

No. 22-179

In The
Supreme Court of the United States

UNITED STATES OF AMERICA,

Petitioner,

v.

HELAMAN HANSEN,

Respondent.

**On Writ Of Certiorari To The
United States Court Of Appeals
For The Ninth Circuit**

**BRIEF FOR *AMICI CURIAE* CITY AND
COUNTY OF SAN FRANCISCO, CALIFORNIA;
COUNTY OF EL PASO, TEXAS; AND
30 OTHER CITIES, COUNTIES, AND MUNICIPAL
ORGANIZATIONS IN SUPPORT OF RESPONDENT**

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT	4
ARGUMENT	6
I. Section 1324(a)(1)(A)(iv) on its Face Could Criminalize Local Government Speech Welcoming and Encouraging Immigrants	8
II. Likewise, Section 1324(a)(1)(A)(iv) Unconstitutionally Jeopardizes Local Government Programs that Support Immigrants	14
III. Section 1324(a)(1)(A)(iv) Jeopardizes Broad-Based Local Government Programs, Too.....	17
CONCLUSION.....	22
APPENDIX A	
List of <i>Amici Curiae</i>	1a

TABLE OF AUTHORITIES

	Page
CASES	
<i>City of Chicago v. Barr</i> , 961 F.3d 882 (7th Cir. 2020).....	11
<i>Gooding v. Wilson</i> , 405 U.S. 518 (1972)	8
<i>Pleasant Grove City v. Summum</i> , 555 U.S. 460 (2009)	9
<i>Reed v. Town of Gilbert, Ariz.</i> , 576 U.S. 155 (2015)	14
<i>United States v. Stevens</i> , 559 U.S. 460 (2010)	6, 9
<i>Walker v. Texas Div., Sons of Confederate Veterans, Inc.</i> , 576 U.S. 200 (2015)	8, 9
STATUTES	
8 U.S.C. § 1324	1, 2, 3, 5, 6, 11
8 U.S.C. § 1324(a).....	2, 3, 6
8 U.S.C. § 1324(a)(1)(A)(iv)	1, 3-21
8 U.S.C. § 1324(a)(1)(A)(v)(II).....	6
8 U.S.C. § 1324(a)(1)(B)(ii).....	5
8 U.S.C. § 1324(a)(2)(B)(ii).....	5
RULES	
U.S. Supreme Court Rule 37.6	1

TABLE OF AUTHORITIES—Continued

	Page
OTHER REFERENCES	
2023 St. Patrick’s Day Parade, Visit St. Augustine, <i>archived at</i> https://perma.cc/JFP8-6ZNW	13
American Law Reports, <i>Construction and effect of statutes making solicitation to commit crime a substantive offense</i> , 51 A.L.R.2d 953 (Originally published in 1957).....	7
Bank On San Francisco, Bank On San Fran- cisco: Account Eligibility (2019), <i>archived at</i> https://perma.cc/YV3C-K8L4	21
Bank On San Francisco, Reaching the Un- banked in San Francisco, <i>archived at</i> https:// perma.cc/C3JH-AWFA	21
Boulder County, Are You An Immigrant? (Jan. 2018), <i>archived at</i> https://perma.cc/ZMK2- 7LP7	12
Boulder County, Crime Victim Assistance Pro- gram (2020), <i>archived at</i> https://perma.cc/ G5LV-2DZX	19
Boulder County, Immigrant Resources (2020), <i>archived at</i> https://perma.cc/846Y-R2LD	15
City College of San Francisco, City DREAM (Dec. 9, 2019), <i>archived at</i> https://perma.cc/ ZE54-P5C3	16
City Colleges of Chicago, Learn English (2020), <i>archived at</i> https://perma.cc/PWV2-3UZT	16

TABLE OF AUTHORITIES—Continued

	Page
City of Chicago, Family & Support Services (2020), <i>archived at</i> https://perma.cc/G4ML-WZHE	18
Dominic Fracassa, S.F. helping eligible Dreamers to renew DACA benefits, S.F. Chronicle (Sept. 20, 2017), <i>archived at</i> https://perma.cc/P38Y-27LF	15
Field-Initiated Programs to Improve Officer and Public Safety, State or Local Government: FY 2018 Certification, <i>archived at</i> https://perma.cc/FY76-SKUP	3
Hearing on Oversight of the United States Department of Homeland Security, Before Judiciary Committee, 115th Congress (January 16, 2018) (statement of Sen. Kamala Harris, Chairperson, Senate Judiciary Committee), <i>archived at</i> https://perma.cc/5HW5-T4W5	2
Immunizations, City of El Paso, Department of Public Health (2020), <i>archived at</i> https://perma.cc/ULQ5-ZSC4	20
Jessica Clark, Can St. Augustine claim the oldest St. Patrick’s Day Parade? (Mar. 9, 2018), <i>archived at</i> https://perma.cc/KD8Y-L6C4	13
Jill H. Wilson, Investing in English Skills: The Limited English Proficient Workforce in U.S. Metropolitan Areas, Metropolitan Policy Program at Brookings (Sept. 2014), <i>archived at</i> https://perma.cc/S2MS-XFMC	16

TABLE OF AUTHORITIES—Continued

	Page
Office of Financial Empowerment City and County of San Francisco, Find a Safe Bank Account (2020), <i>archived at</i> https://perma.cc/XK5U-FT2J	21
Office of Justice Programs, U.S. Department of Justice, FY 2018 Byrne JAG Sample Local Solicitation, <i>archived at</i> https://perma.cc/E6H8-C8AX	3
Office of Justice Programs, U.S. Department of Justice, Gang Suppression Program, State or Local Government: FY 2018 Certification, <i>archived at</i> https://perma.cc/DH6C-Y3FD	3
San Diego County District Attorney Webpage, <i>archived at</i> https://perma.cc/C86L-EX82	19
San Francisco Immigrant Legal and Education Network, Report ICE and help protect your community (2017), <i>archived at</i> https://perma.cc/TL3P-YWZM	12
San Francisco Immigrant Support, Find immigration legal help, <i>archived at</i> https://perma.cc/DY9K-PDVD and https://perma.cc/DTK2-2VUG	15
Stephen Dinan, ICE chief wants to slap smuggling charges on leaders of sanctuary cities (July 26, 2017), <i>archived at</i> https://perma.cc/3N39-VQQG	1
Welcomedayton.org, Welcome Dayton Plan (Sept. 2011), <i>archived at</i> https://perma.cc/6P5W-F9YR	10

TABLE OF AUTHORITIES—Continued

	Page
Welcomedayton.org, Welcome to Dayton: How Immigrants Are Helping To Grow Dayton’s Economy And Reverse Population Decline (2013), <i>archived at</i> https://perma.cc/WVE7-J89H	10
Your World with Neil Cavuto, ‘CA Better Hold On Tight’: ICE Dir Promises Doubling of Officers After ‘Sanctuary’ Law Signed (January 2, 2018), <i>archived at</i> https://perma.cc/XGR7-33QR	2

INTEREST OF *AMICI CURIAE*¹

Amici Curiae are the City and County of San Francisco, California; El Paso County, Texas; and twenty-eight other cities, counties, and municipal organizations; along with two non-partisan advocacy organizations focused on representing the interests of the nation's local governments.² *Amici* represent a broad cross-section of local governments: large, midsize, and small cities and counties from eighteen different states. We are a diverse group that shares common concerns about the constitutionality and scope of Section 1324 of Title 8 of the United States Code in general, and Section 1324(a)(1)(A)(iv) in particular.

In recent years, federal government officials have expressed the view that local governments and their officials can violate the criminal prohibitions of Section 1324 merely by pursuing legitimate state and local prerogatives. For instance, throughout his tenure in 2017 and 2018, then-Acting Director of Immigration and Customs Enforcement (“ICE”) Thomas Homan frequently referenced Section 1324 when asked about jurisdictions that decide not to expend resources to assist federal immigration enforcement efforts.³ Reacting to

¹ Pursuant to Supreme Court Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici* and their counsel made a monetary contribution to its preparation or submission.

² Appendix A contains a full list of *amici*.

³ *E.g.*, Stephen Dinan, ICE chief wants to slap smuggling charges on leaders of sanctuary cities (July 26, 2017), *archived at* <https://perma.cc/3N39-VQQG>.

news that California had enacted a law limiting state cooperation with ICE, Homan stated in an interview that he asked the United States Department of Justice to “hold politicians accountable” by charging them with violations of Section 1324, telling California it “better hold tight.”⁴ That same month, then-Secretary of Homeland Security Kirstjen Nielsen confirmed in testimony before the Senate Judiciary Committee that the Department of Justice was reviewing Director Homan’s request.⁵

The federal government has formalized this intent to threaten state and local governments with enforcement of Section 1324 by incorporating certifications related to Section 1324 into a number of Justice Department grants for state and local governments. For instance, a condition of the FY 2018 Edward Byrne Memorial Justice Assistance Grant, an annual formula grant that funds law enforcement agencies across the country, required a local government grantee to certify that it “carefully reviewed” Section 1324(a), which includes the “encourage[] or induce[]” provision. Recipients must have further attested that they would not “publicly disclose federal law enforcement information

⁴ Your World with Neil Cavuto, ‘CA Better Hold On Tight’: ICE Dir Promises Doubling of Officers After ‘Sanctuary’ Law Signed (January 2, 2018), *archived at* <https://perma.cc/XGR7-33QR>.

⁵ Hearing on Oversight of the United States Department of Homeland Security, Before Judiciary Committee, 115th Congress (January 16, 2018) (statement of Sen. Kamala Harris, Chairperson, Senate Judiciary Committee), *archived at* <https://perma.cc/5HW5-T4W5>.

in an attempt to conceal, harbor, or shield certain individuals from detection, whether or not in violation of 8 U.S.C. § 1324(a).”⁶ A variety of other federal grants also required similar Section 1324(a) certifications.⁷

In light of these threats of prosecution, previous federal officials’ expansive reading of Section 1324, and the Department of Justice’s demonstrated capacity to incorporate aspects of these threats into annual grant certifications, the lawful scope of Section 1324 matters to local governments throughout the country. *Amici* and representatives of our local governments engage in a broad array of important and valuable immigration-related speech, as well as offering programs and services that address the needs of our communities, including persons who may be undocumented. Section 1324(a)(1)(A)(iv) on its face jeopardizes *amici*’s interests by chilling critical political speech and hampering *amici*’s ability to provide a broad range of legitimate and important municipal services.



⁶ Office of Justice Programs, U.S. Department of Justice, FY 2018 Byrne JAG Sample Local Solicitation, *archived at* <https://perma.cc/E6H8-C8AX>.

⁷ *See, e.g.*, Office of Justice Programs, U.S. Department of Justice, Gang Suppression Program, State or Local Government: FY 2018 Certification, *archived at* <https://perma.cc/DH6C-Y3FD>; Field-Initiated Programs to Improve Officer and Public Safety, State or Local Government: FY 2018 Certification, *archived at* <https://perma.cc/FY76-SKUP>. Although the current administration has not included such certifications in its grant requirements, a future administration could do so.

SUMMARY OF ARGUMENT

Amici's residents include natural-born and foreign-born American citizens, as well as immigrants from around the globe. An estimated eleven million undocumented noncitizens live in the United States and have come to reside in cities, towns, and counties—large and small—throughout the nation. *Amici* provide a variety of services to all of their residents, including undocumented noncitizens. Local governments, and their agencies and officials, must be able to have full, robust, and frank discussions about how best to support and improve the lives of their residents. And the First Amendment protects speech about important questions of national, local, or state policy affecting immigrants or our communities writ large. The freedom to speak openly about these issues is fundamental to our ability to fulfill our obligations to provide for the general welfare of all residents, promote the common good, and create communities that can prosper. *Amici* are concerned that Section 1324(a)(1)(A)(iv) will chill our officials' and residents' freedom of speech, preventing important political discourse at the heart of the First Amendment.

Additionally, *amici* provide important public services for our residents that should never be the subjects of possible criminal prosecution—investments to foster community in our neighborhoods, to provide for residents' education and welfare, and to ensure the health and safety of our populations. Some of these important public services focus directly on assisting our immigrant communities (*e.g.*, immigration law clinics

and citizenship application workshops), while others operate more broadly (*e.g.*, food banks and public health clinics). All are valuable public services that help our communities and residents thrive. As explained more fully below, the expansive scope of Section 1324(a)(1)(A)(iv) imperils our ability to provide these services because doing so could be found to “encourage” or “induce” any undocumented residents who benefit from these programs to stay in our communities.⁸ *Amici* are not assuaged by the purportedly narrower (but nonetheless vague) interpretation of the “encourage[] or induce[]” language the federal government now proffers; the language on its face still threatens a broad array of our services. Unless the Ninth Circuit’s judgment is affirmed, federal officials can continue to rely on Section 1324 as a cudgel to discourage local governments from providing important public services to their communities.



⁸ Petitioner frames the question presented to the Court as if the sentencing enhancement in Section 1324(a)(1)(B)(ii) were a substantive element of the crime described in Section 1324(a)(1)(A)(iv). *Amici* reject Petitioner’s framing for the reasons described in Respondent’s brief. *Amici* engage in none of the activities or speech described in this brief “for the purpose of commercial advantage or private financial gain.” 8 U.S.C. § 1324(a)(2)(B)(ii). The substantive prohibition on “encourage[ment]” or “induce[ment]” described in Section 1324(a)(1)(A)(iv) is a standalone crime that *amici* seek to ensure does not proscribe their vital municipal activities and speech.

ARGUMENT

The Supreme Court should affirm the Ninth Circuit’s judgment striking down Section 1324(a)(1)(A)(iv) because the prohibition on “encourag[ing] or induc[ing]” undocumented persons to enter or remain in the United States is overbroad on its face. *See* Pet. App. 1a–14a. *Amici* read the “encourag[ing] or induc[ing]” language by its plain text, giving those words their normal meanings, and not the meanings of other words like “solicitation” or “aiding and abetting,” as the federal government would.⁹ The provision, by its plain text, proscribes substantially more protected expression than is necessary to effectuate any justified applications of the provision (if they exist), especially when considering the limited added value of Section 1324(a)(1)(A)(iv) alongside the other parts of Section 1324(a), *see United States v. Stevens*, 559 U.S. 460, 473 (2010), not to mention alongside standard fraud crimes. *See* Respondent’s Br. at pp. 21–23.

The federal government’s construction of the provision, even if it were supported by text, history, or law, does not adequately protect *amici* from possible

⁹ *Amici* agree with Respondent that “encourage” and “induce” both involve speech, and likewise agree that dictionary definitions reveal the plain meaning of those words—for “encourage,” to inspire or to make confident, and for “induce,” to entice or to persuade. *See* Respondent’s Br. at pp. 14–18. *Amici* also agree with Respondent and the Opinion Below that the words in this subsection cannot mean the same thing as “aiding and abetting,” since nearby Section 1324(a)(1)(A)(v)(II) contains a separate, standalone prohibition on aiding and abetting the substantive Section 1324 offenses.

prosecution for legitimate conduct made in furtherance of important local prerogatives, such as providing for the health, safety, and economic prosperity of our communities. Nor does the proffered construction avoid substantially chilling speech—and potentially First Amendment-protected activity—related to immigration issues. Because the language is so broad, and the federal government’s construction so imprecise, Section 1324(a)(1)(A)(iv) continues to threaten local governments’ lawful activities, and their officials’ protected speech, regardless of the federal government’s newfound interpretation. Even under that construction, it remains unclear whether “solicitation” would include activities that have the *effect* (but not the intent) of soliciting a person to remain here.¹⁰ See Petitioner’s Br. at pp. 23, 27. The federal government’s proffered narrower reading of Section 1324(a)(1)(A)(iv), equating encouragement with solicitation provides little reassurance to *amici*, where, as here, it actually prosecuted Respondent under that statute without being required to prove to the jury the mens rea element of solicitation. See Petitioner’s Br. at p. 28 n.2. These ambiguities, and the broad reach of the plain text, continue to threaten *amici*’s conduct, speech, and other

¹⁰ “Solicitation,” which the federal government would have this Court read as effectively replacing the “encourage[] or induce[]” language, incorporates a mens rea element of “intent,” see generally American Law Reports, *Construction and effect of statutes making solicitation to commit crime a substantive offense*, 51 A.L.R.2d 953 (Originally published in 1957), but the statute by its plain language does not say this or include an additional mens rea requirement, let alone one of specific intent, beyond the knowledge or recklessness standards already included in the text.

activities. It is no solution for the constitutionality of this provision to be considered only in as-applied challenges. *Contra* Petitioner’s Br. at p. 49. This impermissibly forces municipalities and government officials to choose between facing criminal prosecution on the one hand, and providing needed services or engaging in robust community discourse, on the other. Overbreadth challenges were designed to prevent putting speakers to just this sort of choice. *See Gooding v. Wilson*, 405 U.S. 518, 521 (1972). *Amici* urge the court to strike down the provision in its entirety as facially overbroad.

I. Section 1324(a)(1)(A)(iv) on its Face Could Criminalize Local Government Speech Welcoming and Encouraging Immigrants.

The prohibition on “encourage[ment] or induce[ment]” chills speech by local governments and public officials that welcomes, praises, and supports immigrants in furtherance of important local government policies. The open exchange of ideas between government officials and the residents of their jurisdiction is necessary for representative democracy. This is most true at the local level, where governments are in closest contact with the people. The chilling effect of an overbroad criminal statute, which the Department of Justice has, in recent years, indicated directly applies to localities and their officials, interferes with “the democratic electoral process that first and foremost provides a check on government speech.” *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 207 (2015). Moreover, “[i]t is not easy to imagine

how government could function if it lacked [the] freedom' to select the messages it wishes to convey." *Id.* at 208 (quoting *Pleasant Grove City v. Summum*, 555 U. S. 460, 467–68 (2009)). In furtherance of their sovereign powers, local governments, their officials, and entities they partner with engage in a broad range of speech and expression that welcomes and encourages immigrants. These messages further legitimate local prerogatives, and yet are jeopardized by a decision upholding Section 1324(a)(1)(A)(iv)'s vast reach.

Section 1324(a)(1)(A)(iv) threatens to unconstitutionally censor politicians who express support for immigrants or policies that may benefit them. For instance, the provision on its face could criminalize a mayor who encourages all of her city's residents, in the knowledge that some may be undocumented, to take advantage of city warming stations during a cold spell, or a county official who, during a public hearing on immigration issues, thanks a DREAMer for her bravery and encourages her to keep fighting for immigration reform in the United States. There is no exception in Section 1324(a)(1)(A)(iv) for political speech.¹¹ Such proscription eviscerates the ability of government officials to perform their roles in our representative democracy.

Additionally, Section 1324(a)(1)(A)(iv)'s potential reach goes far beyond such a hypothetical statement to

¹¹ In any event, such an exception was not sufficient to save the animal cruelty depiction statute in *Stevens*. See *Stevens*, 559 U.S. at 478–79.

impact other speech, activities, and policies. For some cities, encouraging immigration is an urgent matter of economic rehabilitation. In 2011, for example, Dayton, Ohio launched its “Welcome Dayton” campaign to reverse decades of population decline and encourage immigrants to move to Dayton by branding itself as a “welcoming” city. The campaign cited as its goals “to promote immigrant integration by encouraging business and economic development; ensuring access to education, health, and government and justice services; and promoting an appreciation of diverse arts and cultures.”¹² The “Welcome Dayton” implementation plan called for marketing efforts to highlight neighborhoods friendly to immigrant-run businesses, training police officers on cultural competency, expanding the number of translated documents offered by the government, compiling lists of immigrant-friendly health providers, and advocating at the state level for immigrant-friendly laws, among other speech.¹³ The encouragement worked. In less than a decade, Dayton’s population decline has leveled off and thousands of new foreign-born residents have moved there, injecting millions of dollars into the local and state economies.¹⁴ Section 1324(a)(1)(A)(iv) threatens to derail

¹² Welcomedayton.org, *Welcome to Dayton: How Immigrants Are Helping To Grow Dayton’s Economy And Reverse Population Decline* (2013), *archived at* <https://perma.cc/WVE7-J89H>.

¹³ Welcomedayton.org, *Welcome Dayton Plan* (Sept. 2011), *archived at* <https://perma.cc/6P5W-F9YR>.

¹⁴ Welcomedayton.org, *Welcome to Dayton: How Immigrants Are Helping To Grow Dayton’s Economy And Reverse Population Decline* (2013), *archived at* <https://perma.cc/WVE7-J89H>.

campaigns like this by creating fear of criminal prosecution.

This fear of prosecution for long-lawful activities could affect local government programming across the country. Many *amici* operate agencies within their governance structures specifically to support immigrant communities, such as Chicago’s Office of New Americans or San Francisco’s Office of Civic Engagement and Immigrant Affairs. Among other things, these agencies alert immigrants to the varied services available to them and express various welcoming sentiments to these community newcomers. The names and mere existence of these offices could be said to “encourage” undocumented people to enter and remain in our communities. This concern is not far-fetched; a United States Court of Appeals Judge recently observed that “[w]ith the right facts, a [welcoming city] policy like Chicago’s could very well . . . encourage and induce aliens to enter and reside unlawfully in the United States.” *City of Chicago v. Barr*, 961 F.3d 882, 933 n.1 (7th Cir. 2020) (concurring opinion of Manion, J.). So too could publicly funded signs welcoming all visitors, including undocumented noncitizens, to a city’s jurisdiction. Conceivably, so too could translations of public documents into languages known to be spoken by communities with undocumented persons. The potential reach of Section 1324 in this area is vast, if the Ninth Circuit’s judgment is reversed.

Section 1324(a)(1)(A)(iv) also threatens to interfere with localities who wish to publish basic information to educate residents about interacting with law

enforcement, including civil immigration enforcement. These “tip sheets”¹⁵ or “know your rights”¹⁶ documents explain things like warrant requirements for federal immigration enforcement agents to enter private residences, or advise members of the public about the right to remain silent, and how to assert that right, when questioned by federal officials. Local governments publish these documents for a variety of reasons, including simply to respond to demand from residents for the information. Section 1324(a)(1)(A)(iv) chills this important speech as “encouragement” or “inducement” if the municipal official knows or “recklessly disregards” that the recipient is undocumented. In so doing, the provision interferes with governments’ ability to provide objective information to a concerned public.

Indeed, Section 1324(a)(1)(A)(iv) is written so broadly as to potentially apply to government sponsorship of ethnic and cultural festivals, which encourage immigrants of those groups to make our communities their homes. Such parades, festivals, and similar events are among the oldest and most vibrant ways cities have celebrated the diversity of America, dating back to 1601, when St. Augustine, Florida celebrated the first Saint Patrick’s Day parade in North

¹⁵ San Francisco Immigrant Legal and Education Network, Report ICE and help protect your community (2017), *archived at* <https://perma.cc/TL3P-YWZM>.

¹⁶ Boulder County, Are You An Immigrant? (Jan. 2018), *archived at* <https://perma.cc/ZMK2-7LP7>.

America.¹⁷ Local governments express their support for specific immigrant groups, and for diversity and inclusion more broadly, by funding, advertising, and making public space available for these cultural and ethnic heritage events. For example, San Francisco’s famous Chinese New Year Festival and Parade draws visitors from around the country each year, while Chicago’s famed Polish Constitution Day Parade is considered the largest Polish culture parade outside of Poland. The benefits of these events inure not just to individuals from the particular heritage groups, but to the public at large, who can learn about and celebrate new cultures. Yet, there can be no question that local government support for such events “encourages” noncitizens—including undocumented noncitizens—to remain in those communities, assured that their value is acknowledged and their contributions highlighted.

Allowing Section 1324(a)(1)(A)(iv) to stand is especially pernicious because the provision does not target all immigration-related speech equally. Instead, its broad reach has the effect of chilling speech of only one viewpoint: speech supporting and welcoming immigrants. Section 1324(a)(1)(A)(iv), if allowed to stand, could also mean that public comment periods at city council meetings become artificially one-sided, as only residents and government officials with pro-immigrant viewpoints are chilled and dissuaded from voicing

¹⁷ 2023 St. Patrick’s Day Parade, Visit St. Augustine, *archived at* <https://perma.cc/JFP8-6ZNW>; Jessica Clark, Can St. Augustine claim the oldest St. Patrick’s Day Parade? (Mar. 9, 2018), *archived at* <https://perma.cc/KD8Y-L6C4>.

their views. There are myriad ways local governments educate, welcome, and encourage individual noncitizens and the immigrant groups that make their communities stronger. Section 1324(a)(1)(A)(iv) does not proscribe government speech that discourages or repels immigrants. No federal criminal law hovers over a city that brands itself as “immigrant unwelcoming,” or over a county that issues a “tip sheet” to the public advising residents to report suspected undocumented persons. Section 1324(a)(1)(A)(iv) draws a dividing line between speech that favors immigration and speech that disfavors it—a content-based restriction that criminalizes one viewpoint, in violation of First Amendment principles. *See Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015).

II. Likewise, Section 1324(a)(1)(A)(iv) Unconstitutionally Jeopardizes Local Government Programs that Support Immigrants.

Amici invest billions of dollars in their immigrant communities through targeted programs to help newcomers thrive in America. This is not charity; these programs reflect our shared commitments to investing in the success of immigrants and undocumented residents, regardless of status, to grow our local economies, create pathways to opportunity for individuals and their families, and make our communities more vibrant and resilient. Yet, Section 1324(a)(1)(A)(iv) could also hamper these essential programs and interfere with *amici*'s policy judgments about how best to support their community members.

For example, many *amici* fund legal assistance programs to help immigrants navigate a variety of legal issues, including those related to immigration. Some jurisdictions have sponsored or advertised¹⁸ workshops for people applying for Deferred Action for Childhood Arrivals (“DACA”) status, including offering to pay residents’ application fees.¹⁹ Some offer broader support, such as access to deportation and detention counsel.²⁰ These actions reflect the value *amici* place on the immigrant communities in their jurisdictions and their desires to help them remain in the United States if those individuals want to make the U.S. their home. They are also consistent with our nation’s longstanding commitment to ensure that the judicial system remains open to all people. But read literally, Section 1324(a)(1)(A)(iv) could potentially criminalize a simple referral to an immigration attorney as unlawful “encourage[ment].” By consequence, it could threaten the ongoing vitality of these important legal assistance programs.

Reversal of the Ninth Circuit’s judgment could also cause *amici*, and other localities, to fear prosecution for supporting educational opportunities for immigrants, regardless of their status. In Chicago, for

¹⁸ Boulder County, Immigrant Resources (2020), *archived at* <https://perma.cc/846Y-R2LD>.

¹⁹ Dominic Fracassa, S.F. helping eligible Dreamers to renew DACA benefits, S.F. Chronicle (Sept. 20, 2017), *archived at* <https://perma.cc/P38Y-27LF>.

²⁰ San Francisco Immigrant Support, Find immigration legal help, *archived at* <https://perma.cc/DY9K-PDVD> and <https://perma.cc/DTK2-2VUG>.

example, any adult Illinois resident can take free English as a Second Language (“ESL”) classes through City Colleges of Chicago.²¹ City College of San Francisco, with support from the City and County of San Francisco, also offers free ESL classes for non-native English speakers, and even sponsors a student group called City DREAM, which serves as a hub and resource center for undocumented students, students from mixed status families, and all students affected by immigration or citizenship issues.²² Cities that invest in the language skills of their immigrant communities understand that residents with limited English proficiency face barriers to educational attainment, and that making these investments enhances the human capital and economic mobility of their immigrant populations.²³ These programs welcome and encourage non-native English speakers to move to our communities, while also equipping them with a skill they may need to thrive. Under the plain language of Section 1324(a)(1)(A)(iv), they would potentially violate the criminal law.

Some of *amici*’s programs provide life-sustaining assistance to people who have survived long journeys and require urgent medical attention, food, or water

²¹ City Colleges of Chicago, Learn English (2020), *archived at* <https://perma.cc/PWV2-3UZT>.

²² City College of San Francisco, City DREAM (Dec. 9, 2019), *archived at* <https://perma.cc/ZE54-P5C3>.

²³ *See generally*, Jill H. Wilson, Investing in English Skills: The Limited English Proficient Workforce in U.S. Metropolitan Areas, Metropolitan Policy Program at Brookings (Sept. 2014), *archived at* <https://perma.cc/S2MS-XFMC>.

upon entering the United States. El Paso County, Texas, for example, has helped coordinate volunteers to provide lodging for individuals who completed the arduous journey across the border, has advertised pro bono opportunities for individuals to obtain legal assistance, has paid for their transfer to other locations via non-profit partners, and has funded an immigrant coordinator position to facilitate help for new arrivals. These are legitimate and necessary expenditures and programs to help El Paso address important realities about life at the border and provide humanitarian assistance.

These programs reflect the values and economic realities of the municipalities that play host to immigrants from around the globe. They reflect localities' policy judgment that the broader community is best served by connecting residents who may be undocumented to programs that will help them navigate challenging circumstances, rather than by ignoring them or leaving them to suffer. Allowing the federal government to continue to enforce Section 1324(a)(1)(A)(iv)'s overbroad mandate will stunt local governments' ability to target services to the most needy and invest in segments of the population where those investments pay off the most.

III. Section 1324(a)(1)(A)(iv) Jeopardizes Broad-Based Local Government Programs, Too.

Finally, Section 1324(a)(1)(A)(iv) threatens broad-based municipal programs, due to the simple fact that

undocumented immigrants use them and this information may be known to local officials. *Amici* operate a number of programs that are open to all of our residents, including residents who lack documentation. Sometimes, local government officials or employees may become aware that undocumented people access these services. That should be an unremarkable fact, but a decision reversing the Ninth Circuit would upend it, potentially subjecting local governments to criminal liability. The local government programs that Section 1324(a)(1)(A)(iv) could chill provide services that are important to our communities and to our nation, and in many instances, provide essential care. For example, many *amici* operate food banks and homeless shelters designed to help residents in their most acute times of need. Chicago's Department of Family and Support Services runs six community service centers where residents can access a wide range of resources, including housing and food assistance, support for survivors of domestic violence, job training, and services for the formerly incarcerated.²⁴ In addition to providing programmatic support, each location serves as a warming and cooling center during periods of extreme weather.²⁵ If upheld, Section 1324(a)(1)(A)(iv)'s broad reach could potentially make federal criminals of center staff who, for instance, welcome a Chicagoan who mentions that he lacks documentation when he checks in.

²⁴ City of Chicago, Family & Support Services (2020), *archived at* <https://perma.cc/G4ML-WZHE>.

²⁵ *Id.*

The same could be said for crime victims’ services programs run by local prosecutors’ offices. Many operate comprehensive programs (and provide assistance in multiple languages) to support people who report crimes they have experienced, to keep the person informed as their case develops, to lessen the impact of that crime in their life, and to help the individual assist in the defendant’s prosecution.²⁶ During the course of providing that assistance, service providers may become aware of a crime victim’s undocumented status, and may have even promised to provide services regardless of a person’s immigration status, as some local governments have.²⁷ These programs support important public safety prerogatives, and yet could potentially fall within Section 1324(a)(1)(A)(iv)’s broad reach.

Reversing the Ninth Circuit could also imperil public health by reducing local governments’ willingness to offer public health services that are made available to undocumented people. Many *amici* operate, or otherwise support, public health clinics and hospitals that treat communicable diseases and provide vaccinations to maintain individual and group immunity—this on top of every jurisdiction’s efforts to address the ongoing threat of Covid-19. The County of El Paso,

²⁶ See, e.g., Boulder County, Crime Victim Assistance Program (2020), *archived at* <https://perma.cc/G5LV-2DZX>.

²⁷ E.g., San Diego County District Attorney Webpage, *archived at* <https://perma.cc/C86L-EX82>. (“Victim Advocates assist victims from all walks of life and experiences, regardless of age, background, and/or immigration status. All services are free of charge.”)

working in partnership with the City of El Paso Department of Public Health, operates an immunization program to vaccinate children and adults, and to test for tuberculosis.²⁸ Clinicians fearful of being charged with “encourage[ing] or induc[ing]” in violation of Section 1324(a)(1)(A)(iv) might refuse such services to an undocumented El Paso resident who makes that fact known. That resident could then return to her community untreated, where she could fall ill or spread disease to others. The widespread under-immunization of certain populations could also threaten broader herd immunity and endanger the entire community.

Local governments are also the first line of defense when new problems arise in our communities, and are often innovators in addressing persistent public policy challenges. For example, San Francisco has pursued an innovative strategy to help low-income residents access low-cost banking services instead of relying on check-cashing services and cash. “Bank On San Francisco” offers low-fee checking and savings accounts to residents with no or poor banking history, and explicitly encourages traditionally marginalized communities to participate: “It doesn’t matter how much money you have, if you don’t have a social security number or California ID, or if you’ve had trouble banking in the past. With Bank On San Francisco, everyone is

²⁸ Immunizations, City of El Paso, Department of Public Health (2020), *archived at* <https://perma.cc/ULQ5-ZSC4>.

welcome.”²⁹ Indeed, residents may open accounts with a passport from any country, or even with a consular ID from Mexico or Guatemala.³⁰ The program addresses urgent matters of local concern: protecting low-income residents from high fees charged by payday lenders and check-cashing stores, and from the vulnerabilities caused by having large stores of cash at home, including crime, flood or fire damage, and difficulties in accessing funds during an evacuation or other emergency.³¹ Yet, by the terms of Section 1324(a)(1)(A)(iv), a local government’s support of an important program like this to help low-income people retain their hard-earned funds could constitute a criminal offense.

By its plain terms, Section 1324(a)(1)(A)(iv) chills and prohibits *amici* from addressing urgent community concerns and exposes municipal officials to prosecution for assisting vulnerable communities. The prohibition on “encourage[ment] or induce[ment]” is unconstitutionally overbroad and should be struck down as such, in order to preserve *amici*’s ability to respond to our residents, foster open dialogue about all aspects of the immigration debate, and to create and continue vital public programs.



²⁹ Office of Financial Empowerment City and County of San Francisco, Find a Safe Bank Account (2020), *archived at* <https://perma.cc/XK5U-FT2J>.

³⁰ Bank On San Francisco, Bank On San Francisco: Account Eligibility (2019), *archived at* <https://perma.cc/YV3C-K8L4>.

³¹ See Bank On San Francisco, Reaching the Unbanked in San Francisco, *archived at* <https://perma.cc/C3JH-AWFA>.

CONCLUSION

For the foregoing reasons, *amici* respectfully urge this Court to affirm the judgment of the Court of Appeals.

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