

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



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Before the

Committee on the Judiciary and Public Safety
Councilmember Charles Allen, Chairperson
Public Hearing

On

Sanctuary Values Amendment Act of 2019
October 1, 2020

Chairperson Allen and members of the Council. I am Aurélie Mathieu, Assistant Attorney General for Policy and Legislative Affairs at the Office of the Attorney General (“OAG”). I am pleased to appear on behalf of Attorney General Karl Racine in support of Bill 23-0501, the “Sanctuary Values Amendment Act of 2019.”

Under Attorney General Racine’s leadership, OAG has worked to protect the rights and safety of immigrant communities. OAG has challenged several federal laws and practices that unfairly target immigrant communities, from the Muslim travel ban to limitations on asylum, the termination of Temporary Protected status, and family separation.¹ Not only have we stood up for immigrants, but we have also advocated for States and localities that have instituted pro-immigrant policies. For example, we have helped protect public safety funding for sanctuary cities and opposed immigration-related conditions on law enforcement grants.² We have

¹ *AG Racine Leads 15-State Coalition Backing State Efforts Limiting Local Resources for Federal Immigration Crackdowns*, Office of the Attorney General for the District of Columbia (June 26, 2020), <https://oag.dc.gov/release/ag-racine-leads-15-state-coalition-backing-state>.

² See Brief for D.C. et al as Amicus Curiae Supporting Pl.’s Mot. for Prelim. Inj., *Cal. v. Sessions*, No. 3:17-cv-04701-WHO, (N.D. Cal. 2017), <http://oag.dc.gov/sites/default/files/2018-02/Release-November-20-2017-Byrne-Grant-CA-Amicus-Brief.pdf>; see also Brief for N.Y. et al. as Amicus Curiae Supporting Appellee, *City of Chicago v. Sessions*, No. 17-cv-05720, (7th Cir. 2018), https://ag.ny.gov/sites/default/files/byrne-jag_amicus_brief.pdf.

consistently stood up to support state laws that ensure that local law enforcement is not entangled with enforcement of civil immigration laws.³

OAG's support of the Sanctuary Values Amendment Act of 2019 is a continuation of those efforts. The bill limits the District's cooperation with federal immigration agencies, including by complying with detainer requests from Immigration and Customs Enforcement ("ICE") absent a judicial warrant or order issued by a federal judge or by providing to federal immigration agencies information about when or where someone will be released. This bill prevents mistreatment of our immigrant neighbors and enhances public safety by ensuring that the District's criminal justice system is not coopted to enforce civil immigration laws.

It is critical to public safety that immigrants trust and cooperate with our criminal justice system, as law enforcement leaders across the country, including here in the District, have recognized. Immigrants are far less likely to report crimes, cooperate with law enforcement, or seek help when they are victims or witnesses, if they fear that a court appearance, arrest, or other interaction with the police will result in them or their family being turned over to immigration authorities. As a result, crimes, including domestic violence, human trafficking, and sexual assault, become more difficult to investigate and prosecute. In 2006, the Major Cities Chiefs Association, a group of police chiefs and sheriffs from the 69 largest law enforcement agencies in the United States issued a statement warning that "[i]mmigration enforcement by local police would likely negatively... affect and undermine the level of trust and cooperation between local police and immigrant communities."⁴ The police chiefs explained that local involvement in federal immigration enforcement would discourage documented and undocumented immigrants from contacting or cooperating with the police for "fear that they themselves or undocumented family members or friends may become subject to immigration enforcement."⁵

Fear of local authorities in immigrant communities can also lead to increased victimization and exploitation of immigrants as perpetrators of crime take advantage of heightened immigrant fear to target them for criminal activity or fraud.⁶ Immigrants, and especially undocumented immigrants, are vulnerable to violence, abuse, and exploitation.⁷ For example, in 2019, OAG filed suit against an operator of several teacher exchange companies for preying upon dozens of foreign teachers working in D.C. schools. OAG alleges the companies misled the teachers to get them to pay for unnecessary services, including by threatening them with deportation to coerce them into signing costly contracts.⁸ As the Major Cities Chiefs cautioned, "[w]ithout assurances that contact with the police would not result in purely civil immigration enforcement action, the hard-won trust, communication and cooperation from the immigrant community would

³ See Brief for D.C. et al. as Amicus Curiae Supporting Defs.' Mot. to Dismiss, *U.S. v. NJ*, No. 20-cv-1364-FLW-TJB, (D.N.J. 2020), <https://oag.dc.gov/sites/default/files/2020-06/US-v-NJ-Multistate-Amicus.pdf>.

⁴ Major Cities Chiefs Ass'n, M.C.C. Immigration Committee Recommendations for Enforcement of Immigration Laws by Local Police Agencies 6 (June 2006).

⁵ *Id.*

⁶ National Police Foundation, *The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties* (2009), <https://www.policefoundation.org/publication/the-role-of-local-police-striking-a-balance-between-immigration-enforcement-and-civil-liberties/> (last visited Sept. 30, 2020).

⁷ Marjorie S. Zatz & Hilary Smith, *Immigration, Crime, and Victimization: Rhetoric and Reality*, 8 Ann. Rev. L. & Soc. Sci. 141, 146-47 (2012).

⁸ Complaint at 2, *D.C. v. Bilingual Teacher Exchange*, No. 2019 CA 002088 (D.C. Super. Ct. March 29, 2019).]

disappear.”⁹ This would “result in increased crime against immigrants and... create a class of silent victims and eliminate the potential for assistance from immigrants in solving crimes...”¹⁰ This is true for documented immigrants as well because they “may have strong concerns about the other members of the household—perhaps their own parents.”¹¹

It is for these reasons that the District¹² and the Metropolitan Police Department have long had a policy of not enforcing federal immigration law. As Chief Newsham has stated, “[i]t’s a long-standing policy of the Metropolitan Police Department not to enforce civil immigration law. We believe that the enforcement of civil immigration laws creates a divide between us and the community we serve and at the end of the day we believe that will make our community less safe. As the Chief of Police, I don’t think I should be involved in any behavior that makes our city less safe.”¹³

Even though the District has avoided entanglement of local law enforcement with civil immigration enforcement, this legislation is nevertheless critical in establishing the District’s public policy, which in turn ensures that District government and federal law enforcement operating in the District treat immigrants fairly. For example, in the District, the local criminal court is staffed in significant part by the U.S. Marshals Service (“USMS”). The USMS had a practice of routinely detaining anyone who appeared in D.C. Superior Court who was suspected of civil immigration violations after that person was either ordered released by a judge or after the criminal charges were dropped.¹⁴ USMS detained immigrants who would have been released if they had been citizens. Absent District law making clear that local law enforcement cannot detain individuals solely for the purpose of civil immigration enforcement, USMS could contend that its detention policy is justified in part by District law, as incorporated in 28 U.S.C. § 564, which states that the USMS, “in executing the laws of the United States within a State, may exercise the same powers which a sheriff of the State may exercise in executing the laws thereof.”

In a lawsuit challenging this practice, a class of plaintiffs—joined by OAG, as amicus curiae supporting the challenge—relied on the temporary versions of this bill to argue that USMS could not detain individuals who had been released by the Court under Section 564 because District law does not permit its law enforcement officers to detain individuals solely for federal immigration purposes. The Court agreed with us on that and concluded that Section 564 does not independently authorize the USMS to detain individuals otherwise eligible for release based solely on an ICE detainer. By reinforcing that it is improper to detain immigrants based on District law, this bill ensures that no one is detained solely for federal immigration purposes in a

⁹ Major Cities Chiefs Ass’n, M.C.C. Immigration Committee Recommendations for Enforcement of Immigration Laws by Local Police Agencies 6 (June 2006).

¹⁰ *Id.*

¹¹ David A. Harris, *The War on Terror, Local Police, and Immigration Enforcement: A Curious Tale of Police Power in Post-9/11 America*, 38 Rutgers L.J. 1, 39-40 (2006).

¹² D.C. Mayor’s Order 2011-174 § II(B)(4-5), <https://cdn.cnsnews.com/documents/Mayor's%20Order%202011-174.pdf> (last visited Sept. 30, 2020).

¹³ DC Mayor, *Police Dept. Reiterate District Policy of Not Enforcing Civil Immigration Laws*, FOX 5 DC, (March 28, 2017), <https://www.fox5dc.com/news/dc-mayor-police-dept-reiterate-district-policy-of-not-enforcing-civil-immigration-laws>.

¹⁴ Order Granting Pl.’s Mot. for a Prelim. Inj., *N.S. v. Hugues*, No. 1:20-cv-101-RCL (D.D.C. May 2020).

District detention facility, including St. Elizabeths Hospital or a facility under the Department of Corrections or the Department of Youth Rehabilitation Services.

Disentangling the criminal justice system from federal immigration enforcement also enhances public health, a concern that takes on added significance during the COVID-19 pandemic. Immigrant communities are among the hardest hit by the twin health and economic crises the pandemic presents. When immigrant communities fear that interaction with government actors may lead to deportation of them or a family member, they may be reluctant to enroll in healthcare programs and to seek treatment when they are sick.¹⁵ For example, the Migrant Clinicians Network reported that 65 percent of health care providers surveyed saw a change “in immigrant or migrant patients’ attitudes . . . toward health care access” in the first year of the Trump Administration, with most providers citing “an increase in fear among their patients that drives them to avoid care.”¹⁶ Similarly, “[i]n Los Angeles, a large community-based provider reported a 20 percent reduction in health-care visits in May 2017, by likely unauthorized immigrants.”¹⁷ In Houston, local governments indicated that “fewer Latino immigrants were participating in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) as well as preventive check-ups and health screenings in public health clinics.”¹⁸ Further, “Texas Children’s Hospital also noted a drop in the number of low-income Latino patients,” while several Houston clinics “reported a more than 50 percent drop in unauthorized [immigrant] patients” in late 2017.¹⁹ By reinforcing that interacting with the District government will not lead to adverse immigration consequences, this bill encourages immigrants, documented or not, to seek the health care and other services they need during the pandemic. That protects not only these communities, but all those who come into contact with them.

In sum, this bill is important to protecting the rights of our immigrant neighbors and preserving public health and safety. The bill takes into consideration the limited resources of the District; the complexity of federal immigration laws; the risk of civil liability for immigration and enforcement activities; and the need to foster trust and cooperation between District agencies and the public, including members of immigrant communities. OAG urges the Council to pass Bill 23-0501. This concludes my testimony, and I am happy to answer any questions.

¹⁵ See, e.g., Alexia Elejalde-Ruiz, *Fear, Anxiety, Apprehension: Immigrants Fear Doctor Visits Could Leave Them Vulnerable to Deportation*, Chi. Trib. (Feb. 22, 2018), <https://www.chicagotribune.com/business/ct-biz-immigration-fears-hurt-health-care-access-0225-story.html>; see also Kelli Kennedy, *Deportation Fears Have Legal Immigrants Avoiding Health Care*, Assoc. Press (Jan. 21, 2018), <https://tinyurl.com/avoiding-health-care>.

¹⁶ Claire Hutkins Seda, *Taking a Pulse: Clinician Poll on Migrant and Immigrant Patient Care, Migrant Clinicians Network* (Mar. 14, 2018), <https://tinyurl.com/taking-pulse>.

¹⁷ Randy Capps et al., *Migration Pol’y Inst., Revving Up the Deportation Machinery: Enforcement and Pushback Under Trump* (May 2018)

¹⁸ *Id.* at 69-70.

¹⁹ *Id.* at 70.