

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): 18-01597

Caption [use short title]

Motion for: leave to file an amici curiae brief in support of Plaintiffs-Appellants

Set forth below precise, complete statement of relief sought: leave to file an amici curiae brief on behalf of religious leaders, institutions, and membership organizations in support of Plaintiffs-Appellants

Ragbir v. Homan

MOVING PARTY: 67 Religious Leaders, Institutions, and Membership Organizations/Amici Curiae

OPPOSING PARTY: Homan, et al.

- Plaintiff Defendant Appellant/Petitioner Appellee/Respondent

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Court- Judge/ Agency appealed from: Southern District of New York-Judge P. Kevin Castel

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1): Yes No (explain):

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS 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

Is oral argument on motion requested? Has argument date of appeal been set?

Signature of Moving Attorney:

/s/ Harry Sandick Date: 9/7/2018 Service by: CM/ECF Other [Attach proof of service]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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Ravidath Lawrence Ragbir, et al.,	:	
	:	
<i>Plaintiffs-Appellants,</i>	:	AFFIRMATION
	:	
- v. -	:	No. 18-1597
	:	
Thomas D. Homan, et al.,	:	
	:	
<i>Defendants-Appellees.</i>	:	
-----	x	

HARRY SANDICK, pursuant to Title 28, United States Code, Section 1746,
hereby affirms under penalty of perjury:

1. I am a partner at Patterson Belknap Webb & Tyler LLP and I represent a group of 67 religious leaders, institutions and membership organizations, Amici Curiae in support of Plaintiffs-Appellants. I respectfully submit this Affirmation in support of Amici’s motion for leave to file the attached Amici Curiae brief in support of Plaintiffs-Appellants pursuant to Federal Rule of Appellate Procedure 29(b). A complete list of Amici is contained in Appendix A of the attached brief.

2. Amici are American religious leaders—priests, pastors, rabbis, imams, and other clergy—who represent many faiths and denominations. Amici share an overriding interest in this case: they each treasure their First Amendment rights to follow the courage of their convictions, and to speak out when they see injustice. Amici wish to live in harmony with the government and do not wish to see government officials using their discretion to prosecute, punish, and chill political speech.

3. The attached brief reflects the unique perspective of this diverse group of faith leaders. Many Amici have firsthand experience of activism based on their religious

convictions, and therefore recall that abuses of prosecutorial discretion are a threat to the constitutional rights of all regardless of the political party or ideology currently in power. Moreover, Amici's keen awareness of the history of religiously-motivated political speech in the United States provides the court with useful context for the government's current efforts to suppress pro-immigrant and anti-deportation speech in the religious community.

4. The efforts of the U.S. Immigration and Customs Enforcement ("ICE") to target Plaintiff Ravidath Lawrence Ragbir and likeminded activists jeopardize the work that Amici and other religious leaders have undertaken in recent years to support immigrants and to create a society of love and respect in which their congregants and others can live together without fear. Amici have welcomed immigrants into their communities and congregations, and provided charitable support to immigrants as they adapt to their new homes. Amici have accompanied immigrants to deportation proceedings in order to provide support for congregants during a difficult moment. Amici have provided protection to those at risk of deportation, supporting legal clinics, and opening their houses of worship to vulnerable immigrants and their families. Amici have led nondenominational public gatherings across lines of faith and have spoken out about the need to provide humane treatment and due process for immigrants. And Amici, along with the religious institutions they lead, have spoken out publicly in support of immigrants and against government policies that unfairly target, penalize, and stigmatize immigrants.

5. Moreover, as many Amici are supporters of the Sanctuary Movement, members of Amici's congregations and communities could now themselves be targeted for retaliation, perhaps based on Amici's public statements. If ICE is permitted to discriminate based on free expression, Amici who express ideas that are disfavored by ICE may see their

houses of worship raided, and their congregants arrested and deported based on the expression of views on issues of social concern.

6. In the attached brief, Amici present three arguments in support of Plaintiffs' appeal that explain why judicial intervention is necessary to safeguard the important constitutional values upon which Amici rely. First, Amici explain that as religious leaders, they draw support from the First Amendment's protections of free speech, as well as free exercise. Second, America's faith community has a long history of social justice leadership, and Amici review some of the moments in our history in which religious leaders have exercised their rights to make important contributions to social justice. Finally, Amici explain how the actions taken by ICE, if unchecked, will cause harm not only to Plaintiffs, but also to religious leaders and the institutions that they lead.

7. Plaintiffs-Appellants consent to the filing of the attached brief

8. Counsel for Defendants-Appellees indicated in an email dated August 30, 2018 that Defendant-Appellees do not oppose Amici filing a brief.

9. No prior application has been made for the relief sought herein.

10. Based on the foregoing, appellant respectfully requests leave to file the attached Amici Curiae brief.

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

Dated: New York, New York
September 7, 2018

/s/ Harry Sandick

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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,

—against— *Plaintiffs-Appellants,*

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.

(Caption continued on inside cover)

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

**BRIEF FOR *AMICI CURIAE* 67 RELIGIOUS LEADERS,
INSTITUTIONS, AND MEMBERSHIP ORGANIZATIONS
IN SUPPORT OF PLAINTIFFS-APPELLANTS**

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Religious Leaders, Institutions,
and Membership Organizations*

IMMIGRATION AND CUSTOMS ENFORCEMENT, SCOTT MECHKOWSKI, IN HIS OFFICIAL CAPACITY AS ASSISTANT NEW YORK FIELD OFFICE DIRECTOR FOR 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,

Defendants-Appellees.

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Amici Curiae hereby certify that they have no parent corporations and that no publicly held company owns 10% or more of their stock.

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INTEREST OF *AMICI CURIAE*¹

Amici are American religious leaders—priests, pastors, rabbis, imams, and other clergy—who represent many faiths and denominations.² Amici share an overriding interest in this case: they each treasure their First Amendment rights to follow the courage of their convictions, and to speak out when they see injustice. Motivated by a belief in a higher power than themselves, religious leaders have been at the forefront of American social movements for centuries, going back at least to the abolitionist movement in the antebellum period.

Amici wish to live in harmony with the government and do not wish to see government officials using their discretion to prosecute, punish, and chill political speech. Amici view with deep concern the efforts of U.S. Immigration and Customs Enforcement (“ICE”) to silence critics of the government’s immigration policy by seeking to detain and deport Ravidath Ragbir and likeminded activists who have been targeted because of their political advocacy on behalf of immigrant rights. The Divine’s commandment to love the stranger in your midst as you love each other is central to each of the faiths represented by Amici—Judaism,³

¹ Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), Amici certify that this brief was not written in whole or in part by counsel for any party, and no person or entity other than Amici and their counsel has made a monetary contribution to the preparation and submission of this brief.

² A list of Amici is attached to this memorandum as Appendix A.

³ “The foreigner residing among you must be treated as your native-born. Love

Christianity,⁴ Islam,⁵ and Unitarian Universalism. For this reason, Amici support this appeal from the district court's order denying in part Plaintiffs' motion to enjoin ICE from using its discretion to retaliate against immigration activists.

INTRODUCTION AND SUMMARY OF ARGUMENT

Throughout our nation's history, the Constitution has protected those who express opinions on social issues and matters of public concern, even when those opinions are unpopular or contrary to the views of the government. Religious leaders and their organizations and communities have been among those who have benefited most from these principles of free expression. This is because religious leaders and organizations are compelled by their deeply held religious beliefs to protect the most vulnerable in our society, including immigrants. Based on experiences and memories of intolerance and discrimination, faith communities have long expressed a special concern for the principles of free expression, belief, and action that facilitate their missions, even when doing so requires them to advocate for unpopular positions or criticize the government.

them as yourself, for you were foreigners in Egypt.” *Leviticus* 19:34 (New Int'l Version 2011).

⁴ “Love the Lord your God with all your heart and with all your soul and with all your mind and with all your strength. The second is this: Love your neighbor as yourself. There is no commandment greater than these.” *Mark* 12:30–31 (New Int'l Version 2011).

⁵ “Worship Allah and associate nothing with Him, and to parents do good, and to relatives, orphans, the needy, the near neighbor, the neighbor farther away, the companion at your side, the traveler” *An-Nisa'* 4:36 (Sahih Int'l 1997).

It is against this backdrop that religious leaders are speaking out today, as Amici file this brief in support of Plaintiffs, who have alleged in their complaint and in their motion papers that ICE is now targeting individuals for deportation or other immigration enforcement based on their public statements, rather than based on neutral considerations. ICE agents have gone so far as to “stake out” places of worship in hopes of arresting congregants as they leave services, a direct affront to Amici’s rights and religious practices. Just as religious leaders have supported important social causes in the past, Amici file this brief out of a grave concern that ICE’s recent actions will harm the communities that Amici serve.

In addition to the harms alleged in the Complaint, ICE’s efforts jeopardize the work that Amici and other religious leaders have undertaken in recent years to support immigrants and to create a society of love and respect in which their congregants and others can live together without fear. Amici have welcomed immigrants into their communities and congregations, and provided charitable support to immigrants as they adapt to their new homes. Amici have accompanied immigrants to deportation proceedings in order to provide support for congregants during a difficult moment. Amici have provided protection to those at risk of deportation, supporting legal clinics, and opening their houses of worship to vulnerable immigrants and their families. Amici have led nondenominational public gatherings across lines of faith and have spoken out about the need to

provide humane treatment and due process for immigrants. And Amici, along with the religious institutions they lead, have spoken out publicly in support of immigrants and against government policies that unfairly target, penalize, and stigmatize immigrants.

The actions taken by ICE strike at the heart of the work undertaken by Amici to provide support and sanctuary to immigrants. Those actions are contrary to any notions of fair play and equal treatment, and are meant only to intimidate and silence political opposition. In addition, when immigrants and their supporters who have expressed their views about the unfairness of immigration policies are subjected to retaliatory surveillance, intimidation or detention, leaders of faith are unable to carry out the work that their faith requires them to undertake. Moreover, as many Amici are supporters of the Sanctuary Movement—a cause that ICE seems to view as a threat to its enforcement efforts—members of Amici’s congregations and communities could now themselves be targeted for retaliation, perhaps based on Amici’s public statements. If ICE is permitted to discriminate based on free expression, Amici who express ideas that are disfavored by ICE will see their houses of worship raided, and their congregants arrested and deported based on the expression of views on issues of social concern.

It has long been true that those who seek to exercise their constitutional rights often require the protection of the judiciary. This is such a case. For this

reason, Amici urge this Court to reverse the district court's decision and order denying plaintiffs' motion for a preliminary injunction. Without court intervention, Amici's core mission of spiritual guidance, charity and support for immigrants will become a red flag that leads to heightened enforcement efforts against Amici's congregants.

In this brief, Amici present three arguments in support of this appeal that explain why judicial intervention is necessary to safeguard the important constitutional values upon which Amici rely. First, Amici explain that as religious leaders, they draw support from the First Amendment's protections of free speech, as well as free exercise. Second, America's faith community has a long history of social justice leadership, and Amici review some of the moments in our history in which religious leaders have exercised their rights to make important contributions to social justice. Finally, Amici explain how the actions taken by ICE, if unchecked, will cause harm not only to Plaintiffs, but also to religious leaders and the institutions that they lead. For the reasons set forth herein and in Appellants' papers, Amici respectfully ask the Court to reverse the decision of the district court and remand with instructions to enjoin ICE's removal of Plaintiff Ragbir.

ARGUMENT

I. FAITH-BASED ORGANIZATIONS HAVE HISTORICALLY RELIED UPON FIRST AMENDMENT RIGHTS TO EXPRESS VIEWS AND TAKE ACTION ON MATTERS OF CONSCIENCE WITHOUT FEAR OF RETALIATION

A. Faith-Based Organizations Have Well-Established First Amendment Rights

No constitutional principles are more critical to the integrity of religious autonomy than the rights guaranteed by the First Amendment. While the First Amendment's Free Exercise Clause protects religious beliefs and practices from unwarranted government restrictions,⁶ faith-based organizations, their leaders, and their constituents equally depend on the Free Speech Clause, which secures their right to express and communicate views, ideas, opinions and information consistent with their religious beliefs. *Wooley v. Maynard*, 430 U.S. 705, 714–15 (1977); *cf. X-Men Sec., Inc. v. Pataki*, 196 F.3d 56, 68–69 (2d Cir. 1999) (describing the scope of the First Amendment). Religious expression protected by the Free Speech Clause can take the form of oral speech, displays of symbols, written publications, meetings, and advocacy on social issues.⁷

⁶ *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 531 (1993); *Emp't Div., Or. Dep't of Human Resources v. Smith*, 494 U.S. 872, 877 (1990), superseded by statute on other grounds, Religious Freedom Restoration Act of 1993, 107 Stat. 1488, 42 U.S.C. § 2000bb-1 et seq.; *Sherbert v. Verner*, 374 U.S. 398, 402 (1963), limited by *Emp't Div. v. Smith*, 494 U.S. at 884.

⁷ *See Texas v. Johnson*, 491 U.S. 397, 404 (1989) (The Supreme Court has “long recognized that [the First Amendment’s] protection does not end at the spoken or

The Free Speech and Free Exercise Clauses enshrine our nation’s commitment to diversity and pluralism. *McCreary County v. ACLU*, 545 U.S. 844, 881–82 (2005) (O’Connor, J., concurring). They protect individuals and organizations from government persecution based on their religious convictions and practices, *see, e.g., Murdock v. Pennsylvania*, 319 U.S. 105, 110 (1943); *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 638 (1943)—as long as those convictions and practices are not themselves unconstitutionally discriminatory.

Throughout our history, religious beliefs have inspired and directed faith-based organizations to express views regarding controversial social or political movements. Justice Brennan wrote that religious freedom “has classically been one of the highest values of our society.” *Braunfeld v. Brown*, 366 U.S. 599, 612 (1961) (Brennan, J., concurring and dissenting). Indeed, “no liberty is more essential to the continued vitality of the free society . . . than is the religious liberty protected by the [First Amendment].” *Sherbert*, 374 U.S. at 413 (Stewart, J., concurring).

When, as in this case, First Amendment rights are under attack by the government, religious organizations take notice. Of particular relevance to the issues on review in this appeal, some courts have specifically recognized that the

written word”); *Widmar v. Vincent*, 454 U.S. 263, 269 (1981) (“[R]eligious worship and discussion . . . are forms of speech and association protected by the First Amendment.”).

government may not “prosecute[] sanctuary workers in bad faith for the sole purpose of harassing members and employees of religious groups who are participating in the sanctuary movement.” *Am. Baptist Churches v. Meese*, 666 F. Supp. 1358, 1366 (N.D. Cal. 1987); *cf. Am. Baptist Churches v. Meese*, 712 F. Supp. 756, 764 (N.D. Cal. 1989) (reaffirming that prosecutions motivated by “vocally opposing administration policy” are impermissible, but granting summary judgment on the facts because plaintiffs failed to show an impermissible motive).

Notwithstanding these First Amendment rights, since last year, ICE has targeted for detention and deportation activists affiliated with the Sanctuary Movement who publicly criticize U.S. immigration law, policy, and enforcement. (Compl. ¶ 28.) Appellant Ragbir attracted the attention of ICE in part because of his religious activity. His “Jericho Walks”—weekly prayerful vigils led by faith leaders and immigration activists outside the immigration court and ICE offices—are core protected speech, motivated by religious belief. (*Id.* ¶ 34.) As Plaintiffs have argued in their submissions, the First Amendment does not allow the government to prosecute or deport individuals selectively on account of their protected expressive activities. This is especially true when those activities derive from the free exercise of religion. A preliminary injunction here—to freeze the situation while Plaintiffs litigate the important underlying constitutional issues—will protect the interests of the communities of faith that we represent.

B. Faith-Based Organizations Have a Historical Legacy of Involvement in Social Movements

The Supreme Court has observed: “[A]dherents of particular faiths and individual churches frequently take strong positions on public issues. We could not expect otherwise, for religious values pervade the fabric of our national life.” *Lemon v. Kurtzman*, 403 U.S. 602, 623 (1971) (internal quotation and citation omitted). In the past four decades, the number of organizations engaged in faith-based advocacy has increased dramatically, speaking on hundreds of domestic and international policy issues.⁸ For these organizations, advocating about matters of conscience is essential to their moral and spiritual missions and an expression of their religious beliefs. Religious leaders and institutions do not all speak in a single voice, and have endorsed a vast array of views on social issues and matters of public concern throughout our nation’s history. But the First Amendment applies regardless of viewpoint—it preserves the right for faith-based speakers to express themselves and to participate freely in a discourse that is essential to a pluralistic democracy.

Many leaders of social movements have been inspired by their religious faith to speak out, and faith-based organizations have exercised their First Amendment rights to engage in advocacy on issues of public concern throughout American

⁸ See *Lobbying for the Faithful*, PEW FORUM (May 15, 2012), <http://www.pewforum.org/2011/11/21/lobbying-for-the-faithful-exec/>.

history. The following are some important examples of social movements that flourished in part due to faith-based discourse.

1. **Abolition**

Faith-based organizations were prominent among the voices for abolishing slavery. Abolitionists questioned the practice of slavery in the United States on myriad moral and religious grounds,⁹ and the movement to end slavery depended on the nation's faith-based organizations for success. Many of the nation's settlers were refugees fleeing religious oppression in Europe, and they and their descendants concluded that slavery was immoral and violated Christian values.¹⁰ Further, many abolitionists saw their appeals to conscience as a continuation of the great tradition of Protestant reformers.¹¹

Most of the earliest anti-slavery organizations were organized by the Society of Friends, or Quakers.¹² The first one, The Society for the Relief of Free Negroes Unlawfully Held in Bondage, formed in Pennsylvania in 1775 and helped to pass the state's Gradual Abolition Act of 1780, the first anti-slavery legislation in the

⁹ See JOHN P. KAMINSKI, *A NECESSARY EVIL? SLAVERY AND THE DEBATE OVER THE CONSTITUTION* 212 (1995).

¹⁰ See Paul Finkelman, *Human Liberty, Property in Human Beings, and the Pennsylvania Supreme Court*, 53 Duq. L. Rev. 453, 458 (2015).

¹¹ See David A. Richards, *Public Reason and Abolitionist Dissent*, 69 Chi.-Kent L. Rev. 787, 811 (1994).

¹² Amy Reynolds, *Through the Eyes of the Abolitionists: Free Association and Anti-Slavery Expression*, 11 Comm. L. & Pol'y 449, 453, 456 (2006).

United States.¹³ Other religious organizations were moved to address the question of slavery, including Presbyterians, Methodists, and Baptists.¹⁴ Churches frequently served as stations on the Underground Railroad.¹⁵

Black abolitionists like Frederick Douglass, Sojourner Truth and Harriet Tubman, evangelicals like Harriet Beecher Stowe and Theodore Weld, and social reformers like Lucretia Mott and William Lloyd Garrison all drew on their Christian faith to call for emancipation on the grounds that slavery is a sin, and led a broad coalition that enlisted churches to promote the anti-slavery cause.¹⁶ In order to accomplish their goals, abolitionists employed every method of outreach, including books, newspapers, pamphlets, reports, speeches and other publications, exercising rights protected by the First Amendment.¹⁷ Garrison's writings on

¹³ Finkelman, *supra* note 10, at 460–62.

¹⁴ Reynolds, *supra* note 12, at 456.

¹⁵ CHERYL J. LAROCHE, FREE BLACK COMMUNITIES AND THE UNDERGROUND RAILROAD: THE GEOGRAPHY OF RESISTANCE 14 (2014) (“The Underground Railroad was practically a church movement.”).

¹⁶ John Fea, *Religion and Reform in the Early American Republic*, in THE ROUTLEDGE HISTORY OF NINETEENTH-CENTURY AMERICA (Jonathan Daniel Wells, ed. 2018); THE COLUMBIA GUIDE TO RELIGION IN AMERICAN HISTORY 39 (Paul Harvey & Edward Blum, eds. 2012); *see also* Cynthia N. Dunbar, *True Feminism: Identifying The Real Threats To Women*, 20 Wm. & Mary J. of Women & L. 25, 26 (2013).

¹⁷ Katherine Hessler, *Early Efforts to Suppress Protest: Unwanted Abolitionist Speech*, 7 B.U. Pub. Int. L.J. 185, 190 (1998); Stephen A. Higginson, *A Short History of the Right to Petition Government for the Redress of Grievances*, 96 Yale L.J. 142, 158 (1986).

immediate liberation were a direct extension of evangelical Christian belief that slavery was ongoing disobedience to God.¹⁸

The centrality of free speech to the abolition movement became clear as the struggle for emancipation was met by efforts by supporters of slavery to purge anti-slavery dissent through a campaign of retaliation (just as Plaintiffs allege is being conducted today against immigrants and their supporters). State legislatures passed laws prohibiting criticisms of the institution of slavery,¹⁹ and Congress eventually enacted the “Gag Rule” which forbade the “discussion of slavery, abolition, or anything related.”²⁰ Even the U.S. Postal Service began to censor abolitionist literature that was sent through the mail.²¹ Today, historians and legal scholars view these efforts at suppression of free speech as inconsistent with the values that are embodied by our First Amendment and our nation’s long tradition of permitting controversial speech.

¹⁸ BARRY HANKINS, *THE SECOND GREAT AWAKENING AND THE TRANSCENDENTALISTS* 90 (2004).

¹⁹ See Hessler, *supra* note 17, at 204; Michael Kent Curtis, *The 1837 Killing of Elijah Lovejoy by an Anti-Abolition Mob: Free Speech, Mobs, Republican Government, and the Privileges of American Citizens*, 44 *UCLA L. Rev.* 1109, 1117–18 (1997).

²⁰ Hessler, *supra* note 17, at 210.

²¹ *Id.* at 205.

2. Civil Rights Movement

The Civil Rights Movement of the 1950s and 60s was propelled by a religious revolution. Black Christian thought played a central role in inspiring and sustaining the Civil Rights Movement, and in challenging the pervasive racial injustices that existed in America since its settlement.²² Civil rights organizations persuaded their members to take action based on religious visions of a just society that reflected the kingdom of God.²³ These visions produced a movement that fused social gospel and Black church traditions with nonviolent action inspired by religious ideology.²⁴ The Civil Rights Movement also depended on the religious virtues of solidarity and self-sacrificial devotion.²⁵

It is impossible to conceive of the Civil Rights Movement without the influence of Black churches. Many religious leaders powerfully articulated the experiences of African-Americans living under Jim Crow laws.²⁶ In 1955, Martin

²² Paul Harvey, *The Civil Rights Movement, Religion, and Resistance*, OXFORD RESEARCH ENCYCLOPEDIA OF RELIGION (Feb. 23, 2017), *available at* <https://blog.oup.com/2017/02/civil-rights-movement-religion/>; DAVID L. CHAPPELL, *A STONE OF HOPE: PROPHETIC RELIGION AND THE DEATH OF JIM CROW* 1–8 (2004).

²³ STEPHEN L. CARTER, *THE CULTURE OF DISBELIEF: HOW AMERICAN LAW AND POLITICS TRIVIALIZE RELIGIOUS DEVOTION* 228 (1993).

²⁴ Harvey, *supra* note 22.

²⁵ CHAPPELL, *supra* note 22, at 8.

²⁶ Clarence Taylor, *African American Religious Leadership and the Civil Rights Movement*, THE GILDER LEHRMAN INST. AM. HIST., *available at* <https://www.gilderlehrman.org/history-now/african-american-religious-leadership->

Luther King, Jr. became the pastor of a Montgomery, Alabama church. Dedicated to ending segregation, he founded the Southern Christian Leadership Conference, a coalition of church leaders opposed to segregation in churches and intent on affecting change. Faith-based organizations also provided opportunities for socialization and advocacy. Churches were the most important institutions of the Black community in the South.²⁷ Mass meetings and rallies in support of the movement were held at large Black churches.²⁸ Many churches in America called for fundraising to provide financial support to those participating in civil rights activities by, for instance, helping jailed demonstrators pay bail and other fines.²⁹

The Civil Rights Movement also drew support from non-Christian religious leaders. For example, Rabbi Abraham Joshua Heschel, an immigrant to the United States who for many years taught ethics at the Jewish Theological Seminary, marched with Dr. King in the famous Selma Civil Rights March of 1965.³⁰ Rabbi

and-civil-rights-movement (last visited Feb. 27, 2018).

²⁷ Supad Kumar Ghose, *The Role of the Black Church in the American Civil Rights Movement*, 5 *UITS J.* 58, 65 (last visited Feb. 27, 2018), available at <https://goo.gl/gzJF3L>.

²⁸ *Id.* at 60.

²⁹ *Id.*

³⁰ See Nadine Epstein, *Susannah Heschel on the Legacy of Her Father, Rabbi Abraham Joshua Heschel and the Civil Rights Movement*, *MOMENT MAGAZINE* (Apr. 30, 2015), available at <http://www.momentmag.com/susannah-heschel-on-the-legacy-of-her-father-rabbi-abraham-joshua-heschel-and-the-civil-rights-movement/>.

Heschel believed that his participation in the Selma March “was a holy moment. . . .”³¹ When he marched that day, he said that his “legs were praying.”³² He also took inspiration from Dr. King’s references to the Exodus, which is a central episode in both Jewish and Christian religious liturgy.³³

3. Women’s Suffrage

The women’s rights movement also grew out of a fusion between enlightenment ideals and Protestant moral reform. The exclusion of women from formal political rights like voting underscored the importance of their participation in other organizations, like churches, that could focus the voice of the community and advocate for change.

Quakers believed that their faith demanded women’s religious leadership and public voice.³⁴ From their founding in Seventeenth Century England, the Quakers’ then-radical belief “of God in every person” dictated equal standing for women in the Society’s ministry, leadership and public voice.³⁵ In 1838, Quaker Sarah Moore Grimké penned an influential and comprehensive argument for

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ Dunbar, *supra* note 16, at 26.

³⁵ *See id.*; FAITH AND PRACTICE: THE BOOK OF DISCIPLINE OF THE NEW YORK YEARLY MEETING OF THE RELIGIOUS SOCIETY OF FRIENDS 34–35 (2015), *available at* <http://www.nnym.org/sites/default/files/NYYMFaithandPractice-2016Edition.pdf>.

women's rights with the Bible as its focus.³⁶ Ten years later, the first women's rights convention was held at a chapel in Seneca Falls, New York.³⁷

Other religious groups also were instrumental in this movement. For example, the Organization of Latter-Day Saints—commonly called the Mormons—was among the most vocal advocates of women's suffrage. In 1870, the Utah Territorial Legislature, entirely composed of Mormons, approved women's suffrage and thereby enfranchised the largest population of female voters in the world at the time.³⁸ When the federal government, which was openly hostile toward the Mormon religion, passed legislation in 1887 that stripped female Mormons of their right to vote,³⁹ a group of Mormon women actively protested the law as an affront to religious freedom and women's rights in the widely-read *Woman's Exponent*, a suffragette newspaper.⁴⁰ Similarly, under the leadership of

³⁶ SARAH MOORE GRIMKÉ, LETTERS ON THE EQUALITY OF THE SEXES (1837).

³⁷ ELIZABETH CADY STANTON ET AL., HISTORY OF WOMAN SUFFRAGE 442 (1880).

³⁸ Karen M. Morin, *Political Culture and Suffrage in an Anglo-American Women's West*, 19 Women's Rights L. Rep. 17, 23 (1997); Marie Ashe, *Women's Wrongs, Religions' Rights: Women, Free Exercise, And Establishment In American Law*, 21 Temp. Pol. & Civ. Rts. L. Rev. 163, 173 (2011).

³⁹ See RICHARD WHITE, IT'S YOUR MISFORTUNE AND NONE OF MY OWN: A NEW HISTORY OF THE AMERICAN WEST 357 (1993) (describing the Edmunds-Tucker Act of 1887 as a part of Congress's attack on the Mormon Church).

⁴⁰ Jean Bickmore White, *Women's Suffrage in Utah*, UTAH HISTORY ENCYCLOPEDIA, available at http://historytogo.utah.gov/utah_chapters/statehood_and_the_progressive_era/womensuffrageinutah.html.

Frances Willard—a devout Methodist who claimed that her vision of women’s voting rights came to her in prayer⁴¹—the influential Woman’s Christian Temperance Union became the largest women’s organization in the United States, and endorsed suffrage in 1879.⁴²

4. **Anti-War**

During the 1960s, many major religious organizations began to organize, vocally opposing the Vietnam War and calling for nuclear disarmament.⁴³ The religious objections to the Vietnam War were multifold. First, as graphic accounts and images of Americans perpetrating violence against the Vietnamese began to percolate, faith-based organizations began invoking scripture to call for peace.⁴⁴ Second, some faith-based organizations protested the lack of provisions for selective conscientious objections, allowing those to avoid the draft on the grounds that their religious beliefs and conscience militated against service in this particular war.⁴⁵ In the same vein, boxer Muhammad Ali cited his Muslim faith as the basis

⁴¹ ENCYCLOPEDIA OF WOMEN AND RELIGION IN NORTH AMERICA 14 (Rosemary Keller & Rosemary Ruether, eds. 2006).

⁴² JoEllen Lind, *Symbols, Leaders, Practitioners: The First Women Professionals*, 28 Val. U.L. Rev. 1327, 1353 (1994).

⁴³ Mark G. Toulouse, *Christian Responses to Vietnam: The Organization of Dissent* 1 (2007), available at <https://divinity.uchicago.edu/sites/default/files/imce/pdfs/webforum/062007/vietnam.pdf>.

⁴⁴ *Id.* at 10–11.

⁴⁵ *Id.* at 11.

for his refusal to enlist in the U.S. military during the Vietnam War, thereby subjecting himself to prosecution, immense public criticism, and the interruption of his legendary career.⁴⁶ The Supreme Court reversed his wrongful conviction for refusal to submit to induction into the armed forces. *See Clay v. United States*, 403 U.S. 698 (1971) (holding that Ali's actions were sincere and "religiously based").

Faith-based organizations organized public protests during the Vietnam War. In 1965, at a gathering of Christian organizations to remember the anniversary of the bombings of Hiroshima and Nagasaki, the Roman Catholic priest Father Philip Berrigan addressed a thousand protesters in front of the White House to criticize the war, and hundreds more circulated a petition for peace.⁴⁷ By the end of the weekend, thirty-three faith-based organizations formed a national coalition committed to ending the war in Vietnam.⁴⁸ As a collective, these organizations held protests and engaged in acts of civil disobedience across the country.

Rabbis also participated in the anti-war protest movement. In 1970, Rabbi Balfour Brickner, the director of interfaith activities of the Union of American Hebrew Congregations, called for the organized Jewish community to take greater

⁴⁶ Krishnadev Calamur, *Muhammad Ali and Vietnam*, THE ATLANTIC (June 4, 2016), *available at* <https://www.theatlantic.com/news/archive/2016/06/muhammad-ali-vietnam/485717/>.

⁴⁷ Toulouse, *supra* note 43, at 1–2.

⁴⁸ *Id.*

action in condemning the Vietnam War; he made those remarks after being arrested with 74 other clergymen and laymen who were holding an anti-war prayer service across the street from the White House.⁴⁹

Religious leaders at the Sixth World Order Study Conference of the National Council of Churches specifically invoked their constitutional rights, declaring that “[t]he First Amendment preserves the right of even one man against a majority in this basic freedom. For the functioning of the democratic process, then, dissent is both legitimate and essential.”⁵⁰ Another group of clergy representing three major faiths in America formed “Clergy Concerned About Vietnam,” and they signed a similar statement defending faith-based organizations’ dissent about the war.⁵¹ This group became the leading ecumenical organization in America protesting government policies in Vietnam.⁵² By the end of the 1960s, 16,000 clergy in America were members of the group, including conservative and evangelical groups.⁵³

⁴⁹ *Daily News Bulletin*, JEWISH TELEGRAPHIC AGENCY, Vol. XXXVII, No. 85 (May 5, 1970), available at http://pdfs.jta.org/1970/1970-05-05_085.pdf. .

⁵⁰ Toulouse, *supra* note 43, at 3.

⁵¹ JEWISH TELEGRAPHIC AGENCY, Vol. XXXVII, No. 85, *supra* note 49, at 4.

⁵² Toulouse, *supra* note 43, at 4.

⁵³ *Id.* at 18, 21.

5. Sanctuary Movement

In the 1980s, a self-described Sanctuary Movement began in response to the U.S. policy of deporting Central American refugees fleeing violence in their home countries.⁵⁴ Faith-based organizations viewed deportations as inconsistent with their ministry to welcome and assist the “foreigner” and the “stranger” in our midst and opened the doors to their churches, meetings, temples, and synagogues to provide sanctuary from arrest and deportation to these refugees.⁵⁵ The concept of “sanctuary” itself is rooted in deeply held religious values of welcoming strangers.⁵⁶ The New Sanctuary Movement was formed in 2007 by a coalition of faith-based organizations in direct response to increased immigration raids in neighborhoods and work places, and seeks to provide “sanctuary” to deportable immigrants for humanitarian reasons.⁵⁷ One of the most prominent faith-based organizations to participate in the New Sanctuary Movement is the Catholic

⁵⁴ Kathleen L. Villarruel, *The Underground Railroad And The Sanctuary Movement: A Comparison Of History, Litigation, And Values*, 60 S. Cal. L. Rev. 1429, 1429 (1987); Douglas L. Colbert, *A Symposium on the Sanctuary Movement: The Motion In Limine: Trial Without Jury: A Government’s Weapon against the Sanctuary Movement*, 15 Hofstra L. Rev. 5, 24 (1986).

⁵⁵ Villarruel, *supra* note 54, at 1433.

⁵⁶ Panela Begaj, *An Analysis Of Historical And Legal Sanctuary And A Cohesive Approach To The Current Movement*, 42 J. Marshall L. Rev. 135, 137 (2008); Colbert, *supra* note 54, at 38.

⁵⁷ Villarruel, *supra* note 54, at 1433.

Church, which has taken a stand against deporting immigrants by designating its chapels as sanctuaries.⁵⁸

The New Sanctuary Movement aims to publicize the stories of immigrants to put a human face on the issues, raise public awareness of their plight, and encourage legislative reform. Sanctuary congregations engage in a spectrum of solidarity actions designed to shield immigrants from deportation and create communities in which we can live together without fear. For example, the New Sanctuary Movement was involved in advocacy resulting in the issuance of ICE's 2011 "Sensitive Locations Memo," which instructed ICE agents not to conduct arrests at schools, hospitals, and places of worship.⁵⁹ Plaintiffs' allegations suggest that this memo is no longer being honored by ICE.

II. ICE'S DISCRIMINATORY PRACTICE OF TARGETING IMMIGRATION ACTIVISTS WILL HARM AMICI AND THEIR CONGREGATIONS AND IS CONTRARY TO OUR NATION'S TRADITIONS AND LAWS

In this case, ICE's discriminatory and retaliatory conduct not only harms Plaintiffs but also causes serious harm to Amici and their communities of faith. Amici devote themselves to aiding non-citizens and immigrants and advocating for their humane treatment and legal rights. This activity is central to the deeply held

⁵⁸ *Id.*

⁵⁹ This memo is available at <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>.

religious beliefs of Amici and is a direct expression of their faith. When Amici accompany non-citizens to deportation proceedings, welcome immigrants and their families into their communities, and advocate against anti-immigrant policies, they are engaging in protected speech under the First Amendment—speech they are compelled to make by their religious traditions.

Retribution by the government for immigrant advocacy has a chilling effect on the ability of Amici to engage in this advocacy, which is a form of protected expression at the core of Amici's identities. Through targeted enforcement efforts against those immigrants who are members and allies of the Sanctuary Movement, ICE sends the message that Amici's speech is disfavored and, even worse, may subject them to punitive government action. Indeed, it already has.

In addition to the harm to Plaintiffs that gave rise to these claims, ICE's conduct also harms Amici in at least three ways. First, Amici and their congregants face the direct threat of detention and deportation—as well as other retaliatory measures—because of their participation in certain social advocacy. Second, ICE's conduct undermines Amici's ability to organize around, promote, or carry out their faith-based political agenda. Third, Amici and others will be deterred from practicing their faith or engaging in speech about matters of conscience, lest the government retaliate against them or more vulnerable members of their communities.

In each case, ICE's discriminatory conduct violates Amici's First Amendment rights, causing harm that cannot be undone. A preliminary injunction in this case would freeze the situation and allow the significant harm caused by ICE's actions to be litigated fully and fairly in federal court.

A. Amici and their Congregants Face Direct Harm from ICE's Discriminatory Enforcement Actions

Immigrants and immigrant advocates are important and valued members of Amici's religious communities. Because of this, Amici and their congregants are particularly susceptible to the harm that results when the government decides that it will take action against someone because of an individual's pro-immigrant speech. Members of Amici's congregations find themselves at heightened risk of surveillance, detention, or deportation. And even where Amici are not at risk of deportation, they face threats of other retaliatory conduct.

As participants in the Sanctuary Movement, Amici engage in speech and expression that has become a target for ICE's selective and discriminatory enforcement actions.⁶⁰ Thus, by espousing views about these matters of public

⁶⁰ See, e.g., *Social Principles: The Social Community*, THE UNITED METHODIST CHURCH, <http://www.umc.org:8003/what-we-believe/the-social-community> (2016) (announcing the United Methodist Church's policy to "oppose immigration policies that separate family members from each other or that include detention of families with children," and calling on local churches "to be in ministry with immigrant families"); *A Message on Immigration*, EVANGELICAL LUTHERAN CHURCH IN AM., at 5, <http://download.elca.org/ELCA%20Resource%20Repository/ImmigrationSM.pdf> (observing that "[p]ersons who once were or now are without

concern that are central to their religious beliefs, Amici increase the likelihood that other members of their religious communities will face detention or deportation.

The experiences of Amici and other religious leaders bear out this threat. For example, one congregation discovered that ICE agents arrested one of its leaders while he was at work; he had been told by ICE that he was not an enforcement priority, but suddenly found himself facing deportation the day after his congregation celebrated their involvement in the Sanctuary Movement.⁶¹ Another risks the deportation of a member who—after she emerged from sanctuary when a judge vacated her deportation order—was summoned before ICE and told, without warning, that they were “re-opening” her case and requiring her to wear an ankle bracelet.⁶² And Amicus Rev. Seth Kaper-Dale’s congregation includes three

documents are members of our congregations, and we want them to feel and know that in the Church they are part of a safe and caring community”); *Immigration Detention and Deportation*, AM. FRIENDS SERV. COMM., <https://www.afsc.org/key-issues/issue/immigrant-detention-and-deportation> (stating that “AFSC works to stop detention and deportation, which tears families and communities apart”); *The Jewish Sanctuary Movement*, T’RUAH, <http://www.truah.org/campaign/mikdash-the-jewish-sanctuary-movement/> (observing that “[t]he Torah teaches the obligation to love the immigrant, just as God loves and cares for the immigrant”).

⁶¹ See Jesse Paul, *With his deportation delayed at least 30 days, Arturo Hernandez Garcia anxiously gets back to his family, work*, DENVER POST (May 4, 2017), <https://www.denverpost.com/2017/05/04/arturo-hernandez-garcia-deportation-delay/>.

⁶² John Hinton, *Minerva Garcia remains free after meeting with ICE, but she must wear ankle monitor*, WINSTON-SALEM JOURNAL (Nov. 16, 2017), http://www.journalnow.com/news/local/minerva-garcia-remains-free-after-meeting-with-ice-but-she/article_f563c7fe-59c7-53bf-91f4-d939ddfbc49.html.

members who sought sanctuary in the congregation's church after being stalked or contacted by ICE agents and after two other members were detained while dropping off their children for school.⁶³ ICE also arrested and criminally charged members of a faith-based organization, in apparent retaliation for a report released by the organization detailing how Customs and Border Protection agents destroyed the food and water it provides for migrants crossing the United States' southern border.⁶⁴

An individual facing deportation faces an obvious and harsh injury. Yet repercussions extend beyond the targeted individual. A detained or deported person leaves behind family, friends, and neighbors who relied on that person for financial or emotional support, companionship, leadership, and contributions to the faith life of the community. The harm to Amici, and those they represent, caused by the loss of a community member is incalculable. *See, e.g., Int'l Refugee Assistance Project v. Trump*, 883 F.3d 233, 320 (4th Cir. 2018) (en banc) (referring to "the prolonged, if not indefinite, separation of the plaintiffs and their family

⁶³ *See* Sophie Nieto-Munoz, *Meet the immigrants taking sanctuary in a N.J. church amid an ICE storm*, NJ ADVANCE MEDIA (Jan. 27, 2018), http://www.nj.com/news/index.ssf/2018/01/meet_the_immigrants_taking_sanctuary_in_a_nj_church_amid_an_ice_storm.html.

⁶⁴ *See* Molly Hennessy-Fiske, *The Border Patrol chooses a new target: a volunteer helping migrants*, THE L.A. TIMES (Jan. 25, 2018), <http://www.latimes.com/nation/la-na-arizona-migrant-activists-20180125-story.html>.

members” as “quintessential examples of irreparable harms”). This is the type of harm that a preliminary injunction could address with respect to Ragbir.

Deportation and detention are not the only threats facing Amici: ICE possesses many tools to penalize disfavored speakers. ICE agents have been observed stalking members of Amici’s communities and surveilling places where Amici and their congregations worship, which is prohibited under the First Amendment. *See, e.g., Klayman v. Obama*, 142 F. Supp. 3d 172, 195 (D.D.C. 2015) (finding that government surveillance in violation of constitutional rights constituted irreparable harm), *vacated as moot by* 2016 U.S. App. LEXIS 6190 (D.C. Cir. Apr. 4, 2016). Amici who accompany community members to ICE proceedings or protest at ICE facilities face confrontational law enforcement agents, or are deceived by agents who furtively, and unexpectedly, whisk congregants to remote detention centers.⁶⁵

Amici’s persistence in the face of ICE’s conduct may engender other forms of retaliation by the government. For example, it is not hard to imagine that Amici may be subject to increased scrutiny for compliance with tax laws, or see their towns and cities penalized by losing federal funding based on a refusal to act as

⁶⁵ *See* BrieAnna J. Frank, ‘*This was a total blindside*’: ICE deports Mesa man when he arrives for scheduled check-in, AZCENTRAL.COM (May 11, 2017), <https://www.azcentral.com/story/news/local/phoenix/2017/05/12/supporters-hold-vigil-outside-ice-offices-deported-mesa-man/319309001/>.

mere political subdivisions with respect to immigration enforcement, or even see the complete withdrawal of support of federal law enforcement agencies.⁶⁶ In each case, Amici are directly impacted and harmed by ICE's choice to target their political expression.

B. ICE's Viewpoint Discrimination and Retaliation Undermine the Missions of Amici's Organizations

In addition to causing personal harm, ICE injures Amici by compromising the missions of the organizations they represent. A congregation itself is hobbled by the targeted detention or deportation of its members: When a community member is suddenly whisked away, locked up, or deported, Amici's ability to gather, worship, and engage in the outreach and other activities that are inherent to community life is undermined. ICE's conduct will leave Amici leading depleted and demoralized communities with diminished capacities to express themselves and live out their faith traditions.

ICE also injures the wider communities to which Amici belong. Amici and the faith-affiliated organizations they lead play a vital role in society. Even non-members rely on Amici for spiritual guidance, charity, social advocacy, and to enrich community life. By targeting Amici and their congregants, ICE jeopardizes

⁶⁶ See 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>.

Amici's contributions to their communities and leaves those communities less diverse, prosperous, and civically engaged.

More fundamentally, Amici will be prevented from ministering to the needs of the immigrants or their families who are forced into the shadows for fear of government retribution. Amici are irreparably harmed where they are unable to carry out their mission. *See Step by Step, Inc. v. City of Ogdensburg*, 176 F. Supp. 3d 112, 135 (N.D.N.Y. 2016) (finding irreparable harm where defendant city blocked housing for the mentally ill, frustrating plaintiff's mission as a provider of mental health services); *First Step, Inc. v. City of New London*, 247 F. Supp. 2d 135, 156–57 (D. Conn. 2003) (finding irreparable harm to non-profit group dedicated to assisting individuals with disabilities where defendants denied it “the ability to pursue its mission”).

Indeed, ICE has already begun canvassing sanctuaries and even luring people away from them for enforcement. For instance, one freezing-cold morning in February 2017, ICE detained six men as they emerged from the hypothermia shelter at a Virginia church where they had spent the night.⁶⁷ And in suburban Illinois, ICE agents tricked a worshiper into leaving a church service—by texting

⁶⁷ Julie Carey, *ICE Agents Arrest Men Leaving Fairfax County Church Shelter*, NBC WASHINGTON (Feb. 15, 2017), <https://www.nbcwashington.com/news/local/ICE-Agents-Arrest-Men-Leaving-Alexandria-Church-Shelter413889013.html>.

him from his cousin's cell phone about a fictional car accident—and arrested him at a neighboring McDonald's.⁶⁸ When ICE targets a place of worship and the individuals it serves, it discourages participation in religious activities, and denies Amici's ability to live out their faith and minister to the needs of community members. An injunction is appropriate to prohibit ICE from taking further steps until the underlying issues can be litigated.

C. ICE's Actions Chill Amici's Speech and Dissuade Amici's Protected Expression

Even if ICE does not target Amici directly, the discriminatory enforcement of immigration laws targeting those who speak out chills future speech and advocacy by religious leaders and organizations. Broadcasting that pro-immigrant advocacy results in retribution and discourages Amici from exercising their First Amendment rights. Because of ICE's discriminatory conduct, Amici confront an impossible—and impermissible—choice: face government action, or forgo acting as their faith demands.

Examples of this chilling effect abound. Rabbi Michael E. Feinberg laments that ICE's activities have “chill[ed] . . . peoples' willingness to speak out publicly

⁶⁸ Odette Yousef, *Amid Deportation Push, Suburban Church Grapples with Loss*, WBEZ 95.1 CHICAGO (Feb. 15, 2016), <https://www.wbez.org/shows/wbez-news/amid-deportation-push-suburban-church-grapples-with-loss/3d269fc3-04e7-4604-bae4-a376a37410c9>.

and declare their dissent from [current] immigration policies.”⁶⁹ Justin Remer-Thamert, a faith leader and immigration activist, says “it is of grave concern that ICE has targeted immigrant leaders” like Plaintiffs and that he has “seen reticence to speak out in the media or within the political sphere because of the increase in ICE detentions and targeting our people who are residents or even naturalized.” Amici are even finding that children are withdrawing from civic life, afraid that they will be removed from or targeted at school.

The harm caused by this chilling effect on an individual’s constitutional rights is well-established. “The loss of First Amendment freedoms . . . for even minimal periods of time, unquestionably constitutes irreparable injury.” *Salinger v. Colting*, 607 F.3d 68, 81 (2d Cir. 2010) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); *see also Laird v. Tatum*, 408 U.S. 1, 12–13 (1972) (“[C]onstitutional violations may arise from the deterrent, or ‘chilling’ effect of governmental regulations that fall short of a direct prohibition against the exercise of First Amendment rights.”). Amici compelled to give up protected speech because of the fear of reprisal suffer the same injury as those whose speech the government actually explicitly proscribes. *See, e.g., Hedges v. Obama*, No. 12-cv-331, 2012 U.S. Dist. LEXIS 68683, at *74–75 (S.D.N.Y. May 16, 2012) (finding irreparable

⁶⁹ Rabbi Feinberg’s congregation is a member organization of Appellants New Sanctuary Coalition and the New York Immigration Coalition.

injury where reporters “changed certain associational conduct” and “avoided certain expressive conduct” because of concerns of prosecution for disfavored speech).

ICE has targeted Amici and others because of their participation in a social movement. ICE does not like what Amici and other providers of sanctuary and immigrant advocates have to say. Government agents have stalked churchgoers, surveilled places of worship, shut down protests,⁷⁰ and detained—without warning—advocates who were assured of their security. Amici now must think twice before gathering to worship, aiding community members, or advocating against laws they view as unjust. These expressive acts are sacrosanct under the Constitution and fundamental to Amici’s religious traditions. “The danger of that chilling effect upon the exercise of vital First Amendment [free speech] rights must be guarded against.” *Keyishian v. Bd. of Regents*, 385 U.S. 589, 604 (1967). But the message sent to Amici by ICE is clear: if you continue to engage in protected First Amendment activities, you and your congregants will be punished. ICE’s discriminatory and retaliatory conduct should be enjoined.

⁷⁰ See, e.g., Samantha Matsumoto, *Protesters arrested after blocking immigrant detention bus at SW Portland ICE office*, THE OREGONIAN (Oct. 11, 2017), http://www.oregonlive.com/portland/index.ssf/2017/10/protesters_block_immigrant_det.html.

CONCLUSION

For the reasons stated herein and in Plaintiffs' papers, Amici respectfully ask this Court to reverse the decision of the district court and make clear that Plaintiff Ragbir's removal is stayed pending a decision of Plaintiffs' motion for a preliminary injunction on the merits.

Respectfully submitted,

By: /s/ Harry Sandick

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Religious Leaders, Institutions, and
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CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5), 32(a)(7)(B), and Circuit Rules 29-1(c) and 32-1(a)(4) because it contains 7000 words, calculated by the word processing system used in its preparation, and excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. 32(a)(6) because it has been prepared in a proportionally-spaced typeface using Microsoft Word 2010 in Times New Roman 14-point font.

Dated: September 7, 2018

**PATTERSON BELKNAP WEBB &
TYLER LLP**

By: /s/ Harry Sandick

*Attorneys for Amici Curiae 67 Religious
Leaders, Institutions, and Membership
Organizations*

APPENDIX A

List of Amici Curiae and Signing Statements

AMICI CURIAE

6 Amici Curiae Religious Institutions and Membership Organizations

include: Congregation Shaarei Shamayim, Madison, WI; the New Hampshire Conference United Church of Christ Immigrant Refugee Support Group; the New York State Council of Churches; the New York Yearly Meeting of the Religious Society of Friends; SAJ-Judaism; Unitarian Universalist Association.

61 Amici Curiae individual religious leaders¹ span a rich diversity of American faith traditions, and include: Reverend Marie Alford-Harkey, President and CEO, Religious Institute, Bridgeport, CT; Reverend Dr. Eileen Altman, Associate Pastor, First Congregational Church, UCC, Palo Alto, CA; Reverend Dave Bean, Senior Pastor, Pioneer United Methodist Church, Portland, OR; Rabbi Dr. Herbert Brockman, Congregation Mishkan Israel, Hamden, CT; Reverend Elder Pat Bumgardner, Senior Pastor, Metropolitan Community Church of New York, New York, NY; Reverend Vanessa Cardinale, Pastor, South Congregational Church of Amherst, MA; Reverend Molly Carlson, Designated Term Conference Minister, Central Pacific Conference United Church of Christ; Pastor Marilyn Chilcote, Pastor, Beacon Presbyterian Fellowship of Oakland; Dr. Joseph Chuman,

¹ Amici curiae individual religious leaders sign only in their individual capacities; institutional affiliations are provided here for identification purposes only.

Leader, Ethical Culture Society of Bergen County, Teaneck, NJ; Rabbi Glynis Conyer, Executive Director Community Synagogue of Rye; Father Daniel Corrou SJ, Church of St. Francis Xavier, New York, NY; Rabbi Faith Joy Dantowitz, Temple B'nai Abraham, Livingston, NJ; Rev John Edgerton, Associate Minister, The Old South Church in Boston; Rabbi Bruce Elder, Congregation Hakafa, Glencoe, IL; Rabbi Barat Ellman, Ph.D, Adjunct Assistant Professor, Theology, Fordham University; Reverend Paul Fleck, Hamden Plains United Methodist Church, Hamden, CT; Rabbi Arnold S. Gluck, Temple Beth-El, Hillsborough, NJ; Reverend Ailsa R. Guardiola Gonzalez, First Christian Church (Disciples of Christ), Tucson, AZ; Pastor Alison Harrington, Pastor, Southside Presbyterian Church, Tucson, AZ; Rabbi Lauren Grabelle Herrmann, Society for the Advancement of Judaism, New York, NY; Rabbi Linda Holtzman, Tikken Olam Chavurah, Philadelphia, PA; Reverend Sonja L. Ingebritsen, Community of Hope United Church of Christ, Madison Christian Community, Madison, WI; Reverend Holly R. Jackson, Pastor, United Church of Christ of Seneca Valley, Germantown, MD; The Reverend Paula M. Jackson, Rector, Church of Our Saviour/La Iglesia de Nuestro Salvador Episcopal, Cincinnati, OH; The Reverend Dr. Dennis Jacobsen, Glendale, Wisconsin; Rabbi Paul Jacobson, Temple Avodat Shalom, River Edge, NJ; Tina Kachele, Presiding Officer, Albuquerque Monthly Meeting of the Religious Society of Friends; Reverend Seth Kaper-Dale, Pastor, Reformed Church

of Highland Park, Highland Park, NJ; Rabbi Marc Aaron Kline, J.D., Red Bank, NJ; Rabbi Debra Kolodny, Portland's UnShul, Portland, OR; Reverend Cheri Kroon, Plainview Reformed Church, Plainview, NY; Rabbi Ann Landowne, Temple Beth-El, Geneva, NY; Reverend Dr. David B. Lindsey, Senior Pastor of Little River United Church of Christ, Annandale, VA; Reverend John Long, Presbyterian Minister, Buffalo, NY; Rabbi Bonnie Margulis, President, Wisconsin Faith Voices for Justice; Reverend Robert McKenzie, Pastor Emeritus, St. John's Presbyterian Church, Berkeley, CA; Reverend Terri McNamara, St. Luke's UCC, Philadelphia, PA; Reverend R. Cameron Miller, Rector, Trinity Episcopal Church, Geneva, NY; Reverend Julie Windsor Mitchell, Campus Minister, University Christian Ministry at Northwestern University; Reverend Chris Moore, Senior Minister, Fellowship Congregational UCC; The Reverend Dr. John A. Nelson, Pastor and Teacher, Church on the Hill, UCC, Lenox, MA; Reverend Elizabeth Nguyen, Senior Strategist, Side with Love, Unitarian Universalist Association; Rabbi Dev Noily, Kehilla Community Synagogue, Oakland, CA; Nancy Pape, Deacon, Madbury United Church of Christ, Madbury, NH; Reverend Aaron R. Payson, Minister, Unitarian Universalist Church of Worcester, MA; Muhammad T. Rahman, Director, Resource Development, Islamic Circle of North America and Social Justice Department, Islamic Circle of North America, Jamaica, New York; Reverend David Rommereim, Good Shepherd Lutheran Church, Brooklyn

(Retired); Rabbi John L. Rosove, Temple Israel of Hollywood, Los Angeles, CA; The Reverend Timothy Seitz-Brown, Pastor, Evangelical Lutheran Church in America, Spring Grove, PA; Rabbi Drorah Setel, Temple Emanu-El, Rochester, NY; Father James C. Sheehan, Jr., University Apostolate, Catholic Archdiocese of New York, Bronx, NY; Rabbi Suzanne Singer, Temple Beth El, Riverside, CA; Rabbi Joshua Stanton, East End Temple in Manhattan; Dr. Diane Steinman, Director, NYS Interfaith Network for Immigration Reform; Reverend Martha E. Swords-Horrell, Pastor, Emmaus United Methodist Church, Albany, NY; Rabbi Elliott Tepperman, Bnai Keshet, Montclair, NJ; Reverend Robert V. Thompson, Board Chair, Compassionate Atlanta; Rabbi Donald A. Weber, Temple Rodeph Torah, Marlboro, NJ; Reverend Diane Weible, Conference Minister, Northern California Nevada Conference United Church of Christ; Rabbi Laurie Zimmerman, Congregation Shaarei Shamayim, Madison, WI; Brother Anthony Zuba, Capuchin Franciscans, Church of the Good Shepherd, New York, NY.

* * *

SIGNING STATEMENTS

The Governing Board (Executive Committee) of the New York State Council of Churches has given its unanimous approval to serve as Amici. The Council, which has been in existence since the late 19th Century, is comprised of eight denominations (American Baptist, Episcopal Church, Evangelical Lutheran

Church of America, New York Yearly Meeting of the Religious Society of Friends (Quaker), Lutheran Church of America, Presbyterian, U.S.A., United Church of Christ, United Methodist Church) and approximately 7,000 congregations from those denominations in every part of New York State.

The New York State Council of Churches states in its constitution that “It’s fitting that Christians should manifest their unity by joining together to proclaim the gospel of Jesus Christ and to show God’s good and just purposes throughout New York State. Therefore, we covenant to care for one another, safeguard the presence of vital Christian communities, provide hospitality to all, proclaim the gospel boldly in each place, and declare God’s just will among the powers and principalities.”

Given our mission, we have a compelling interest to serve as Amici to protect the free speech of our congregations and its lay and clergy leaders that they may freely exercise their first amendment rights to welcome the stranger, advocate for marginalized and vulnerable people and seek their welfare. Such advocacy is central to our goal to offer the good news of the Gospel in word and deed in a broken world and to offering effective pastoral care to our congregants and those in the society as a whole. All of our denominations have well developed theological positions to advocate for immigrants who have, over the years, been subjected to discrimination and marginalization. We have advocated for government policies

and laws which prevent this discrimination and allow for human flourishing. We are deeply grieved by the poor treatment of Ravi Ragbir and many immigrants like him by Immigration Customs and Enforcement (ICE). The prospect of the Government intimidating and discriminating against our congregants and their lay and clergy leaders infringes on our ability to offer the good news of the Gospel through advocating for the poor, the vulnerable and the stranger in our midst.

Signed September 7, 2018 by: The Reverend Peter Cook, Executive Director; The Reverend Dustin Wright, President

* * *

Statement of New York Yearly Meeting of the Religious Society of Friends (Quaker): Faith and Practice, the Book of Discipline of the New York Yearly Meeting of the Religious Society of Friends (Quaker), the umbrella organization for 68 Friends Meetings and Worship Groups in New York, New Jersey and Connecticut, expresses our commitment to speaking out in support of “those the world neglects, exploits, or condemns.” The immigrant being pursued by the state is of especial concern to Friends. In Faith and Practice, we declare:

We can draw no clear line between religious and secular affairs. We find ways to serve God in the world. We expect each Friend to live each day in holy obedience, secure in the faith that the Light illumines all relationships. Accordingly, Friends are enjoined to have a deep concern for the welfare of the community. This involves intelligent care for the dignity and welfare of all; love for adversaries, not merely for those who love us; and special care for those whom the world neglects, exploits, or condemns.

We stand with Ravi Ragbir and all those being persecuted for their immigration status. We are committed to caring for the newcomers in our midst who seek to become our neighbors and to speaking out on their behalf.

Signed September 7, 2018 by: Jeffrey Aaron, Clerk, and Steve Mohlke,
General Secretary