously, rather than use her name and identifying information. Because of fear of retaliation by ICE, "Heidi" felt she could not publicly participate in an action that would likely vindicate her rights and prevent future violations. The very real fear of retaliation meant that she potentially let an injustice pass without speaking up.

- 8. Our members' heightened fear of being targeted by the government for speaking out impacts MRNJ as an organization every time a member or client is in a position to potentially share their story with the media. We now regularly provide a legal consult with our members every time someone is asked by local or national media to share their immigration story. Through these consults we conduct a risk assessment for our members, we explain various options for how best to share their stories while mitigating any risks, and we help the members make informed decisions about the safety and wisdom of their public participation. With only two attorneys on staff, these extra consults take up attorney time and resources that go above and beyond the traditional legal services that our organization provides. In this way, additional legal screenings and consults add an extra burden on already stretched resources.
- 9. MRNJ members are now more afraid to speak out in other contexts as well. We have seen members hesitant to participate not just in response to media requests or through litigation, but they are also fearful to speak at public events or in legislative meetings. This fear impacts the organization's ability to effectively

conduct campaigns that our members have identified as priorities, publicize our work, reach other members who would benefit from the organization's services, and advance crucial campaign goals.

- 10. As well, because some members are fearful, a smaller number of our members are disproportionately asked to share their stories more frequently, which can place a heavy burden on these individuals. For example, our member Manuel is not afraid to share his story of prolonged immigration detention and lack of access to counsel for his bond proceeding after he arrived in the United States seeking asylum. However, every time Manuel shares his story, he has to re-live his traumatic experience, which takes a psychological toll. Were more members willing to speak, this burden might not fall so heavily on his shoulders.
- 11. MRNJ has had to spend organizational resources to train and prepare members and staff in issues regarding safety and constitutional rights given the fears of unlawful ICE enforcement in the community. Additionally, MRNJ has had to invest time and resources to protect our physical space (speaking to neighbors about unlawful entry by the government and other actors); and to shore up the physical and digital security protocols of the organization.
- I, Sara Cullinane, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and recollection.

Executed this 5 day of March, 2018.

Sara Cullinane

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### UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Ravidath Lawrence Ragbir, et al.,

CASE NO. 18 Civ. 1159 (PKC)

Plaintiffs.

٧.

Thomas D. Homan, et al.,

Defendants.

## DECLARATION OF JAVIER VALDES IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Pursuant to Title 28 U.S.C. Section 1746, I, Javier Valdes, hereby declare and state as follows:

#### Introduction

- I have been Co-Executive Director at Make the Road New York

  ("MRNY") since 2012. Before that time, I held the position of Deputy Director at

  MRNY for over three years.
- 2. MRNY is a nonprofit, membership-based community organization that integrates adult and youth education, legal and survival services, and community organizing in a holistic approach to help low-income immigrant New Yorkers improve their lives and neighborhoods.
- MRNY currently has 197 employees and a total operating budget of
   \$18 million dollars. We have five office locations: Port Richmond, Staten Island;

Bushwick, Brooklyn; Jackson Heights, Queens; Brentwood, Long Island; and White Plains, Westchester.

- 4. MRNY has more than 21,000 dues-paying members, most of who live near one of our office locations. Each member pays an initial membership fee of \$120 over two years, and then \$20 in dues on an annual basis.
- 5. The core of MRNY's work is community organizing. We believe that those who are directly impacted by injustice are the best positioned to create change and so we organize primarily low-income immigrant workers to develop and win policy solutions.
- 6. While MRNY organizes around many issues including workplace justice, affordable housing, and educational equity, humane immigration reform is the primary topic that unites our membership and staff.
- 7. As an organization, MRNY has fought for legislative reform for undocumented immigrants since 2002. MRNY is one of the founding organizations of United We Dream ("UWD") and a key member of Fair Immigration Reform Movement ("FIRM"), lead national advocacy entities fighting for immigration reform. The ability of MRNY members and staff to share their lived experiences with the immigration system without fear of retaliation is critical to these efforts.
- 8. Storytelling is one of the most important organizing tactics we utilize.

  When one of our staff or members publicly shares, for example, how their own
  family was torn apart as a result of deportation, their story has the power to inspire
  others who are similarly situated to come forward, which is how we gain collective

power through numbers. This storytelling also has the power to change the hearts and minds of decision makers.

- 9. In our context, an individual's story is inherently political. It exposes a problem, including the actors responsible for the injustice, and proposes a policy solution.
- 10. MRNY invests significant resources educating members and staff on the importance of sharing their personal narratives and teaching the tools of effective storytelling. Learning opportunities include participation in our membership committees, our leadership school, and personalized coaching with our media experts.
- 11. In a typical week, five to fifteen of our members and staff share their stories in the press through a combination of local, statewide, and national print, radio, television, and film outlets in both English and Spanish.
- 12. In addition to media work, MRNY members and staff frequently share their stories at marches and rallies, through art exhibitions, at public hearings, and in courtrooms.
- 13. For example, storytelling was critical to MRNY's efforts to pass the Car Wash Accountability Act ("CWAA"). The campaign launched with a March 4, 2014 article in the New York Times. The article included a portrait of Adan Nicolas, a Mexican immigrant and car wash worker, as well as a detailed discussion of the conditions Adan was faced in his own workplace.

- 14. Over the next several years, dozens of car wash workers testified in public legislative hearings, spoke at events, and shared their stories with the press. Through their stories, they educated others about not being paid overtime despite working 12-14 hour shifts, having their tips stolen by managers, being told to report to work and then waiting around for hours before being permitted to clock-in, and about the dangerous conditions of their industry, where injuries such as dismemberment frequently occur, often without access to workers compensation. Workers were also parties to significant wage-theft lawsuits and some even organized unions in their workplaces.
- 15. When Mayor Bill DeBlasio signed the CWAA into law, car wash workers were at his side.

#### Surveillance, Retaliation, and the Chilling Effect

- 16. At MRNY, we acknowledge that discriminatory surveillance and retaliation against immigrant rights activists may be occurring. Our understanding is grounded not only in what has happened at our own rallies and to our partners in the immigrant rights movement, but also in our study of United States history and current surveillance and retaliation in other contexts.
- 17. We have not forgotten federal government programs like COINTELPRO, which was active from the mid-1950s until the early 1970s, that surveilled and attempted to undermine the Civil Rights, Black Power, anti-Vietnam and other movements.

- 18. We have also paid close attention to recently released Federal Bureau of Investigation ("FBI") and Department of Homeland Security ("DHS") documents that uncover the contemporary targeting of activists within the Black Lives Matter movement.
- 19. When a government is willing to wield its power to suppress one group of perceived political opponents, it is foreseeable that it may do the same to another.

  Ripple Effect of Retaliation
- 20. Many of MRNY's members and staff are recipients of Deferred Action for Childhood Arrivals ("DACA") and are on the frontlines of the fight for a clean Dream Act in Congress. The campaign for a clean Dream Act seeks a legislative solution for certain undocumented youth to have a path to citizenship, without enforcement measures that target other groups of immigrants, including potentially the parents of Dreamers, and thus tear immigrant communities apart.
- 21. Prior to the creation of the DACA program in 2012, MRNY and its members expended significant time and resources advocating for protection from deportation for young immigrants. Since Attorney General Jeff Sessions announced the termination of the DACA program on September 5, 2017, MRNY has increased our time and efforts focused on protecting DACA through litigation and other efforts while also pushing Congress to pass a clean Dream Act.
- 22. MRNY-affiliated DACA recipients are plaintiffs in Batalla Vidal v. Nielsen, a lawsuit challenging the termination of the DACA program, they have spoken at local and national rallies, and are frequently profiled in the press,

including high-profile outlets like the New York Times. Antonio Alarcon, Martin Batalla Vidal, Eliana Fernandez, Amalia Rojas Enriquez, Yatziri Tovar, and Carlos Vargas are just a few examples of DACAmented members and staff who have significant public presence, but MRNY has many others with DACA who have been outspoken advocates in the fight for a clean Dream Act. For example, on December 6th, 2017, one of our youth members, Ricardo Aca, spoke in front of a crowd of approximately 15,000 in Washington D.C. at a national rally to protect "Dreamers."

- 23. Antonio Alarcon is MRNY's Immigrant Youth Organizer in Queens. Antonio has been on staff since 2013 and his job responsibilities include his work with the Youth Power Project building a base of young people ages 14-21 from our community and engaging them around issues that they care about. He helps lead our summer youth program, guides workshops, and conducts outreach in schools. Antonio is also a DACA recipient.
- 24. Antonio is among the most visible Dreamers in the movement for a permanent legislative solution for immigrant youth. Antonio engages in policy work at the state and federal level, is a plaintiff in the Batalla Vidal lawsuit, and has been featured in numerous high-profile art and press pieces ranging from a full-length documentary ("Indivisible") to the New York Times.
- 25. In his capacity as a youth organizer, Antonio not only shares his own story as a DACA recipient, but also trains and encourages other undocumented youth to do the same. Recent retaliation against activists has led him to question

his own safety and has made his work encouraging other young people to come forward increasingly more difficult.

- 26. MRNY's youth are connected to national networks of Dreamers through organizations like UWD. This means that when there are instances of retaliation against DACA recipients, MRNY often hears about them even before the cases become public. When Daniela Vargas was arrested by Immigration and Customs Enforcement ("ICE") in Mississippi immediately after speaking at a press conference, it scarred our youth.
- 27. Antonio is responsible for processing these incidents with youth members in our Queens office. Every week, he engages directly with approximately 15 youth. Of those 15, he asks two to three to share their stories and of those, approximately one is afraid of speaking publicly for fear of retaliation against themselves or their families. ICE retaliation has sent a signal to others that if they speak out, they could be next.
- 28. For example, MRNY has a youth member, who had been active with the organization for seven years, named "Sarahi." Her older brother joined the organization in his mid-teens, and she got involved with MRNY at approximately age twelve. "Sarahi" was undocumented as a young person, but after learning from our legal team that she was eligible for immigration relief, she was able to obtain lawful permanent resident status. "Sarahi" had spoken publicly about inhumane immigration policies for many years and conducted multiple interviews with the press. After President Trump was elected and MRNY started to learn of ICE

retaliation targeting activists, she refused to come forward out of fear. Even though she now has lawful permanent residency, she remains concerned that ICE will target her undocumented mother due to the public nature of her advocacy.

- 29. Last week, one of MRNY's legal clients, "Celeste," spoke with a news outlet about her experience fighting her own deportation case. She is a resilient young woman who has often fearlessly overcome obstacles as a single mother and domestic violence survivor, yet she still only agreed to the interview under condition of pseudonym due to fear of ICE retaliation. While "Celeste" was not entirely silenced, she was deprived of the right to publicly own her own truth and approximately an hour of attorney time was devoted to negotiating the conditions of the interview and preparing her to be questioned.
- 30. Since MRNY relies on storytelling, the most effective way to neutralize the impact of our work is to silence us. Many of our members and staff are now unwilling to come forward.
- 31. In addition, not only do we spend significant resources coaching members and staff about the potential consequences of speech and preparing them to speak to the press in ways that minimize risk, but we also expend resources preparing to defend our members and staff if retaliatory enforcement action is taken by ICE.

## Chilling Following Discriminatory Surveillance

32. The DHS continues to expand its surveillance of immigrants' social media. According to audio leaked to the press, the DHS is currently building social

media data sets that are searchable by "tone," which concerns immigrant activists that political speech expressed through social media will be used for enforcement purposes or held against them when applying for an immigration benefit. There has been fear that hashtags such as #UndocumentedandUnafraid, which was designed to encourage undocumented immigrant youth to build power through flexing their numbers, could be used to identify and target activist leaders.

- 33. In response, MRNY has been forced to hold digital security trainings for our staff and to hire a consultant to assess the safety of our digital communication. MRNY has developed community education materials regarding the presence of law enforcement in social media spaces. Some activities, which we previously would have advertised to the public via social media, are now shared through more limited channels, resulting in a suppression of MRNY's online organizing.
- 34. Surveillance of MRNY has not been limited to online activities.

  Organizers report uninvited law enforcement at immigrant rights focused rallies on Long Island. On approximately three occasions during the past five months, our staff has noted unmarked black vehicles parked within blocks of MRNY demonstrations. Shortly after the vehicles have arrived, participant's phone batteries mysteriously drained and cell phone service was disrupted symptoms consistent with the use of "stingrays", law enforcement technology designed to intercept cellular communication. Officers occasionally come out of the vehicles in civilian clothes with visible firearms strapped to their bodies. They typically stand

across the street, but spread apart and take photos of MRNY staff and members, as well as other participants, with a professional camera and cellular phones. We cannot confirm their agency affiliation, but the officers did not appear connected to local police, who were also separately present.

- 35. These incidents put fear into our membership and staff. They silence activists and make it more difficult for MRNY to effectively advocate for change.

  Our power is within our immigrant community members' willingness to bravely share their own stories.
- 36. When ICE detained Ravi Ragbir, many of our staff and members reported fear and despair. His detention by ICE sent a message to other activists that they could be in danger of detention if they speak out. If ICE were to detain or threaten deportation against once of MRNY's most vocal leaders, the chilling effect that would follow would be crippling.

I, Javier Valdes, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and recollection.

Executed this 5th day of March, 2018.

Javier Valdes

## UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Ravidath Lawrence Ragbir, et al.,

CASE NO. 18 Civ. 1159 (PKC)

Plaintiffs,

v.

Thomas D. Homan, et al.,

Defendants.

## DECLARATION OF JUSTIN REMER-THAMERT IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Pursuant to Title 28 U.S.C. Section 1746, I, Justin Remer-Thamert, hereby declare and state as follows:

- 1. My name is Justin Remer-Thamert, and I have been the Executive

  Director of the New Mexico Faith Coalition for Immigrant Justice ("the Coalition")

  since 2013.
- 2. The Coalition started in 2009 as an informal gathering of faith leaders who primarily wanted to see what we could do to support immigrants and their families who were leaving Arizona and coming to New Mexico as a result of Arizona's Senate Bill 1070.
- 3. We are a coalition of individuals and organizations of the faith communities in New Mexico interested in supporting immigrants' rights. Our organization is composed of three staff members, social work interns, a board of

directors, and many volunteers. We have about 50 to 75 core volunteers, and 100 to 200 additional volunteers who are involved in some capacity at any given time. Our staff, board of directors, social work interns, and volunteers include individuals of varying immigration statuses.

- 4. The Coalition initially focused only on advocacy, but over the past five to six years, we have developed three distinct arms. First, we engage in advocacy, supporting policies and individuals at a state and local level, including a "court companion" program in which volunteers accompany community members to their civil and criminal court proceedings as legal observers and emotional support due to an uptick in immigration enforcement we have seen at courthouses. Second, we engage in community education with local faith communities and schools. Third, we provide direct services to families who are either seeking asylum or impacted by detention and deportation.
- 5. Given that our leadership and membership include people of many immigration statuses, it is of grave concern that Immigration and Customs Enforcement ("ICE") has targeted immigrant leaders like Ravi Ragbir. Our membership has expressed concern that there will be a similar targeting of individuals who participate in the Coalition's activities, and as a result we have had to make some internal changes to the organization. Similarly, we have also worked with families who have been affected and have changed their behavior because of fear of immigration enforcement if they speak out against ICE. In our work with the

community we have seen reticence to speak out in the media or within the political sphere because of ICE's targeting of non-citizen activists.

- 6. Further, we believe that there has been ICE targeting of individuals in New Mexico. For example, the Coalition engaged in public advocacy, media, and legal support around in an individual's case. After we engaged in media support for this individual, ICE released a statement to the media that had incorrect and negative information about the individual that we were able to prove was wrong through court and police records. Since then, that individual has had unreasonable delays and trouble getting their family petition processed by the government. This is an example of how our attempt to advocate for a community member resulted in ICE retaliation through the media and also possible retaliation by USCIS to fairly adjudicate their immigration case.
- 7. Members of the Coalition have expressed fear of speaking to the media, or at public events in general, because they are afraid of how it might impact their immigration status or make them a target for ICE. This has hampered our organization's ability to educate the communities we serve about our court companion program or our attempts to speak out to denounce ICE's presence at our local courts.
- 8. More than once, immigrant community members committed to share their stories publicly and then withdrew out of fear of ICE retaliation. For example, in February 2017, the Coalition was doing an anti-deportation campaign for a man who had been arrested and detained by ICE. His wife, "Lilian," was initially willing

to speak at our press conference to share more about the impact that her husband's arrest by ICE has had on her family. Unfortunately, "Lilian" decided on the day of the press conference that she did not want to proceed because she was afraid ICE would retaliate against her husband, through delaying his bond proceedings or not cooperating with respect to his deportation proceedings. She was also afraid that her speaking out and making her name and face recognizable could put herself and their children at risk of being arrested and detained by ICE as well.

- 9. Other Coalition volunteers or members have been initially willing to consider speaking to the press or at meetings of the Albuquerque City Council or other elected officials' meetings, but they ultimately changed their mind or decided not to speak because of fear of ICE retaliation against them.
- media and have had to expend time discussing social media behavior. This is in part because in the last year we learned that ICE uses social media to track individuals under their surveillance. We have discussed this at a board meeting and in a gathering of mixed status and undocumented families. In these meetings, we discussed that DHS has been following and tracking noncitizens through social media based on posts related to immigration issues. We have warned our staff and the communities we serve to be diligent and careful about not disclosing too much personal information that could result in the targeting of specific families by ICE.
- 11. In the last year, we have also changed how we communicate internally and externally because of fear of being monitored or retaliated against.

- 12. Since President Trump's election, we have had a significant decline in the numbers of people from mixed status families participating in our activities. For example, primarily immigrant-based Catholic churches have seen a decrease in membership or attendance because community members fear ICE arrest and fear leaving their homes. Some individuals who were themselves immigrants or from mixed-status families inquired about our educational activities at churches but then decided not to attend those community presentations or other activities if those events were announced publicly, because they were afraid of ICE surveilling the event and coming to arrest people.
- 13. The Coalition has reached out to many congregations in and around Albuquerque to engage them in more immigrants' rights work in the last year and a half. While many were sympathetic to the cause, many individuals were not willing to speak publicly or take a stand because they were afraid to risk the arrest of their fellow noncitizen parishioners. Additionally, one local congregation had expressed an interest in being more involved in immigration issues, including engaging in actions and protests against immigration enforcement. However, because their faith leader, "Joshua," is a lawful permanent resident and not a citizen, the congregation ultimately decided not to pursue any speech or actions to support immigrants for fear that it would put "Joshua" at risk of immigration enforcement.
- 14. In the past year, our meeting attendance has changed. While there has been an increase from allied communities (not immigrants), we have found it much

harder to get noncitizens involved or to build connections with immigrant communities because they fear engaging in public advocacy.

- 15. We have seen this same effect on attendance at our events. For example, we have organized vigils and press conferences recently in support of community members targeted and detained by ICE, and a large number of allies attended, but very few noncitizens attended the vigil or press conference because of fear of being targeted by ICE.
- 16. Because immigrant community members are afraid of ICE monitoring of public events, we do not publicly broadcast the time and location for some of our meetings, and instead only invite people through personal invitations.
- 17. We have also had to advise people to be cautious if we have a meeting in a place that poses a greater risk for retaliatory enforcement. For example, we recently had a press conference outside of ICE headquarters, and we advised undocumented families and individuals and others with pending immigration cases not to attend or to consult an attorney or meet with our legal observers before coming. This is because we have witnessed ICE coming to events like this and asking random bystanders or participants what organizations they are affiliated with. Our staff resources were utilized to make phone calls and conduct community education to address these fears.
- 18. On another occasion, we were considering having a vigil outside of a local courthouse, but we decided to move the location because ICE has conducted enforcement outside of that courthouse. We have changed our activities based on a

perception of greater risk of ICE enforcement in retaliation for public speaking and advocacy in certain locations.

19. We have spent resources training members and volunteers on our court companion program. Throughout the past year, this training has increasingly focused on what retaliation could look like if ICE arrives while a person is acting as a legal observer or accompanying an individual or family to court. We are concerned that if our court companion program participants were to say something to an ICE officer who was attempting to arrest someone at a courthouse, that person could also be arrested by ICE. We have trained participants to record such instances on the ACLU Mobile Justice application, which is a tool we have started using over the past year and a half. We have to train our volunteers that if ICE asks them to step back, they must do so lest they risk charges.

I declare under penalty of perjury that the foregoing is true and correct.

Justin Remer - Thamest

Justin Remer : Mannet

3-5-18