NO. 17-35679

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ANTONIO SANCHEZ OCHOA,

Plaintiff-Appellee,

v.

ED W. CAMPBELL, Director of Yakima County Department of Corrections; SCOTT HIMES, Chief of the Yakima County Department of Corrections; and YAKIMA COUNTY,

Defendants-Appellants.

On Appeal from the United States District Court
for the Eastern District of Washington
Case No: 1:17-cv-03124-SMJ

AMICUS CURIAE BRIEF OF THE STATE OF WASHINGTON

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I. INTRODUCTION

To ensure that all Washington residents are afforded the constitutional and statutory protections to which they are entitled, Washington consistently enacts policies to protect the rights of its immigrant communities and reaffirms that tolerance and inclusivity of all Washingtonians is a top priority. Washington also provides guidance to local law enforcement agencies ("LEAs") about their constitutional, statutory, and public records obligations including the civil issues that may arise when LEAs become excessively entangled with federal civil immigration enforcement. To assist with these goals Washington urges the Court to affirm the district court's ruling and confirm that all Washingtonians, regardless of immigration status, have a constitutionally protected right to be free from incarceration when the predicate Fourth Amendment requirements are not met.

II. IDENTITY AND INTEREST OF *AMICUS CURIAE*

Washington submits this amicus brief under Federal Rule of Appellate Procedure 29(a) to protect Washingtonians from constitutional and statutory violations that may result when LEAs become entangled in civil immigration enforcement. Washington has a *parens patriae* interest in ensuring that LEAs comply with state and federal constitutional and statutory requirements.

See Alfred Snapp & Son, Inc. v. Puerto Rico ex rel. Barez, 458 U.S. 592, 602-08 (1982) (ensuring "well-being of its residents" is well within a state's legitimate interests); *Pennsylvania v. Porter*, 659 F.2d 306, 315 (3d Cir. 1981) (affirming a state's vital interest in the lawful exercise of the powers its laws confer upon police officers). Washington's *parens patriae* interest also includes ensuring that LEAs operate in a manner that keeps all Washingtonians safe and that creates healthy relationships between law enforcement and the immigrant communities they serve. *See Snapp*, 458 U.S. at 600 (explaining that "*parens patriae* is inherent in the supreme power of every State" and is often exerted to prevent injury to those who cannot protect themselves) (quoting *Mormon Church v. United States*, 136 U.S. 1, 57 (1890)).

Washington also has a vested interest in ensuring that all entities bound by and applying Washington's Public Records Act, Wash. Rev. Code §§ 42.56.001-42.56.904, understand the contours of its disclosure requirements.

III. FACTUAL BACKGROUND

A. Washington Protects the Rights of Immigrant Communities

Washington has long been committed to protecting its immigrant communities. Indeed, Washington's Legislature enacted the Washington Law Against Discrimination ("WLAD") in 1949 – well before its federal counterpart

the Civil Rights Act of 1964. Wash. Rev. Code §§ 49.60.010-49.60.505. When the Legislature enacted the WLAD, it declared that practices that discriminate against any of its inhabitants because of race, color, or national origin are matters of public concern. Wash. Rev. Code § 49.60.010. Washington's Legislature also found that such discrimination threatens the rights and proper privileges of the public, "menaces the institutions and foundation of a free democratic state," and harms the public welfare, health, and peace of the people. Wash. Rev. Code § 49.60.010.

Washington has shown its dedication to its immigrant communities not just by enacting protective laws, but by opening its doors to immigrants and refugees. In April 1975, then-Governor Dan Evans encouraged Southeast Asian refugees from the Vietnam War to make Washington their home. *After the Fall of Saigon: When Washington Did the Right Thing for Refugees*, Seattle Times (Apr. 24, 2015), https://www.seattletimes.com/opinion/editorials/when-washington-did-the-right-thing-for-refugees (last visited Nov. 1, 2017). Governor Evans "announced that every state agency would answer President Ford's call to help refugees from Indochina, including Vietnam, Cambodia, and Laos." *Id.* Governor Evans also encouraged Washingtonians to open their hearts, homes, and churches to the new Washingtonians. *Id.*

Forty years later, Governor Jay Inslee reaffirmed Washington's commitment, stating: "Today we welcome refugees from Afghanistan, Iraq and Somalia" with the same intention of creating and supporting diverse communities that Washington has consistently shown since 1975. Jay Inslee, *Why my State Won't Close its Doors to Syrian Refugees*, N.Y. Times (Nov. 20, 2015), https://www.nytimes.com/2015/11/21/opinion/why-my-state-wont-close-its-doors-to-syrian-refugees.html (last visited Nov. 1, 2017). Governor Inslee also noted that "[i]n 2014, more than 2,800 refugees from countless countries arrived in Washington, and no one demanded we send them back to where they came from." *Id.* (recalling Washington's failure to protect Japanese-Americans from internment).

Most recently, Governor Inslee signed an Executive Order titled *Reaffirming Washington's Commitment to Tolerance, Diversity, and Inclusiveness*. Exec. Order No. 17-01 (Feb. 23, 2017), http://www.governor.wa.gov/sites/default/files/exe_order/eo_17-01.pdf (last visited Nov. 1, 2017). The Executive Order recites that nearly one million Washingtonians - or nearly one in every seven people in our State - are immigrants. *Id.* Immigrants are members of the military, healthcare community, and serve as leaders in industries ranging from the technology to agriculture. *Id.*

Immigrants are our coworkers, classmates, and neighbors, and Washington "values the unique differences in our residents." *Id.* Our State not just appreciates, but "protects diversity." *Id.* The purpose of Executive Order 17–01 is to ensure that Washington's immigrant communities can meaningfully access the full range of state services, including seeking protection and assistance from state law enforcement agencies and engaging Washington's justice system without fear that accessing these services will result in their detention or deportation. *Id.*

B. Washington Provides Guidance for Law Enforcement Agencies Regarding Civil Immigration Enforcement

Washington LEAs are committed to protecting and serving all Washingtonians in a manner that comports with constitutional and statutory obligations. In April 2017, the Washington Attorney General issued a publication intended, in part, to assist LEAs in understanding their role in the federal immigration system, including under new federal immigration policies and priorities announced by the federal government. *See Guidance Concerning Immigration Enforcement* ("*Guidance*") (Apr. 2017), http://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/AGO%20Immigration%20Guidance.pdf (last visited Nov. 1, 2017). The *Guidance* is addressed to local governments, including LEAs, who are tasked with protecting immigrants'

rights and maintaining positive relationships with immigrant communities while appropriately responding to federal authorities. *Id.* at 2 & 4. One goal of the *Guidance* is to educate LEAs about constitutional and statutory concerns that arise when LEAs agree to participate in civil immigration enforcement. *Id.* at 17-24. This includes guidance about searches, seizures, arrests, and information sharing. *Id.* The *Guidance* also provides information about best practices to protect and foster relationships between immigrant communities and LEAs. *Id.*

In addition to promulgating the *Guidance*, Washington's Attorney General has partnered with other states to provide specific, detailed information about the legal and community safety consequences that excessive entanglement of LEAs in civil immigration enforcement can have on immigrant communities including isolating immigrant communities from LEAs. *See Setting the Record Straight on Local Involvement in Federal Civil Immigration Enforcement: The Facts and the Law* (May 2017), https://ag.ny.gov/sites/default/files/setting_the_record_straight.pdf (last visited Nov. 1, 2017) (hereinafter "*Setting the Record Straight*"). The report discusses the possible legal consequences of LEA participation in civil immigration enforcement, including conduct that may constitute a violation of the Fourth Amendment to the United States Constitution. *Id.* at 8-12.

C. Washington's Judiciary Seek to Ensure the Immigrant Community Can Access Washington's Courthouses Safely

Like the Legislature, Governor, and Attorney General, Washington's judiciary seeks to foster a state that is welcoming to Washington's immigrant community. To this end, in March 2017, the Chief Justice of the Washington State Supreme Court and Co-chair of the Board for Judicial Administration, Mary Fairhurst, sent a letter to then-Secretary of Homeland Security John Kelly. Letter from Mary Fairhurst, Chief Justice Washington State Supreme Court, to Hon. John F. Kelly, Sec. of Homeland Security (Mar. 22, 2017), https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/KellyJohnDHSICE032217.pdf (last visited Nov. 1, 2017). Chief Justice Fairhurst requested that Immigration and Customs Enforcement ("ICE") agents treat courthouses in Washington as "sensitive locations" where immigration enforcement activities would not occur. *Id.* Chief Justice Fairhurst made this request because when ICE agents engage in immigration enforcement in state courthouses, their presence creates "fear of apprehension by immigration officials" that deters immigrants from accessing Washington courthouses and erodes trust in Washington's legal system, which in many locations around our state "is the only place where individuals are ensured of a trusted public forum

where they will be treated with dignity, respect, and fairness." *Id*. For example, immigrants who are victims of domestic violence or who have witnessed crimes may be reluctant to engage the justice system if it could mean that they will be detained or deported, in some cases separating them from their children.

Taken together, the actions of the Legislature, Governor, Attorney General, and Chief Justice demonstrate commitment from all three branches of Washington's government to protect the rights of immigrants and promote safe, diverse, and healthy Washington communities.

IV. ARGUMENT

"Every day, state and local governments and law enforcement agencies . . . across the country make critical decisions about how they can best serve and protect their communities." *Setting the Record Straight* at 3. When making decisions about resource allocation and prioritizing particular law enforcement actions, LEAs "consider multiple factors–including the needs and demographics of the community, the patterns and types of criminal activity faced by the community," what state laws require and permit, and policies set by government leadership. *Id*.

After reviewing their options and considering the impact of participating in civil immigration enforcement, Washington LEAs generally decline to

become involved in civil immigration enforcement, and, as such, generally decline administrative arrest or detainer requests from ICE agents. The decision not to participate in civil immigration enforcement is rooted in LEAs' dedication to meeting their legal obligations and maximizing public safety through increased community trust in law enforcement.

A. Washington Law Enforcement Agencies Generally Are Not Authorized to Enforce Civil Immigration Laws

Congress granted general authority to enforce immigration laws to federal immigration officers. *Arizona v. United States*, 567 U.S. 387, 408-09 (2012). *See* generally 8 U.S.C. §1357 (colloquially referred to as 287(g)). However, there are some instances where local law enforcement officers may have authority to perform the functions of an immigration officer. *See* 8 U.S.C. § 1357(g); *Arizona*, 567 U.S. at 408-09. For example, the United States has authority to grant civil immigration enforcement authority to specific LEA officers, provided the Department of Homeland Security enters into a formal agreement with the state or local government where the LEA officer serves. *See* 8 U.S.C. § 1357(g)(1).[1] LEA officers covered by these agreements can enforce civil

[1] Local law enforcement officers may engage in immigration enforcement in other, limited instances including: (1) in unique circumstances like in the event of an "imminent mass influx of aliens arriving off the coast of the United States,

immigration law under direction and supervision of federal actors, who are ultimately responsible for the enforcement of federal immigration law. *Arizona*, 567 U.S. at 408-09. *See also* 8 U.S.C. § 1357(g)(3). Any agreement authorizing local law enforcement to engage in civil immigration enforcement must contain written certification that officers have received adequate training to carry out the duties of an immigration officer. *Arizona*, 567 U.S. at 408-09 (citing 8 U.S.C § 1357(g)(2)). *See also* 8 C.F.R. § 287.5(c) (authorizing arrest power contingent on training); 8 C.F.R. § 287.1(g) (defining the training)).

LEAs that do not have such certification are not authorized to engage in civil immigration enforcement. *See Melendres v. Arpaio*, 695 F.3d 990, 1000-01 (9th Cir. 2012). This is because LEAs, including those in Washington, have general authority to enforce *criminal* laws. *See* Wash. Rev. Code §§ 10.93.080. And, as the Ninth Circuit has repeatedly held, "unlike illegal entry, mere unauthorized presence in the United States is not a crime." *Melendres*, 695 F.3d at 1000; *see also Martinez-Medina v. Holder*, 673 F.3d 1029, 1036 (9th Cir. 2011). No law enforcement officers or entities in Washington State are currently certified under Section 1357(g) to enforce federal immigration law. *See*

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8 U.S.C. § 1103(a)(10); and (2) authority to arrest for bringing in and harboring certain aliens, 8 U.S.C. § 1324(c).

Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act, U.S. Immigration and Customs Enforcement, https://www.ice.gov/287g (last visited Nov. 1, 2017).

Washington local law enforcement entities understand these limitations and, to avoid running afoul of any constitutional or statutory protections, generally do not acquiesce to requests from federal immigration agents to enforce civil immigration laws. The Washington State Sheriff's Association, for example, issued an open letter discussing Washington LEAs' concerns about requests from immigration agents to assist with civil immigration enforcement. Letter from the Washington State Sheriffs' Association to the People of Washington State (Mar. 31, 2017), http://lewiscountywa.gov/sites/default/files/users/lcso/2017_0331%20Final%20Media%20Release%20Letter%20on%20ICE_msn.pdf (last visited Nov. 1, 2017). In that letter, Cowlitz County Sheriff and Washington State Sheriffs' Association President Mark Nelson reiterated the organization's position that LEAs should not engage in civil immigration enforcement and reaffirmed that "Sheriffs cannot enforce federal civil (non-criminal) law." *Id*.

B. Law Enforcement Agencies and Jails Lack Authority to Detain Individuals Solely for Purposes of Civil Immigration Enforcement

Because Washington LEAs do not have the authority to enforce civil immigration laws, they also do not have the authority to detain an individual solely for civil immigration enforcement purposes. LEAs may detain a person, including by prolonging a detention in jail, only if there is a probable cause justification. *Morales v. Chadbourne*, 793 F.3d 208, 217-18 (9th Cir. 2015) (citing *Illinois v. Caballes*, 543 U.S. 405, 407-08 (2005); and *Arizona*, 567 U.S. at 413)). Immigration "arrest warrants" and "detainers" generally are not issued by judges, but instead are signed by immigration officials. ER 3–4; ER 11–12; *see also* 8 C.F.R. § 287.7(b)(1)–(8). As such, unless accompanied by a judicial warrant, civil immigration enforcement arrest warrants and detainers are insufficient to provide LEAs with authority to detain individuals without violating the Fourth Amendment. *See Morales*, 793 F.3d at 217; *Santos v. Frederick Cty. Bd. of Comm'rs*, 725 F.3d 451, 464 (4th Cir. 2013) (holding that generally "state and local law enforcement officers may not detain or arrest an individual solely based on known or suspected civil violations of immigration law"); *Santoyo v. United States*, No. 5:16-cv-00855–OLG, 2017 WL 2896021, at *6 (W.D. Tex. June 5, 2017) (holding that detention pursuant to an ICE detainer request is a Fourth Amendment seizure that must be supported by

probable cause or a warrant); *Miranda–Olivares v. Clackamas Cty.*, No. 3:12-cv-02317, 2014 WL 1414305, at *9–10 (D. Or. Apr. 11, 2014) (holding that extended detention pursuant to a civil ICE detainer constituted a new seizure independent of plaintiff's detention on state criminal charges).

These rules apply to jail administrators as well as police officers. To ensure that Washington jail administrators understand the limitations of their authority to detain individuals solely for civil immigration purposes, the Washington Attorney General addressed this specific issue in his *Guidance*. The *Guidance* informs jail administrators that "[n]o provision of the Immigration and Nationality Act authorizes federal officials to command local or state officials to detain suspected aliens subject to removal." *Guidance* at 26. The *Guidance* further informs jail officials that "[g]overnment entities that receive detainer requests are not relieved of their obligation to comply with the Fourth Amendment to the U.S. Constitution and article I, § 7 of the Washington Constitution." *Id.* The *Guidance* also reminds jail administrators that "[a]bsent a judicial warrant, a government entity may only hold an individual in custody if the officer has probable cause to believe that the person has committed a crime." *Id.*

C. Limiting Law Enforcement Agencies Involvement in Civil Immigration Enforcement Makes Washington Safer

In addition to presenting serious statutory and constitutional questions, there is a general consensus among Washington LEAs that participation in civil immigration enforcement jeopardizes their relationship with the communities they are sworn to protect and serve. When LEAs are involved in civil immigration enforcement, research and experience show that such involvement erodes public confidence and trust in LEAs. *See generally* Nik Theodore, *Insecure Communities* (May 2013), http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF (last visited Nov. 1, 2017).

For example, the Law Enforcement Immigration Task Force, a group of more than 60 sheriffs, police commissioners, and police chiefs from around the country, including law enforcement officers from Washington, has warned that when LEAs are seen as civil immigration enforcement agents, immigrants may be less likely to "[c]all authorities when criminal activity is happening in their neighborhoods." *Setting the Record Straight* at 15. This concern is echoed by "[m]any experienced sheriffs and police officers [who] have found that LEA involvement with federal immigration enforcement drives immigrants in their communities behind closed doors, thereby decreasing the likelihood that crimes

will be reported, trials will go forward, and criminals will be prosecuted." *Id.* at 14. The ultimate result from excessive comingling between LEAs and civil immigration enforcement is that "[c]riminals can use the fear of deportation to coerce . . . immigrants into silence" which makes our communities less safe for everybody. *Id.* at 15. Responding to these concerns, President Obama's Task Force on 21st Century Policing recommended "decoup[ling] federal immigration enforcement from routine local policing for civil enforcement and nonserious crime[.]" Charles H. Ramsey & Laurie O. Robinson, *Final Report of the President's Task Force on 21st Century Policing* (May 2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf (last visited Nov. 1, 2017).

Washington LEAs are in general agreement that excessive entanglement with civil immigration enforcement compromises community safety and the efficacy of LEAs. Indeed, the Washington State Sheriffs Association found that in order to build and maintain trust, police need a system that "allows us to keep clear the important distinction between federal officials who enforce civil immigration law versus local law enforcement who enforce criminal law." OneAmerica, *WA State Sheriffs Association Calls for Urgent Fix to 'Chaos' of Immigration System* (Aug. 28, 2009), http://wafreepress.org/article/090715imm

igration.shtml (last visited Nov. 1, 2017). Lewis County Sheriff Rob Snaza voiced this concern by noting that LEAs "must build confidence so victims and witnesses to crimes come forward to report such criminal activity and/or seek assistance, as needed, without fear of becoming vulnerable to immigration repercussions." Sharyn L. Decker, *Tensions Build Between Immigration Enforcement, Local Law Enforcement*, LewisCountySirens.com (Mar. 31, 2017), http://www.lewiscountysirens.com/?p=40268&cpage=1 (last visited Nov. 1, 2017). Likewise, King County Sheriff John Urquhart explained that LEAs should not be involved in civil immigration enforcement because "[i]f people are afraid that if they cooperate with the police they're going to be deported, they're not going to cooperate with the police, which means they're not going to call 911. . . . They're not going to be good witnesses for us so we can solve crimes." KUOW, *King County Sheriff says Immigration Policy Won't Change for Trump* (Jan. 25, 2017), http://kuow.org/post/king-county-sheriff-says-immigration-policy-wont-change-trump (last visited Nov. 1, 2017).

Excessive entanglement between LEAs and federal civil immigration enforcement does not just erode community trust in local law enforcement, it can compromise the efficacy of Washington's entire legal system. Washington Supreme Court Chief Justice Mary Fairhurst objected to federal immigration

enforcement activities occurring in and around Washington courthouses because of the negative impact that such enforcement activities have on access to justice. Chief Justice Fairhurst's concern is rooted in the knowledge that immigration enforcement in courthouses creates fear in immigrant communities the result of which is the people do not access the protection and benefits of the legal system including protection from domestic violence. All of this erodes trust in the legal system "even for those with lawful immigration status." Letter from Chief Justice Fairhurst (Mar. 22, 2017), https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/KellyJohnDHSICE032217.pdf. Chief Justice Fairhurst also noted that when "people are afraid to access our courts, it undermines our fundamental mission." *Id.* This is because "[w]hen people are afraid to appear for court hearings, out of fear of apprehension by immigration officials, their ability to access justice is compromised," their absence "curtails that capacity of our judges, clerks and court personnel to function effectively," and their absence risks making Washington less safe. *Id*.

In sum, limiting the entanglement of immigration enforcement with Washington's law enforcement and legal systems is an established way to promote public safety. Not only does it improve compliance with important

Fourth Amendment guarantees, it preserves trust between immigrant communities and government institutions on which we all rely.

D. Washington's Public Records Act Does Not Require the Posting of Immigration Information in Jail Rosters

In addition to important legal and policy implications, participation in civil immigration enforcement may trigger questions under Washington's Public Records Act ("PRA"). Wash. Rev. Code §§ 42.56.001-42.56.904. The PRA is meant to ensure transparency in state and local agencies and to ensure that Washingtonians can be informed about how state and local agencies operate.[2] Wash. Rev. Code § 42.56.030. However, there are limitations on the types of information that government entities are required or permitted to produce under Washington's PRA. *See* Wash. Rev. Code §§ 42.56.050, .210, .230, .240 (limiting disclosure of personal or private information). Further limitations on the disclosure of information related to an individual's incarceration are codified at Wash. Rev. Code § 70.48.100, which defines the type of information that is to

[2] To ensure compliance with the PRA, Washington's Office of the Attorney General provides "information, technical assistance, and training" about the Public Records Act to government agencies. Wash. Rev. Code § 42.56.155.

be listed on Washington jail rosters and protects certain information from being released.

In this case, Defendants-Appellants argue that the PRA creates some basis for reversing the district court's injunction. Defendants-Appellants Op. Br. at 54-57, ECF No. 8-1. To bolster their argument, Defendants-Appellants claim that "a jail's own records created in the management of information from other agencies, like the I-200 administrative warrant here, are not" protected by the confidentiality requirements governing jail records under Wash. Rev. Code § 70.48.100(2). *Id*. Defendants-Appellants also argue that "[n]o legal authority is necessary to allow immigration information to be disseminated" to anyone and that "copies of the I-200 administrative warrant and the jail's own records regarding receipt and internal management of ICE documents are public records," and, as such, any restriction on posting "immigration holds" creates a public records quandary for Defendants-Appellants that requires this Court to reverse the district court's injunction. *Id*. at 46-47. This argument is misguided for three reasons.

First, there is no public records request at issue in this matter. No one requested Mr. Sanchez Ochoa's immigration documents that were in Defendants-Appellants' custody. Instead, the instant litigation is a challenge to

Yakima County Department of Corrections' practice of proactively listing "immigration holds" on its public jail roster – not a challenge to its protocols for responding to public records requests. Therefore, the question of whether the PRA requires disclosure of immigration–related records in the possession of Defendants-Appellants is not before the Court.

Second, although the PRA is to "be liberally construed and its exemptions narrowly construed" to ensure that Washingtonians are capable of "remaining informed so that they may maintain control over" their government, there is nothing in the PRA that can be construed as requiring Defendants-Appellants to publicly, without a specific request for documents, publish immigration information about individuals in the custody of Yakima County Department of Corrections. *See* Wash. Rev. Code § 42.56.080 (directing that "[p]ublic records shall be available for inspection and copying, and agencies shall, upon request for identifiable public records make them promptly available to any person" but nowhere requiring that all public records be affirmatively published regardless of whether there was a specific request for such documents). Seeming to acknowledge this, Defendants-Appellants do not cite any subsection of the PRA that could reasonably be construed as *requiring* Defendants-Appellants to post

"immigration holds" on its public–facing jail roster. *See* Defendants-Appellants Op. Br. at 44-47.

Third, as acknowledged by Defendants-Appellants' argument, personal information about incarcerated people detained in a county jail is governed not only by the PRA but also by Wash. Rev. Code § 70.48.100. This provision lists specific categories of information that must be contained on the publicly available jail roster. Wash. Rev. Code § 70.48.100(1)(a)–(b).[3] Immigration information is not part of the information required to be posted in a public roster. This provision also demands that with limited exceptions, which are not applicable here, all other "records of a person confined in jail" are to be "held in confidence and shall be made available only to criminal justice agencies[.]" *Id.* at (2). It is clear that the PRA does not require Defendants-Appellants to post "immigration holds" on its roster. Indeed, Defendants-Appellants lacked the authority to publicly disclose Mr. Sanchez Ochoa's immigration related records, which should have been "held in confidence." *Id*.

[3] Jails must include the following information in the public jail register: "The name of each person confined in the jail with the hour, date and cause of the confinement" and "[t]he hour, date and manner of each person's discharge." *Id.*

V. CONCLUSION

For the foregoing reasons Washington urges the Court to affirm the district court's ruling and confirm that all Washingtonians, regardless of immigration status, have a constitutionally protected right to be free from incarceration when the predicate Fourth Amendment requirements are not met.

RESPECTFULLY SUBMITTED this 1st day of November, 2017.

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify the following:

This brief complies with the word limitations of Fed. R. App. P. 29(a)(5) because it contains 4,082 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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

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DECLARATION OF SERVICE

I hereby certify that on November 1, 2017, the forgoing document was filed with the Clerk of the United States Court of Appeals for the Ninth Circuit via the Court's CM/ECF system, which will send notice of such filing to all counsel who are registered CM/ECF users.

Dated this 1st day of November, 2017.

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