

**CASE NO. 25-4047**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

UNITED FARM WORKERS OF AMERICA, et al.,

*Plaintiffs-Appellees,*

v.

KRISTI NOEM, et al.,

*Defendants-Appellants.*

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On Appeal from an Interlocutory Order Issued by the U.S. District Court for the  
Eastern District of California (Civil Action No. 1:25-cv-00246-JLT-CDB)

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**BRIEF OF AMICI CURIAE THE CATO INSTITUTE, THE LAW  
ENFORCEMENT ACTION PARTNERSHIP, AND THE CENTER FOR  
POLICING EQUITY IN SUPPORT OF PLAINTIFFS-APPELLEES**

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**RULE 26.1 CORPORATE DISCLOSURE STATEMENT**

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Dated: December 30, 2025

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## **STATEMENT OF INTEREST OF *AMICI CURIAE*<sup>1</sup>**

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Project on Criminal Justice was founded in 1999 and focuses in particular on the scope of substantive criminal liability, the proper and effective role of police in their communities, the protection of constitutional and statutory safeguards for criminal suspects and defendants, citizen participation in the criminal justice system, and accountability for law enforcement officers.

The Law Enforcement Action Partnership (LEAP) is a nonprofit organization whose members include police, prosecutors, judges, corrections officials, and other law enforcement officials who advocate for criminal justice and drug policy reforms that will make our communities safer and more just. Founded by five police officers in 2002 with a sole focus on drug policy, today LEAP's speakers bureau numbers 275 criminal justice professionals advising on police community relations, incarceration, harm reduction, drug policy, and global issues. Through speaking engagements, media appearances, testimony, and support of allied efforts, LEAP

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<sup>1</sup> Fed. R. App. P. 29 Statement: No counsel for either party authored this brief in whole or in part. No person or entity other than amici made a monetary contribution toward its preparation or submission. Pursuant to Ninth Circuit Local Rule 29-2(a), all parties have been notified of and have consented to the filing of this brief.

reaches audiences across a wide spectrum of affiliations and beliefs, calling for more practical and ethical policies from a public safety perspective.

The Center for Policing Equity (CPE) is a racial justice non-profit that provides leaders with data, stories, and relationships to facilitate change that is bold, innovative, and lasting. CPE gathers and analyzes data on behaviors within public safety systems and uses those data to help communities achieve safer policing outcomes. This work is also the basis of CPE's National Justice Database, the nation's first database tracking national statistics on police behavior. This database allows CPE to provide others with a clearer picture of the approaches, measures, and methods that work best in redesigning public safety to better keep vulnerable communities safe.

## INTRODUCTION AND SUMMARY OF THE ARGUMENT

“[T]he Constitution prohibits selective enforcement of the law based on considerations such as race.” *Whren v. United States*, 517 U.S. 806, 813 (1996). Nonetheless, on January 7, 2025, heavily agricultural Kern County, California fell into chaos as Border Patrol agents targeted people for stops based on their ethnicity in executing “Operation Return to Sender.” Mot. Prelim. Inj. 1. While Kern County is well over 200 miles from the U.S.-Mexico border, and “officers must not make interior immigration stops or arrests based on race or ethnicity,” *Trump v. Illinois*, No. 25A443, 2025 U.S. LEXIS 4766, at \*7 n.4 (Sup. Ct. Dec. 23, 2025) (Kavanaugh, J., concurring), residents have been stopped discriminatorily based on their apparent ethnicity—then subjected to property damage and even physical assault. Mot. Prelim. Inj. 1.

Color-coded campaigns of official harassment are unconstitutional. *See United States v. Brignoni-Ponce*, 422 U.S. 873 (1975); *United States v. Montero-Camargo*, 208 F.3d 1122, 1135 (9th Cir. 2000) (en banc); *Whren*, 517 U.S. at 813. “The Fourth Amendment requires that immigration stops be based on reasonable suspicion of illegal presence, stops must be brief, arrests must be based on probable cause, and officers must not use excessive force.” *Trump*, 2025 U.S. LEXIS 4766, at \*7 n.4 (Kavanaugh, J., concurring). These rules, born of aversion to British subjugation in the colonial era, were adopted to prevent abuses such as those the

Border Patrol seeks to inflict in Kern County. England’s general warrant regime gave the King’s agents “blanket authority” to search wheresoever they pleased. *Stanford v. Texas*, 379 U.S. 476, 481 (1965). That tyranny, which “had so bedeviled the colonists,” led to the creation of the Fourth Amendment. *Id.* However, the U.S. Border Patrol has resurrected the ancient abuses by subjecting individuals to violent stops and seizures based on nothing more than ethnicity or occupation.

The order to launch a Kern County crackdown came from El Centro sector Border Patrol Chief Agent Gregory Bovino in the leadup to President Trump’s second term. One former official described the operation as a way for agents to “show that there was a new boss coming and that that’s where their loyalties lay.”<sup>2</sup> Chief Agent Bovino directed officers to target people based on unconstitutional factors.<sup>3</sup> While higher ups lacked advanced notice of this operation,<sup>4</sup> the Trump Administration has since endorsed Chief Agent Bovino’s heavy-handed tactics, even

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<sup>2</sup> Rebecca Plevin et al., *Kern County immigration raid offers glimpse into new reality for California farmworkers*, L.A. TIMES (Feb. 26, 2025). Available at <https://tinyurl.com/4e7beyc9>.

<sup>3</sup> *See id.*

<sup>4</sup> *Id.*

naming him “commander-at-large” and authorizing him to carry out similarly aggressive and extraconstitutional operations throughout the nation.<sup>5</sup>

These operations have devastated public confidence in law enforcement. The Administration’s mass deportation agenda has set immigrant communities and their local police at odds, compromising public safety in the process. The ensuing distortion of law enforcement priorities has also been profound: thousands of state and federal officials have been pulled away from operations targeting terrorism, child exploitation, and human smuggling in order to smoke out low-level immigration violations.

If the Administration has its way, the Border Patrol’s manhandling of Kern County is not yet over. Mot. Prelim. Inj. at 1–2. Absent the preliminary injunction, federal agents plan to resume “stopping Latinos *en masse* without reasonable suspicion, arresting them without a warrant or probable cause that they pose a flight risk (as required under 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii)<sup>6</sup>), and coercing them into summary expulsion” from the United States. *Id.* at 1. This Court should affirm the district court’s order enjoining such lawlessness.

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<sup>5</sup> See Nora O’Neill, *4 things to know about Trump’s border patrol commander with NC ties*, THE CHARLOTTE OBSERVER (Nov. 19, 2025). Available at <https://tinyurl.com/4vx7vukj>.

<sup>6</sup> See *Tejeda-Mata v. INS*, 626 F.2d 721, 725 (9th Cir. 1980).

## ARGUMENT

### **I. THE PRELIMINARY INJUNCTION PREVENTS FOURTH AMENDMENT ABUSES.**

The Fourth Amendment secures “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”

U.S. CONST. amend. IV. Its protections are not some “outworn bit of Eighteenth-Century romantic rationalism but an indispensable need for a democratic society.”

*Harris v. United States*, 331 U.S. 145, 161 (1947) (Frankfurter, J., dissenting).<sup>7</sup>

Casting these strictures aside, Border Patrol agents have orchestrated a scheme of violent and lawless seizures in Kern County based on color, ethnic background, and occupation. Compl. 1–2. Indeed, “Commander” Bovino (the title is not an official rank, but has been used by Defendant-Appellant DHS Secretary Kristi Noem to refer to Bovino)—who had previously been relieved of his command and urged to retire<sup>8</sup>—has boasted that Border Patrol agents would act with “reckless abandon—professionally, legally, ethically and morally,”<sup>9</sup> claiming that they “can question

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<sup>7</sup> Overruled in part by *Chimel v. California*, 395 U.S. 752 (1969).

<sup>8</sup> Elliot Spagat, *Takeaways: Gregory Bovino is breaking norms while leading immigration enforcement in Los Angeles*, ASSOCIATED PRESS (Sept. 4, 2025). Available at <https://tinyurl.com/e2x23szs>.

<sup>9</sup> Ali Bradley, *Trump to replace ICE leadership with Border Patrol officials: Sources*, NEWSNATION (Oct. 28, 2025). Available at <https://tinyurl.com/ms4am65z>.

anyone, anywhere in the United States as to their citizenship.”<sup>10</sup> In addition to sending a message that certain classes of people are “assumed to be potential criminals first and individuals second,” *Montero-Camargo*, 208 F.3d at 1135—and that people of some ethnicities are not entitled to the equal protection of the laws—such actions trample upon core Fourth Amendment protections.

These safeguards “grew in large measure out of the colonists’ experience with the writs of assistance and their memories of the general warrants formerly in use in England.” *United States v. Chadwick*, 433 U.S. 1, 7–8 (1977); *see also Chimel*, 395 U.S. at 761<sup>11</sup> (describing the Fourth Amendment as “a reaction to the general warrants and warrantless searches that had so alienated the colonists and had helped speed the movement for independence.”). Writs of assistance gave royal officials broad authority to “search at large for smuggled goods,” *id.* at 8, including entering private homes. RADLEY BALKO, RISE OF THE WARRIOR COP: THE MILITARIZATION OF AMERICA’S POLICE FORCES 8 (2013). They were arguably the most hated form of general warrant, regularly trotted out to suppress colonial resistance to increased taxation. Patriot James Otis, a prominent lawyer, called writs of assistance “the worst instrument of arbitrary power, the most destructive of English liberty and the

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<sup>10</sup> *Erin Burnett OutFront*, CNN (Oct. 7, 2025), transcript of interview with Gregory Bovino. Available at <https://tinyurl.com/y3wwt7t9>.

<sup>11</sup> *Abrogated on other grounds by California v. Acevedo*, 500 U.S. 565 (1991).

fundamental principles of law.”<sup>12</sup> Their lack of specificity, he argued, put “the liberty of every man in the hands of every petty officer.”<sup>13</sup> Abuses stemming from the use of these writs were “[v]ivid in the memory” of the Framers when the Fourth Amendment was adopted. *Stanford*, 379 U.S. at 481; *see also Weeks v. United States*, 232 U.S. 383, 393 (1914) (commenting on the oppressive searches and seizures, and “years of endeavor and suffering,” leading up to the Fourth Amendment).

The Framers understood that general warrants’ unchecked power to stop, seize, question, and search would be “more pernicious to the innocent than useful to the public.” *Boyd v. United States*, 116 U.S. 616, 629 (1886) (quoting *Entick v. Carrington*, 19 How. St. Tr. 1029 (1765)). Thus, they enacted the Fourth Amendment to safeguard each person’s “indefeasible right of personal security, personal liberty, and private property.” *Boyd*, 116 U.S. at 630. The Framers ratified “objective criteria to measure the propriety of government actions.”<sup>14</sup> The Fourth Amendment’s words are “precise and clear,” and “reflect the determination” that Americans should be secure “from intrusion and seizure by officers acting under the unbridled authority of a general warrant.” *Stanford*, 379 U.S. at 481. Accordingly, a

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<sup>12</sup> James Otis, *Speech Against Writs of Assistance*, TEACHING AM. HIST. (last visited Dec. 8, 2025). Available at <https://tinyurl.com/b8az6cns>.

<sup>13</sup> *Id.*

<sup>14</sup> Thomas K. Clancy, *The Framers’ Intent: John Adams, His Era, and the Fourth Amendment*, 86 IND. L.J. 979, 980 (2011).

“warrant must generally be secured” for a search to be “reasonable.” *Kentucky v. King*, 563 U.S. 452, 459 (2011). In principle, “searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.” *Katz v. United States*, 389 U.S. 347, 357 (1967).

The Border Patrol’s policy in Kern County was to disregard the Fourth Amendment by stopping individuals without reasonable suspicion, arresting them without probable cause that they pose a flight risk, and coercing them into signing “voluntary” departure agreements. Even the (lamentably) low threshold for warrantless searches and seizures set out in *Terry v. Ohio* still requires these to be based on specific, articulable facts, as even temporary stops and searches are “a serious intrusion upon the sanctity of the person.” *Terry v. Ohio*, 392 U.S. 1, 17, 22 (1968) (noting that any lesser standard would subjugate personal liberty to “nothing more substantial than inarticulate hunches” and unbridled police discretion). Sitting *en banc*, this Court has further emphasized that “reasonable suspicion requires *particularized* suspicion,” based on existing information, “that *the particular person being stopped* has committed or is about to commit a crime.” *Montero-Camargo*, 208 F.3d at 1129, 1131. Accordingly, it has consistently rejected the use of “profiles that are ‘likely to sweep many ordinary citizens into a generality of suspicious

appearance.”” *Id.* (quoting *United States v. Rodriguez*, 976 F.2d 592, 595–96 (9th Cir. 1992)). When many people share a characteristic, it is of so little probative value as to be practically worthless. *Id.* at 1131.

Ethnicity, including Hispanicity, is a marquee example of such a characteristic. *Id.* at 1132. Especially in much of rural California, where “the majority—or even a substantial part—of the population is Hispanic,” apparent Hispanic ancestry cannot form the nucleus of reasonable suspicion. *Id.* Neither can working in agriculture or other broad occupational classifications. *Benitez-Mendez v. INS*, 752 F.2d 1309, 1311 (9th Cir. 1983).

The Supreme Court’s decision in *United States v. Brignoni-Ponce* echoes these holdings, determining that the Fourth Amendment prohibits “stopping or detaining persons for questioning about their citizenship on less than a reasonable suspicion that they may be aliens.” *Brignoni-Ponce*, 422 U.S. at 884. Roving Border Patrol agents cannot rely on “apparent Mexican ancestry” to establish reasonable suspicion that someone is unlawfully present in the country. *Id.* at 885–86. The federal government’s broad authority over immigration “cannot diminish the Fourth Amendment rights of citizens who may be mistaken for aliens.” *Id.* at 884.

Indeed, the Fourth Amendment “categorical[ly] and without exception” forbids suspicionless investigatory searches and seizures. *Maryland v. King*, 569 U.S. 435, 466 (2013) (Scalia, J., dissenting). On the specific occasions where the

Supreme Court has allowed suspicionless searches, it has required a “justifying motive apart from the investigation of crime.” *Id.*; *see also Skinner v. Ry. Lab. Execs. Ass’n*, 489 U.S. 602, 619 (1989) (allowing suspicionless searches of railway employees to ensure safety); *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 665 (1995) (allowing public schools to randomly drug-test student athletes). The Court has allowed brief suspicionless stops at permanent checkpoints close to the border where neither vehicles nor their occupants are searched. *United States v. Martinez-Fuerte*, 428 U.S. 543, 545, 558 (1976) (concerning a checkpoint just 66 miles from the border). But this exception is extremely limited. *Id.* at 567 (“[O]ur holding today is limited to the type of stops described in this opinion.”). And *Martinez-Fuerte* expressly disavowed suspicionless stops made by immigration agents roaming at large. *Id.* at 558–59. The Court also emphasized that suspicionless immigration stops were not categorically authorized within the entire hundred-mile band surrounding America’s “2,000-mile border.” *Id.* at 559. (Relevant to this case, Kern County’s seat of Bakersfield is over 250 miles from the border.)

Even worse than lacking the constitutionally required reasonable suspicion, the stops in this case pass far beyond the “petty indignit[ies]” imagined in *Terry*. *Terry*, 392 U.S. at 17. Border Patrol agents engaged in random suspicionless stops of cars in Latino neighborhoods “with non-white passengers,” then interrogated drivers and occupants. Mot. Prelim. Inj. 3. When those stopped declined to answer

questions, agents smashed car windows, slashed tires, and forcefully dragged people out of cars. *Id.* at 4. They identified non-white people in the parking lots of businesses “that serve farm workers and day laborers,” blocked them in, and interrogated them about their immigration status. *Id.* at 3–4. Far from the “quite limited” intrusion created by a stop at a permanent border-adjacent checkpoint, *see Martinez-Fuerte*, 428 U.S. at 557, these encounters were violent, disruptive, and dangerous.

The Border Patrol should not be allowed to resume its concerted disregard for the Fourth Amendment. “The spectre of American citizens being asked, by badge-wielding police, for identification, travel papers—in short a *raison d’être*—is foreign to *any* fair reading of the Constitution, and its guarantee of human liberties.” *Florida v. Bostick*, 501 U.S. 429, 443 (1991) (Marshall, J., dissenting) (quoting *Bostick v. State*, 554 So. 2d 1153, 1158 (Fla. 1989)). The preliminary injunction the district court entered properly protects the liberty of Kern County residents from being left to the mercy of “every petty officer” taking part in “Operation Return to Sender.”<sup>15</sup>

## **II. THE PRELIMINARY INJUNCTION SAFEGUARDS CALIFORNIA COMMUNITIES AND PRESERVES INSTITUTIONAL LEGITIMACY.**

“Anyone, from any corner of the Earth, can come to live in America and become an American.” President Ronald Reagan, Remarks at the Presentation

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<sup>15</sup> *Otis, supra.*

Ceremony for the Presidential Medal of Freedom (Jan. 19, 1989).<sup>16</sup> That pledge of equal belonging—as well as the Constitution’s related one of equal protection—are under siege. To appear tough on illegal immigration, the Administration has instructed immigration officers to “turn the creative knob up to 11” and “push the envelope.”<sup>17</sup> As this case demonstrates, those exhortations equate to disregarding constitutional limits. But a blasé attitude toward rights may come with substantial costs: government enforcement efforts cannot be effective if the public perceives them as illegitimate. The general public largely disapproves of the tactics used by ICE and CBP.<sup>18</sup> When law enforcement acts without guardrails, public support drops, and policing in general suffers. Further, the diversion of law enforcement personnel to overzealous immigration enforcement hinders other policing activity. Maintaining the preliminary injunction is the way to prevent such irreparable harm from materializing.

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<sup>16</sup> Available at <https://tinyurl.com/29cb3dzn>.

<sup>17</sup> José Olivares, *US immigration officers ordered to arrest more people even without warrants*, THE GUARDIAN (June 4, 2025) [hereinafter “Olivares, *US immigration*”] (quoting internal agency emails). Available at <https://tinyurl.com/2x3tvyx9>.

<sup>18</sup> Ashleigh Fields, *Majorities of Americans disapprove of how ICE operates*, THE HILL (Nov. 15, 2025). Available at <https://tinyurl.com/bu3xvyjx>.

## **A. The Administration’s Prioritization of Low-Level Immigration Enforcement Compromises Public Safety.**

While “Operation Return to Sender” occurred shortly before President Trump returned to office, the tactics Border Patrol agents employed in Kern County have become emblematic of immigration enforcement under the current Administration.<sup>19</sup> And these measures would surely return in the absence of the preliminary injunction. The Trump Administration’s overarching goal has been to deport millions of immigrants, many of whom the president believes guilty of “vile and heinous acts” amounting to an “invasion” of this country. *See Exec. Order No. 14,159, Protecting the American People Against Invasion*, 90 Fed. Reg. 8443 (Jan. 20, 2025). Pursuing that goal has meant adopting arbitrary arrest quotas—of up to 3,000 people a day—which can be met only by employing aggressive tactics.<sup>20</sup> Senior immigration officials have reportedly said, “if it involves handcuffs on wrists, it’s probably worth pursuing.”<sup>21</sup> ICE agents are being pressured to interrogate so-called “collateral,” e.g. coworkers and relatives of initial arrestees.<sup>22</sup> White House Deputy Chief of Staff Stephen Miller has reportedly rejected an exclusive focus on criminals:

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<sup>19</sup> O’Neill, *supra*.

<sup>20</sup> José Olivares, *Trump administration sets quota to arrest 3,000 people a day in anti-immigration agenda*, THE GUARDIAN (May 29, 2025). Available at <https://tinyurl.com/3vhbm89v>.

<sup>21</sup> Olivares, *US immigration*, *supra*.

<sup>22</sup> *Id.*

One of the [ICE] officials in attendance stood up and stated that the Department of Homeland Security and the White House had publicly messaged about targeting criminal illegal immigrants, and therefore, ICE was targeting them, and not the general illegal immigration population. Miller said, “What do you mean you’re going after criminals?”<sup>23</sup>

He purportedly asked, “Why aren’t you at Home Depot? Why aren’t you at 7-Eleven?”<sup>24</sup>

Substituting group proxies for individualized suspicion, officers have now fanned out into neighborhoods, detaining and arresting individuals with no prior law-enforcement contact—a “telltale sign of illegal profiling.”<sup>25</sup> And indeed, as noted above, Commander Bovino has not only indicated that ethnicity gives rise to reasonable suspicion, he has also insisted that agents need only “reasonable suspicion to make an immigration arrest. You notice I did not say probable cause, nor did I say I need a warrant.”<sup>26</sup> In the first six months of 2025, 16,000 immigrants who had no criminal convictions, charges, or removal orders were arrested.<sup>27</sup> Ninety

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<sup>23</sup> Anna Giaritelli, *Stephen Miller ‘eviscerated’ ICE officials in private meeting for low deportation numbers*, WASH. EXAM’R (May 30, 2025). Available at <https://tinyurl.com/53pc2xkr>.

<sup>24</sup> *Id.*

<sup>25</sup> David J. Bier, *One in Five ICE Arrests Are Latinos on the Streets with No Criminal Past or Removal Order*, CATO INST. (Aug. 5, 2025). Available at <https://tinyurl.com/562k96b9>.

<sup>26</sup> *Erin Burnett OutFront, supra.*

<sup>27</sup> Bier, *supra*.

percent of these people were from Latin America.<sup>28</sup> In one series of Florida raids, over one hundred construction workers were detained—and just six of them turned out to be illegal immigrants.<sup>29</sup>

While ICE and the Border Patrol may claim that ethnically discriminatory stops are consensual, those who are stopped are not free to leave: a message that officers have sometimes reinforced with violence. In one case, a landscaper stopped by agents outside of a pancake restaurant—the father of three U.S. Marines—was pepper-sprayed, tackled, and beaten.<sup>30</sup> According to a DHS statement, immigration agents pursued the man because he “refused to answer questions.”<sup>31</sup> Additionally, over 170 U.S. citizens have been unlawfully detained by immigration agents, some despite being in possession of their REAL ID and Social Security cards.<sup>32</sup> During the recent “Operation Midway Blitz” in the Chicago area, a fifteen-year-old U.S.

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<sup>28</sup> Bier, *supra*.

<sup>29</sup> Francisco Alvarado, *Fear of ICE raids creates chilling effect at South Florida construction sites*, YAHOO NEWS (Jul. 24, 2025). Available at <https://tinyurl.com/4tsppc7p>.

<sup>30</sup> Bier, *supra*.

<sup>31</sup> Julia Ornedo, *Border Patrol Agents Brutally Detain Santa Ana Landscaper*, DAILY BEAST (Jun. 23, 2025). Available at <https://tinyurl.com/yeyswmv9>.

<sup>32</sup> Nicole Foy, *We Found That More Than 170 U.S. Citizens Have Been Held by Immigration Agents. They've Been Kicked, Dragged and Detained for Days*, PROPUBLICA (Oct. 16, 2025). Available at <https://tinyurl.com/y2jhw9c4>.

citizen was tackled by ICE agents.<sup>33</sup> When he told agents he was born in the very city where he had been stopped, they abruptly left.<sup>34</sup> Dayanne Figueroa, a U.S.-born paralegal, was hospitalized after being rammed by unmarked vehicles and dragged from her car.<sup>35</sup> Rafael Veraza, his wife, and their one-year-old daughter were pepper-sprayed in their car after officers mistook them for anti-ICE protesters.<sup>36</sup>

Agents have directed excessive force against dissenters as well. ICE and Border Patrol agents are not trained in crowd control and urban policing.<sup>37</sup> These agencies typically arrest people after intensive, targeted surveillance; after releases from jails or prisons; or near the border—not on urban streets.<sup>38</sup> Their inexperience has proven hazardous, as a federal lawsuit in northern Illinois has revealed. During a clergy-led peaceful demonstration, Rev. David Black was shot in the head, face,

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<sup>33</sup> Robert Klemko, *The U.S. citizens getting caught in Trump's immigration crackdown*, WASH. POST (Dec. 7, 2025). Available at <https://tinyurl.com/mw5hm5fr>.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Marianne LeVine & Robert Klemko, *ICE and Border Patrol's use of tear gas injures, sickens and tests the law*, WASH. POST (Nov. 1, 2025). Available at <https://tinyurl.com/mhnxfdrz>.

<sup>38</sup> See *id.* (quoting Thor Eells, executive director of the National Tactical Officers Association, calling immigration officers' use of chemical irritants "unorthodox").

and body by pepper balls fired by agents on a nearby roof.<sup>39</sup> On another occasion, Commander Bovino deployed tear gas into a crowd, falsely claiming that he had been hit by a rock.<sup>40</sup> The court considering these issues found that the tactics used by immigration agents “shock the conscience.”<sup>41</sup>

The Chicago incident was not a one-off. The characteristic use of excessive force was on full display in Portland, Oregon on October 18, 2025. Federal agents intended to fire tear gas at protesters they claimed were surrounding an ICE office during an otherwise peaceful “No Kings” protest.<sup>42</sup> But they missed and instead hit their colleagues—who mistook this “friendly fire” as an attack by the protesters.<sup>43</sup> Agents responded by firing less-than-lethal munitions into the crowd.<sup>44</sup> At a U.S. district court hearing on October 29, 2025, Portland Police Commander Franz Schoening testified that “[t]he types and amounts of force being used by federal

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<sup>39</sup> Kim Bellware & David Nakamura, *Judge says immigration officers' use of force in Chicago 'shocks the conscience'*, WASH. POST (Nov. 6, 2025). Available at <https://tinyurl.com/3ymxc8bb>.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* (quoting U.S. District Judge Sara Ellis).

<sup>42</sup> Ellie Q. Houghtaling, *Portland Police Chief Reveals Troops Tear-Gassed Protest by Accident*, NEW REPUBLIC (Oct. 29, 2025). Available at <https://tinyurl.com/bde5xtw7>.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

officers is disproportionate to the level of criminal conduct or violence we're seeing.”<sup>45</sup>

Moreover, these strongarm tactics are proving ineffective at flushing out criminals. Defendant-Appellant Secretary Noem avers that these operations target the “worst of the worst.”<sup>46</sup> But the data do not support this claim. In Chicago raids, for example, only around 120 of the more than 4,000 people arrested had a criminal history.<sup>47</sup> Three quarters of those booked into ICE custody this year had no criminal convictions, and only five percent were convicted of a violent crime.<sup>48</sup> The total number of people in detention without a conviction or pending charges increased over 2,360% between January and November.<sup>49</sup> In “Operation Return to Sender”—the action at issue here—just one of the 78 people arrested by the Border Patrol “had a record of criminal or immigration history.”<sup>50</sup> (And that one person’s record

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<sup>45</sup> *Id.*

<sup>46</sup> David J. Bier, *5% of People Detained by ICE Have Violent Convictions, 73% No Convictions*, CATO INST. (Nov. 24, 2025) [hereinafter “Bier, 5%”]. Available at <https://tinyurl.com/4h4rxcpd>.

<sup>47</sup> Arelis R. Hernández et al., *DHS swept Chicago to get ‘the worst’ criminals. Many have no record.*, WASH. POST (Nov. 30, 2025). Available at <https://tinyurl.com/y2svzd5j>.

<sup>48</sup> Bier, 5%, *supra*.

<sup>49</sup> *Id.*

<sup>50</sup> Sergio Olmos & Wendy Fry, *Border Patrol said it targeted known criminals in Kern County. But it had no record on 77 of 78 arrestees*, CAL MATTERS (Apr. 8, 2025). Available at <https://tinyurl.com/3dt4n64a>.

consisted only of a prior deportation order.<sup>51)</sup> The government is not rounding up known criminals. It is sweeping people up in ethnically targeted dragnets. Lifting the preliminary injunction would mean greenlighting the government's casting those nets again and again, despite the irreparable harms to public safety that would follow.

### **B. Aggressive Immigration Enforcement Tactics Impair Institutional Legitimacy.**

Setting law enforcement officers against entire communities has serious effects on how the public views police. Law enforcement efforts suffer when institutional credibility is low. “[W]hen a sense of procedural fairness is illusory, this fosters a sense of second-class citizenship, increases the likelihood people will fail to comply with legal directives, and induces anomie in some groups that leaves them with a sense of statelessness.”<sup>52</sup> The legitimacy of our criminal enforcement system is “rooted in the judgement that the police and the courts are acting fairly when they deal with community residents.”<sup>53</sup> That confidence is essential. “To the degree that people do regard the police and courts as legitimate, they are more willing to accept the directives and decisions of the police and courts, and the

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<sup>51</sup> *Id.*

<sup>52</sup> Fred O. Smith, *Abstention in the Time of Ferguson*, 131 HARV. L. REV. 2283, 2356 (2018).

<sup>53</sup> Tom R. Tyler, *Procedural Justice, Legitimacy, and the Effective Rule of Law*, 30 CRIME & JUST. 283, 286 (2003).

likelihood of defiance, hostility, and resistance is diminished.”<sup>54</sup> By contrast, when public support wanes, communities are much less likely to utilize emergency services, report crimes, or cooperate as witnesses—further eroding public safety.<sup>55</sup> Evidence suggests that these dynamics are playing out in the immigration-enforcement context as well. In the wake of “Operation Midway Blitz,” the rate of 911 calls placed in Chicago dropped precipitously.<sup>56</sup>

Law enforcement effectiveness is also hampered by shifting personnel to overzealous immigration enforcement. Two U.S. Senators have proposed legislation out of concern that diverting Border Patrol agents to the interior may distract from

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<sup>54</sup> *Id.*

<sup>55</sup> See e.g., TOM R. TYLER, WHY PEOPLE OBEY THE LAW 5 (2006) (“Of particular importance is the impact of [people’s] experiences [with legal authorities] on views of the legitimacy of legal authorities, because legitimacy in the eyes of the public is a key precondition to the effectiveness of authorities.”); Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2059 (2017) (“Empirical evidence suggests that feelings of distrust manifest themselves in a reduced likelihood among African Americans to accept law enforcement officers’ directives and cooperate with their crime-fighting efforts.”) (citations omitted); *accord* U.S. DEP’T OF JUST., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 80 (Mar. 4, 2015) (saying a “loss of legitimacy makes individuals more likely to resist enforcement efforts and less likely to cooperate with law enforcement efforts to prevent and investigate crime”), <https://perma.cc/XYQ8-7TB4>.

<sup>56</sup> Sam Charles et al., *Operation Midway Blitz linked to dip in 911 calls, especially in Little Village*, CHI. TRIB. (Nov. 3, 2025). Available at <https://tinyurl.com/2u6cjdcu>.

“their primary mission of ensuring a secure border.”<sup>57</sup> Additionally, ICE has already drawn on the assistance of some 42,000 federal and state, and local law enforcement officers.<sup>58</sup> On the federal level, these include agents from the U.S. Marshals, FBI, DEA, ATF, and even IRS.<sup>59</sup> Diverting this much manpower has altered priorities. Homeland Security Investigations recently suspended investigations “into human trafficking, child exploitation, cybercrime, weapons export controls, intellectual property theft, drugs, and terrorism to focus on arresting immigrants.”<sup>60</sup> Federal prosecutors, too, have been directed to take “all steps necessary” to prosecute illegal

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<sup>57</sup> David Lightman, *Bill would keep border patrol agents close to the border, not in distant cities*, THE SACRAMENTO BEE (Dec. 24, 2025). Available at <https://tinyurl.com/mc4kzurj>.

<sup>58</sup> David J. Bier, *ICE Has Diverted Over 25,000 Officers from Their Jobs*, CATO INST. (Sept. 3, 2025) [hereinafter “Bier, ICE”]. Available at <https://tinyurl.com/28dtma3t>.

<sup>59</sup> *Id.*; see, e.g., Shelby Bremer, *DEA special agent in charge of San Diego discusses immigration, US-Mexico border*, NBC SAN DIEGO (Mar. 8, 2025) (DEA agents stating that this is “new to the DEA. We’ve always only done drugs and narcotics.”), <https://tinyurl.com/yfbs56nc>; Sadie Gurman et al., *How Trump’s Sweeping Expulsions Have Thrown the FBI Into Chaos*, WALL ST. J. (Feb. 5, 2025) (reporting that FBI specialists in counterintelligence and child exploitation have been reassigned to immigration enforcement), <https://tinyurl.com/4x2fwymj>; Ken Dilanian & Julia Ainsley, *FBI returning agents to counterterrorism work after diverting them to immigration*, NBC NEWS (Jun. 24, 2025) (FBI agents returning to counterterrorism to address potential threats after being “sidetracked by immigration duties”), <https://tinyurl.com/yfn3eb48>; IRS, *Sixteen indictments returned for previously deported illegal aliens identified in recent immigration enforcement actions* (Jun. 18, 2025), <https://tinyurl.com/3sxxp5v6>.

<sup>60</sup> Bier, ICE, *supra*.

immigrants.<sup>61</sup> At the state level, over 8,500 “task force officers” can now arrest people based solely on purported removability.<sup>62</sup> For example, the Florida Highway Patrol has deputized nearly 98 percent of its troopers as “designated immigration officers.”<sup>63</sup> But their unfamiliarity with immigration law has made pretextual traffic stops increasingly prevalent.<sup>64</sup> In one stop involving Florida troopers, a native-born, Hispanic high school senior was told: “You got no rights here. You’re an amigo, brother.”<sup>65</sup> Footage captured the officers he encountered musing about shooting the people they subject to immigration stops: “‘They’re starting to resist more. We’re gonna end up shooting some of them.’ Another officer replies, ‘Just remember, you can smell that too with a \$30,000 bonus.’”<sup>66</sup> Meanwhile, the Florida Highway Patrol continues to face a staffing shortfall impairing its response to crime, accidents, and

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<sup>61</sup> Brad Heath et al., *Exclusive: Thousands of agents diverted to Trump immigration crackdown*, REUTERS (Mar. 22, 2025). Available at <https://tinyurl.com/nhzwefhb>.

<sup>62</sup> Bier, *ICE, supra*.

<sup>63</sup> Ariana Campo-Flores et al., *Florida Cops Turn Traffic Stops Into Deportations*, WALL ST. J. (Aug. 25, 2025). Available at <https://tinyurl.com/39bsx2sj>.

<sup>64</sup> *See Id.*

<sup>65</sup> Cristian Benavides, *U.S. citizen told “you have no rights” during immigration arrest speaks out: “It hurts me,”* CBS NEWS (Jul. 28, 2025). Available at <https://tinyurl.com/5n7aw82w>.

<sup>66</sup> *Id.*

natural disasters.<sup>67</sup> In spite of this, nearly 90 percent of the agency's arrests were related to federal immigration violations.<sup>68</sup>

Unlike Florida, California has strictly limited cooperation between state law enforcement and federal immigration authorities. California Values Act, S.B. 54, 2017 Cal. Stat. ch. 495 (codified as Cal. Gov't Code §§ 7284-7284.12). However, California police frequently find themselves drawn indirectly into the Administration's immigration crackdown.<sup>69</sup> Indeed, the President has urged the Los Angeles Police Department to "bring[] in the troops" and not let "thugs get away with" violence at immigration-focused protests.<sup>70</sup> Public disturbances and protests against excessive federal zeal requires responses from California officers, and allegations of excessive force have followed.<sup>71</sup> The Administration's unconstitutional behavior triggers protests—and its flouting of Fourth Amendment

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<sup>67</sup> William Smith, *Florida state troopers have to protect more people than ever. We need help.*, PALM BEACH POST (May 21, 2025). Available at <https://tinyurl.com/457m3r9y>.

<sup>68</sup> Naomi Feinstein, *Highway Patrol Leads Florida in Immigration Arrests, Data Shows*, MIAMI NEW TIMES (Oct. 15, 2025). Available at <https://tinyurl.com/mr2a5sth>.

<sup>69</sup> Libor Jany et al., *How L.A. law enforcement got pulled into the fight over Trump's immigration crackdown*, L.A. TIMES (June 10, 2025). Available at <https://tinyurl.com/2ea5hyah>.

<sup>70</sup> *Id.*

<sup>71</sup> See BrieAnna J. Frank, *LAPD sued over journalists' treatment at Los Angeles immigration protests*, USA TODAY (June 17, 2025). Available at <https://tinyurl.com/y7anak7s>.

rules signals to responding California officers that perhaps they, too, can disregard limits governing seizures.

Perhaps most damaging is the erosion of public trust. As federal agents increasingly make traffic stops and initiate street encounters—tasks traditionally performed by local police—residents find it nearly impossible to distinguish between the two. This confusion delegitimizes local agencies and discourages community cooperation. Ultimately, when federal operations spark unrest, the burden of restoration falls on local police, creating a cycle of chaos and further claims of misconduct against California law enforcement.

While the policy costs of the shift to immigration enforcement are a matter for the political branches to address, this Court is tasked with ensuring that political decisions do not impinge the rule of law. The Border Patrol has deemed “Operation Return to Sender” a resounding success and vowed to “try and catch even more people next time.” Mot. Prelim. Inj. 22. Kern County and surrounding communities have palpable reasons to fear the Border Patrol’s release from constitutional restraints, and imminent irreparable harm to the perceived legitimacy of law enforcement efforts looms large.

## CONCLUSION

This Court should take the government’s threat to double down on the unconstitutional abuses of “Operation Return to Sender” at face value. For these

reasons and those given by the Plaintiffs-Appellees, this Court should affirm the district court's order.

Respectfully submitted,

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Dated: December 30, 2025

## **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of Court, who will enter it into the ACMS system, which will send a notification of such filing to the appropriate counsel.

*/s/ Matthew P. Cavedon  
Counsel for Amici Curiae  
Cato Institute*

Dated: December 30, 2025