

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

STATE OF CALIFORNIA, *et al.*,

Defendants-Appellees.

No. 26-926

**On Appeal from the United States District Court
for the Central District of California**

No. 25-cv-10999

The Honorable Christina A. Snyder

**AMICUS CURIAE BRIEF OF CITIZENS FOR RESPONSIBILITY
AND ETHICS IN WASHINGTON IN SUPPORT OF
DEFENDANTS-APPELLEES' OPPOSITION TO
EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL**

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I. STATEMENT OF INTEREST OF AMICUS CURIAE¹

Citizens for Responsibility and Ethics in Washington (CREW) is a nonprofit, nonpartisan organization dedicated to promoting integrity, transparency, and accountability in government. CREW seeks to protect the rights of citizens to be fully informed about the activities of government officials and to ensure that those officials act lawfully and ethically. All parties have consented to the filing of this brief.

II. INTRODUCTION

CREW submits this brief as amicus curiae in support of the California defendants-appellees' opposition to the Federal Government's emergency motion for an injunction pending appeal to block enforcement of the visible identification requirement in Section 10 of the "No Vigilantes Act." This brief focuses on three of the four *Winter* factors for a preliminary injunction: whether the moving party has established that it is "likely to suffer irreparable harm in the absence of preliminary relief," whether "the balance of equities tips in [its] favor," and whether "an injunction is in the public interest." *Winter v. Nat. Res. Def. Council*,

¹ CREW affirms that no counsel for a party authored this brief in whole or in part, no party or counsel for a party contributed money that was intended to fund preparing or submitting this brief, and no person other than CREW or its counsel contributed money that was intended to fund the preparation or submission of this brief.

555 U.S. 7, 20 (2008). None of these factors militate in favor of granting the injunctive relief sought by the Federal Government.

As set forth below, a number of important and salutary public policies are served by the identification requirement in Section 10 of the No Vigilantes Act. There is a strong public interest in requiring ICE and CBP agents and other federal law enforcement officers to display identification that includes their agency and a name or badge number. This requirement promotes the safety of both federal law enforcement officers and the public, and increases the public's trust and confidence in those officers. It also creates greater transparency, accountability, and oversight. Identification decreases the likelihood of misconduct and abuse by federal law enforcement officers, such as the recent killings of Renee Good and Alex Pretti by ICE and CBP agents who were masked and not wearing identification badges. It also makes it less likely that criminals will continue to impersonate ICE agents in their commission of crimes. And the identification requirement prevents the chilling effect on lawful protest and the exercise of First Amendment rights that is created by the intimidating appearance of unidentified federal law enforcement agents. Secret police are commonplace in repressive regimes, not free and open societies.

As recognized by the District Court, there is no federal statute, regulation, or agency policy that requires federal law enforcement officers to conceal their

agency, name, or badge number while performing their duties. Order at 11-12.

The Court correctly found that the absence of any such federal requirement, coupled with “the historical tradition of law enforcement officers not masking their identities,” belies the Federal Government’s arguments that identification concealment is essential to federal law enforcement operations and ensuring agents’ safety. *Id.* at 16-17.

III. ARGUMENT

A. Legislative History of the No Vigilantes Act

The Report by the Senate Committee on Public Safety concerning the “No Vigilantes Act” contains the following explanation of the “Need for this Bill:”

We are facing an extraordinary moment in California. Masked individuals with no name identification, no uniforms, driving unmarked vehicles, and carrying firearms are taking our neighbors – both immigrants and American citizens – in broad daylight. When asked by members of the public to provide badge numbers, they refuse. We assume they are federal agents from Homeland Security or ICE. However, unless these individuals provide proper identification, we simply do not know.

When we receive reports of these individuals using excessive force without identification, there is no way to ensure oversight or accountability. Across the country, there have also been reports of criminals impersonating ICE officers, using threats and intimidation to target vulnerable communities. When immigration enforcement officers fails to identify themselves, they create opportunities for vigilantes to target communities. This lack of transparency fosters confusion, fear, and mistrust in communities across the state.

* * *

This is a common-sense proposal to prevent impersonating law enforcement officers, while ensuring basic oversight and accountability during enforcement actions.²

B. Requiring Identification Promotes Transparency, Deters Misconduct, and Ensures Accountability

As correctly recognized by the California Legislature, it is vitally important that law enforcement officers, whether they are federal, state, or local, be identifiable to the public. This common sense proposition was previously emphasized by the California Supreme Court in the context of its ruling that the names of California law enforcement officers must be disclosed to the press under the California Public Records Act:

We find no well-established social norm that recognizes a need to protect the identity of all peace officers. Peace officers operate in the public realm on a daily basis, and identify themselves to the members of the public with whom they deal. Indeed, uniformed peace officers are required to wear a badge or nameplate with the officer's name or identification number.

Commission on Peace Officer Standards & Training v. Superior Court, 42 Cal. 4th 278, 301 (2007) (“POST”) (emphasis added).

In *POST*, the Court also stated as follows:

² Senate Committee on Public Safety, Bill No. SB805, https://spsf.senate.ca.gov/system/files/2025-09/sb-805-analysis_0.pdf at p. 7.

The public's legitimate interest in the identity and activities of peace officers is even greater than its interest in those of the average public servant. "Law enforcement officers carry upon their shoulders the cloak of authority to enforce the laws of the state. In order to maintain trust in its police department, the public must be kept fully informed of the activities of its peace officers" ... The abuse of a patrolman's office can have great potentiality for social harm.

Id. at 297-98 (emphasis added).

Significantly, the Court expressly rejected the argument that "peace officers have legitimate concerns relating to annoyance, embarrassment, or oppression, as well as physical threats to themselves and their families, that outweigh any public interest in disclosure" of their identities. *Id.* at 299. In words equally applicable here, the Court stated:

The public's interest in the qualifications and conduct of peace officers is substantial, a circumstance that both diminishes and counterbalances any expectation officers may have that their names and employment as peace officers will be confidential. Peace officers "hold one of the most powerful positions in our society; our dependence on them is high and the potential for abuse of power is far from insignificant" ... A police officer "possesses both the authority and the ability to exercise force. Misuse of his authority can result in significant deprivation of constitutional rights and personal freedoms, not to mention bodily injury and financial loss."

Id. at 299-300 (citations omitted; emphasis added).

The Court concluded as follows:

The safety of peace officers and their families is most certainly a legitimate concern, but the Commission's

contention that peace officers in general would be threatened by the release of the information in question [their identities] is purely speculative. “*A mere assertion of possible endangerment*” is insufficient to justify nondisclosure...

Id. at 302 (citation omitted; emphasis added).

The Federal Government’s speculation that the concealment of identities by federal law enforcement officers is necessary to prevent “doxxing” and ensure their safety is greatly undermined by the facts that:

- No federal statute, regulation, or policy mandates the concealment of identities;
- Until last year, ICE agents and other federal law enforcement officers had very rarely, if ever, concealed their identities when performing their duties (except when necessary, such as undercover operations);
- Historically, state and local law enforcement officers around the country have not concealed their identities and, to the contrary, have generally been obligated to wear badges identifying themselves; and
- The Government did not present *any* data concerning the prevalence of doxxing before ICE and CBP agents began wearing masks and concealing their identities last year.

In sum, the discretionary practice by some ICE agents to conceal their identities is not necessary to protect them from violence and harassment by the

public, but instead make it much more likely that the agents themselves will commit harassing and violent acts, such as their use of lethal force in Minneapolis.

C. Historically, Federal Law Enforcement Officers and State and Local Police Have Not Concealed Their Identities

Scott Shuchart, a former high-ranking ICE official, stated in his Declaration that before last year, it was “extremely uncommon” for ICE agents and other federal law enforcement officers to engage in the discretionary practice of concealing their names, badge numbers, or agency affiliation. SA-15 at ¶ 11-12.

Under DHS regulations, immigration officers making an arrest must identify themselves “as soon as it is practical and safe to do so.” 8 C.F.R. § 287.8(c)(2)(iii). Also, in the aftermath of unidentified troops responding to protests of the killing of George Floyd, Congress enacted legislation requiring federal law enforcement personnel or members of the National Guard who respond to a civil disturbance to “visibly display” their “name or other individual identifier” and the name of their agency. 10 U.S.C. § 723(a).

As explained in the Expert Report of Dr. Stuart Schrader, there are certain “key traditions of policing in the United States” that are “widely accepted and often venerated.” SA-23, 28 at ¶¶ 6, 17. Among them, “[p]olice are distinctive from other civilians or government officials, as indicated by their badge, uniform, and weapon. Police are public and accountable to the public, and they do not operate primarily in secret or clandestine ways, except for tactical purposes.” SA-

49 at ¶ 57. By contrast, it is commonplace for authoritarian and undemocratic regimes to utilize anonymous “secret police” and militaries to suppress dissent, instill fear, and protect the regime. SA-38-41 at ¶¶ 38-42.

Stanford O’Neill Franklin, who has over 30 years of law enforcement experience, submitted a Declaration stating as follows:

[T]ransparency is vital to establishing and maintaining public trust in law enforcement. Clear identification of officers during enforcement activities assures the public that government actions are lawful, justified, and subject to accountability.

* * *

Masking agents or concealing their identities during public enforcement creates an atmosphere of secrecy that undermines trust. When government actors conceal their identities in public forums, it invites suspicion, fear, and doubt among the community.

* * *

Based on my law enforcement experience, I am aware that secrecy in non-covert operations can increase the risk of misconduct or abuse of authority ...

SA-61-62 at ¶¶ 9, 12, 14.

In *McKenzie v. Lamb*, 738 F.2d 1005, 1010-11 (9th Cir. 1984), this Court reversed the entry of summary judgment for the defendant police officers on plaintiffs’ claim of an excessive use of force, and emphasized that the officers “refused to identify themselves as police officers” and refused plaintiffs’ request “to see official identification.” Other cases in which this Court has found police

officers' refusal to identify themselves relevant to a claim of excessive force or constitutional law violations include *Nehad v. Browder*, 929 F.3d 1125, 1138 (9th Cir. 2019); *Vlasak v. Las Vegas Metro. Police Dep't*, 213 F.App'x 512, 514 (9th Cir. 2006) (unpublished disposition); *Bluestein v. Groover*, 940 F.2d 667, 1991 WL 136179, at *2 (9th Cir. 1991) (unpublished disposition); and *Kiles v. City of N. Las Vegas*, 2006 WL 1967469, at *2, 4 (D. Nev. July 12, 2006), *aff'd*, 276 F.App'x 620 (9th Cir. 2008).

When ICE and CBP agents conceal their identities, it is far easier for them to avoid a *Bivens* action for civil liability, OIG investigations, and internal agency discipline for the use of excessive force or other misconduct. It also makes it much more difficult to establish a Federal Tort Claims Act claim and to conduct discovery in such a case. As explained in the Shuchart Declaration:

Law enforcement oversight depends on investigators after the fact being able to discover which officers or agents were involved in potential misconduct. A visible identifier – ideally a name tag, or when necessary, an identification number – is critical to that inquiry. Only by recording the specifics of the personnel with whom they interact can members of the public file meaningful, actionable reports or complaints about improper conduct by officers. Investigating an excessive force or unlawful arrest complaint at DHS, for example, would be effectively impossible without a name or numerical identifier that would allow an oversight office to identify the personnel involved in the incident.

SA-16-17 at ¶ 15. *See also* Franklin Declaration, SA-63 at ¶ 20 (“visible identification and transparency serve as critical checks on law enforcement behavior”).

Anonymity imbues federal law enforcement agents with a sense of impunity and thus makes misconduct far more likely. Enforcement of the identification requirement is in the public interest, and the balance of equities weighs against entry of the injunction pending appeal.

D. Identification Concealment Creates Intimidation and Fear In The Community and Chills the Exercise of First Amendment Rights

As stated above, the use of secret police to intimidate and suppress dissent is a hallmark of an authoritarian regime. Allowing ICE and CBP agents to conceal their identities creates an atmosphere of fear and chills free speech. It also impedes the ability of the press to identify and report on agents who engage in misconduct, violate constitutional rights, and abuse the great power they possess.

In *Molina v. United States Dept of Homeland Sec.*, 2025 U.S. Dist. LEXIS 234930, at *130-131 (D.D.C. Dec. 2, 2025), the court stressed the importance of “transparency” when ICE agents make arrests. It declared that just as masking by agents “terrorize[s] Americans into quiescence,” “[t]he same is true of agents making arrests without identifying themselves.” *Id.*

State action which chills expression is a quintessential First Amendment issue. *See Gibson v. United States*, 781 F.2d 1334, 1338 (9th Cir. 1986).

“Accordingly, a police officer violates a person’s First Amendment rights if his actions ‘would chill or silence a person of ordinary firmness from future First Amendment activities.’” *Aja v. City of Riverside*, 2025 U.S. Dist. LEXIS 157015, at *21 (C.D. Cal. Aug. 11, 2025), quoting *Mendocino Env’tl Ctr. v. Mendocino Cnty.*, 192 F.3d 1283, 1300-01 (9th Cir. 1999). *Accord Anti Police-Terror Project v. City of Oakland*, 477 F.Supp.3d 1066, 1088 (N.D. Cal. 2020) (tactics used by police in George Floyd protests “had a chilling effect on the political speech of the protesters and likely deterred some of them from engaging in further protests.”).

ICE agents’ concealment of their identities makes it more likely that they will engage in unconstitutional conduct, while at the same time making it less likely that those opposed to the Administration’s immigration policies will exercise their own constitutional right to engage in peaceful protest.

E. Identification Concealment By Federal Law Enforcement Agents Has Facilitated Crimes by ICE Impersonators

As set forth above, the legislative history of the No Vigilantes Act reflects the Legislature’s well-founded concern that ICE agents’ concealment of their identities was leading to impersonations of them by criminals. This concern is shared by the FBI.

On October 17, 2025, the FBI disseminated a Public Safety Awareness Report entitled, “Criminal Actors Impersonate ICE Agents to Commit Violent

Crime.”³ In that Report, the FBI informed “state, local, and federal law enforcement (LE) partners about criminal actors impersonating ICE agents to commit violent crime.” It stated that “[t]hese criminal impersonations make it difficult for the community to distinguish between legitimate officers conducting lawful law enforcement action and imposters engaging in criminal activity, which damages trust between the local community and law enforcement officers.” The Report identified various instances where such impersonations had taken place. To combat the ICE impersonation schemes, the FBI urged that “law enforcement personnel adequately identify themselves during operations and cooperate with individuals who request further verification.”

One month later, on November 20, 2025, the U.S. Marshals Service issued “public guidance on how citizens can verify whether an individual is a legitimate law enforcement officer.”⁴ Under the heading “Proper Identification,” it stressed that “[r]eal officers will identify themselves [and] state their agency.” It noted that

³ Public Safety Awareness Report, <https://s3.documentcloud.org/documents/26364028/20251016-fbi-alert-re-ice-impersonators.pdf>

⁴ Real Officers have Nothing to Hide: If In Doubt, Ask to Verify, <https://www.usmarshals.gov/news/press-release/real-officers-have-nothing-hide-if-doubt-ask-verify#:~:text=ensure%20accountability%20and%20build%20safer,are%20currently%20operating%20in%20Memphis.>

such identification by officers helps “to ensure accountability and build safer communities through transparency...”

The disturbing reality that criminals are impersonating unidentified ICE agents provides yet additional support for the District Court’s sensible conclusion that “enforcing the challenged Acts against federal law enforcement officers is in the public interest.” Order at 28.

IV. CONCLUSION

For the reasons set forth above and in the defendants-appellees' opposition papers, CREW respectfully submits that the emergency motion for an injunction pending appeal should be denied.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rules of Appellate Procedure 27(d)(2)(A) and 29(a)(5) and Local Rules 27-1(d) and 32-3(2) because it contains 2,775 words. The brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Microsoft Word in Times New Roman 14-point font.

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CERTIFICATE OF SERVICE

I certify that on February 26, 2026, I electronically filed the foregoing Brief with the Clerk of the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

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