

No. 15-40238

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

STATE OF TEXAS, et al.,

Plaintiffs-Appellees,

v.

UNITED STATES OF AMERICA, et al.,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS AT BROWNSVILLE

No. 1:14-cv-00254

The Honorable Andrew S. Hagen
United States District Court Judge

***AMICUS CURIAE* BRIEF OF MAJOR CITIES CHIEFS
ASSOCIATION, POLICE EXECUTIVE RESEARCH FORUM, AND
INDIVIDUAL SHERIFFS AND POLICE CHIEFS IN SUPPORT
OF DEFENDANTS-APPELLANTS**

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SUPPLEMENTAL CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Circuit Rule 28.2.1, in addition to those disclosed in the parties' certificates of interested persons, have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Amici Curiae

- Major Cities Chiefs Association;¹
- Police Executive Research Forum;²
- Chief Art Acevedo, City of Austin, Texas, Police Department;
- Chief Charlie Beck, Los Angeles, California, Police Department;
- Chief David Bejarano, Chula Vista, California, Police Department;
- Chief Richard S. Biehl, Dayton, Ohio, Police Department;
- Chief Chris Burbank, Salt Lake City, Utah, Police Department
- Chief Michael Butler, Longmont, Colorado, Police Department;
- Sheriff Mark C. Curran Jr., Lake County, Illinois, Sheriff's Office;
- Chief Sergio Diaz, Riverside, California, Police Department;

¹ Major Cities Chiefs Association has no parent corporation, and no stock of which a publically held company owns 10% or more.

² Police Executive Research Forum has no parent corporation, and no stock of which a publically held company owns 10% or more

- Sheriff Clarence Dupnik, Pima County, Arizona, Sheriff's Department;
- Sheriff Tony Estrada, Santa Cruz County, Arizona, Sheriff's Office;
- Commissioner William B. Evans, Boston, Massachusetts, Police Department;
- Sheriff Paul Fitzgerald, Story County, Iowa, Sheriff's Office;
- Sheriff Adrian Garcia, Harris County, Texas, Sheriff's Office;
- Sheriff Marlin Gusman, New Orleans Parish, Louisiana, Sheriff's Office;
- Chief Ron Haddad, Dearborn, Michigan, Police Department;
- Chief James Hawkins, Garden City, Kansas, Police Department;
- Chief Dwight Henninger, Vail, Colorado, Police Department;
- Chief Michael C. Koval, Madison, Wisconsin, Police Department;
- Asst. Chief Randy Gaber, Madison, Wisconsin, Police Department;
- Chief Jose L. Lopez Sr., Durham, North Carolina, Police Department;
- Sheriff Leon Lott, Richland County, South Carolina, Sheriff's Department;
- Sheriff Bill McCarthy, Polk County, Iowa, Sheriff's Office;
- Superintendent Garry F. McCarthy, Chicago, Illinois, Police Department;
- Chief Roy W. Minter, Jr., Peoria, Arizona, Police Department;
- Lieutenant Andy Norris, Tuscaloosa County, Alabama, Sheriff's Office;
- Chief Kathleen O'Toole, Seattle, Washington, Police Department;
- Chief Joe Pelle, Boulder County, Colorado, Police Department;
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- Chief Greg Suhr, San Francisco, California, Police Department;
- Chief Ron Teachman, South Bend, Indiana, Police Department;
- Chief Michael Tupper, Marshalltown, Iowa, Police Department;
- Sheriff John Urquhart, King County, Washington, Sheriff's Office;
- Sheriff Lupe Valdez, Dallas County, Texas, Sheriff's Department;
- Chief Roberto Villaseñor, Tucson, Arizona, Police Department;
- Chief Robert White, Denver, Colorado, Police Department;
- Sheriff Richard D. Wiles, El Paso County, Texas, Sheriff's Office.³

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CERTIFICATE OF CONFERENCE

Pursuant to Federal Rule of Appellate Procedure 29(a), counsel for amici curiae conferred with counsel for the Plaintiffs-Appellees and Defendants-Appellants by electronic mail on April 3, 2015, to seek consent for the filing of this amicus brief. Counsel for Plaintiffs-Appellees stated that Plaintiffs-Appellees consent to the filing of this brief. Counsel for Defendants-Appellants stated that Defendants-Appellants consent to the filing of this brief.

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INTEREST OF THE AMICI CURIAE¹

Amici file this brief under Fed. R. App. P. 29(a), with the consent of the parties. *Amici* are associations of local law enforcement officials and individual current law enforcement officials. They have deep expertise in local law enforcement and, in addition, on cooperative federal-state law enforcement activities. *Amici* previously participated in the district court, *see* Dist. Court ECF No. 83, and submit this brief to inform the Court of the harms that the preliminary injunction issued against Defendants’ Deferred Action Initiative² will cause to local law enforcement entities and to the communities they serve.

Amici are:

- Major Cities Chiefs Association, which is a professional association of chiefs and sheriffs representing the largest cities in the United States, serving more than 68 million people;
- Police Executive Research Forum, which is a national membership organization of police executives from the largest city, county and state law enforcement agencies dedicated to improving policing and advancing professionalism through research and involvement in public policy debate;

¹ No counsel for any party in this case authored this brief in whole or in part. No party or party’s counsel made a monetary contribution to the preparation or submission of this brief. No person, other than *amici* or their counsel, contributed money that was intended to fund preparing or submitting the brief. FRAP 29(c)(5).

² The initiative, which is described in ROA.83-87, is referred to throughout as the “Deferred Action Initiative.”

- Chief Art Acevedo, City of Austin, Texas, Police Dept.;
- Chief Charlie Beck, Los Angeles, California, Police Dept.;
- Chief David Bejarano, Chula Vista, California, Police Dept.;
- Chief Richard S. Biehl, Dayton, Ohio, Police Dept.;
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- Chief Roberto Villaseñor, Tucson, Arizona, Police Dept.;
- Chief Robert White, Denver, Colorado, Police Dept.;

- Sheriff Richard D. Wiles, El Paso County, Texas, Sheriff's Office.³

SUMMARY OF ARGUMENT

In this brief, *amici* demonstrate that the Deferred Action Initiative will improve public safety by encouraging community cooperation with police, an essential element to effective policing and improving public safety. *Amici* also demonstrate that the Deferred Action Initiative will provide individuals with the opportunity to obtain verified and secure identification, which aids law enforcement in carrying out its day to day duties. Given that the Deferred Action Initiative promotes the public interest, the District Court erred in granting preliminary injunctive relief.

ARGUMENT

Amici demonstrate below that the preliminary injunction harms the ability of local law enforcement authorities to effectively police and protect the communities they serve, and that injunctive relief is therefore against the public interest. The Deferred Action Initiative, which provides individuals with a process to register with the federal government and receive temporary relief from removal, work

³ For individuals, affiliations are provided for identification purposes only.

authorization, and other identity documents, will improve public safety in several important ways. First, the Deferred Action Initiative encourages community cooperation with police, an essential element to effective policing and improving public safety, and facilitates a shift in federal law enforcement resources away from individuals with family ties to their communities and no criminal convictions, leading to more effective and resource-conscious policing with attendant public safety benefits. Further, the Deferred Action Initiative provides individuals with the opportunity to obtain verified and secure identification, including an employment authorization document, which aids law enforcement in carrying out day to day duties.

I. The Deferred Action Initiative Promotes the Public Interest by Enabling Community Cooperation With Police

Law enforcement cannot successfully protect a community without the cooperation of those individuals who make up the community. At both the federal and state level, community policing—the cooperative approach under which law enforcement and community members work together to combat crime—has resulted in better and more efficient policing, and has thus become a cornerstone of modern law

enforcement. Because community policing is an approach where police officers engage communities in a working partnership to reduce crime and promote public safety, it requires police to interact with neighborhood residents in a manner that will build trust and improve the level of cooperation with the police department.⁴

One barrier to the development of trust required for effective community policing is the fact that individuals subject to deportation or removal may fear that interactions with local and state law enforcement could result in scrutiny of one's immigration status, or the status of family members or neighbors. For example, a domestic violence victim who doesn't have legal status may not call police for fear that she or her abuser will be deported.⁵ A recent survey showed that 44 percent of surveyed Latinos are less likely to contact police officers if

⁴ See Police Foundation, Anita Khashu, *The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties* 24 (2009), available at <http://www.policefoundation.org/sites/g/files/g798246/f/Khashu%20%282009%29%20-%20The%20Role%20of%20Local%20Police.pdf>; see also Robert Wasserman, *Guidance for Building Communities of Trust*, at 7, U.S. Department of Justice, Office of Community Oriented Policing Services (2010), available at http://www.cops.usdoj.gov/files/RIC/Publications/e071021293_BuildingCommTrust.pdf.

⁵ See Matthew Lysakowski, Albert Antony Pearsall III, and Jill Pope, *Policing in New Immigrant Communities*, U.S. Department of Justice, Office of Community Oriented Policing Services (June 2009), available at <http://www.vera.org/sites/default/files/resources/downloads/e060924209-NewImmigrantCommunities.pdf>

they have been the victim of a crime because they fear that police officers could use the interaction as an opportunity to inquire into their immigration status or that of people they know; 45 percent of Latinos stated that they are less likely to voluntarily offer information about crimes, and 45 percent are less likely to report a crime because they are afraid the police will ask them or people they know about their immigration status; and 70 percent of undocumented immigrants reported they are less likely to contact law enforcement authorities if they were victims of a crime.⁶ Fear of immigration enforcement preventing cooperation with police would extend to authorized immigrants living in mixed-status households who may fear contact with police could lead to the deportation of family members and other loved ones.⁷

An avoidance of law enforcement makes immigrants especially vulnerable to all types of crime and civil violations; for example, domestic violence, sexual assault, gang activity, human trafficking,

⁶ Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, at 5-6, Univ. of Illinois Chicago (May 2013), available at http://www.academia.edu/4738588/Insecure_Communities_Latino_Perceptions_of_Police_Involvement_in_Immigration_Enforcement.

⁷ See Khashu, *supra* note 4, at 24 (estimating that 85% of immigrants live in mixed-status families) (citation omitted).

nonpayment by employers, and financial scams.⁸ Criminals are known to target immigrants because their reluctance to report crimes is well-known, and some employers take advantage of undocumented immigrants' labor and refuse to pay wages, knowing that the workers won't report them to police or other authorities.⁹ One report showed that 41 percent of surveyed migrant workers had experienced wage theft where they were not paid for work performed.¹⁰ Furthermore, many immigrant laborers become prime targets for robbery and other crimes because they lack the ability to open bank accounts (in part due to identification issues discussed below in Part II), and thus criminals know they are more likely than others to be carrying large sums of cash.¹¹ Thus, the distrust of police emboldens individuals engaged in

⁸ See *Enhancing Community Policing with Immigrant Populations: Recommendations from a Roundtable Meeting of Immigrant Advocates and Law Enforcement Leaders*, at 16, U.S. Department of Justice Office of Community Oriented Policing Services (April 2010), *available at* http://www.cops.usdoj.gov/Publications/e041016266-Enhancing-CP-Immigrant-Populations_b.pdf.

⁹ See Lysakowski, Pearsall, and Pope, *supra* note 5 at 4.

¹⁰ Southern Poverty Law Ctr., *Under Siege: Life for Low-Income Latinos in the South*, at 6 (Apr. 2009), *available at* <http://www.splcenter.org/sites/default/files/downloads/UnderSiege.pdf>.

¹¹ *Id.* at 25 (noting that immigrant laborers have “been dubbed walking ATMs”).

criminal enterprises, increases crime, and decreases public safety for whole communities.

The Deferred Action Initiative encourages immigrant cooperation with police and benefits community policing by removing the fear of detention and removal for the millions of eligible individuals who are already members of the communities which local law enforcement serve. The Deferred Action Initiative supports community policing by legitimizing the presence of otherwise law-abiding immigrants with already strong ties to their neighborhoods, and reassuring them that their cooperation with law enforcement will not separate them from their lives and families in the United States. In contexts where individuals would not fear removal due to the availability of an immigration benefit, for example the U-visa, a form of immigration relief created by Congress as part of the Violence Against Women Act of 2000 offering temporary legal immigration status to immigrants who have been victims of certain criminal activities, communities have noted increased rates of reports made to, and participation with, local law enforcement.¹² The Deferred Action Initiative thus improves public

¹² See Natalia Lee, Daniel J. Quinones, Nawal Ammar & Leslye E. Orloff, *National Survey of Service Providers on Police Response to Immigrant Crime Victims, U Visa*

safety for the entire community and allows *amici* to effectively do their jobs.

Additionally, the Deferred Action Initiative guidelines help the federal government to focus its removal efforts on individuals with certain criminal convictions and threats to national security and public safety. ROA.83-87; *see also* ROA.558-563. This shift in priorities at the federal level will in turn help local law enforcement keep communities safer. In addition to true threats to public safety being removed from local communities, individuals who are *not* priorities for removal and who have existing ties to the community will be more likely to cooperate with local law enforcement entities, and will harbor fewer fears regarding interaction with local law enforcement.

The preliminary injunction granted by the district court will thus harm the efforts of local law enforcement to build trust with community members, and would adversely affect public safety.

Certification and Language Access, at 6-7, National Immigrant Women's Advocacy Project (April 2013), available at <http://www.niwap.org/reports/Police-Response-U-Visas-Language-Access-Report-4.6.13.pdf> (citing prior research finding that "the rate at which immigrant victims called the police for help and were helpful or willing to be helpful in the detection, investigation, prosecution, conviction or sentencing of a perpetrator was extremely high (99.45%) among U Visa applicants and recipients").

II. The Deferred Action Initiative Facilitates Noncitizens' Ability to Obtain Valid Identification and thus Benefits Law Enforcement and Improves Public Safety

Individuals under the Deferred Action Initiative would be granted a deferral from removal, and may be eligible for a federal employment authorization document (“EAD”). The EAD comes in the form of a card issued by the United States Citizenship and Immigration Services, and includes the recipient’s photograph.¹³ Individuals who receive employment authorization would also be eligible to obtain a Social Security number and card.¹⁴ These forms of identification alone improve public safety by permitting individuals to work lawfully and to avoid exploitation and other types of crimes that target undocumented individuals.

Further, the district court erred in finding that licensing “costs” incurred by one state warranted nationwide injunctive relief. First, to the extent the Deferred Action Initiative facilitates the issuance of

¹³ See 8 U.S.C. § 1324a(h)(3); 8 C.F.R. § 274a.12(c)(14); *see also* Department of Homeland Security, USICS, Instructions for I-765 Application for Employment Authorization, *available at* <http://www.uscis.gov/sites/default/files/files/form/i-765instr.pdf> (describing EAD as a “card” and requiring two passport-style photos).

¹⁴ See *Social Security Numbers For Noncitizens*, Social Security Administration, SSA Publication No. 05-10096 (Aug. 2013), *available at* <http://www.ssa.gov/pubs/EN-05-10096.pdf>.

identification to undocumented immigrants, including an employment authorization document, a social security card, and state driver's licenses, the program would greatly assist law enforcement officers' ability to properly identify individuals in everyday interactions, making the jobs of those officers easier and more effective. For example, officers engaged in active investigations need to be able to verify the identity of witnesses to, or victims of, crimes. Daily tasks such as making a stop for a driving infraction are made easier when an officer can identify the individual in question and issue a citation. If an officer stops a motorist who does not have a license or other form of identification, the officer may have no other option than to arrest the individual, bring him to the station, and obtain fingerprint information in order to securely identify the individual. As one police chief has stated, "[w]hen we stop cars and the driver doesn't have a driver's license, there are very few options for the officers and troopers. If there is no other source of identification, we're going to use fingerprint identification. That means the person has to be put in the police car and taken to jail so we can find out who they are." ¹⁵ Such situations take time and unnecessarily divert resources

¹⁵ See *Police Executive Research Forum, Voices from Across the Country: Local Law Enforcement Officials Discuss the Challenges of Immigration Enforcement*, at 15-16,

away from true threats to public safety, such as investigations and responses to violent offenses. As a former police chief has stated, “[t]he question is an economic one for police, because every time we stop somebody who has no identification, it takes a lot of manpower to try to identify that person. An officer will spend up to two to three hours to determine who an arrestee is. . . . They don’t have the resources to start dealing with the problem.”¹⁶

Second, the benefits of access to a license or other form of identification strongly outweigh any state-imposed licensing costs. Studies have provided strong evidence that unlicensed drivers are much more hazardous on the road than are validly licensed drivers.¹⁷ Thus, the increase in motorists who are trained, tested, licensed, and insured will improve road safety overall.

Police Executive Research Forum (2012), available at http://www.policeforum.org/assets/docs/Free_Online_Documents/Immigration/voices%20from%20across%20the%20country%20%20local%20law%20enforcement%20officials%20discuss%20the%20challenges%20of%20immigration%20enforcement%202012.pdf.

¹⁶ *Id.*

¹⁷ See, e.g., Sukhvir S. Brar, *Estimation of Fatal Crash Rates for Suspended/Revoked and Unlicensed Drivers in California*, California Department of Motor Vehicles (2012), available at <http://www.dol.wa.gov/about/docs/UnlicensedDriverStudy.pdf>.

The ability of millions of individuals to obtain identification, including a federal employment authorization document, a social security number and card, and a driver's license under state law through the Deferred Action Initiative will greatly benefit local law enforcement officers' ability to conduct their jobs effectively, and the preliminary injunction granted by the district court will cause significant harms and will injure the public interest.

CONCLUSION

The Deferred Action Initiative will improve public safety by encouraging community cooperation with police and by providing individuals with a greater opportunity to obtain verified and secure identification, which would aid law enforcement in carrying out its day to day duties. The population included in the Deferred Action Initiative is one with long-standing ties to the communities served by *amici*, and the preliminary injunction will harm this population and law enforcement's ability to effectively protect the public. For the reasons in Defendants-Appellants' brief and the reasons set forth above, this court should reverse the District Court's order granting preliminary injunctive relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In compliance with Fed. R. App. P. 25 and 5th Cir. I.O.P. 25, I hereby certify that on this 6th day of April, 2015, I electronically filed the foregoing Amicus Curia Brief with the Clerk of Court by using the CM/ECF system. 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. All other parties will be served via regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

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No. 15-40238 State of Texas, et al v. USA, et al
USDC No. 1:14-CV-254

Dear Mr. Badlani,

The following pertains to your Amicus brief electronically filed on April 6, 2015.

You must submit the seven (7) paper copies of your brief with green covers required by 5TH CIR. R. 31.1 for **OVERNIGHT DELIVERY**.

Sincerely,

LYLE W. CAYCE, Clerk



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Shawn D. Henderson, Deputy Clerk
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