

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LANE

RURAL ORGANIZING PROJECT and
COMMUNITY ALLIANCE OF LANE
COUNTY,
PLAINTIFFS,

v.

The CITY OF COTTAGE GROVE and
the COTTAGE GROVE POLICE
DEPARTMENT,

DEFENDANTS.

Case No. 23CV07691

AMICUS BRIEF IN SUPPORT OF
DEFENDANTS' RULE 21 MOTIONS

ADVOCATES FOR VICTIMS OF ILLEGAL ALIEN CRIME'S MOTION TO FILE
BRIEF OF *AMICUS CURIAE* IN SUPPORT OF DEFENDANTS' RULE 21 MOTIONS

Lorraine G. Woodwark
By /s/ Lorraine G. Woodwark, Esq.
D.C. Bar No. 1720603
Attorneys United for a Secure America
25 Massachusetts Ave. NW, Ste 335
Washington, D.C. 20001
(202) 591-0962
LWoodwark@IRLI.org

Ray D. Hacke
By /s/ Ray D. Hacke
Ore. S.B. No. 173647
Pacific Justice Institute
317 Court St. NE, Suite 202
Salem, OR 97301
(503) 917-4409
rhacke@pji.org

Counsel for *Amicus Curiae* Advocates for
Victims of Illegal Alien Crime

Advocates for Victims of Illegal Alien Crime (“AVIAC”) respectfully applies for permission to file the accompanying *amicus curiae* brief in support of Defendants.

CERTIFICATE OF INTERESTED PERSONS

The case number for this *amicus curiae* brief is No. 23CV07691, *Rural Organizing Project, Community Alliance of Lane County vs City of Cottage Grove, Cottage Grove Police Department*.

Amicus Curiae Advocates for Victims of Illegal Alien Crime is a non-profit corporation, which has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

The undersigned counsel of record certifies that the parties’ list of persons and entities having an interest in the outcome of this case is complete, to the best of the undersigned counsel’s knowledge, with the following additions:

Advocates for Victims of Illegal Alien Crime, *Amicus Curiae*

Oregon attorney name, Esq., counsel for *Amicus Curiae*

Lorraine G. Woodwark, Esq., counsel for *Amicus Curiae*

These representations are made in order that the judge of this court may evaluate possible disqualification or recusal.

Date: April 24, 2023

/s/ Ray D. Hacke
Ray D. Hacke, Esq.
*Counsel for Advocates for Victims of Illegal
Alien Crime*

IDENTITY, INTEREST AND AUTHORITY TO FILE¹

Amicus curiae Advocates for Victims of Illegal Alien Crime (hereinafter, “AVIAC”) is a 26 U.S.C. § 501(c)(3) non-profit organization that was founded in 2017. AVIAC is led by individuals who have lost family members because of crimes committed by illegal aliens.² AVIAC’s mission includes being a source of support for such victims across the country and a resource for advancing policies that will enforce the nation’s immigration laws and prevent governmental incentives for illegal immigration.

AVIAC supports Defendants’ Motion to Dismiss Plaintiffs’ Complaint for Declaratory and Injunctive Relief. Police departments have a constitutional right to independently cooperate with federal law enforcement in detaining and removing criminal aliens to protect Oregonians, regardless of citizenship, from the harm that has been inflicted by illegal and mass migration. AVIAC is also concerned about sanctuary jurisdictions that protect criminal illegal aliens from removal to the detriment of all Oregonians.

REASONS TO GRANT PERMISSION TO FILE

AVIAC respectfully requests that the Court accept this brief because it may provide the Court with valuable perspective on the issues of this case. Anytime there is an

¹ All parties have consented to the filing of this brief by *Amicus*. Undersigned counsel certifies that: counsel for the *Amicus* authored this brief in whole; no counsel for a party authored this brief in any respect; and no person or entity—other than *Amicus*, its members, and its counsel—contributed monetarily to this brief’s preparation or submission.

² <https://www.aviac.us/> (viewed April 24, 2023).

issue or issues of extreme importance to a society, participation by all stakeholders concerned is of principal importance in whatever forum that issue may arise. As explained in Collins, *THE USE OF AMICUS BRIEFS*, 14 ANNU. REV. LAW SOC. SCI. 219, 220 (2018), “amicus briefs offer social movements a means to participate in the judiciary, thus potentially increasing its democratic responsiveness.” “The Supreme Court is finding amicus briefs increasingly helpful.” R. Reeves Anderson & Anthony J. Franze, *Commentary: The Court’s Increasing Reliance on Amicus Curiae in the Past Term*, *The National Law Journal* (2011).

AVIAC’s brief provides this important perspective to the Court. AVIAC submits this brief in support of Defendants’ Rule 21 Motions. These brief addresses Plaintiffs’ complaint and Oregon’s rule amendment to the Promise Act in that the statute violates Congress’s plenary authority to regulate immigration, including who may remain under certain circumstances and who must be removed to protect our nation’s sovereignty.

CONCLUSION

For the foregoing reasons, AVIAC respectfully requests that this application for permission to file the accompanying *amicus curiae* brief be granted.

Date: April 24, 2023

Lorraine G. Woodwark
By /s/ Lorraine G. Woodwark, Esq.
D.C. Bar No. 1720603
Attorneys United for a Secure America
25 Massachusetts Ave. NW, Ste 335
Washington, D.C. 20001
(202) 591-0962
LWoodwark@IRLI.org

Respectfully submitted,

Ray D. Hacke
By /s/ Ray D. Hacke, Esq.
Ore. S.B. No. 173647
Pacific Justice Institute
317 Court St. NE, Suite 202
Salem, OR 97301
(503) 917-4409
rhacke@pji.org

Counsel for *Amicus Curiae* Advocates for
Victims of Illegal Alien Crime

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS	i
IDENTITY, INTEREST AND AUTHORITY TO FILE	ii
REASONS TO GRANT PERMISSION TO FILE.....	ii
TABLE OF AUTHORITIES	v
ARGUMENT	2
1. PLAINTIFFS’ COMPLAINT FAILS TO ALLEGE CONCRETE FACTS THAT WOULD MEET THE STANDARD FOR THE RELIEF SOUGHT	4
2. 8 U.S.C. § 1373(a) PROHIBITS RESTRICTIONS ON THE VOLUNTARY EXCHANGE OF IMMIGRATION INFORMATION BETWEEN FEDERAL, STATE AND/OR LOCAL GOVERNMENT AUTHORITIES	7
3. THE CITY OF COTTAGE GROVE HAS THE LEGISLATIVE AUTHORITY TO INDEPENDENTLY COOPERATE WITH FEDERAL IMMIGRATION ENFORCEMENT .	9
CONCLUSION.....	14
CERTIFICATE OF COMPLIANCE.....	15
CERTIFICATE OF SERVICE	16

TABLE OF AUTHORITIES

Cases

<i>Ariz. Dream Act Coal. v. Brewer</i> , 855 F.3d 957, 962 (9th Cir. 2017).....	14, 16
<i>Arizona v. United States</i> , 567 U.S. 387, 388, (2012).....	12, 16
<i>Arizona v. United States</i> , 567 U.S. 387, 394-95, (2012).....	20
Authority not available.	3
<i>D.T. v. Sumner Cnty. Sch.</i> , 942 F.3d 324, 326 (6th Cir. 2019).....	12, 14
<i>Eastside Bend, Ltd. Liab. Co. v. Calaveras II. Ltd. Liab. Co.</i> , 323 Or. App. 313, 316 (2022)	13
<i>Estrada v. Becker</i> , 1:16-CV-3310-TWT at 19 (N.D. Ga. 2017).....	17
<i>Johnson v. Miller</i> , 113 Ore. App. 98, (Or. Ct. App. 1992).....	13
<i>Oregon State Shooting Ass'n v. Multnomah County</i> , 122 Ore. App. 540, 858 (Or. Ct. App. 1993)	11, 13
<i>Overstreet v. Lexington-Fayette Urb. Cnty. Gov't</i> , 305 F.3d 566, 573 (6th Cir. 2002)	13
<i>Truax v. Raich</i> , 239 U.S. 33, 42, (1915).....	20
<i>United States v. Arizona</i> , No. CV 10-1413-PHX-SRB, (D. Ariz. 2010).....	17
<i>United States v. Hernandez-Guerrero</i> , 147 F.3d 1075, 1076 (9th Cir. 1998)	20
<i>Valle del Sol Inc. v. Whiting</i> , 732 F.3d 1006, 1023 (9th Cir. 2013)	12, 21
<i>Valle Del Sol Inc. v. Whiting</i> , 732 F.3d 1006, 1023 (9th Cir. 2013).....	17
<i>Velasquez-Rios v. Wilkinson</i> , 988 F.3d 1081, 1083 (9th Cir. 2021).....	17
<i>Velasquez-Rios v. Wilkinson</i> , 988 F.3d 1081, 1088-89 (9th Cir. 2021).....	12, 18, 20

Statutes

§ 8, cl.....	20
§ 9, cl. 1.....	20

287(g).....	18
8 U.S.C. §1373(a)	11, 18
8 USC § 1229a(c)(4).....	12
8 USC §§1227 and 1229a(c)(4)	15
8 USC §1227.....	16
8 USC §1229a(a)(1).....	16
8 USC §1373.....	23
8 USC §1373 et seq.....	20
8 USC §1373(a)	16
FED. R. APP. P. 29(a)(4)(E)	3
HB 3265	11
ORS § 180.805 et seq.....	20
ORS §§180.805, 181A.820, 181A.823, and ORS 181A.826 et seq	17
U.S. Const. art. I, § 8, cl. 4;.....	20
U.S. Const. art. VI, cl. 2.....	17
 Other Authorities	
Charter of City of Cottage Grove.....	19
Complaint at 3.....	14
<i>D.T. v. Sumner Cnty. Schs.</i> , 942 F.3d 324 at 327 (6th Cir. 2019).....	14
Oregon Municipal Handbook	19
 Rules	
Oregon Rules of Court 2022-UTCR-Ch 2 et seq.....	25
Rule §8.200(c)(1).....	4

UTCR 21.100..... 26

**IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LANE**

RURAL ORGANIZING PROJECT and
COMMUNITY ALLIANCE OF LANE
COUNTY,

PLAINTIFFS,

v.

The CITY OF COTTAGE GROVE and
the COTTAGE GROVE POLICE
DEPARTMENT,

DEFENDANTS.

Case No. 23CV07691

PROPOSED AMICUS BRIEF IN
SUPPORT OF DEFENDANTS' RULE 21
MOTIONS

ADVOCATES FOR VICTIMS OF ILLEGAL ALIEN CRIME'S
APPLICATION FOR PERMISSION TO FILE BRIEF OF *AMICUS*
CURIAE IN SUPPORT OF DEFENDANTS

Lorraine G. Woodwark
By /s/ Lorraine G. Woodwark, Esq.
D.C. Bar No. 1720603
Attorneys United for a Secure America
25 Massachusetts Ave. NW, Ste 335
Washington, D.C. 20001
(202) 591-0962
LWoodwark@IRLI.org

Ray D. Hacke
By /s/ Ray D. Hacke, Esq.
Ore. S.B. No. 173647
Pacific Justice Institute
317 Court St. NE, Suite 202
Salem, OR 97301
(503) 917-4409
rhacke@pji.org

Counsel for *Amicus Curiae* Advocates for
Victims of Illegal Alien Crime

ARGUMENT

Plaintiffs seek declaratory and injunctive relief based on Oregon’s Sanctuary Promise Act, which prohibits state and local government agencies from cooperating with federal immigration enforcement or using public resources for immigration enforcement. *See* ORS 181A.820 *et seq.* Certain amended provisions of the Sanctuary Promise Act exceed a state’s authority to regulate federal immigration. Congress has plenary power over immigration law and has explicitly preempted any state or local law prohibiting or restricting any government official from voluntarily communicating with federal immigration officers’ details relating to an individual’s immigration status. *See* 8 U.S.C. § 1373(a).

Declaratory and injunctive relief requires an “actual and substantial controversy that involves present facts rather than future events or a hypothetical issue.” *Oregon State Shooting Ass’n v. Multnomah County*, 122 Ore. App. 540, 858 (Or. Ct. App. 1993). Plaintiffs’ complaint includes unsubstantiated claims of fear of deportation or the mere threat of enforcement that would not merit success on the pleadings. The complaint also states that Defendants have subjected individuals to immigration enforcement. However, the U.S. Department of Immigration, Custom and Enforcement (ICE) does not randomly detain unlawful aliens for removal, including crime victims regardless of immigration status. The standard for granting a preliminary injunction: “(1) whether the movant has shown a strong likelihood of success on the merits; (2) whether the movant will suffer irreparable harm if the injunction is not issued; (3) whether the issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be

served by issuing the injunction.” *D.T. v. Sumner Cnty. Sch.*, 942 F.3d 324, 326 (6th Cir. 2019) (internal quotation marks omitted). A mere threat of some undetermined point in the future does not merit a preliminary injunction.

The Supreme Court has affirmed that federal immigration laws are exclusively within the authority of Congress. Federal immigration law standards cannot be “altered or contradicted retroactively by state law actions, and cannot be manipulated after the fact by state laws modifying sentences that at the time of conviction permitted removal or that precluded cancellation”. *Velasquez-Rios v. Wilkinson*, 988 F.3d 1081, 1088-89 (9th Cir. 2021). “A principal feature of the removal system is the broad discretion exercised by federal immigration officials.” *Arizona v. United States*, 567 U.S. 387, 396 (2012). “Congress may make laws defining the proper sphere in which a person who is not a citizen and is in the United States without proper authority and documentation may be removed from this country...” *See Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1023 (9th Cir. 2013). Individual states cannot override Congress’ authority when it comes to the regulation of immigration.

The Sanctuary Promise Act does not protect Oregonians; instead, it protects criminal aliens from coming to the attention of federal immigration officials. To the extent that the Sanctuary Promise Act prevents local government entities or officers from cooperating with federal immigration officers, it is preempted by federal law. 8 U.S.C. § 1373. Public safety requires the removal of criminal aliens to protect all Oregonians. Therefore, Plaintiffs’ complaint should be dismissed.

1. PLAINTIFFS' COMPLAINT FAILS TO ALLEGE CONCRETE FACTS THAT WOULD MEET THE STANDARD FOR THE RELIEF SOUGHT

A complaint seeking declaratory and injunctive relief requires a justiciable controversy. A justiciable controversy exists when there is “an actual and substantial controversy between parties with adverse legal interests and it must involve present facts rather than future events or a hypothetical issue.” *Oregon State Shooting Ass'n v. Multnomah County*, 122 Ore. App. 540, 858 (Or. Ct. App. 1993). See also *Johnson v. Miller*, 113 Ore. App. 98, (Or. Ct. App. 1992). When a complaint against a government entity involves a lawful activity, there is no justiciable controversy.

“A preliminary injunction is an extraordinary remedy which should be granted only if the movant carries his or her burden of proving that the circumstances clearly demand it.” *Overstreet v. Lexington-Fayette Urb. Cnty. Gov't*, 305 F.3d 566, 573 (6th Cir. 2002) (emphasis added); *see also Eastside Bend, LLC v. Calaveras II, LLC*, 323 Or. App. 313, 316 (2022) (finding no legal error where the “testimony and evidence presented on plaintiff’s claim for injunctive relief does not, by clear and convincing evidence, establish any irreparable harm”). The Sixth Circuit outlined four factors a court must consider in deciding whether to grant a preliminary injunction: “(1) whether the movant has shown a strong likelihood of success on the merits; (2) whether the movant will suffer irreparable harm if the injunction is not issued; (3) whether the issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuing the injunction.” *D.T. v. Sumner Cnty. Schs.*, 942 F.3d at 327

(internal quotation marks omitted). The Sixth Circuit has stressed that “although the extent of an injury may be balanced against other factors, the existence of an irreparable injury is mandatory.” *Id.* A “hypothetical threat of prosecution is not an ‘immediate,’ ‘irreparable’ injury that warrants the ‘extraordinary remedy’ of a preliminary injunction.” *Id.*

ICE is in charge of all immigration field offices throughout the United States. ICE’s Enforcement and Removal Operations mission is to “protect the homeland through the arrest and removal of those who undermine the safety of our communities and the integrity of our immigration laws.”³ ICE does not conduct random or indiscriminate raids or sweeps and does not detain and remove crime victims regardless of immigration status. There are several instances when unlawfully present foreigners have contacted law enforcement to report a crime. Clearly, these unlawfully present foreigners had no fear or apprehension in contacting and even cooperating with law enforcement.

Plaintiff’s First Claim for Relief demands the “issuance of an injunction directing Defendants to immediately stop disclosing information to federal immigration authorities for the purpose of enforcement of immigration laws, *except as permitted by state or federal law.*” Complaint at 8 (emphasis added). Federal immigration law explicitly permits local governments and law enforcement officers to send information relating to immigration status to federal immigration enforcement authorities, notwithstanding any state law to the contrary. 8 USC § 1373. The laws of the United States, including 8 USC

³ <https://www.ice.gov/about-ice/ero>

§ 1373, preempt state laws prohibiting the sharing of information by local authorities. U.S. Const., art. VI, cl. 2. Regardless of whether there is local cooperation with ICE detainees, the State of Oregon cannot lawfully restrict such communication with ICE.

“Federal statutes contemplate and protect the discretion of the Executive Branch... The discretion built into statutory removal procedures suggests that auxiliary state regulations regarding the presence of aliens in the United States are particularly intrusive on the overall federal statutory immigration scheme. *Ariz. Dream Act Coal. v. Brewer*, 855 F.3d 957, 962 (9th Cir. 2017)

Plaintiff’s First Claim for Relief demands the “issuance of an injunction directing Defendants to immediately stop disclosing information to federal immigration authorities for the purpose of enforcement of immigration laws, *except as permitted by state or federal law*” (emphasis added). Complaint at 8. Federal immigration law permits independent local governments and local law enforcement to cooperate with immigration enforcement authorities. 8 USC §§1227 and 1229a(c)(4). Regardless of whether or not there is cooperation with ICE detainees, the State of Oregon cannot enact legislation to restrict such cooperation.

Congress has specified which aliens may be removed from the United States and the procedures for doing so:“Any alien who at the time of entry or adjustment of status was within one or more of the classes of aliens inadmissible by the law existing at such time is deportable.” 8 USC § 1227(a)(1)(A). A principal feature of the removal system is the broad discretion exercised by an immigration judge for “for deciding the inadmissibility

or deportability of an alien.” 8 USC §1229a(a)(1); *see also Arizona v. United States*, 567 U.S. 387, 388 (2012).

2. 8 U.S.C. § 1373(a) PROHIBITS RESTRICTIONS ON THE VOLUNTARY EXCHANGE OF IMMIGRATION INFORMATION BETWEEN FEDERAL, STATE AND/OR LOCAL GOVERNMENT AUTHORITIES

The Sanctuary Promise Act does not protect U.S. citizens, legal immigrants, or crime victims; it protects criminal aliens. The Cottage Grove City Council and local law enforcement are lawfully permitted to mitigate the harm that unenforced immigration causes for its residents. Regardless of whether or not there was any cooperation with ICE detainers, including using public resources, the city council and local law enforcement are entitled under federal law to cooperate with federal immigration enforcement authorities.⁴ 8 USC § 1373(a) states. “Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”⁵

⁴ Some courts have held that 8 U.S.C. §§ 1373 and 1644 violate the Tenth Amendment to the constitution. *See, e.g., Oregon v. Trump*, 406 F. Supp. 3d 940, 971 (D. Or. 2019) (“Here, the Court agrees with Plaintiffs, as well as every other court to have considered the issue after *Murphy*, that sections 1373 and 1644 violate the Tenth Amendment.”). But read properly, 8 U.S.C. § 1373 simply gives local officials, in their personal capacities, a federal right to cooperate with federal immigration officials.

⁵ The Immigration and Naturalization Service was ICE’s predecessor. *See* <https://www.ice.gov/about-ice> (“ICE was created in 2003 through a merger of the investigative and interior enforcement elements of the former U.S. Customs Service and the Immigration and Naturalization Service.”) (last visited April 24, 2023).

The Supremacy Clause of the United States Constitution makes federal law "the supreme law of the land." U.S. Const. art. VI, cl. 2. The Supreme Court has said that the "[p]ower to regulate immigration is unquestionably exclusively federal power."

Velasquez-Rios v. Wilkinson, 988 F.3d 1081, 1089 (9th Cir. 2021); *see also Valle Del Sol Inc. v. Whiting*, 732 F.3d 1006, 1023 (9th Cir. 2013).

While not every state enactment regarding aliens undermines Congress' plenary powers, state law becomes a "regulation of immigration" if it "essentially . . . determin[es]" (1) "who should or should not be admitted into the country" or (2) "the conditions under which a legal entrant may remain." *Estrada v. Becker*, 917 F.3d 1298, 1303 (11th Cir. 2019). The State of Oregon's amended legislation of the Sanctuary Promise Act attempts to prohibit the use of public resources for the purpose of immigration enforcement. The provisions in ORS §§ 180.805, 181A.820, 181A.823, and ORS 181A.826 are regulations of immigration that run counter to federal law and are thus superseded by Congress' plenary power over immigration.

The Supreme Court has affirmed that federal immigration laws are exclusively within the authority of Congress. Federal immigration law standards cannot be "altered or contradicted retroactively by state law actions, and cannot be manipulated after the fact by state laws modifying sentences that at the time of conviction permitted removal or that precluded cancellation." *Velasquez-Rios v. Wilkinson*, 988 F.3d 1081, 1088-89 (9th Cir. 2021). 8 U.S.C. §1373(a) invalidates all restrictions on the voluntary exchange of immigration information between federal, state and local government entities and officials with federal immigration authorities.

The Sanctuary Promise Act’s restrictions also interfere with the independent authority for a local governmental agency to determine how to use their funds for the purpose of public safety. Public safety includes the removal of criminal aliens in order to protect all Oregonians.

The United States Department of Homeland Security (DHS) is responsible for locating and removing foreign nationals illegally in the U.S. Under ICE’s federal 287(g) Program, it has authority to partner with state and local law agencies for assistance with immigration enforcement. Local law enforcement agencies may cooperate with federal immigration enforcement even when a State forbids such cooperation. *See* 8 U.S.C. § 1357(g). States cannot opt out of federal immigration laws any more than they can opt out of the United States Constitution.

3. THE CITY OF COTTAGE GROVE HAS THE LEGISLATIVE AUTHORITY TO INDEPENDENTLY COOPERATE WITH FEDERAL IMMIGRATION ENFORCEMENT

The City of Cottage Grove has the legal authority to independently cooperate with federal immigration enforcement and such authority is codified in the Charter of City of Cottage Grove. The Charter states that the “City has all powers that the constitutions, statutes and common law of the United States and Oregon expressly or impliedly grant or allow the City, as fully as though this charter specifically enumerated each of those powers.”⁶

⁶ www.Codepublishing.com/OR/CottageGrove/html/CottageGroveCH.html

The Oregon Municipal Handbook, page 10, states that the “time and resources expended on police activities varies with the size and social and economic characteristic of the city. The history of criminal activity and police practices also plays a role in the framework for police services.”⁷ Therefore, Cottage Grove may use public money as they deem necessary to protect the safety of their community.

The primary duty of law enforcement is to protect law-abiding citizens and lawful residents from being harmed, especially by known criminals. The Sanctuary Promise Act undermines all aspects of public safety; it instead protects criminal aliens. Oregon’s “Sanctuary Promise Act” does not prohibit “an officer of a law enforcement agency” to arrest a foreign national. Section 2 of the Act provides guidelines for law enforcement upon the arrest of a foreign national. However, Section 3 states that local law enforcement may not “[p]rovide information about an individual in the custody of the public body or law enforcement agency to a federal immigration authority for the purpose of civil immigration enforcement” with two minor and irrelevant exceptions. ORS § 181A.823(1)(c). Section 3 is in direct conflict with federal law regarding communications between local and federal officials with respect to immigration-related information. *See* 8 USC § 1373.

“[F]or more than a century, it has been universally acknowledged that Congress has sweeping authority over immigration policy as ‘an incident of sovereignty.’” *United States v. Hernandez-Guerrero*, 147 F.3d 1075, 1076 (9th Cir. 1998) [quoting *Chae Chan*

⁷ https://www.orcities.org/application/files/2315/9917/4968/Handbook_-_Chapter_3_Municipal_Officials.pdf

Ping v. United States, 130 U.S. 581, 609 (1889)]; see also *Velasquez-Rios v. Wilkinson*, 988 F.3d 1081, 1088-89 (9th Cir. 2021); *United States v. Hernandez-Guerrero*, 147 F.3d 1075, 1076 (9th Cir. 1998). Part of the federal government’s authority is established in the Naturalization Clause, U.S. Const. art. I, § 8, cl. 4; the Commerce Clause, § 8, cl. 3; and the Migration and Importation Clause, § 9, cl. 1. The federal government has “inherent power as sovereign to control and conduct relations with foreign nations.” *Velasquez-Rios*, 988 F.3d at 1088-89; see also *Truax v. Raich*, 239 U.S. 33, 42 (1915), *Arizona v. United States*, 567 U.S. 387, 394-95 (2012).

In *Velasquez-Rios*, the Ninth Circuit further explained that “Congress may make laws defining the proper sphere in which a person who is not a citizen and is in the United States without proper authority and documentation may be removed from this country, and that Congress, ***but not individual states***, can give an escape hatch for removal in certain cases where equitable circumstances are thought to warrant cancellation of removal as a matter of federal law.” *Velasquez-Rios*, 988 F.3d at 1089 (emphasis added); see also *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1023 (9th Cir. 2013).

According to Oregon’s Department of Corrections, in December 2022, Lane County had 1,841 arrests, among the largest number of crimes compared to other counties.⁸ In fiscal year 2019, ICE removed 267,000 aliens. ICE’s Enforcement and Removal Operations arrested 143,000 aliens, more than 86 percent of whom had criminal convictions or pending criminal charges.⁹ December 2022 data, obtained from the

⁸ <https://www.oregon.gov/doc/Documents/community-profile.pdf> (last visited April 24, 2023).

⁹ <https://www.oregon.gov/doc/Documents/community-profile.pdf> (last visited April 24, 2023).

Department of Corrections website, indicate there were approximately 595 foreign nationals incarcerated in Oregon’s prison system. Due to the Sanctuary Promise Act, actual numbers of crimes committed by foreign nationals have been suppressed. A January 2023 report titled “Oregon’s Lane County Fifth in Foreign National Crime in December 2022” indicated that Lane County had approximately 29 criminal aliens, which accounted for 4.87 percent of the total Oregon prison population. While 4.87 percent may appear to be a small percentage, any crime committed by any alien is one crime too many.¹⁰

While any crime committed by an alien is one crime too many, criminals rarely limit themselves to committing just one crime. The following are a few examples of criminal aliens who have benefitted, to the detriment of residents, from the Sanctuary Promise Act’s amendments:

- Leonel Zurita-Loeza (SID: 17045856, DOB: 09/20/1981) was recently released back into Yamhill County, Oregon, on March 21, 2023.¹¹ On Mother’s Day, May 11, 2008, Mr. Zurita-Loeza, a habitual re-offender, killed cherished mother of seven and grandmother of four, Carma Colleen Smith, 52, and was convicted of Driving under the Influence of Intoxicants (DUII) and sentenced to prison for approximately 15 years. He was already on a Diversion for a previous DUI out of

¹⁰ <https://docfnc.wordpress.com/2023/01/23/oregons-lane-county-fifth-in-foreign-national-crime-in-december-2022/>

¹¹ <https://www.kxl.com/criminal-alien-report-03-21-23-by-david-cross/>

Washington County when he killed Mrs. Smith. Due to the lack of cooperation with DHS' detainer, Mr. Zurita-Loeza is free while the Smith family has been permanently separated.

- Aggravated felon Julio Garcia-Castellano, also known as Victor Garcia Ignacio (along with other aliases), 33, committed an aggravated felony and was issued an expedited removal order. On May 11, 2007, he was removed from the State of Arizona to Guatemala, his country of citizenship. Then, in 2010, at the Lane County Circuit Court, Garcia-Castellano was convicted of second-degree rape. After serving a 75-month sentence, he was again removed. In 2016, Mr. Garcia-Castellano was placed on the "Most Wanted Fugitive" list and subsequently arrested later for DUII in California.¹²
- Another repeat-offender is Sanctuary Promise Act beneficiary Ignacio Merendon-Zerega (Case Number: CR070606; SID: 7213917; DOB: 11-04-1962), who was convicted by the Yamhill County Circuit Court of first-degree manslaughter and one count of DUII for killing Judyth Anne Cox, a 66-year old wife, mother of two, and grandmother of six who was a resident of Newberg, Oregon.¹³ He was released back to Newberg in 2022 instead of being removed on an immigration detainer due to the Promise Act's retroactive provisions. And this was not his first conviction. This was, in fact, his sixth conviction. He is now free while his

¹² <https://www.larslarson.com/criminal-alien-of-the-week-report-05-14-20-by-david-cross/>

¹³ <https://www.facebook.com/aviacusa/posts/548-the-death-of-judyth-cox-couldve-been-prevented-she-was-the-victim-of-a-hit-a/2999155306994679/>

victims' lives have been permanently destroyed. Nobody should feel comfortable knowing that hundreds of criminal aliens are evading federal immigration enforcement officers, including other non-criminal unlawfully present aliens.

The City of Cottage Grove and police department are authorized by their Charter to use public resources for law enforcement and to cooperate with federal immigration authorities. The Sanctuary Promise Act was amended in 2021 to specifically ban cooperation with federal authorities and bar local law enforcement from using public resources; that amendment interferes with Congress' plenary powers over federal immigration laws, including restricting local governments' independent and voluntary cooperation with federal immigration enforcement. *See* 8 USC §1373. Federal law explicitly permits local law enforcement agencies, including the City of Cottage Grove's Police Department, to independently and lawfully cooperate with federal immigration enforcement officers.

CONCLUSION

For the foregoing reasons, Defendants Rule 21 Motions should be granted.

Dated: April 24, 2023

Lorraine G. Woodwark
By /s/ Lorraine G. Woodwark, Esq.
D.C. Bar No. 1720603
Attorneys United for a Secure America
25 Massachusetts Ave. NW, Ste 335
Washington, D.C. 20001
(202) 591-0962
LWoodwark@IRLI.org

Respectfully submitted,

Attorney Name
By /s/ Ray D. Hacke
Ore. S.B. No. 173647
Pacific Justice Institute
317 Court St. NE
Salem, OR 97301
(503) 917-4409
rhacke@pji.org

Counsel for *Amicus Curiae* Advocates for
Victims of Illegal Alien Crime

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that brief of *amicus curiae* Advocates for Victims of Illegal Alien Crimes, meets the requirements of Oregon Rules of Court 2022-UTCR-Ch 2 et seq. because it contains fewer than 14,000 words. The brief was written using Microsoft Word software and, according to the software word count total, contains words.

Dated: April 24, 2023

Ray D. Hacke
By /s/ Ray D. Hacke
Ore. S.B. No. 173647
Pacific Justice Institute
317 Court St. NE, Suite 202
Salem, OR 97301
(503) 917-4409
rhacke@pji.org

Counsel for *Amicus Curiae* Advocates for
Victims of Illegal Alien Crime

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the *amicus curiae* brief on behalf of Advocates for Victims of Illegal Alien Crimes was served electronically on April 24, 2023 via the court's eFiling system pursuant to UTCR 21.100.

Dated: April 24, 2023

Ray D. Hacke
By /s/ Ray D. Hacke
Ore. S.B. No. 173647
317 Court St. NE, Suite 202
Salem, OR 97301
(503) 917-4409
rhacke@pji.org

Counsel for *Amicus Curiae* Advocates for
Victims of Illegal Alien Crime