

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

RAVIDATH LAWRENCE RAGBIR, et al.,

Plaintiffs,

v.

THOMAS D. HOMAN, et al.,

Defendants.

Civil Case No. 18-CV-1159 (PKC)

**BRIEF OF *AMICI CURIAE* NEW YORK ELECTED OFFICIALS IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

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STATEMENT OF INTEREST OF *AMICI*

Amici are 8 members of New York's delegation to the U.S. House of Representatives, 7 New York State Senators, 14 members of the New York State Assembly, 19 members of the New York City Council, the Public Advocate for the City of New York, the Manhattan Borough President, the New York State Black, Puerto Rican, Hispanic, and Asian Legislative Caucus, and the Progressive Caucus of the New York City Council. *See* Exhibit A for a list of *amici*.

As elected representatives of the people of New York, *amici* have a special responsibility to defend the constitutional rights of immigrant-rights activists like Ravidath Ragbir and the immigrant communities they serve. Immigrants make up a substantial portion of *amici*'s constituencies: Over 2 million noncitizen immigrants reside in New York State, with over 1.3 million in New York City alone. These immigrants account for roughly 10 percent of New York's population and over 20 percent of New York City residents,¹ and they are a source of tremendous cultural and economic vibrancy in the communities that *amici* represent.

New York's noncitizen immigrants are *amici*'s constituents, but they cannot vote. To be heard in a political system that often ignores them, these individuals must be free to speak on matters of public concern that uniquely affect their lives. This case concerns whether they can do that without fear of official reprisal. *Amici* submit this brief to ensure that federal immigration authorities respect the free speech rights of all New Yorkers, citizens and noncitizens alike.²

¹ *See American FactFinder*, U.S. Census Bureau, <https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited Mar. 5, 2018). New York State and New York City are also home to, respectively, over 2.2 million and 1.5 million naturalized citizens. *Id.*

² This brief was neither authored nor funded by any party or person other than *amici* and their counsel.

INTRODUCTION

Immigration policy has been at the forefront of our national political debate for years. *Amici* are actively engaged in that debate, working at the federal, state, and local level to build a brighter future for the millions of noncitizen immigrants in our communities. Those efforts depend on robust public input and engagement. It is hard to serve, and to know how to serve, people who cannot express their concerns, views, and opinions. It is harder still for the millions of noncitizens, who cannot vote, to ensure their voices are heard by the public officials who represent them.

Today, this public engagement is under assault. While the current administration publicly targets policies like the Diversity Immigrant Visa program and Deferred Action for Childhood Arrivals (“DACA”), it is also waging a campaign against immigrants behind the scenes.³ In the past year, the administration has drastically increased its arrests of noncitizens.⁴ It has tried to strong-arm state and local governments into joining its crackdown on immigrants. And it has flooded cities, courts, hospitals, churches, trains, and buses with federal immigration officers. The result? Millions of noncitizens now live in constant fear, marginalized by the country of which they have long been a part.⁵

This case is a quintessential example of the federal government’s campaign against noncitizens. Since his release from custody in 2008, Plaintiff Ravidath Ragbir has become a fierce advocate for immigrant rights and “lived a life of a redeemed man,” *see Ragbir v. Sessions*, No.

³ The U.S. Citizenship and Immigration Services even deleted a reference to “America’s promise as a nation of immigrants” from its mission statement. Richard Gonzales, *America No Longer a ‘Nation of Immigrants,’ USCIS Says*, NPR (Feb. 22, 2018), <https://www.npr.org/sections/thetwo-way/2018/02/22/588097749/america-no-longer-a-nation-of-immigrants-uscis-says>.

⁴ *See* Tessa Berenson, *Immigration Raids Are Sweeping Up More People Who Weren’t Targets*, Time (Aug. 9, 2017), <http://time.com/4893074/immigration-raids-undocumented-targets/>.

⁵ *See* Matt Viser, *Fear of Trump Crackdown Haunts Undocumented Immigrants*, Boston Globe (Nov. 25, 2017), <https://www.bostonglobe.com/news/politics/2017/11/25/fear-trump-crackdown-haunts-daily-life-undocumented-immigrants/LozpzJllpZS0mxQ34QMVvK/story.html>.

18-cv-236 (KBF), 2018 WL 623557, at *3 n.11 (S.D.N.Y. Jan. 29, 2018). Yet Immigration and Customs Enforcement (“ICE”) agents suddenly seized him, unlawfully detained him more than a thousand miles from his home of over 20 years, and tried to expel him from the country before any court could intervene—all because ICE officials resented the public scrutiny his advocacy brought to their work. ICE retaliated against Mr. Ragbir, as it has against immigrant-rights activists across the country.⁶ This pattern of discrimination and retaliation is an attack on basic First Amendment freedoms and a threat to *amici*’s ability to effectively represent millions of New Yorkers.

ARGUMENT

Amici endorse the arguments set forth in Plaintiffs’ motion for a preliminary injunction. See ECF Nos. 11–18. They submit this brief to further illustrate that Defendants’ actions against Mr. Ragbir are part of a pattern and practice of retaliation against immigrants in New York and across the United States. Absent an injunction, ICE’s targeting of immigrant-rights activists threatens to chill the protected speech of *amici*’s constituents and harm the public interest.

I. Plaintiffs Are Likely To Succeed On The Merits Because Defendants’ Actions Are Part Of A Pattern Of Retaliation Against Proponents Of Immigration Reform.

To obtain a preliminary injunction, Plaintiffs must demonstrate “a likelihood of success on the merits.” *Winter v. NRDC*, 555 U.S. 7, 20 (2008). Plaintiffs have satisfied that standard: another judge in this Court has already found that the “unnecessarily cruel” conduct by Defendants raises “grave concern[s]” that Mr. Ragbir has “been targeted as a result of his speech and political advocacy on behalf of immigrants’ rights and social justice.” *Ragbir*, 2018 WL 623557, at *1, *3,

⁶ See, e.g., Liz Robbins, *Activists and ICE Face Off over Detained Immigrant Leader*, N.Y. Times (Jan. 12, 2018), <https://www.nytimes.com/2018/01/12/nyregion/immigration-activist-deportation.html>; Maria Sacchetti & David Weigel, *ICE Has Detained or Deported Prominent Immigration Activists*, Wash. Post (Jan. 19, 2018), https://www.washingtonpost.com/powerpost/ice-has-detained-or-deported-foreigners-who-are-also-immigration-activists/2018/01/19/377af23a-fc95-11e7-a46b-a3614530bd87_story.html.

& n.1. Unfortunately, Mr. Ragbir’s case is just one of many instances in which ICE has retaliated against prominent immigrant-rights activists across the country.

A. ICE has retaliated and discriminated against immigrant-rights activists around the country.

The First Amendment recognizes that the government may not “deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration.” *Citizens United v. FEC*, 558 U.S. 310, 341 (2010). To give that right and privilege meaning, the First Amendment bars the government from discriminating against views it dislikes, *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995), and from retaliating against people “for speaking out,” *Hartman v. Moore*, 547 U.S. 250, 256 (2006). These protections apply with equal force to immigrants residing in this country. *Bridges v. Wixon*, 326 U.S. 135, 148 (1945); *Valle Del Sol Inc. v. Whiting*, 709 F.3d 808, 814 (9th Cir. 2013). Defendants have abandoned these constitutional protections by retaliating and discriminating against Plaintiffs, and others like them, for their activism.

In the past few months, ICE has targeted—and in one case deported—two of New York’s most prominent immigration activists.⁷ Mr. Ragbir, a well-respected New Yorker, award-winning immigrant-rights advocate, and the Executive Director of the New Sanctuary Coalition of New York City, *see* Compl. ¶¶ 32–38, was targeted at a routine check-in after he publicly criticized ICE’s enforcement and detention policies, *see id.* ¶¶ 49–65. For drawing unwanted attention from the media and elected officials, ICE suddenly arrested Mr. Ragbir, misled his U.S. citizen wife about his whereabouts, and detained him under circumstances this Court called “unnecessarily cruel.” *See id.* ¶¶ 64–72; *Ragbir*, 2018 WL 623557, at *3. While the Government has now stayed

⁷ *See* Robbins, *supra* note 6; Sacchetti & Weigel, *supra* note 6.

Mr. Ragbir’s deportation pending resolution of the Plaintiffs’ motion for a preliminary injunction, Jean Montrevil, a co-founder of the New Sanctuary Coalition, was not as fortunate. ICE agents surveilled and arrested Mr. Montrevil while he was on his lunch break outside his home in Queens on January 3, 2018, and sent him to a detention center in Florida—all to avoid any “noisy protest.” *See* Compl. ¶¶ 58–61. ICE deported Mr. Montrevil after just thirteen days, ignoring pleas that he had moved to reopen his deportation proceedings. *Id.* ¶ 58.⁸

The cases of Mr. Ragbir and Mr. Montrevil are sadly not unique. ICE has surveilled, harassed, detained, and deported activists across the country.⁹ In March 2017, ICE arrested a young DREAMer in Mississippi, after she spoke out against ICE raids at a news conference,¹⁰ and three public spokespeople for Migrant Justice, after they led public protests on behalf of “undocumented labor in Vermont.”¹¹ Between November 2017 and January 2018, ICE targeted several more outspoken activists, including: Baltazar Aburto Gutierrez, who spoke to the *Seattle Times* about his partner’s arrest and deportation;¹² Eliseo Jurado, whose wife captured media attention by seeking sanctuary in a Colorado church;¹³ and Harry Pangemanan, an award-winning humanitarian who has become “something of a spokesman for undocumented immigrants in New

⁸ *See* Jerry Iannelli, *New York Immigrant Activist Detained by ICE in Miami Might Be Deported Today*, Miami New Times (Jan. 16, 2018), <http://www.miaminewtimes.com/news/new-york-immigrant-activists-ragbir-montrevil-held-in-miamis-krome-processing-center-face-deportation-9996632>.

⁹ *See, e.g.*, Julianne Hing, *ICE Is Going After People Who Were Once Off-Limits*, The Nation (Jan. 19, 2018), <https://www.thenation.com/article/ice-is-going-after-people-who-were-once-off-limits/>.

¹⁰ Jamiel Lynch, *DREAMer Speaks Out on Immigration, Gets Arrested by ICE*, CNN (Mar. 2, 2017), <https://www.cnn.com/2017/03/01/us/dreamer-arrested-jackson-mississippi/index.html>.

¹¹ Annelise Orleck, *How Migrant Workers Took on Ben & Jerry’s — And Won a Historic Agreement*, The Guardian (Feb. 25, 2018), <https://www.theguardian.com/us-news/2018/feb/25/ben-jerrys-migrant-workers-dairy-farms>.

¹² Nina Shapiro, *ICE Tracks Down Immigrant Who Spoke to Media in SW Washington: ‘You Are the One from the Newspaper’*, Seattle Times (Dec. 5, 2017), <https://www.seattletimes.com/seattle-news/ice-tracks-down-immigrant-who-spoke-to-media-in-sw-washington-you-are-the-one-from-the-newspaper/>.

¹³ Sacchetti & Weigel, *supra* note 6.

Jersey.”¹⁴ Then there is the case of Maru Mora-Villalpando, who protested conditions at an ICE detention center in Washington and publicized detainee hunger strikes. ICE placed her into removal proceedings last December. In a form explaining why, an ICE officer noted Ms. Mora-Villalpando’s “extensive involvement with anti-ICE protests and Latino advocacy programs.”¹⁵

As these examples illustrate, Mr. Ragbir’s case is part of a pattern of ICE’s retaliation and discrimination against activists who have publicly criticized this administration’s immigration policies. As *amicus* N.Y. State Senator Gustavo Rivera remarked, ICE’s actions are “a clear sign that this administration is targeting folks who are leading efforts to resist attacks on immigrant communities.”¹⁶ Similarly, *amicus* U.S. Congressman Jerrold Nadler has observed that “[ICE is] trying to intimidate people. These are well-known activists who’ve been here for decades, and [ICE is] saying to them: Don’t raise your head.”¹⁷

¹⁴ Ben Mathis-Lilley, *Immigrant Who Just Won Public Service Award Named for MLK Is Now Hiding from ICE in a New Jersey Church*, Slate (Jan. 26, 2018), <https://slate.com/news-and-politics/2018/01/harry-pangemanan-fled-ice-to-new-jersey-church.html>.

¹⁵ Gene Johnson, *Deportation Document Described Immigrant Activist’s Protests*, Wash. Post (Feb. 26, 2018), https://www.washingtonpost.com/national/deportation-document-described-immigrant-activists-protests/2018/02/26/6a84ccc8-1b53-11e8-98f5-ceecfa8741b6_story.html; see also Nina Shapiro, *Activist Maru Mora-Villalpando Says ICE Using Deportation Threat as ‘Intimidation Tactic’*, Seattle Times (Jan. 16, 2018), <https://www.seattletimes.com/seattle-news/activist-maru-mora-villalpando-says-ice-using-her-deportation-as-intimidation-tactic/>.

¹⁶ Carey Dunne, *Sanctuary Activists Say Trump Targeting Them After ICE Detains Second Immigrant Leader*, Village Voice (Jan. 12, 2018), <https://www.villagevoice.com/2018/01/12/sanctuary-activists-say-trump-targeting-them-after-ice-detains-second-immigrant-leader/>.

¹⁷ Sacchetti & Weigel, *supra* note 6; see also *id.* (“I have long suspected that very vocal advocates were harshly targeted after they spoke out,” said [U.S. Congressman Luis] Gutierrez. ‘I would go to a hearing, an immigration hearing, and the person who made the biggest impression? I’d find out that they’d been detained. And that started last year.’”); Hing, *supra* note 9 (“ICE seems intent on proving that there is no safety for undocumented immigrants anywhere—not in the shadows and not in the spotlight.”).

B. ICE’s targeting of activists is one front in a broader campaign against dissent.

Activists are not the administration’s only targets. This pattern of intimidation is part of a broader campaign to punish any critics of the administration’s draconian immigration policies.¹⁸

Federal authorities have begun to retaliate against certain cities, known as “sanctuary cities,” that have declined to assist federal immigration officers in the detention and deportation of law-abiding noncitizens.¹⁹ The President has threatened to cut off these cities’ federal funding,²⁰ the Justice Department has threatened them with subpoenas,²¹ and Defendant Thomas Homan, the Acting Director of ICE, has threatened to prosecute local and state officials.²² Federal courts have already enjoined some of these efforts as unconstitutional. *See, e.g., Cty. of Santa Clara v. Trump*, 250 F. Supp. 3d 497 (N.D. Cal. 2017); *City of Phila. v. Sessions*, — F. Supp. 3d. —, 2017 WL 5489476 (E.D. Pa. Nov. 15, 2017). In response to these decisions, ICE has begun to threaten these cities’ immigrant communities directly. Acting Director Homan warned that he would “flood sanctuary cities with agents.”²³ True to his word, ICE arrested nearly 500 people over four days

¹⁸ See Katie Egan, *Federal Crackdown on Immigration Activists Threatens to Chill Free Speech*, ACLU (Jan. 30, 2018), <https://www.aclu.org/blog/free-speech/rights-protesters/federal-crackdown-immigration-activists-threatens-chill-free>.

¹⁹ Roque Planas & Elise Foley, *Deportations of Noncriminals Rise as ICE Casts Wider Net*, HuffPost (Jan. 9, 2018), https://www.huffingtonpost.com/entry/trump-immigrant-deportation-noncriminals_us_5a25dfc8e4b07324e8401714.

²⁰ Martin Kaste, *Trump Threatens ‘Sanctuary’ Cities with Loss of Federal Funds*, NPR (Jan. 26, 2017), <https://www.npr.org/sections/thetwo-way/2017/01/26/511899896/trumps-threatens-sanctuary-cities-with-loss-of-federal-funds>.

²¹ Kevin Johnson & Gregory Korte, *DOJ Threatens ‘Sanctuary Cities’ with Subpoenas, Escalating Trump’s Immigration Enforcement Campaign*, USA Today (Jan. 24, 2018), <https://www.usatoday.com/story/news/politics/2018/01/24/justice-department-threatens-sanctuary-cities-subpoenas-escalating-trumps-immigration-enforcement-ca/1061225001/>.

²² Nicole Rodriguez, *Trump Administration Wants to Arrest Mayors of ‘Sanctuary Cities’*, Newsweek (Jan. 16, 2018), <http://www.newsweek.com/trump-administration-wants-arrest-mayors-sanctuary-cities-783010>.

²³ Paul Bedard, *ICE Chief: 80% Jump in Illegal Targets, Readies National ‘Sanctuary’ Crackdown*, Wash. Examiner (July 18, 2017), <http://www.washingtonexaminer.com/ice-chief-80-jump-in-illegal-targets-readies-national-sanctuary-crackdown/article/2629001>.

last September in raids that targeted sanctuary cities.²⁴ Just this past week, and only a month after Oakland barred city employees from assisting ICE, federal agents swept across the Bay Area in a raid that targeted at least 1,000 people for arrest.²⁵

Federal immigration officials have zeroed in on New York as part of their attempt to punish sanctuary cities. Since 2017, ICE activity has spiked in New York. For example, immigration arrests of New Yorkers without criminal records have more than tripled,²⁶ and ICE arrested 45 residents of New York City alone as part of its nationwide raids last September.²⁷ ICE is also stalking New York courthouses—places most New Yorkers rightfully thought safe. According to the Immigrant Defense Project, there have been 111 successful and attempted ICE arrests in or around New York City courthouses since January 2017, a 1000% increase from the 11 in 2016.²⁸ Among those ICE has targeted: a father of two U.S. citizen children as he left family court, a Queens woman who had appeared in human trafficking intervention court, and a victim of alleged domestic violence as she left Queens County Criminal Court.²⁹ Meanwhile, ICE has engaged in tactics intended to sow mistrust and confusion: ICE agents wear “POLICE” insignia when making

²⁴ Eric Westervelt, *ICE Raids Target Sanctuary Cities*, NPR (Sept. 29, 2017), <https://www.npr.org/2017/09/29/554424186/ice-raids-target-sanctuary-cities>.

²⁵ See Carlos Ballesteros, *Sanctuary City Policies Strengthened by Oakland, Bars Any City Employee from Cooperating with ICE*, Newsweek (Jan. 18, 2018), <http://www.newsweek.com/sanctuary-cities-oakland-city-council-ice-california-784398>; Thomas Fuller, *Immigration Agency Rails Against Oakland Mayor's Warning of Raids*, N.Y. Times (Feb. 28, 2018), <https://www.nytimes.com/2018/02/28/us/oakland-mayor-ice-warning.html>.

²⁶ Liz Robbins, *In a 'Sanctuary City,' Immigrants Are Still at Risk*, N.Y. Times (Feb. 27, 2018), <https://www.nytimes.com/2018/02/27/nyregion/sanctuary-cities-immigrants-ice.html>.

²⁷ Kristin Toussaint, *45 Arrested in NYC as Part of ICE Operation that Targeted Sanctuary Cities*, Metro (Sept. 29, 2017), <https://www.metro.us/news/local-news/new-york/45-arrested-nyc-ice-sanctuary-cities>.

²⁸ Noah Manskar, *City Council Members Push Top State Judge to Bar ICE from Courts*, Patch (Feb. 20, 2018), <https://patch.com/new-york/new-york-city/city-council-members-push-top-state-judge-bar-ice-courts>.

²⁹ Steve Coll, *When a Day in Court Is a Trap for Immigrants*, The New Yorker (Nov. 8, 2017), <https://www.newyorker.com/news/daily-comment/when-a-day-in-court-is-a-trap-for-immigrants>.

arrests, exploiting and eroding trust between local police and the immigrants they protect and serve.³⁰ But ICE is not alone in their crusade. Even Border Patrol officers—whose mission is to protect our nation’s border, not engage in interior enforcement³¹—are now boarding New York buses and trains, demanding proof of citizenship, and turning immigrants over to ICE.³²

These actions are not limited to immigrants with criminal records. Instead, ICE has begun targeting people with “clean histories” and “longstanding ties to the country.”³³ In the words of Acting Director Homan, all undocumented immigrants in the United States “should be concerned” that the agency “is looking for [them]”—“[t]here’s no population off the table.”³⁴ With its newly unfettered discretion to decide whom to arrest,³⁵ ICE made 37,734 “noncriminal” arrests in fiscal year 2017, more than twice the number in 2016.³⁶ Even once-routine ICE “check-ins” now often end with immigrants in handcuffs.³⁷ These tactics have caused immigrants around the country to

³⁰ See Miranda Green, *New Bill Aims to Block ICE from Identifying as Police Officers*, CNN (Apr. 6, 2017), <https://www.cnn.com/2017/04/06/politics/ice-officers-police-bill/index.html> (discussing a bill introduced by *amicus* Congresswoman Nydia Velázquez to stop the practice).

³¹ See *Along U.S. Borders*, U.S. Customs & Border Protection, <https://www.cbp.gov/border-security/along-us-borders> (last updated Jan. 17, 2018).

³² Ron Nixon, *Under Trump, Border Patrol Steps Up Searches Far from the Border*, N.Y. Times (Feb. 21, 2018), <https://www.nytimes.com/2018/02/21/us/politics/trump-border-patrol-searches.html>.

³³ Planas & Foley, *supra* note 19.

³⁴ *Id.*

³⁵ See Nicholas Kulish et al., *Immigration Agents Discover New Freedom to Deport Under Trump*, N.Y. Times (Feb. 25, 2017), <https://www.nytimes.com/2017/02/25/us/ice-immigrant-deportations-trump.html>.

³⁶ Nick Miroff & Maria Sacchetti, *Trump Takes ‘Shackles’ off ICE, Which Is Slapping Them on Immigrants Who Thought They Were Safe*, Wash. Post (Feb. 11, 2018), https://www.washingtonpost.com/world/national-security/trump-takes-shackles-off-ice-which-is-slapping-them-on-immigrants-who-thought-they-were-safe/2018/02/11/4bd5c164-083a-11e8-b48c-b07fea957bd5_story.html.

³⁷ *Id.*

steer clear of prominent community institutions, once viewed as sacrosanct but now commonly targeted by ICE, including courthouses, churches, and hospitals.³⁸

In light of this pattern of aggressive conduct targeting immigrants, Defendants’ “unusual” and “unnecessarily cruel” actions against Mr. Ragbir are unmistakably an effort to retaliate against him and silence his political voice. *Ragbir*, 2018 WL 623557, at *3; *see also Hous. Works, Inc. v. City of New York*, 72 F. Supp. 2d 402, 426 (S.D.N.Y. 1999) (“Evidence of a pattern of antagonism or of prior retaliatory conduct may serve as circumstantial evidence of retaliation.” (citation and internal quotation marks omitted)); *Shub v. Westchester Cmty. Coll.*, 556 F. Supp. 2d 227, 246 (S.D.N.Y. 2008) (“evidence of an ongoing pattern of retaliatory conduct and intent can . . . establish a causal connection” between defendant’s adverse action and plaintiff’s protected activities).³⁹

II. The Public Interest Weighs In Favor Of A Preliminary Injunction.

Plaintiffs must also establish that the injunctive relief they request will serve the “public interest.” *Winter*, 555 U.S. at 20. Plaintiffs seek from this Court a preliminary injunction that stays Mr. Ragbir’s removal and restrains Defendants from taking any adverse enforcement action against any noncitizen on the basis of protected speech or expressive conduct. ECF No. 12 at 32.

Both forms of relief are overwhelmingly in the public interest. Protecting free speech rights from unlawful discrimination serves the public interest, and here Plaintiffs have shown that ICE

³⁸ *See id.*; Nick Pinto, *No Sanctuary: As ICE Targets Immigrant Rights Activists for Deportation, Suspicious Vehicles Outside Churches Stoke Surveillance Fears*, *The Intercept* (Jan. 19, 2018), <https://theintercept.com/2018/01/19/ice-new-sanctuary-movement-ravi-ragbir-deportation/>; John Burnett, *Border Patrol Arrests Parents While Infant Awaits Serious Operation*, *NPR* (Sept. 20, 2017), <https://www.npr.org/2017/09/20/552339976/border-patrol-arrests-parents-while-infant-awaits-serious-operation>; Coll, *supra* note 29.

³⁹ Although Plaintiffs will be able to make a more complete factual showing after discovery and at trial, in deciding Plaintiffs’ motion for a preliminary injunction, the Court may consider evidence cited in this brief, which weighs strongly in favor of a finding that Plaintiffs are likely to succeed on the merits. *See Mullins v. City of New York*, 626 F.3d 47, 52 (2d Cir. 2010) (“It is well established that a preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits. . . . [H]earsay evidence may be considered by a district court in determining whether to grant a preliminary injunction.” (citations and internal quotation marks omitted)).

officials targeted Mr. Ragbir (and other activists) for drawing critical attention to the agency's operations. Moreover, ICE's retaliatory actions are having a significant chilling effect on the speech of noncitizens (and likely some citizens as well), which compromises the ability of *amici* and other public officials to effectively represent their constituents. Finally, while *amici* have tried to protect their constituents, ICE has given no indication that it will alter its conduct. Plaintiffs' requested relief is therefore necessary not only to protect Mr. Ragbir, but also to ensure that ICE does not continue to retaliate against its critics on the basis of their protected speech.

A. The public interest requires protecting the right of noncitizens to communicate with political officials without fear of retaliation.

ICE's campaign to suppress the voices of immigrant-rights activists across the country betrays, not protects, the "public interest." Noncitizen activists like Mr. Ragbir and Mr. Montrevil have a constitutional right to participate in our national debate about immigration reform without fear of official retribution. Our laws and our Constitution protect them, irrespective of immigration status. *See Bridges*, 326 U.S. at 148; *Whiting*, 709 F.3d at 814.

By contrast, ICE has no legitimate interest in suppressing these activists' speech. *See N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013) (explaining that the "public interest" diverges from "the interests of the State" when the government suppresses free speech). Indeed, "the public interest in having free and unhindered debate on matters of public importance" like immigration is "*the core value* of the Free Speech Clause." *Pickering v. Bd. of Educ.*, 391 U.S. 563, 573 (1968) (emphasis added). When, as here, that value comes under assault, there can be no question that "securing First Amendment rights is in the public interest." *N.Y. Progress*, 733 F.3d at 488; *see also, e.g., Pac. Gas & Elec. Co. v. Pub. Utils. Comm'n of Cal.*, 475 U.S. 1, 8 (1986) ("By protecting those who wish to enter the marketplace of ideas from government attack, the First Amendment protects the public's interest in receiving information.").

Protecting one's right to engage in public debates is especially important here because it is the primary, if not exclusive, means by which noncitizens in America can communicate with political officeholders like *amici*. Citizens can communicate with their representatives through the ballot box or run for public office themselves. Noncitizens are not permitted to vote in New York or federal elections,⁴⁰ nor can they run for office, *see* U.S. Const. art. I, §§ 2-3; N.Y. Const. art. III, § 7; *id.* art. IV, § 2; *id.* art. V, § 1; N.Y. Pub. Off. Law § 3. Instead, they must rely on their First Amendment rights to assemble and to speak freely.

The value of robust public engagement by immigrants is illustrated by what has happened in New York. *Amici* and the bodies in which they serve have crafted several new public welfare initiatives to address concerns raised by New York's immigrant communities. They include programs to make photo IDs available to all New York City residents,⁴¹ to ensure immigrants have access to literacy, health, and legal services,⁴² and to support immigrant-owned small businesses.⁴³ All of these programs serve the public's interest in ensuring millions of New Yorkers live safe and productive lives, and they are the product of a quickly vanishing environment in which noncitizens and immigrant-rights activists can engage freely with *amici* about the needs of their communities.

⁴⁰ Felipe De La Hoz, *Why Don't We Let Noncitizen Residents Vote?*, Village Voice (Nov. 7, 2017), <https://www.villagevoice.com/2017/11/07/why-dont-we-let-noncitizen-residents-vote/>.

⁴¹ *See* N.Y.C. Admin. Code § 3-115.

⁴² *See, e.g.*, New York City Council, *Report of the Finance Division on the Fiscal 2018 Preliminary Budget and the Fiscal 2017 Preliminary Mayor's Management Report* (Mar. 2017), available at <http://council.nyc.gov/budget/wp-content/uploads/sites/54/2017/03/002-MOIA.pdf>; Press Release, *New York State Becomes First in the Nation to Provide Lawyers for All Immigrants Detained and Facing Deportation*, Vera Inst. of Justice (Apr. 7, 2017), available at <https://www.vera.org/newsroom/press-releases/new-york-state-becomes-first-in-the-nation-to-provide-lawyers-for-all-immigrants-detained-and-facing-deportation>; *Our Programs*, N.Y.C. Mayor's Office of Immigrant Affairs, <https://www1.nyc.gov/site/immigrants/programs/social-economic.page> (last visited Mar. 5, 2018); Mayor's Task Force on Immigrant Health Care Access, *Improving Immigrant Access to Healthcare in New York City* (Oct. 2015), available at <http://www1.nyc.gov/assets/home/downloads/pdf/reports/2015/immigrant-health-task-force-report.pdf>.

⁴³ *See Immigrant Business Initiative*, N.Y.C. Business, <https://www1.nyc.gov/nycbusiness/article/immigrant-business-initiative> (last visited Mar. 5, 2018).

B. ICE’s unlawful conduct is having a chilling effect on New York’s immigrants and threatening *amici*’s ability to represent their noncitizen constituents.

As ICE attempts to silence the loudest voices of dissent, it also undermines the willingness of New York’s immigrants to speak out—whether about politics, immigration, or crime. As 31 U.S. Representatives—including the 8 *amici* who represent New York State in Congress—wrote to Secretary of Homeland Security Kirstjen Nielsen and Acting Director Homan, ICE’s conduct threatens to create “a broader chilling effect within the community, dissuading some immigrants from invoking their legal rights for fear that doing so will result in retaliation by ICE.”⁴⁴ Many noncitizens will not give interviews, attend rallies, speak out in public forums, or even set foot in a courthouse if they fear retaliation, detention, or deportation.⁴⁵ Nor will many citizens speak out if they fear that ICE could retaliate against their noncitizen family and friends.

Driving millions of immigrants and their loved ones into hiding can only harm our communities. As New York City Mayor Bill de Blasio wrote to the Director of ICE’s New York Field Office, ICE’s actions have “not only create[d] fear in immigrant communities, but undermine[d] public safety.”⁴⁶ “When ICE takes aggressive action against leaders in immigrant communities,” it hollows out the programs and protests they lead, and “it casts a chilling effect on immigrants’ willingness to engage with government and law enforcement generally, undercutting th[e] trust” officials have worked hard to build.⁴⁷ When that trust breaks, when immigrants are

⁴⁴ Letter from Nydia M. Velázquez, Member, U.S. House of Representatives, et al. to Kirstjen M. Nielsen, Sec’y, Dep’t of Homeland Sec., and Thomas D. Homan, Deputy Dir. & Senior Official, ICE (Jan. 26, 2018), *available at* https://velazquez.house.gov/sites/velazquez.house.gov/files/Velazquez_Crowley_MOC_Letter_On_Immigration_Rights_Activists_PDF.pdf.

⁴⁵ See Egan, *supra* note 18.

⁴⁶ Letter from Bill de Blasio, Mayor, The City of New York, to Thomas Decker, Director, N.Y. Field Office, ICE (Feb. 7, 2018), *available at* <https://ravidefense.files.wordpress.com/2018/02/ravi-letter-to-ice1.pdf>.

⁴⁷ *Id.*

too afraid to speak up or seek help, it compromises *amici*'s ability to identify and address the needs of millions of their most vulnerable constituents. In the words of Mayor de Blasio, "[Mr. Ragbir] and others like him have played a crucial role in making New York a beacon of diversity and inclusion for so many. Forcing [them]" to leave the country "would adversely impact the larger immigrant community."⁴⁸

These concerns are not theoretical; the chilling effects are already being felt by other activists and immigrant-rights organizations. ICE's aggression has forced many groups to rethink how to advocate for immigrants who are constantly under threat. According to Reverend Micah Bucey, whose church in Manhattan hosts the New Sanctuary Coalition, "[a]ll bets are off, and we have no idea what the most effective tactics moving forward will be."⁴⁹ Many immigrants are now too afraid to even walk from the nearest subway station to the church without accompaniment.⁵⁰

C. *Amici* have worked to protect their noncitizen constituents, but ICE refuses to take reasonable steps to respect the rights of those constituents.

Amici have worked hard to shield New York's immigrants from ICE's aggressive conduct and to lobby the agency to change its ways. But ICE has refused to implement reasonable measures necessary to protect the legal rights of noncitizens, requiring this Court to intervene.

New York State and New York City have taken a variety of steps to minimize the frequency, and consequences, of run-ins between New Yorkers and ICE. For example, New York City has enacted a law that limits the instances in which corrections and police officials can honor "detainer requests" from ICE, which ask officers to hold otherwise-releasable noncitizens so that

⁴⁸ *Id.*

⁴⁹ Dunne, *supra* note 16.

⁵⁰ *Id.*; see also Pinto, *supra* note 38.

ICE can take them into custody. *See* N.Y.C. Admin. Code §§ 9-131, 14-154. New York State and New York City have also taken steps to improve immigrants’ access to legal services.⁵¹ And bills now pending in the New York State legislature would reduce the maximum sentence for a misdemeanor from 365 to 364 days and thereby avoid triggering federal laws that link deportation to convictions for crimes punishable by a sentence of at least one year. A4881, 240th Sess. (N.Y. 2017); S4294, 240th Sess. (N.Y. 2017); *see also, e.g.*, 8 U.S.C. § 1227(a)(2)(A).⁵² In response, ICE has only “ratcheted up its attacks” against New York and its immigrant communities.⁵³

Similarly, when ICE began targeting noncitizens in New York’s courthouses, New York Attorney General Eric Schneiderman, then-Acting Brooklyn District Attorney Eric Gonzalez, and other District Attorneys warned that the practice threatens public safety and impedes access to justice by driving victims and witnesses underground.⁵⁴ But ICE ignored these warnings and refused to designate courthouses as “sensitive locations” where enforcement actions should be avoided. Instead, it doubled down by formalizing rules authorizing courthouse arrests.⁵⁵

⁵¹ *See* Press Release, Vera Inst. of Justice, *supra* note 42; *Padilla Initiative*, NYS Office of Indigent Legal Services, <https://www.ils.ny.gov/content/padilla-initiative> (last visited Mar. 5, 2018); *Liberty Defense Project*, N.Y. St., <https://www.ny.gov/programs/liberty-defense-project> (last visited Mar. 5, 2018).

⁵² *See* New York City Bar, *Report on Legislation by the Criminal Courts Committee and the Criminal Justice Operations Committee* (Mar. 2017), available at http://s3.amazonaws.com/documents.nycbar.org/files/20073134-One_Day_to_Protect_NYers_Crim_CourtsandCJO_Report_FINAL_7.21.16.pdf.

⁵³ Robbins, *supra* note 26.

⁵⁴ Press Release, *New York AG Eric Schneiderman and Acting Brooklyn DA Eric Gonzalez Call for ICE to End Immigration Enforcement Raids in State Courts*, N.Y. Attorney Gen. (Aug. 3, 2017), available at <https://ag.ny.gov/press-release/new-york-ag-eric-schneiderman-and-acting-brooklyn-da-eric-gonzalez-call-ice-end>; Erin Durkin, *City DAs Plead with ICE to Stop Arresting Immigrants at NYC Courthouses: ‘It Jeopardizes Public Safety’*, N.Y. Daily News (Feb. 14, 2018), <http://www.nydailynews.com/new-york/city-das-press-ice-stop-arresting-immigrants-courthouses-article-1.3820798>.

⁵⁵ *Id.* More than half of the members of the New York City Council have now asked New York’s Chief Judge to ban ICE agents from the state’s courthouses. Manskar, *supra* note 28.

Amici have also sought to address Defendants' efforts to retaliate against New Yorkers who engage in "core" First Amendment speech. *Amicus* Congresswoman Nydia Velázquez has introduced a private bill, H.R. 4937, 115th Cong. (2018), that would grant Mr. Ragbir permanent legal status, and in the case of his deportation, a legal right to return to the United States. The New York City Council has passed a Resolution calling upon Congress to enact H.R. 4397 and denouncing ICE's unlawful targeting of immigrant-rights activists. N.Y.C. Council Res. 0182-2018 ("The deportation and detention of highly visible advocates not only has a destabilizing effect on immigrant communities, it can also be construed as politically motivated based on the activists' outspoken positions contrary to current policy[.]").⁵⁶ Mayor de Blasio has urged ICE to stay Mr. Ragbir's removal, noting that its actions "have raised serious concerns about how ICE is targeting immigrants."⁵⁷ Finally, 31 Members of Congress, including 8 *amici*, have written to Acting Director Homan and Secretary Nielsen to express concerns regarding ICE's targeting of immigrant-rights leaders around the country.⁵⁸

While *amici* have taken these steps to protect basic First Amendment rights, they are by themselves insufficient to protect *amici*'s constituents from Defendants' unconstitutional conduct. ICE has repeatedly chosen to ignore the concerns of *amici* and other New York officials. And, as representatives of the people of New York, *amici* lack the legal authority to stop ICE's unlawful conduct. Accordingly, only judicial relief will bring an end to Defendants' ongoing efforts to silence America's leading voices for immigration reform.

⁵⁶ Available at <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3344956&GUID=949C76BE-6106-4B1A-BB32-80C060BF9116&Options=&Search=> (last visited Mar. 5, 2018).

⁵⁷ Letter from Mayor de Blasio, *supra* note 46.

⁵⁸ Letter from Rep. Velázquez et al., *supra* note 44.

CONCLUSION

For all of these reasons and those provided by the Plaintiffs, *see* ECF No. 12, *amici* respectfully request the Court grant the Plaintiffs' motion for a preliminary injunction.

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Respectfully submitted,

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EXHIBIT A

LIST OF *AMICI*

Members of the United States House of Representatives

Yvette D. Clarke (NY - 9th)	Joe Crowley (NY - 14th)	Adriano Espaillat (NY - 13th)	Carolyn B. Maloney (NY - 12th)
Grace Meng (NY - 6th)	Jerrold Nadler (NY - 10th)	José E. Serrano (NY - 15th)	Nydia M. Velázquez (NY - 7th)

New York State Senators

Jamaal Bailey (36th Senate District)	Leroy Comrie (14th Senate District)	Jesse Hamilton (20th Senate District)	Kevin S. Parker (21st Senate District)
Roxanne J. Persaud (19th Senate District)	Gustavo Rivera (33rd Senate District)	James Sanders Jr. (10th Senate District)	

Members of the New York State Assembly

Jeffrion L. Aubry (Assembly District 35)	Rodneyse Bichotte (Assembly District 42)	Michael Blake (Assembly District 79)	Harry B. Bronson (Assembly District 138)
Carmen N. De La Rosa (Assembly District 72)	Patricia Fahy (Assembly District 109)	Joseph R. Lentol (Assembly District 50)	Walter T. Mosley (Assembly District 57)
Yuh-Line Niou (Assembly District 65)	Victor M. Pichardo (Assembly District 86)	Sean Ryan (Assembly District 149)	Luis R. Sepúlveda (Assembly District 87)
	Jo Anne Simon (Assembly District 52)	Latrice Walker (Assembly District 55)	

The New York State Black, Puerto Rican, Hispanic and Asian Legislative Caucus

Public Advocate for the City of New York

Letitia James

Manhattan Borough President

Gale Brewer

Members of the New York City Council

Alicka Ampry-Samuel (District 41)	Diana Ayala (District 8)	Justin Brannan (District 43)	Margaret S. Chin (District 1)
Daniel Dromm (District 25)	Ben Kallos (District 5)	Brad Lander (District 39)	Stephen T. Levin (District 33)
Mark Levine (District 7)	Carlos Menchaca (District 38)	I. Daneek Miller (District 27)	Bill Perkins (District 9)
Antonio Reynoso (District 34)	Donovan J. Richards (District 31)	Carlina Rivera (District 2)	Ydanis Rodriguez (District 10)
Helen Rosenthal (District 6)	Jimmy Van Bramer (District 26)	Jumaane D. Williams (District 45)	

The Progressive Caucus of the New York City Council