

NO. 98622-3

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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CITY OF KENT,

Respondent,

v.

RICHARD L. JENKINS,

Appellant

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BRIEF OF *AMICUS CURIAE* WASHINGTON DEFENDER  
ASSOCIATION IMMIGRATION PROJECT, NORTHWEST  
IMMIGRANT RIGHTS PROJECT, and ONEAMERICA IN SUPPORT  
OF APPELLANT

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**I. Identity and Interest of Amicus Curiae**

The Washington Defender Association (WDA) is a statewide non-profit organization that represents over 30 public defender agencies and has over 1,500 members comprising criminal defense attorneys, immigration attorneys, investigators, social workers and paralegals throughout Washington. WDA is committed to protecting the rights of people accused of crimes in Washington.

The WDA Immigration Project provides immigration-related technical assistance to criminal defense counsel representing noncitizens; produces training and education materials for the criminal defense bar, prosecutors, judges, and others regarding the immigration consequences of crimes; and works in collaboration with other advocacy organizations to make Washington's criminal justice system fairer for noncitizens accused of crimes.

WDA representatives frequently testify before the Washington House and Senate on proposed legislation affecting indigent defense and noncitizens who interact with Washington's criminal legal system. WDA has been granted leave on many occasions to file amicus briefs in this Court. The issues in this case are important to public defenders, who represent many of the people accused of the crime of obstructing in Washington, and to their clients, some of whom are noncitizens.

The Northwest Immigrant Rights Project (NWIRP) is a nonprofit legal organization dedicated to defending and advancing the rights of immigrants through direct legal services, systemic advocacy, and community education. NWIRP conducts know-your-rights presentations to immigrant community groups throughout the State, including in-person community presentations, workshops, radio shows, and social media broadcasts. These presentations focus, among other things, on the legal rights and responsibilities of individuals when interacting with law enforcement. As such, NWIRP has a strong interest in the issues presented in this case.

OneAmerica is the largest immigrant and refugee advocacy organization in Washington State, organizing with and advocating for diverse communities including Latinx, African, and Asian. OneAmerica plays an active and leading role in state and national coalitions working on immigrant rights and education. OneAmerica conducts know-your-rights presentations for immigrants. These presentations include information about legal rights and responsibilities when communicating with law enforcement.

## **II. Introduction and Summary of Argument**

Richard Jenkins was convicted of obstructing a law enforcement officer because he refused to open the door of his home to a police officer

who did not have a warrant, but who insisted that Mr. Jenkins was required to open his door. Mr. Jenkins refused. He did not actively seek to prevent the officers from opening the door and did not stand in their way once they entered; he simply declined to consent to open his door to the police in the absence of a warrant. Mr. Jenkins was subsequently arrested and charged with obstructing.

This Court should narrowly construe the obstruction statute to exclude the mere refusal to obey an order to open the door to one's home to police officers lacking a warrant. To hold otherwise would have a severe negative impact on Washington's substantial immigrant community. Advocacy groups have long counseled Washington noncitizens that they have the right to refuse entry to *any* law enforcement officer without a warrant. Upholding Mr. Jenkins conviction would mean this advice is incorrect and that in fact there is one rule for Washington police, and another rule for federal officers. Noncitizens would find themselves in the impossible position of having to determine which law enforcement entity is at their door before they know whether they must open it. In addition, such a rule would run afoul of the Washington legislature's commitment to protecting Washington's noncitizen residents, as evidenced by the passage of the Keep Washington Working Act



(KWW).<sup>1</sup> The KWW prohibits Washington law enforcement from sharing information with, or otherwise collaborating with, federal immigration authorities engaged in immigration enforcement.<sup>2</sup> The law attempts to rectify the long-standing problem of mistrust of the police among immigrant communities. If noncitizens are afraid to report crimes committed against them, or to cooperate in the solving and prosecution of crimes, the public safety of all is threatened.

### **III. Argument**

#### **A. The Absence of a Clear Rule Makes Educating Noncitizens About Their Rights Difficult and Chills Noncitizens from Exercising Their Rights.**

Many local and national groups that work to protect the rights of noncitizens in the United States provide legal information in the form of know your rights publications and trainings that tell people what they can do to protect their rights during interactions with law enforcement. A person cannot exercise a right of which they are unaware. *See, e.g., State v. Ferrier*, 136 Wn.2d 103, 116-17, 960 P.2d 927 (1998) (person cannot make informed decision about whether to let police conducting “knock and talk” into their home unless they know they can refuse); *State v. Ruem*, 179 Wn.2d 195, 211, 313 P.3d 1156 (2013) (Wiggins concurring in

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<sup>1</sup> [Laws of 2019 ch. 440, E2SB 5497](#).

<sup>2</sup> *See id.*, codified at RCW 10.93.160.

result) (federal and state privacy rights “are devoid of substance where a person does not know they exist”); *Miranda v. Arizona*, 86 S.Ct. 1602, 1624, 384 U.S. 436, 468 (1966) (being aware of a right is “the threshold requirement for an intelligent decision as to its exercise”). Know your rights publications make people aware of when they have constitutional rights so they can make informed decisions about exercising them.

Know your rights information provided by Washington-based organizations to noncitizens who live in Washington currently advises that they do not have to open the door when police or immigration officials knock if they do not have a judicial warrant. For example, Northwest Immigrant Rights Project’s (NWIRP)<sup>3</sup> two-page know your rights guide explains that “if the police, FBI or Immigration agents come to your home, **you have the right to refuse them entry, unless they produce a warrant signed by a judge.**” (Emphasis in original).<sup>4</sup> Know your rights information on One America’s<sup>5</sup> website advises “don’t open the door” if law enforcement or ICE comes to a person’s home.<sup>6</sup> The Washington

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<sup>3</sup> NWIRP defends and advances the rights of immigrants through community education and other means and has four offices in Washington.

<https://www.nwirp.org/about/mission/> .  
<sup>4</sup> <https://www.nwirp.org/uploads/2019/07/NWIRP-Know-Your-Rights--New-Design--2019.pdf>.

<sup>5</sup> One America is the largest immigrant and refugee advocacy organization in Washington State. It organizes with and advocates for diverse immigrant communities.

<https://weareoneamerica.org/who-we-are/about-oneamerica/>.

<sup>6</sup> [Know and Exercise Your Rights! \(wpengine.com\)](#), page 11.

Immigrant Solidarity Network (WAISN)<sup>7</sup> publishes a single page of legal information for noncitizens titled “What to Do if ICE Comes to Your Door” that tells them “do not open doors” unless ICE shows a warrant by passing it under a door.<sup>8</sup>

National groups educating and advocating for noncitizens give similar advice. For example, a guide on the National Immigration Law Center’s (NILC)<sup>9</sup> website says “DO NOT OPEN THE DOOR. Opening the door [to police or immigration officers] could mean you give the officers permission to enter your home.” (Emphasis in original).<sup>10</sup> A publication by Mijente<sup>11</sup> explains that “ICE or police can only enter [your home] if they have a judicial warrant that has correct information, and is actually signed by a judge.”<sup>12</sup>

The lack of a clear rule about when people must open their doors to police will make providing accurate know your rights information

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<sup>7</sup> WAISN was organized to protect and advance the power of immigrants statewide and educates people in order to uphold and defend the rights and dignity of immigrants. [History, Mission, Vision — WAISN](#).

<sup>8</sup> <https://www.nwirp.org/uploads/2019/08/Final-WAISN-English-KYRs-Flyer.png>.

<sup>9</sup> NILC is a dedicated to defending and advancing the rights of immigrants with low income. [https://www.nilc.org/about-us/what\\_we\\_do/](https://www.nilc.org/about-us/what_we_do/).

<sup>10</sup> Know Your Rights: A Guide to Your Rights When Interacting with Law Enforcement, page 3 at <https://cliniclegal.org/resources/protecting-your-community/know-your-rights/know-your-rights-guide-your-rights-when>

<sup>11</sup> Mijente connects Latinx and Chicax people and serves as a hub for culture, learning, and advocacy. <https://mijente.net/our-dna/>.

<sup>12</sup> Know Your Rights to Defend Your Rights, page 9 at <https://mijente.net/wp-content/uploads/2018/06/2017-04-19-kyr-english-final.pdf>

impractical and leave noncitizens uninformed about their right to privacy, chilling their exercise of that right. A legal rule that police do not need a warrant to enter a home in certain circumstances (but ICE always needs a warrant) would be nearly impossible to explain in a practical way that would allow noncitizens to put that information to use. The difficulty of communicating legal information to non-lawyers who are new to legal systems in the United States calls for a clear, straightforward rule about when noncitizens must open their doors to police.

**B. The Lack of a Clear Rule Will Further Erode the Relationship Between Immigrant Communities and Law Enforcement**

A rule that requires individuals in some circumstances to comply with a warrantless demand by police to open the door, or risk arrest, will contribute to the already well-documented mistrust of immigrant communities towards the police. Studies have shown that noncitizens fear reaching out to the police because of concerns they will be reported to federal authorities for deportation.<sup>13</sup> The Washington legislature recognized this concern when it adopted the Keep Washington Working Act in 2019 (KWW).<sup>14</sup> The Act stressed the importance of state and local

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<sup>13</sup> See, e.g. [INSECURE COMMUNITIES REPORT FINAL.PDF \(policylink.org\)](#) (survey of Latinos' views on police); [Immigrant-Access-to-Justice-National-Report.pdf \(american.edu\)](#) (Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey1 May 3, 2018).

<sup>14</sup> [Laws of 2019 ch. 440, E2SB 5497](#)

law enforcement fostering trust in immigrant communities in order to maintain public safety.<sup>15</sup> Given the fear of immigration enforcement, the Act requires law enforcement to limit, to the extent possible, police engagement with federal immigration enforcement. Removing noncitizens' right to demand a warrant before allowing *any* law enforcement officer into their home will be counterproductive to these efforts.

In practical terms, the current rule requires individuals to open the door to their home to Washington police even in the absence of a warrant, or risk arrest for obstructing. That puts noncitizens facing law enforcement at their door in an untenable situation. To know how to respond, they must first determine if the officer is a police officer (open door) or an ICE officer (do not open door). In the best of circumstances, this task would not be easy. However, it is made nearly impossible by the fact that ICE enforcement agents frequently wear jackets emblazoned with the word "POLICE" on the back, they may identify themselves as "police", and they may be working together with the local police.<sup>16</sup> If a noncitizen

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<sup>15</sup> S.B. 5497, New Sec. 7, p. 10.

<sup>16</sup> See, e.g. H.R. 2073, proposing to amend the Immigration and Nationality Act to prohibit ICE agents and officers from wearing clothing or other items bearing the word "police" [Velazquez Seeks to Block Immigration Feds from Identifying as Local Police | Congresswoman Nvdia Velazquez \(house.gov\)](#); : [Immigration debate: Should ICE officers identify themselves as police? | CNN](#).

chooses not to open the door, for fear of being deported, they could find themselves arrested and charged with obstruction. If they open the door, believing it is the police, they could find themselves in the hands of ICE, snatched from their home and community and facing the threat of deportation. This level of risk and uncertainty will increase the fear and mistrust immigrant communities already experience towards law enforcement and lead to a greater reluctance to call police when needed or cooperate with police when asked.

**C. Noncitizens May Face Immigration Consequences if They Have Any Contact with Law Enforcement.**

While KWW purports to protect noncitizens from landing in ICE custody as a result of contact with local law enforcement, it is not a perfect system. Not all counties have fully implemented KWW, and there are localities resistant to its implementation.<sup>17</sup> Advocates still must warn noncitizens that any contact with law enforcement, particularly if it results in an arrest and booking into jail, risks triggering ICE enforcement. Some officers and some jails will still notify ICE or CBP when they encounter an individual whom they believe is not a citizen.<sup>18</sup> In addition, DOC is not

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<sup>17</sup> See, e.g. Crosscut, [Despite Washington state's new sanctuary law, some local officials still cooperate with ICE and Border Patrol](#), December 9, 2019; in addition, WDAIP has been monitoring KWW compliance together with the ACLU and other advocacy organizations and has documented instances of noncompliance, including officers in the field contacting Customs and Border Patrol when a person was not fluent in English.

<sup>18</sup> *Id.*

covered by KWW, so anyone sentenced to DOC will almost certainly have their information shared with ICE.<sup>19</sup>

Thus, although the Washington offense of obstructing does not itself appear to trigger specific grounds of removal, there is a risk to noncitizens inherent in any contact with law enforcement. Further, most immigration applications have a discretionary element and any arrest or conviction will be a negative factor in the exercise of that discretion.<sup>20</sup> A rule requiring noncitizens to distinguish between local and federal law enforcement and to open the door to one but not the other, will increase the perception of threat, decrease community safety, and damage relations between community and law enforcement.

#### **IV. Conclusion**

This Court should narrowly construe the obstructing statute and adopt a clear rule that allows citizens and noncitizens in Washington to refuse to open their doors to law enforcement without a warrant. Doing so will give

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<sup>19</sup> See, New Sec. 6, para 15, p. 10.

<sup>20</sup> See, e.g. 8 U.S.C. 1229b (the Attorney General (AG) may cancel the removal of certain noncitizens in removal proceedings); *Matter of C-V-T*, 22 I&N Dec. 7 (BIA 1998)(applicant for cancellation must establish that he or she warrants such relief as a matter of discretion); 8 U.S.C. 1158 (AG may grant asylum); 8 C.F.R. 1208.14(a) and (b) (immigration judge, asylum officer, may grant asylum in the exercise of discretion); <https://www.uscis.gov/policy-manual/volume-7-part-a-chapter-10> (lists discretionary applications for adjustment of status); <https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-8#footnotelink-7> (listing immigration benefits with discretionary component).

noncitizens a clear rule that will allow them to exercise their rights and increase noncitizens' trust in police.

Respectfully submitted this 22nd day of June, 2021

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