

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

RAVIDATH LAWRENCE RAGBIR et al.,)
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) *Plaintiffs,*)
)
) v.)
)
 THOMAS D. HOMAN et al.,) No. 18 Civ. 1159 (PKC)
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) *Defendants.*)
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**MEMORANDUM OF LAW FILED ON BEHALF OF
RELIGIOUS LEADERS AS *AMICI CURIAE* IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

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<i>Heffron v. Int'l Soc'y for Krishna Consciousness</i> , 452 U.S. 640 (1981)	5
<i>Int'l Refugee Assistance Project v. Trump</i> , No. 17-2231, 2018 U.S. App. LEXIS 3513 (4th Cir. Feb. 15, 2018) (en banc)	21
<i>Keyishian v. Bd. of Regents</i> , 385 U.S. 589 (1967)	25

<i>Klayman v. Obama</i> , 142 F. Supp. 3d 172, 195 (D.D.C. 2015)	21
<i>Kreisner v. City of San Diego</i> , 988 F.2d 883 (9th Cir. 1993)	5
<i>Laird v. Tatum</i> , 408 U.S. 1 (1972).....	24
<i>Lemon v. Kurtzman</i> , 403 U.S. 602 (1971).....	6
<i>McCreary County v. ACLU</i> , 545 U.S. 844 (2005).....	5
<i>McCullen v. Coakley</i> , 134 S. Ct. 2518 (2014).....	16
<i>McDaniel v. Paty</i> , 435 U.S. 618 (1978).....	5
<i>Murdock v. Pennsylvania</i> , 319 U.S. 105 (1943).....	5
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<i>Salinger v. Colting</i> , 607 F.3d 68 (2d Cir. 2010).....	24
<i>Sherbert v. Verner</i> , 374 U.S. 398 (1963).....	4, 5
<i>Step by Step, Inc. v. City of Ogdensburg</i> , 176 F. Supp. 3d 112, 135 (N.D.N.Y. 2016).....	22
<i>Texas v. Johnson</i> , 491 U.S. 397 (1989).....	5
<i>West Virginia Bd. of Ed. v. Barnette</i> , 319 U.S. 624 (1943).....	5
<i>Widmar v. Vincent</i> , 454 U.S. 263 (1981).....	5
<i>Wooley v. Maynard</i> , 430 U.S. 705 (1977).....	4

<i>X-Men Sec., Inc. v. Pataki</i> , 196 F.3d 56 (2d Cir. 1999).....	4
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Other Authorities

First Amendment	<i>passim</i>
Amy Reynolds, <i>Through the Eyes of the Abolitionists: Free Association and Anti-Slavery Expression</i>	8
C.J. Lockwood, <i>Regulating the Abortion Clinic Battleground: Will Free Speech be the Ultimate Casualty?</i> , 21 Ohio N.U.L. Rev. 995, 999 (1995)	16
Catholic Bishops, “Declaration on Conscientious Objection and Selective Conscientious Objection,” (Oct. 21, 1971).....	13
95.1 Chicago, <i>Amid Deportation Push, Suburban Church Grapples with Loss</i> , https://www.wbez.org/shows/wbez-news/amid-deportation-push-suburban-church-grapples-with-loss/3d269fc3-04e7-4604-bae4-a376a37410c9 (Feb. 15, 2016)	23
Christopher P. Keleher, <i>Double Standards: The Suppression Of Abortion Protesters’ Free Speech Rights</i> , 51 DePaul L. Rev. 825, 883 (2002)	16
<i>Civil Rights Movement</i> , 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/	11
Clarence Taylor, The Gilder Lehrman Inst. Am. Hist., <i>African American Religious Leadership and the Civil Rights Movement</i> , available at https://www.gilderlehrman.org/history-now/african-american-religious-leadership-and-civil-rights-movement (last visited Feb. 27, 2018).....	10
Cynthia N. Dunbar, <i>True Feminism: Identifying The Real Threats To Women</i>	8, 9
Dan Mangan, CNBC, <i>Trump threatens to yank immigration enforcement from California, warns crime would explode</i> , https://www.cnbc.com/2018/02/22/trump-threatens-to-withdraw-immigration-enforcement-from-california.html (Feb. 22, 2018).....	22
David A. Richards, <i>Public Reason and Abolitionist Dissent</i> , 69 Chi.-Kent L. Rev. 787, 811 (1994).....	8
December 1966, <i>Commonweal</i>	15
Douglas L. Colbert, <i>A Symposium on the Sanctuary Movement: The Motion In Limine: Trial Without Jury: A Government’s Weapon against the Sanctuary Movement</i> , 15 Hofstra L. Rev. 5, 24 (1986)	16

FAITH AND PRACTICE: THE BOOK OF DISCIPLINE OF THE NEW YORK YEARLY MEETING OF THE RELIGIOUS SOCIETY OF FRIENDS 34–35 (2015), <i>available at</i> http://www.nyym.org/sites/default/files/NYYMFaithandPractice-2016Edition.pdf	12
ICE’s 2011 “Sensitive Locations Memo,”	17
Immigration Detention and Deportation, American Friends Service Committee, https://www.afsc.org/key-issues/issue/immigrant-detention-and-deportation	19
Jesse Paul, Denver Post.....	20
Jewish Sanctuary Movement, T’ruah, http://www.truah.org/campaign/mikdash-the-jewish-sanctuary-movement/	19
Jewish Telegraphic Agency, Daily News	14
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JoEllen Lind, <i>Symbols, Leaders, Practitioners: The First Women Professionals</i> , 28 Val. U.L. Rev. 1327, 1353 (1994)	13
John Fea, “Religion and Reform in the Early American Republic,”	8
John Hinton, Winston-Salem Journal	20
Julie Carey, NBC Washington, <i>ICE Agents Arrest Men Leaving Fairfax County Church Shelter</i> , https://www.nbcwashington.com/news/local/ICE-Agents-Arrest-Men-Leaving-Alexandria-Church-Shelter413889013.html (Feb. 15, 2017)	23
Karen M. Morin, <i>Political Culture and Suffrage in an Anglo-American Women’s West</i>	12
Katherine Hessler, <i>Early Efforts to Suppress Protest: Unwanted Abolitionist Speech</i> , 7 B.U. Pub. Int. L.J. 185, 190 (1998)	9
Kathleen L. Villarruel, <i>The Underground Railroad And The Sanctuary Movement: A Comparison Of History, Litigation, And Values</i> , 60 S. Cal. L. Rev. 1429, 1429 (1987)	16
Lobbying for the Faithful, Pew Forum (May 15, 2012), http://www.pewforum.org/2011/11/21/lobbying-for-the-faithful-exec/	7
Mark G. Toulouse, <i>Christian Responses to Vietnam: The Organization of Dissent</i> 1 (2007), <i>available at</i> https://divinity.uchicago.edu/sites/default/files/imce/pdfs/webforum/062007/vietnam.pdf	13

Martin Kaste, NPR, <i>Trump Threatens ‘Sanctuary’ Cities With Loss Of Federal Funds</i> , https://www.npr.org/sections/thetwo-way/2017/01/26/511899896/trumps-threatens-sanctuary-cities-with-loss-of-federal-funds (Jan. 26, 2017)	22
Michael Kent Curtis, <i>The 1837 Killing of Elijah Lovejoy by an Anti-Abolition Mob: Free Speech, Mobs, Republican Government, and the Privileges of American Citizens</i> , 44 UCLA L. Rev. 1109, 1117–18 (1997).....	9
<i>Minerva Garcia remains free after meeting with ICE, but she must wear ankle monitor</i> , http://www.journalnow.com/news/local/minerva-garcia-remains-free-after-meeting-with-ice-but-she/article_f563c7fe-59c7-53bf-91f4-d939ddfbc49.html (Nov. 16, 2017).....	20
Molly Hennessy-Fiske, The L.A. Times, <i>The Border Patrol chooses a new target: a volunteer helping migrants</i> , http://www.latimes.com/nation/la-na-arizona-migrant-activists-20180125-story.html (Jan. 25, 2018).....	20
<i>Muhammad Ali and Vietnam</i> , The Atlantic (June 4, 2016), available at https://www.theatlantic.com/news/archive/2016/06/muhammad-ali-vietnam/485717/	14
Panela Begaj, <i>An Analysis Of Historical And Legal Sanctuary And A Cohesive Approach To The Current Movement</i> , 42 J. Marshall L. Rev. 135, 137 (2008).....	17
Paul Finkelman, <i>Human Liberty, Property in Human Beings, and the Pennsylvania Supreme Court</i> , 53 Duq. L. Rev. 453, 458 (2015)	8
Paul Harvey, Oxford Research Encyclopedia of Religion, <i>The Civil Rights Movement, Religion, and Resistance</i> (Feb. 23, 2017), available at https://blog.oup.com/2017/02/civil-rights-movement-religion/ ;	10
<i>Protesters arrested after blocking immigrant detention bus at SW Portland ICE office</i> , http://www.oregonlive.com/portland/index.ssf/2017/10/protesters_block_immigrant_det.html (Oct. 11, 2017).....	25
Samantha Matsumoto, The Oregonian	25
Social Principles: The Social Community, The United Methodist Church, http://www.umc.org:8003/what-we-believe/the-social-community (2016)	19
Sophie Nieto-Munoz, NJ Advance Media, <i>Meet the immigrants taking sanctuary in a N.J. church amid an ICE storm</i> , http://www.nj.com/news/index.ssf/2018/01/meet_the_immigrants_taking_sanctuary_in_a_nj_church_amid_an_ice_storm.html (Jan. 27, 2018).....	20

Stephen A. Higginson, <i>A Short History of the Right to Petition Government for the Redress of Grievances</i> , 96 Yale L.J. 142, 158 (1986)	9
Supad Kumar Ghose, <i>The Role of the Black Church in the American Civil Rights Movement</i>	10
Temp. Pol. & Civ. Rts. L. Rev. 163, 173 (2011)	12
<i>'This was a total blindside': ICE departs Mesa man when he arrives for scheduled check-in,</i> https://www.azcentral.com/story/news/local/phoenix/2017/05/12/supporters-hold-vigil-outside-ice-offices-deported-mesa-man/319309001/ (May 11, 2017)	21
<i>Utah</i> , <i>Utah History Encyclopedia</i> (last visited March 5, 2018), <i>available at</i> http://historytogo.utah.gov/utah_chapters/statehood_and_the_progressive_era/womenssuffrageinutah.html	12
<i>Why We Went: A Joint Letter from the Rabbis Arrested in St. Augustine</i> (June 19, 1964), <i>available at</i> https://jwa.org/media/why-we-went-joint-letter-from-rabbis-arrested-in-st-augustine	11, 12
<i>With his deportation delayed at least 30 days, Arturo Hernandez Garcia anxiously gets back to his family, work,</i> https://www.denverpost.com/2017/05/04/arturo-hernandez-garcia-deportation-delay/ (May 4, 2017)	20
Women's Rights L. Rep. 17, 23 (1997)	12

INTERESTS OF AMICI CURIAE

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. 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,¹ Christianity,² and Islam.³ For this reason, Amici support the Plaintiffs’ motion to enjoin ICE from using its discretion to retaliate against immigration activists, or engage in viewpoint discrimination of any kind.

¹ “The foreigner residing among you must be treated as your native-born. Love them as yourself, for you were foreigners in Egypt.” Leviticus 19:34 (New Int’l Version 2011).

² “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).

³ “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).

PRELIMINARY STATEMENT

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.

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 even 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 will 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. 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 Plaintiffs’ motion. 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 Plaintiffs’ motion papers, Amici respectfully ask the Court to grant Plaintiffs’ motion for a preliminary injunction.

ARGUMENT

I. Faith-Based Organizations Have Historically Relied Upon First Amendment Rights to Express Views and Take Action on Matters of Conscience

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. The First Amendment’s Free Exercise Clause protects religious beliefs and practices from unwarranted government restrictions,⁴ but 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

⁴ *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.

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.⁵

Together, the constitutional protections in the First Amendment’s Free Speech Clause and Free Exercise Clause enshrine our nation’s commitment to diversity and pluralism, *Goldman v. Weinberger*, 475 U.S. 503, 523 (1986) (Brennan, J., dissenting), *superseded by statute on other grounds*, 10 U.S.C. § 744; *McCreary County v. ACLU*, 545 U.S. 844, 881–82 (2005) (O’Connor, J., concurring), and protect individuals and organizations whose religious convictions and practices are controversial or otherwise fail to accord with majoritarian currents, *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).

Throughout our history, religious beliefs have inspired and directed faith-based organizations to express views regarding controversial social or political movements. In 1961, 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).

⁵ *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 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.”); *McDaniel v. Paty*, 435 U.S. 618, 641 (1978) (Brennan, J., concurring) (“Religionists no less than members of any other group enjoy the full measure of protection afforded speech, association, and political activity generally.”); *see also, e.g., Heffron v. Int’l Soc’y for Krishna Consciousness*, 452 U.S. 640, 642 (1981) (sale of religious literature and solicitations of donations protected speech); *Kreisner v. City of San Diego*, 988 F.2d 883, 891 (9th Cir. 1993) (displaying a religious symbol is protected speech); *Americans United for Separation of Church and State v. City of Grand Rapids*, 980 F.2d 1538, 1542 (6th Cir. 1992) (en banc) (same); *Doe v. Small*, 964 F.2d 611, 618–19 (7th Cir. 1992) (en banc) (display of religious paintings protected speech).

When, as in this case, First Amendment rights are under attack by the government, religious organizations take notice. Of particular relevance to the claims presented in this lawsuit, some courts have specifically recognized that the 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) (denying defendants’ motion to dismiss); *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. (Complaint ¶ 28). Plaintiff 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.

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) (quoting *Walz v. Tax Comm'n of New York*, 397 U.S. 664, 670 (1970)) (internal quotation marks omitted). In the past four decades, the number of organizations engaged in faith-based advocacy in our nation's capital has increased dramatically, speaking on hundreds of domestic and international policy issues.⁶ 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.⁷ 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 history. The following are some important examples of social movements that flourished in part due to faith-based discourse.

i. *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,⁸ 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

⁶ See Lobbying for the Faithful, Pew Forum (May 15, 2012), <http://www.pewforum.org/2011/11/21/lobbying-for-the-faithful-exec/>.

⁷ Even in the case of abolition, some faith-based organizations contended that scripture supported maintaining the institution of slavery or a clear separation of gender roles. See Lincoln's Second Inaugural (Mar. 4, 1865) ("Both read the same Bible and pray to the same God, and each invokes His aid against the other. It may seem strange that any men should dare to ask a just God's assistance in wringing their bread from the sweat of other men's faces, but let us judge not, that we be not judged.").

⁸ See JOHN P. KAMINSKI, A NECESSARY EVIL? SLAVERY AND THE DEBATE OVER THE CONSTITUTION 212 (1995).

oppression in Europe, and they and their descendants concluded that slavery was immoral and violated Christian values.⁹ Further, many abolitionists saw their appeals to conscience as a continuation of the great tradition of Protestant reformers.¹⁰

Most of the earliest anti-slavery organizations were organized by the Society of Friends, or Quakers.¹¹ 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 United States.¹² Other religious organizations were moved to address the question of slavery, including Presbyterians, Methodists, and Baptists.¹³ Churches frequently served as stations on the Underground Railroad.¹⁴

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.¹⁵ In order to accomplish their goals, abolitionists employed every method of outreach, including books, newspapers, pamphlets, reports, speeches and other publications,

⁹ See Paul Finkelman, *Human Liberty, Property in Human Beings, and the Pennsylvania Supreme Court*, 53 Duq. L. Rev. 453, 458 (2015).

¹⁰ See David A. Richards, *Public Reason and Abolitionist Dissent*, 69 Chi.-Kent L. Rev. 787, 811 (1994).

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

¹² Finkelman, *supra* note 9, at 460–62.

¹³ Reynolds, *supra* note 11, at 456.

¹⁴ Cheryl J. LaRoche, *Free Black Communities and the Underground Railroad: The Geography of Resistance* 14 (2014) (“The Underground Railroad was practically a church movement.”).

¹⁵ 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).

exercising rights protected by the First Amendment.¹⁶ Garrison’s writings on immediate liberation were a direct extension of evangelical Christian belief that slavery was ongoing disobedience to God.¹⁷

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,¹⁸ and Congress eventually enacted the “Gag Rule” which forbade the “discussion of slavery, abolition, or anything related.”¹⁹ Even the U.S. Postal Service began to censor abolitionist literature that was sent through the mail.²⁰ 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.

ii. 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

¹⁶ 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).

¹⁷ Barry Hankins, *The Second Great Awakening and the Transcendentalists* 90 (2004).

¹⁸ See Hessler, *supra* note 16, 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).

¹⁹ Hessler, *supra* note 16, at 210.

²⁰ *Id.* at 205.

settlement.²¹ Civil rights organizations persuaded their members to take action based on religious visions of a just society that reflected the kingdom of God.²² These visions produced a movement that fused social gospel and Black church traditions with nonviolent action inspired by religious ideology.²³ The Civil Rights Movement also depended on the religious virtues of solidarity and self-sacrificial devotion.²⁴

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.²⁵ In 1955, Martin 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.²⁶ Mass meetings and rallies in support of the movement were held at large Black churches.²⁷ Many churches in America called for fundraising to provide financial

²¹ Paul Harvey, Oxford Research Encyclopedia of Religion, *The Civil Rights Movement, Religion, and Resistance* (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).

²² Stephen L. Carter, *The Culture of Disbelief: How American Law and Politics Trivialize Religious Devotion* 228 (1993).

²³ Harvey, *supra* note 21.

²⁴ Chappell, *supra* note 21, at 8.

²⁵ Clarence Taylor, The Gilder Lehrman Inst. Am. Hist., *African American Religious Leadership and the Civil Rights Movement*, available at <https://www.gilderlehrman.org/history-now/african-american-religious-leadership-and-civil-rights-movement> (last visited Feb. 27, 2018).

²⁶ Supad Kumar Ghose, *The Role of the Black Church in the American Civil Rights Movement*, 5 *UITS J.* 58, 65 (last visited February 27, 2018), available at <https://goo.gl/gzJF3L..>

²⁷ *Id.* at 60.

support to those participating in civil rights activities by, for instance, helping jailed demonstrators pay bail and other fines.²⁸

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 1965.²⁹ Rabbi Heschel believed that his participation in the Selma March “was a holy moment . . . he felt holiness in the march; it reminded him of walking with Hasidic rebbes in Europe, which is a religious act.”³⁰ When he marched that day, he said that his “legs were praying.” He also took inspiration from Dr. King’s references to the Exodus, which is a central episode in both Jewish and Christian religious liturgy.³¹

iii. 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.

²⁸ *Id.*

²⁹ 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/>.

³⁰ *Id.*

³¹ *Id.* During the prior year, rabbis responded to the call from Dr. King to protest segregation in the tourist town of St. Augustine, Florida. Fifteen rabbis were arrested while praying in an integrated group in front of a restaurant. In a joint letter written by the rabbis, they explained their motivation for participation: they “came in the hope that the God of us all would accept our small involvement as partial atonement for the many things we wish we had done before and often” and that they “believe[d] in man’s ability to fulfill God’s commands with God’s help.” See Jewish Women’s Archive, *Why We Went: A Joint Letter from the Rabbis Arrested in St. Augustine* (June 19, 1964), available at <https://jwa.org/media/why-we-went-joint-letter-from-rabbis-arrested-in-st-augustine>.

Quakers believed that their ideology demanded women’s religious leadership and public voice.³² From their founding in Seventeenth Century England, the Religious Society of Friends’ (Quakers) then-radical belief in “that of God in every person” dictated equal standing for women in the Society’s ministry, leadership and public voice.³³ In 1838, Sarah Moore Grimké, a Quaker who lived in Philadelphia, penned an influential and comprehensive argument for women’s rights with the Bible as its focus.³⁴ Ten years later, the first women’s rights convention was held at a chapel in Seneca Falls, New York.³⁵ 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.³⁶ 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,³⁷ 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.³⁸

³² Dunbar, *supra* note 15, at 26.

³³ *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.nyym.org/sites/default/files/NYYMFaithandPractice-2016Edition.pdf>.

³⁴ SARAH MOORE GRIMKÉ, LETTERS ON THE EQUALITY OF THE SEXES (1837).

³⁵ ELIZABETH CADY STANTON ET AL., HISTORY OF WOMAN SUFFRAGE 442 (1880).

³⁶ 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).

³⁷ *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).

³⁸ Jean Bickmore White, *Women’s Suffrage in Utah*, [Utah History Encyclopedia](http://historytogo.utah.gov/utah_chapters/statehood_and_the_progressive_era/womenssuffrageinutah.html) (last visited March 5, 2018), available at http://historytogo.utah.gov/utah_chapters/statehood_and_the_progressive_era/womenssuffrageinutah.html

Other faith-based organizations similarly viewed woman's suffrage as a moral and religious issue. Under the leadership of Frances Willard, the influential Woman's Christian Temperance Union became the largest women's organization in the United States, and endorsed suffrage in 1879.³⁹ Willard was a devout Methodist who claimed that her vision of women's voting rights came to her in prayer.⁴⁰ By the 1960s, "each religion included within it a social justice tradition that inspired feminist foment and leadership," even while "the religious climate of the period generally encouraged traditional gender roles."⁴¹

iv. *Anti-War*

During the 1960s, many major religious organizations began to organize, vocally opposing the Vietnam War and calling for nuclear disarmament.⁴² 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 to rescue Americans from the forfeiture of their humanitarian principles.⁴³ 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.⁴⁴ In the same

³⁹ JoEllen Lind, *Symbols, Leaders, Practitioners: The First Women Professionals*, 28 Val. U.L. Rev. 1327, 1353 (1994).

⁴⁰ ENCYCLOPEDIA OF WOMEN AND RELIGION IN NORTH AMERICA 14 (Rosemary Keller & Rosemary Ruether, eds. 2006).

⁴¹ *Id.*

⁴² 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>.

⁴³ *Id.* at 10–11.

⁴⁴ *Id.* at 11; *see, e.g.*, United States Conference of Catholic Bishops, "Declaration on Conscientious Objection and Selective Conscientious Objection," (Oct. 21, 1971) ("The status of the selective conscientious objector is complicated by the fact that the present law does not provide an exemption for this type of conscientious objection."), found at <http://www.usccb.org/issues-and-action/human-life-and-dignity/war-and-peace/declaration-on-conscientious-objection-and-selective-conscientious-objections-1971-10-21.cfm>.

vein, boxer Muhammad Ali cited his Muslim faith as the basis 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.⁴⁵ 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.⁴⁶ By the end of the weekend, thirty-three faith-based organizations formed a national coalition committed to ending the war in Vietnam.⁴⁷ 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 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.⁴⁸

⁴⁵ 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/>.

⁴⁶ Toulouse, *supra* note 42, at 1–2.

⁴⁷ *Id.* The organization was named the “National Coordinating Committee to End the War in Vietnam.”

⁴⁸ Jewish Telegraphic Agency, *Daily News Bulletin*, Vol. XXXVII, No. 85 (May 5, 1970), available at http://pdfs.jta.org/1970/1970-05-05_085.pdf. In May 1972, the Massachusetts Board of Rabbis organized a peaceful protest at a federal building in Boston, Massachusetts, at which six rabbis were arrested as they conducted prayer services and sang Hebrew songs. *See* Jewish Telegraphic Agency, *Daily News Bulletin*, Vol. XXXIX, No. 98 (May 19, 1972), available at http://pdfs.jta.org/1972/1972-05-19_098.pdf.

Religious leaders at the Sixth World Order Study Conference of the National Council of Churches specifically invoked their constitutional rights, declaring that “The 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.”⁴⁹ 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.⁵⁰ This group became the leading ecumenical organization in America protesting government policies in Vietnam.⁵¹ By the end of the 1960s, 16,000 clergy in America were members of the group, including conservative and evangelical groups.⁵² Several faith-based newspapers also frequently published opinions opposing the war effort.⁵³ For example, in December 1966, *Commonweal*, an American Catholic magazine, declared the Vietnam War completely immoral and unjust, “a crime and a sin.”⁵⁴

v. *Pro-Life Activism*

The pro-life movement, which is a central pillar of some (but certainly not all) religious organizations’ beliefs, similarly relies on First Amendment protections to pursue its goals and survive. Since the Supreme Court held in 1973 that a woman has a constitutional right to choose to have an abortion,⁵⁵ faith-based pro-life groups have turned to vociferous advocacy to

⁴⁹ Tolouse, *supra* note 42, at 3.

⁵⁰ *Jewish Telegraphic Agency*, *supra* note 48.

⁵¹ *Id.* at 4.

⁵² *Id.* at 18, 21.

⁵³ *Id.* at 5.

⁵⁴ *Id.* at 16.

⁵⁵ *Roe v. Wade*, 410 U.S. 113 (1973).

discourage the practice of abortions.⁵⁶ Justice Ruth Bader Ginsburg, reflecting on *Roe v. Wade*, has observed that “a well-organized and vocal right to life rallied” in response to the Court’s opinion.⁵⁷ This response was led by the Catholic Church, but they “knew they could not win the fight alone, and soon, large numbers of Evangelical Protestants, Orthodox Jews, and Mormons joined the movement.”⁵⁸ Pro-life proponents have marched and rallied, organized demonstrations and sit-ins, picketed clinics, and distributed publications to encourage pregnant woman to choose alternatives to abortions.⁵⁹ As in response to other social movements, some states have made efforts to suppress pro-life free speech; for instance, legislatures have enacted laws banning sidewalk picketing, which severely stifles protected pro-life speech.⁶⁰ Courts have protected the First Amendment rights of those who act out of conscience.⁶¹

vi. 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.⁶² Faith-based organizations viewed the 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,

⁵⁶ Christopher P. Keleher, *Double Standards: The Suppression Of Abortion Protesters’ Free Speech Rights*, 51 DePaul L. Rev. 825, 883 (2002).

⁵⁷ *Id.* at 838.

⁵⁸ *Id.* at 839.

⁵⁹ *Id.* at 840.

⁶⁰ *Id.* at 881; C.J. Lockwood, *Regulating the Abortion Clinic Battleground: Will Free Speech be the Ultimate Casualty?*, 21 Ohio N.U.L. Rev. 995, 999 (1995).

⁶¹ *McCullen v. Coakley*, 134 S. Ct. 2518, 2541 (2014) (rejecting under the First Amendment a Massachusetts law that closed to speech a traditional public forum—the public streets and sidewalks—even when this closure was taken in order to preserve access to adjacent health care facilities).

⁶² 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).

temples, and synagogues to provide sanctuary from arrest and deportation to these refugees.⁶³ The concept of “sanctuary” itself is rooted in deeply held religious values of welcoming strangers.⁶⁴ 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 similarly seeks to provide “sanctuary” to deportable immigrants for humanitarian reasons.⁶⁵ One of the most prominent faith-based organizations to participate in the New Sanctuary Movement is the Catholic Church, which has taken a stand against deporting immigrants by designating its chapels as sanctuaries.⁶⁶

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.⁶⁷ Plaintiffs’ allegations suggest that this memo, unfortunately, 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, Defendants’ discriminatory and retaliatory conduct not only harms Plaintiffs but also causes serious harm to Amici and their communities of faith. Amici devote themselves

⁶³ Villarruel, *supra* note 62, at 1433.

⁶⁴ Panella 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 62, at 38.

⁶⁵ Villarruel, *supra* note 62, at 1433.

⁶⁶ *Id.*

⁶⁷ This memo is available at <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>.

to aiding non-citizens and immigrants and advocating for their humane treatment and legal rights. This activity is central to the deeply held 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 the religious traditions to which they adhere.

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, Defendants send 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 against Plaintiffs that is the focus of this lawsuit, Defendants' 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, Defendants undermine 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, Defendants' discriminatory conduct violates Amici's First Amendment rights, causing harm that cannot be undone.

A. Amici and their Congregants Face Direct Harm from Defendants' 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 Defendants' selective and discriminatory enforcement actions.⁶⁸ Thus, by espousing views about these matters of public 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 one of its leaders had been arrested by ICE agents 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

⁶⁸ 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 that it is 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," calling on local churches "to be in ministry with immigrant families"); Evangelical Lutheran Church in America, A Message on Immigration 5, available at <http://download.elca.org/ELCA%20Resource%20Repository/ImmigrationSM.pdf> (observing that "[p]ersons who once were or now are without 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, American Friends Service Committee, <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").

Sanctuary movement.⁶⁹ 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.⁷⁰ And Amici Rev. Seth Kaper-Dale’s congregation includes three 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.⁷¹ ICE even has arrested and criminally charged members of a faith-based organization after the organization released a report detailing how CBP agents destroyed the food and water it provides for migrants crossing the United States’ southern border.⁷²

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*, No. 17-2231, 2018 U.S. App. LEXIS 3513, at *178–79 (4th Cir. Feb. 15, 2018) (en banc) (referring to “the prolonged, if not indefinite,

⁶⁹ See Jesse Paul, Denver Post, *With his deportation delayed at least 30 days, Arturo Hernandez Garcia anxiously gets back to his family, work*, <https://www.denverpost.com/2017/05/04/arturo-hernandez-garcia-deportation-delay/> (May 4, 2017).

⁷⁰ John Hinton, Winston-Salem Journal, *Minerva Garcia remains free after meeting with ICE, but she must wear ankle monitor*, http://www.journalnow.com/news/local/minerva-garcia-remains-free-after-meeting-with-ice-but-she/article_f563c7fe-59c7-53bf-91f4-d939ddfbc49.html (Nov. 16, 2017).

⁷¹ See Sophie Nieto-Munoz, NJ Advance Media, *Meet the immigrants taking sanctuary in a N.J. church amid an ICE storm*, http://www.nj.com/news/index.ssf/2018/01/meet_the_immigrants_taking_sanctuary_in_a_nj_church_amid_an_ice_storm.html (Jan. 27, 2018).

⁷² See Molly Hennessy-Fiske, The L.A. Times, *The Border Patrol chooses a new target: a volunteer helping migrants*, <http://www.latimes.com/nation/la-na-arizona-migrant-activists-20180125-story.html> (Jan. 25, 2018).

separation of the plaintiffs and their family members” as “quintessential examples of irreparable harms”).

Deportation and detention are not the only threats facing Amici: Defendants possess 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.⁷³

Amici’s persistence in the face of Defendants’ 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 mere political subdivisions with respect to immigration enforcement, or even see the complete withdrawal of support of federal law enforcement agencies.⁷⁴ In each case, Amici are directly impacted and harmed by Defendants’ choice to target their political expression.

⁷³ See BrieAnna J. Frank, azcentral.com, *‘This was a total blindside’: ICE departs Mesa man when he arrives for scheduled check-in*, <https://www.azcentral.com/story/news/local/phoenix/2017/05/12/supporters-hold-vigil-outside-ice-offices-deported-mesa-man/319309001/> (May 11, 2017).

⁷⁴ See Dan Mangan, CNBC, *Trump threatens to yank immigration enforcement from California, warns crime would explode*, <https://www.cnn.com/2018/02/22/trump-threatens-to-withdraw-immigration-enforcement-from-california.html> (Feb. 22, 2018); Martin Kaste, NPR, *Trump Threatens ‘Sanctuary’ Cities With Loss Of Federal Funds*, <https://www.npr.org/sections/thetwo-way/2017/01/26/511899896/trumps-threatens-sanctuary-cities-with-loss-of-federal-funds> (Jan. 26, 2017).

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

In addition to causing personal harm, Defendants injure 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. Defendants' conduct will leave Amici leading depleted and demoralized communities with diminished capacities to express themselves and live out their faith traditions.

Defendants also injure 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, Defendants jeopardize Amici's contributions to their communities and leave 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.⁷⁵ And in suburban Illinois, ICE agents tricked a worshiper into leaving a church service—by texting him from his cousin’s cell phone about a fictional car accident—and arrested him at a neighboring McDonald’s.⁷⁶ When Defendants target a place of worship and the individuals it serves, they discourage participation in religious activities, and deny Amici’s ability to live out their faith and minister to the needs of community members.

C. Defendants’ Actions Chill Amici’s Speech and Dissuade Amici’s Protected Expression

Even if Defendants do 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 discourages Amici from exercising their First Amendment rights. Because of Defendants’ discriminatory conduct, Amici confront an impossible—and impermissible—choice: either face government action, or forgo acting as their faith demands.

Examples of this chilling effect abound. Rabbi Michael E. Feinberg laments that Defendants’ activities have “chill[ed] . . . peoples’ willingness to speak out publicly and declare their dissent from [current] immigration policies.”⁷⁷ And one Amici, Justin Remer-Thamert, says that “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

⁷⁵ Julie Carey, NBC Washington, *ICE Agents Arrest Men Leaving Fairfax County Church Shelter*, <https://www.nbcwashington.com/news/local/ICE-Agents-Arrest-Men-Leaving-Alexandria-Church-Shelter413889013.html> (Feb. 15, 2017).

⁷⁶ Odette Yousef, WBEZ 95.1 Chicago, *Amid Deportation Push, Suburban Church Grapples with Loss*, <https://www.wbez.org/shows/wbez-news/amid-deportation-push-suburban-church-grapples-with-loss/3d269fc3-04e7-4604-bae4-a376a37410c9> (Feb. 15, 2016).

⁷⁷ Rabbi Feinberg’s congregation is a member organization of Plaintiffs New Sanctuary Coalition and the New York Immigration Coalition.

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

Here, Defendants have targeted Amici and others because of their participation in a social movement, because 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 and demonstrations,⁷⁸ and detained—without warning—advocates who have heretofore been assured of their security. Amici now must think twice before gathering to worship, aiding community members, or advocating against laws they view

⁷⁸ See, e.g., Samantha Matsumoto, *The Oregonian*, *Protesters arrested after blocking immigrant detention bus at SW Portland ICE office*, http://www.oregonlive.com/portland/index.ssf/2017/10/protesters_block_immigrant_det.html (Oct. 11, 2017).

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 Defendants is clear: if you continue to engage in protected First Amendment activities, you and your congregants will be punished. Defendants' discriminatory and retaliatory conduct must be enjoined.

CONCLUSION

For the reasons stated herein and in Plaintiffs' motion papers, Amici respectfully ask this Court to grant Plaintiff's motion for a preliminary injunction.

Date: March 5, 2017

Respectfully submitted,
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Appendix A *

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