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IN THE
INDIANA COURT OF APPEALS

Appellate Case No. 20A-MI-2317

CITY OF GARY,

Appellant,

v.

JEFF NICHOLSON, et al.,

Appellees.

STATE OF INDIANA,

Intervenor.

On Appeal from Lake County Superior Court, Civil Division

Cause No. 45D05-1802-MI-000014

Hon. Stephen E. Scheele, Judge

BRIEF OF APPELLANT

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INTRODUCTION

This suit arises from a challenge to a public-safety measure adopted by the City of Gary in 2017. The measure, known locally as the "Welcoming City" Ordinance, aims to ensure that all residents feel comfortable communicating and cooperating with local law-enforcement officials and participating in city services. To achieve that goal, the Ordinance directs City officials to treat all residents equally, regardless of their immigration status. The City adopted the Ordinance—which also seeks to prioritize local policing concerns and preserve the City's limited resources—based on the notion that community safety ultimately requires trust in community law-enforcement institutions.

Plaintiffs do not claim that they have been injured by the Ordinance in any way; indeed, half of them do not even live in the City, and all of them concede that they have not been harmed by its enactment or enforcement. Nor have Plaintiffs identified anyone else who has been harmed by the Ordinance. Rather, Plaintiffs' case rests on a purely abstract harm: they assert that the Ordinance conflicts with state law. Under their theory, Indiana law bars municipalities from deciding how to use their *own* resources in responding to federal requests for voluntary assistance with federal immigration-law enforcement.

As explained below, state law imposes no such dictate. Plaintiffs' theory in this case—that state law forbids *any* local policy that could conceivably reduce a municipality's participation in federal immigration enforcement—rests on a widely-rejected reading of the relevant statutory language. Moreover, Plaintiffs' reading of Indiana law would also contravene Indiana's Home Rule Act by wresting control of quintessentially local matters—like public safety and budgeting—away from local communities. And, perhaps most glaringly, Plaintiffs have offered no limiting principle for their sweeping interpretation of state law, thereby inviting challenges to a host of traditional local policies and resource-allocation decisions.

The trial court declined to confront any of these problems with Plaintiffs' theory in granting summary judgment to them. Instead, after over three years of litigation—and more than two hundred pages of merits briefing from Plaintiffs, the City, and the State of Indiana as intervenor—the court issued a two-page order ending the case. The order contained no explanation of the court's reasoning and cited no precedents from this (or any other) court. Indeed, the order's entire summary-judgment ruling consists of a single sentence directing the City to comply with the relevant state law "and/or other applicable state and federal law." Appellant's

Appendix (App. Appx.) 3.[1] Because that order rests on a misreading of state law and is too vague to be enforceable anyway, the City respectfully asks that it be reversed.

STATEMENT OF THE ISSUES

1. Whether the trial court's injunction is unenforceable because it fails to define the conduct that it prohibits.

2. Whether the City of Gary's "Welcoming City" Ordinance violates Indiana Code § 5-2-18.2.

STATEMENT OF THE CASE

This suit was originally filed in Lake County Superior Court by Jeff Nicholson, Douglas Grimes, Greg Serbon, and Cheree Calabro in 2017. Plaintiffs' complaint alleged that the City of Gary's "Welcoming City" Ordinance, enacted earlier that same year, violated Indiana Code § 5-2-18.2. App. Appx. 4–50 (Complaint). The State of Indiana intervened in support of Plaintiffs in April 2018. App. Appx. 116 (Order Granting Leave To Intervene).

On November 16, 2020, the trial court issued an order granting summary judgment to Plaintiffs and enjoining the City from enforcing

[1] All citations to the Appellant's Appendix in this brief are citations to Volume II of the Appendix.

certain provisions of the Ordinance. App. Appx. 2–3 (Summary Judgment Order). The City filed this direct appeal from that order in December 2020.

STATEMENT OF FACTS

In the summer of 2017, the City of Gary enacted Ordinance 9100, colloquially known as the "Welcoming City" Ordinance. App. Appx. 51–58 (Ordinance). The Ordinance was conceived to promote the City's vision of a safe and inclusive community—one in which all residents feel encouraged to cooperate with local law-enforcement authorities and participate in local services to advance the public welfare. App. Appx. 63–64 (Freeman-Wilson Affidavit). To that end, the Ordinance directs City agencies and officials, including police and social-service providers, to treat everyone fairly without regard to their immigration status. The Ordinance, which the City adopted pursuant to its broad home-rule authority, rests on a simple premise: that local officials are in the best position to decide how to utilize local resources to ensure safety within their own communities.

In adopting the Ordinance, the City sought to strike a balance between safeguarding its own policing priorities and supporting the federal government's immigration-enforcement efforts. App. Appx. 63–64.

Thus, the Ordinance requires that City agencies exchange information with federal authorities regarding individuals' "citizenship or immigration status," App. Appx. 57 (§ 26.59), but directs those agencies not to expend resources on actively collecting such information, App. Appx. 56 (§ 26-57). Similarly, the Ordinance permits City agencies to transfer individuals into the custody of Immigration and Customs Enforcement (ICE) pursuant to a criminal warrant, App. Appx. 56 (§ 26-55(f)), but not pursuant to a mere administrative warrant, App. Appx. 55 (§ 26-55(b)). In short, the Ordinance reflected the City's efforts to carefully delineate the parameters of its role within the Nation's broader immigration-enforcement regime.

A few months after the Ordinance was adopted, Plaintiffs filed this lawsuit challenging its validity. App. Appx. 4–50 (Complaint). They did not allege any concrete injuries stemming from the Ordinance. Instead, they invoked Indiana's "public standing" doctrine to assert that the Ordinance violated a 2011 state law known as "Chapter 18.2." App. Appx. 5–6. That law, which is codified at Indiana Code § 5-2-18.2,[2] contains two substantive provisions relevant to this case:

[2] The full text of Chapter 18.2 is included in an addendum to this brief.

- **Section 3**, which bars municipalities from adopting policies that prohibit or restrict the maintenance or sharing of individuals' citizenship or immigration status with federal, state, or other local governments, Ind. Code § 5-2-18.2-3; and
- **Section 4**, which bars municipalities from limiting or restricting the enforcement of federal immigration laws, *id.* § 5-2-18.2-4.[3]

Chapter 18.2 also contains a handful of procedural provisions, one of which creates a cause of action for private citizens seeking to compel compliance with the statute's substantive provisions. Ind. Code § 5-2-18.2-5. The statute also authorizes a court to issue injunctive relief if a municipality "knowingly or intentionally" violates one of the statute's substantive provisions. *Id.* § 5-2-18.2-6.

The parties filed cross-motions for summary judgment, which the trial court heard in October 2020. Five weeks later, the court issued a two-page order granting summary judgment to Plaintiffs and denying the

[3] Chapter 18.2 governs not only municipalities, but all state and local governmental entities, as well as postsecondary educational institutions. *See* Ind. Code § 5-2-18.2-1; *id.* § 5-22-2-1. Because the present case focuses solely on the Gary Ordinance, this brief focuses on the application of Chapter 18.2's prohibitions to municipalities.

City's cross-motion for summary judgment.[4] App. Appx. 2–3. As noted, the court's order did not provide any account of the reasoning or authorities underlying its ruling. Instead, the entirety of its summary-judgment ruling consisted of a single sentence that stated as follows:

> The Plaintiff's [sic] Summary-Judgment Motion as filed on 12/27/2017 is GRANTED as to its claims against the sole remaining party-defendant, City of Gary, Indiana, such that the City of Gary, Indiana is hereby prohibited from enforcing those provisions of its City of Gary Ordinance 9100 Section 26-52, Section 26-55, Section 26-58(c) and Section 26.59 that are violative of Indiana Code §§ 5-2-18.2-3, 5-2-18.2-4 and/or other applicable state or federal law.

App. Appx. 3. The City filed this timely appeal the following month.

SUMMARY OF ARGUMENT

Indiana's Home Rule Act grants municipalities expansive authority for the effective management of their local affairs. Under the Home Rule Act, any doubts about whether state law precludes a community from regulating as it sees fit must be construed so as not to encroach on those local efforts. This principle applies with particular force to matters concerning public safety and the operation of local institutions.

The City of Gary relied on its broad home-rule authority in passing the Ordinance at issue in this case. The trial court's order enjoining

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[4] The order also dismissed all of Plaintiffs' claims against the Gary Common Council.

aspects of that Ordinance under Chapter 18.2 must be reversed for several reasons:

I. The trial court's injunction is too vague to be enforceable. Among its other deficiencies, the one-sentence injunction fails to specify: which portions of the challenged Ordinance provisions actually violate Chapter 18.2; which sections of Chapter 18.2—"and/or other applicable state or federal law," App. Appx. 3—the challenged Ordinance provisions violate; and how the City should alter its conduct in response to the injunction, *if at all*. Accordingly, the trial court's order—which does nothing more than instruct the City, in generic terms, to "obey the law"—violates a longstanding principle of equity: that injunctions must specify exactly what they prohibit. The injunction would have to be vacated on that basis alone, even if the Ordinance actually violated Chapter 18.2 (which, as explained below, it does not).

II. The Ordinance does not violate section 3 of Chapter 18.2. Section 3 prohibits cities from restricting the exchange of certain information with other governmental authorities, including the federal government. In particular, the statute bars local restrictions on sharing any individual's "citizenship or immigration status" information. Ind. Code § 5-2-18.2-3. Because § 26.59 of the Ordinance explicitly authorizes

City officials to share "citizenship or immigration status" information with outside authorities (including the federal government), App. Appx. 57, it does not violate section 3.

Plaintiffs' claim that the Ordinance violates section 3 rests on a strained reading of the statute's plain language. Rather than give the phrase "citizenship or immigration status" its ordinary meaning, Plaintiffs would read that phrase expansively to encompass any and all types of information that federal immigration officials might find useful. Numerous federal courts have rejected that reading of nearly identical language in a federal statute—the same federal statute on which section 3 itself was modeled. These courts have construed the term "information regarding . . . citizenship or immigration status" to refer only to an individual's country of citizenship and legal status in the United States.

In departing from that plain-text reading of section 3's language, Plaintiffs' position not only contravenes federal case law, but also conflicts with Indiana's Home Rule Act. As noted, that Act requires state statutes to be read narrowly, whenever possible, to avoid impinging on local governance decisions. Plaintiffs' proposed reading of section 3 does precisely the opposite of what the Home Rule Act requires and must be rejected.

III. The Ordinance also comports with section 4 of Chapter 18.2. Section 4 bars municipalities from "limit[ing] or restrict[ing] the enforcement of federal immigration laws to less than the full extent permitted by federal law." Ind. Code § 5-2-18.2-4. Plaintiffs construe this language to require that Indiana cities affirmatively re-direct their own local resources to support the federal government's immigration-enforcement agenda. But section 4 requires no such thing. By its plain terms, the statute aims to prevent localities from actively seeking to "limit or restrict" the *federal* government's efforts to enforce *federal* immigration law—it does not conscript localities into that effort. Indeed, local governments have no freestanding authority to enforce "federal immigration laws." Section 4, therefore, cannot be read to require localities to exercise authority that they generally do not have.

Chapter 18.2's legislative history confirms that section 4—contrary to Plaintiffs' reading of it—was never intended to impose sweeping constraints on municipalities' traditional power to control their own resources and public-safety priorities. The General Assembly, in fact, deliberately removed provisions from the final bill that would have explicitly directed localities to participate in certain federal immigration enforcement activities. The absence of such language in the final

legislation casts significant doubt on Plaintiffs' proposed reading of section 4. And the Home Rule Act only further undermines Plaintiffs' strained effort to find a conflict between the statute and the Ordinance. As explained further below, no such conflict exists because the Ordinance does not regulate *federal* immigration-enforcement efforts.

STANDARD OF REVIEW

This Court reviews a trial court's order granting summary judgment de novo. *FLM, LLC v. Cincinnati Ins. Co.*, 973 N.E.2d 1167, 1173 (Ind. Ct. App. 2012). A trial court's issuance of a permanent injunction is reviewed for abuse of discretion. *Lesh v. Chandler*, 944 N.E.2d 942, 952 (Ind. Ct. App. 2011).

ARGUMENT

I. The trial court's injunction is unenforceable because it fails to define the conduct that it prohibits.

The Indiana Supreme Court has long recognized that injunctions "must be clear and certain so that there can be no question as to what the person is restrained from doing, and no question exists when he violates such an order." *Martinal v. Lake O' the Woods Club, Inc.*, 248 Ind. 252, 254; 225 N.E.2d 183, 185 (Ind. 1967). That rule derives from a common-sense principle of equity: namely, that "defendants ought to be informed,

as accurately as the case permits, what they are forbidden to do." *Swift & Co. v. United States*, 196 U.S. 375, 401 (1905) (Holmes, J.).

The trial court's order in the present case fails to comport with that basic principle. The order states that the City of Gary is "hereby prohibited from enforcing those provisions of its City of Gary Ordinance 9100 Section 26-52, Section 26-55, Section 26-58(c) and Section 26.59 that are violative of Indiana Code §§ 5-2-18.2-3, 5-2-18.2-4 and/or other applicable state or federal law." App. Appx. 3. But the order conspicuously fails to identify *which* provisions of the cited Ordinance sections actually violate Chapter 18.2, or *how* they violate Chapter 18.2—let alone how they violate any "other applicable state or federal law." App. Appx. 3. More importantly, the order fails to identify what *specific actions* it actually forbids City officials from taking (if any).

Those omissions render the scope and meaning of the trial court's order entirely ambiguous. For instance, the order purports to prohibit the City from enforcing § 26.59 of the Ordinance. But that provision merely implements a requirement of federal immigration law. Section 26.59's states: "Nothing in this chapter prohibits any municipal agency from sending to, or receiving from, any . . . federal agency, information regarding an individual's citizenship or immigration status." App. Appx.

57. That language mirrors 8 U.S.C. § 1373(a), which states that municipalities "may not prohibit . . . any government entity or official from sending to, or receiving from, [federal immigration agencies] information regarding the citizenship or immigration status, lawful or unlawful, of any individual." The trial court's order never explains how the City can refrain from enforcing section 26.59 while still complying with a nearly identical federal statute. Instead, the order simply instructs the City—without comment or elaboration—to comply with Chapter 18.2.

The trial court's order, in short, "does little more than enjoin the defendant to obey the law." *United States v. P.H. Glatfelter Co.*, 768 F.3d 662, 682 (7th Cir. 2014) (vacating injunction as improper). As numerous courts have recognized, "[a]n injunction that does no more than order a defeated litigant to obey the law raises several concerns." *EEOC v. AutoZone, Inc.*, 707 F.3d 824, 841 (7th Cir. 2013). Among other concerns, such injunctions "depart[ ] from the traditional equitable principle that injunctions should prohibit no more than the violation established." *Id.* And obey-the-law injunctions are also typically too vague to permit meaningful enforcement. *See Uservo, Inc. v. Selking*, 217 Ind. 567; 28 N.E.2d 61, 63 (Ind. 1940) ("[A]n indefinite, uncertain or ambiguous decree of a court cannot be inforced [sic] in a contempt proceeding.").

Moreover, as relevant here, obey-the-law injunctions frustrate appellate review. Indeed, "[u]nless the trial court carefully frames its orders of injunctive relief, it is impossible for an appellate tribunal to know precisely what it is reviewing." *Schmidt v. Lessard*, 414 U.S. 473, 477 (1974). This case illustrates that problem concretely. Plaintiffs have alleged that multiple provisions of the City's Ordinance violate multiple provisions of Chapter 18.2 in myriad ways. Yet, the trial court's order makes no attempt to specify which elements of the Ordinance—or which types of enforcement actions—might actually run afoul of Chapter 18.2. As a result, this Court cannot ascertain the scope of the injunction, much less evaluate the injunction's validity as a matter of law.

The imprecision of obey-the-law injunctions also raise serious due-process concerns by depriving the defendant of notice of what exactly is prohibited. *See generally H.K. Porter Co. v. Nat'l Friction Prod. Corp.*, 568 F.2d 24, 27 (7th Cir. 1977) ("Because of the risks of contempt proceedings, civil or criminal, paramount interests of liberty and due process make it indispensable for the chancellor or his surrogate to speak clearly, explicitly, and specifically if violation of his direction is to subject a litigant . . . to coercive or penal measures."). In this case, the City of Gary has no way of knowing how it must alter its conduct in order to avoid contempt

sanctions. Indeed, it is not even clear from the trial court's order that the City would need to alter its conduct at all. Neither the trial court nor Plaintiffs have identified a single action that City officials have actually taken in the past that would now be prohibited by the injunction.[5] The dearth of any such concrete examples of past Chapter 18.2 violations—either by Gary or any other Indiana municipality—only exacerbates the difficulty of trying to divine the meaning of the trial court's one-sentence injunction.

So, too, does Plaintiffs' failure to identify any concrete harms stemming from the Ordinance. Ordinarily, a permanent injunction would be "limited to preclude only activities which are injuriously interfering with the rights of the party in whose favor the injunction is granted." *Blair v. Anderson*, 570 N.E.2d 1337, 1340 (Ind. Ct. App. 1991) (vacating overbroad injunction). But the absence of any tangible injuries here makes it impossible to discern what activities the trial court actually intended to enjoin.

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[5] Notably, Plaintiffs cannot even point to a single occasion when the City has actually denied a federal immigration agency's request for local assistance. And the City's police chief explicitly attested in his affidavit that, in his two decades on the police force, "Immigration and Customs Enforcement (ICE) has never contacted the Gary Police Department for assistance." App. Appx. 62 (Allen Affidavit); *see also id.* ("I am not aware of any ICE detainer requests issued to Gary.").

Given the injunction's uncertain scope and lack of clear guidance to the City, this Court should vacate the trial court's order. Even if this Court ultimately concludes that certain portions of the Ordinance are susceptible to attack under Chapter 18.2—and, as explained below, it should not—it would still need to vacate the current injunction and direct the trial court to define the forbidden conduct in "clear and certain" terms. *Martinal*, 248 Ind. at 2254; 225 N.E.2d at 185.

II. The Ordinance does not violate section 3 of Chapter 18.2.

Plaintiffs allege that the Ordinance violates section 3 of Chapter 18.2. Section 3 generally prohibits municipalities from restricting the exchange of certain information concerning the "citizenship or immigration status" of any individual with outside authorities, including the federal government. Ind. Code § 5-2-18.2-3. As explained below, the Ordinance does not impermissibly restrict the exchange of that information. To the contrary, it *expressly authorizes* City officials to share that information in all of the ways that section 3 contemplates.

A. The Ordinance expressly authorizes the type of information-sharing described in section 3.

Section 3 of Chapter 18.2 provides that municipalities may not restrict their employees from "taking [certain] actions with regard to

information of the citizenship or immigration status, lawful or unlawful, of an individual." Ind. Code § 5-2-18.2-3. Specifically, section 3 prohibits municipalities from imposing restrictions on: "(1) Communicating or cooperating with federal officials[;] (2) Sending to or receiving information from the United States Department of Homeland Security[;] (3) Maintaining information[;] [and] (4) Exchanging information with another federal, state, or local government entity." *Id.*

The Ordinance does not restrict any of these activities. In fact, as previously noted, § 26.59 of the Ordinance explicitly provides: "Nothing in this chapter prohibits any municipal agency from sending to, or receiving from, any local, state, [or] federal agency, information regarding an individual's citizenship or immigration status." Thus, the Ordinance expressly permits the exchange of "information regarding an individual's citizenship or immigration status"—the exact same type of information on which section 3 itself focuses. *See* Ind. Code § 5-2-18.2-3 ("information of the citizenship or immigration status, lawful or unlawful, of an individual").

The fact that § 26.59 of the Ordinance and section 3 of Chapter 18.2 both apply to the same category of information is hardly surprising. After all, both provisions borrow their language from the same federal statute:

namely, 8 U.S.C. § 1373.[6] As noted, that statute generally prohibits municipalities (and other governmental entities) from imposing certain restrictions on the exchange of "information regarding the citizenship or immigration status, lawful or unlawful, of any individual." 8 U.S.C. § 1373(a).[7] Just as § 26.59 of the Ordinance ensures that City officials comply with § 1373's requirements, it also ensures that they comply with the virtually indistinguishable requirements of section 3.

B. Plaintiffs' challenge rests on an overbroad and atextual reading of the phrase "information of . . . citizenship or immigration status" in section 3.

Despite § 26.59's clear language authorizing the exchange of "citizenship or immigration status" information, Plaintiffs insist that the Ordinance restricts the City's information-sharing practices in violation of

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[6] The text of § 1373 is included in full in an addendum to this brief.

[7] Section 1373(b) provides, *inter alia*, that municipalities may not prohibit:

> doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:
>
> (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.
>
> (2) Maintaining such information.
>
> (3) Exchanging such information with any other Federal, State, or local government entity.

section 3. Their clam rests on a strained reading of section 3's use of the phrase "information of . . . citizenship or immigration status." Rather than give that phrase its plain and ordinary meaning, Plaintiffs (joined by the State as intervenor) would construe that phrase to encompass any and all information that might be "useful" to federal immigration authorities. Pls.' Summary-Judgment Br. 26. Relying on that overbroad reading, they argue that section 3 requires the City to collect and exchange any information—not just "citizenship or immigration status"—that federal immigration authorities might ever want.

Plaintiffs' reading of section 3 is untenable. Numerous federal courts have rejected Plaintiffs' sweeping reading of the phrase "citizenship or immigration status" when construing the nearly identical language in 8 U.S.C. § 1373.[8] Instead, these courts have consistently construed the term more narrowly to mean: "an individual's category of presence in the United States—e.g., undocumented, refugee, lawful permanent resident, U.S. citizen, etc.—and whether or not an individual is a U.S. citizen, and if not, of what country." *City of Philadelphia v. Sessions*, 309 F. Supp. 3d 289,

[8] "[W]hen a legislature adopts language from another jurisdiction, it presumably also adopts the judicial interpretation of that language." *Brownsburg Area Patrons Affecting Change v. Baldwin*, 714 N.E.2d 135, 140 (Ind. 1999).

333 (E.D. Pa. 2018), *aff'd in part, vacated in part on other grounds*, 916 F.3d 276 (3d Cir. 2019).

In coalescing around that definition, these courts have relied on the plain and unambiguous meaning of the words "citizenship or immigration status." *See, e.g.*, *United States v. California (California II)*, 921 F.3d 865, 890 (9th Cir. 2019) ("[T]he phrase 'information regarding the citizenship or immigration status, lawful or unlawful, of any individual' is naturally understood as a reference to a person's legal classification under federal law . . . ."); *County of Ocean v. Grewal*, No. CV 19-18083 (FLW), 2020 WL 4345317, at *13 (D.N.J. July 29, 2020) ("[T]he Court finds that sections 1373(a) and 1644 apply only to information specifically regarding an individual's immigration or citizenship status, i.e., whether the individual is a U.S. citizen, green card holder, or holds some other legal or unlawful status in the United States[.]").

For that reason, these courts have roundly rejected efforts to construe "citizenship or immigration status" to include the types of information that Plaintiffs would read into that phrase—information as far afield as home addresses, contact information for friends or relatives, and release dates from custody. *See, e.g.*, *Steinle v. City & Cty. of San Francisco*, 919 F.3d 1154, 1164 (9th Cir. 2019) ("[N]o plausible reading of

'information regarding' 'immigration status' encompasses the state or local release date of an inmate who is an alien."). As one district court explained, a "contrary interpretation would know no bounds." *United States v. California (California I)*, 314 F. Supp. 3d 1077, 1102–03 (E.D. Cal. 2018). "The phrase could conceivably mean 'everything in a person's life.' . . . While an immigrant's release date or home address might assist immigration enforcement officers in their endeavors, neither of these pieces of information ha[s] any bearing on one's immigration or citizenship status." *Id.* After all, "the range of facts that might have some connection to federal removability or detention decisions is extraordinarily broad." *California II*, 921 F.3d at 892 n.17.

In arguing to the contrary, Plaintiffs rely primarily on the legislative history of § 1373 and 8 U.S.C. § 1644 (a provision materially identical to § 1373). *See, e.g.*, App. Appx. 12 (Complaint). In particular, Plaintiffs cite dicta from the Second Circuit's decision in *City of New York v. United States*, 179 F.3d 29 (2d Cir. 1999), which described § 1373 broadly in the course of deciding that case. But the court in that case had no reason to define the range of information covered by § 1373. The case arose from a declaratory-judgment action filed by New York City challenging § 1373 under the Tenth Amendment's anticommandeering principle and arguing

that a City policy restricting information-sharing did not violate § 1373. *See City of New York*, 179 F.3d at 33. Although the Second Circuit rejected New York's constitutional argument, its holding was limited to deciding that § 1373 does not facially violate the Constitution. *Id.* at 35, 37. The decision did not purport to address the ways in which New York City's policy did—or did not—conflict with § 1373 and, thus, had no reason to definitively address the statute's reach. *Id.* The court's brief references to isolated portions of § 1373's legislative history (in the "Background" section of its opinion, no less) cannot change the plain meaning of § 1373's statutory text—much less the plain meaning of section 3's text. *See Day v. State*, 57 N.E.3d 809, 812 (Ind. 2016) ("If [a statute's] language is clear and unambiguous, we simply apply its plain and ordinary meaning . . . .").

C. Section 3 does not impose any duty on municipalities to "collect" information.

Like § 1373, section 3 of Chapter 18.2 does not create any affirmative obligation to collect (or assist in collecting) citizenship or immigration status information. Rather, the statute's plain language applies only to the maintenance and exchange of information already in a municipality's possession. *See* Ind. Code § 5-2-18.2-3 (referencing the "[s]ending," "receiving," "[m]aintaining," and "[e]xchanging" of information). Nevertheless, Plaintiffs and the State would construe

section 3 to impose a duty on municipalities to actively collect "citizenship or immigration status" information. Their reading of the statute fails for several reasons.

"If [a statute's] language is clear and unambiguous, [courts] simply apply its plain and ordinary meaning, heeding both what it 'does say' and what it 'does not say.'" *Day v. State*, 57 N.E.3d 809, 812 (Ind. 2016) (citation omitted). Nothing in the text of section 3 mandates the collection of citizenship or immigration status information. Rather, the statute bans policies that restrict "communicating or cooperating with federal officials" and "sending to or receiving," "maintaining," or "exchanging" citizenship or immigration status information. Ind. Code § 5-2-18.2-3(1)–(4). Each of these verbs describes an action to be taken with respect to information already in the municipality's possession. Notably absent are verbs like "investigating," "gathering," or "inquiring," each of which would reflect a duty to acquire information in the first instance.

Nor does the phrase "cooperating with federal officials" mandate the collection of information that may be useful to those officials. Under the principle of *noscitur a sociis*, "cooperating" must be understood to bear a meaning similar to its surrounding terms in section 3. *See Day*, 57 N.E.3d at 814 ("[U]nder *noscitur a sociis,* if a statute contains a list, each word in

that list should be understood in the same general sense." (internal quotation marks and footnote omitted)). Interpreting "cooperating with federal officials" to encompass the distinct act of acquiring information—conduct suggested nowhere else in section 3—would strain the statute's text by placing that phrase severely out of step with its neighboring provisions.

The difference between exchanging information and collecting information is not trivial. The Department of Homeland Security's (DHS) guidance on state and local cooperation specifically highlights the "important distinction between communication of alien-status information between a state or local government and DHS, and the original acquisition of information by the state or local officer from an individual." App. Appx. 79 (DHS Guidance on State and Local Governments' Assistance in Immigration Enforcement and Related Matters) (explaining that § 1373 does not authorize state or local officers to "investigate an individual's immigration status so as to acquire information that might be communicated to DHS," which must instead "derive from another source"), *available at* https://perma.cc/4W6C-2FG6. The Department of Justice has similarly highlighted the distinction in observing that § 1373 "does not impose on states and localities the affirmative obligation to collect

information from private individuals regarding their immigration status." App. Appx. 83 (Office of Justice Programs Guidance Regarding Compliance with 8 U.S.C. § 1373), *available at* https://perma.cc/8R8M-XTL2. The lack of any information-collection mandate in § 1373—the statute on which section 3 was modeled—only casts further doubt on Plaintiffs' reading of section 3.

Finally, the legislative context surrounding Chapter 18.2 reaffirms that section 3 focuses solely on information already in a municipality's possession. *See Siwinski v. Town of Ogden Dunes*, 949 N.E.2d 825, 828 (Ind. 2011) ("[T]o help determine the framers' intent, we must consider the statute in its entirety, and we must construe [any] ambiguity to be consistent with the entirety of the enactment."). Indiana Code § 11-10-1-2, which was enacted in 2011 as part of the same legislation as Chapter 18.2, requires the Indiana Department of Correction to provide federal immigration authorities with "any information regarding [a] committed criminal offender that: (1) is requested by [DHS]; and (2) is in the department's possession *or the department is able to obtain*." Ind. Code § 11-10-1-2(d) (emphasis added). That language plainly contemplates that the Department will communicate information beyond what it currently possesses. The absence of any analogous language in section 3 suggests

that the General Assembly never intended to impose an affirmative information-collection mandate under that section.

For all of these reasons, section 3 is best read to prevent municipalities from restricting the sharing or maintenance of individuals' citizenship or immigration status information already in the municipality's possession. It does not establish a freestanding duty to actively gather that information.

D. The Home Rule Act requires any ambiguities in section 3 to be resolved in the City's favor.

The Indiana Home Rule Act declares it to be "[t]he policy of the state . . . to grant units all the powers that they need for the effective operation of government as to local affairs." Ind. Code § 36-1-3-2. The Act expressly abrogates the State's previous regime, under which local governments possessed only those powers that had been expressly granted to them by the General Assembly. *Id.* § 36-1-3-4 (a). Thus, under the Home Rule Act, each local government now has "all powers granted it by statute" and "all other powers necessary or desirable in the conduct of its affairs, even though not granted by statute," *id.* § 36-1-3-4(b). As relevant here, the Act explicitly directs courts to resolve "[a]ny doubt as to the existence of a power of a unit . . . in favor of its existence." *Id.* § 36-1-3-3 (b).

Here, a plain-text reading of section 3 makes clear that it does not deprive the City of its lawful power to enforce the challenged Ordinance. *See supra* Part II.A–C. But to the extent there were any ambiguity about whether section 3 precludes such enforcement, that ambiguity would have to be resolved in the City's favor under the Home Rule Act. The Act therefore precludes Plaintiffs' atextual readings of terms like "information of . . . citizenship or immigration status" and "cooperating with federal officials" because those readings impose broad and undefined constraints on the City's powers. *See Yater v. Hancock Cty. Planning Comm'n*, 614 N.E.2d 568, 575–77 (Ind. Ct. App. 1993) (citing home rule principles in holding that a statute granting the Indiana Department of Transportation authority to "consent to *openings* made in a state highway" did not prohibit a city from enacting additional regulation governing *access* to the same highway (emphases added)).

To put it more directly, section 3's ban on municipal policies that limit "cooperat[ion] with federal officials" through sharing "information of . . . citizenship or immigration status" cannot be construed to mandate cooperation on *all* immigration-related enforcement matters. Nor can it be construed to preclude any local policy, like § 26-52 of the Ordinance, that in any way limits a municipality's "assist[ance]" with federal immigration

investigations. App. Appx. 53. Section 3's brief and undefined reference to "cooperating with federal officials" is far too ambiguous to "expressly deny" a locality the power to establish its own investigatory priorities and regulate its own law-enforcement officers. Ind. Code § 36-1-3-3(b). And any doubt as to the reach of that phrase must be resolved against a broad reading of section 3 and in favor of preserving the Ordinance. *See Hobble by & through Hobble v. Basham*, 575 N.E.2d 693, 696–97 (Ind. Ct. App. 1991) ("In construing the statute or ordinance, all doubts are to be resolved against the challenger and, if possible, the ordinance is to be construed as valid.").

These principles simply reaffirm the same conclusion that the text of the Ordinance itself compels: that the Ordinance does not violate section 3 of Chapter 18.2. As noted, § 26.59 of the Ordinance explicitly permits the sharing of "information regarding an individual's citizenship or immigration status"—the same information covered by section 3. App. Appx. 57. Even if there were some doubt as to whether § 26.59 might conflict with section 3 (and, again, there is not), that doubt would have to be resolved in favor of the City under basic home-rule principles.

III. The Ordinance does not violate section 4 of Chapter 18.2.

Section 4 of Chapter 18.2 provides that municipalities "may not limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by federal law." Ind. Code § 5-2-18.2-4. The statute's plain language thus prohibits cities from restricting the *federal* government's efforts to enforce federal immigration law. It does not mandate that cities affirmatively re-direct their *own* resources to advance the federal government's enforcement agenda. By reading section 4 to ban municipalities' efforts to regulate their own involvement in that agenda, Plaintiffs ignore basic principles of statutory interpretation, disregard Indiana's Home Rule Act, and needlessly inject ambiguity into an otherwise clear statutory requirement.

A. Section 4's plain language and statutory context demonstrate that it bars cities from restricting federal enforcement efforts—not cities' own efforts.

Plaintiffs' claim that the Ordinance violates section 4 rests on the faulty premise that the statute bars municipalities from limiting their own participation in federal immigration enforcement. In relying on that premise, Plaintiffs pay little heed to the statutory language the General Assembly actually enacted, the legislative context in which section 4 was

enacted, or the broader structure of the country's federal immigration-enforcement regime.

To start with the text: the only restrictions that section 4 forbids localities from imposing are restrictions on "the *enforcement* of federal immigration laws." The responsibility of enforcing federal immigration laws belongs to the *federal* government; state and local officials generally lack the authority to enforce federal immigration laws on their own. *See Arizona v. United States*, 567 U.S. 387, 409 (2012) ("[T]he removal process is entrusted to the discretion of the Federal Government."). In certain "limited circumstances," federal law authorizes state and local officials to engage directly in the enforcement of immigration laws. *Id.* at 408.[9] But

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[9] *See, e.g.*, 8 U.S.C. § 1103 (a)(10) (allowing state and local law enforcement officers to exercise the powers of a federal immigration officer in the event of "an actual or imminent mass influx of aliens"); *id.* § 1252c(a) (allowing state and local law enforcement to arrest an individual who is illegally present and had previously left the country after a felony conviction); *id.* § 1324 (c) (granting authority to arrest for criminal transportation or harboring of illegal aliens to "all other officers whose duty it is to enforce criminal laws"). Although 8 U.S.C. § 1357(g)(1) authorizes state and local law-enforcement officers to perform the functions of federal immigration officers, that authority vests only after the state or locality has entered into a voluntary written agreement with the U.S. Attorney General and received appropriate training. Neither the State of Indiana nor the City of Gary (nor any other municipality in Indiana) has entered into such an agreement. *See* U.S. Immigration & Customs Enforcement, *Delegation of Immigration Authority Section 287(g)*

Continued on next page.

those circumstances are merely "specific, limited" exceptions to the default regime of federal enforcement. *Id.* at 410. Thus, section 4's reference to the "enforcement of federal immigration laws" necessarily means enforcement by *federal officials*—not local officials. Construing the phrase to mean "*local* enforcement of *federal* immigration laws" would make little sense as a legal matter, and, moreover, would imply that the General Assembly fundamentally misunderstood America's immigration system when it enacted section 4. *See generally Truax v. Raich*, 239 U.S. 33, 42 (1915) ("The authority to control immigration—to admit or exclude aliens—is vested solely in the Federal government.").

The more natural reading of section 4 is as a prohibition on local policies that *actively interfere* with the federal government's efforts to enforce immigration law. In other words, section 4 operates to ensure that no Indiana city becomes a true "sanctuary" for undocumented immigrants, where they might be shielded from federal immigration authorities. Section 4 would thus bar cities from excluding federal immigration agents from public places like courthouses and libraries (as some other

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Immigration and Nationality Act, https://perma.cc/6CAC-Y5P8 (last updated Nov. 24, 2020).

jurisdictions outside of Indiana have done[10]). And it would likewise bar any city's attempt to block federal agents from conducting raids using federal personnel and equipment. The Gary Ordinance does none of these things.

Plaintiffs' alternative reading of section 4—as a requirement that localities affirmatively assist in any federal enforcement efforts—rests on their view that section 4 "requires full cooperation" with federal authorities. Pls.' Summary-Judgment Br. 27. But section 4 never uses the word "cooperation" (let alone "full cooperation"). In fact, the only substantive provision of Chapter 18.2 that addresses any kind of "cooperation" with the federal government is section 3.[11] And, as outlined

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[10] *See, e.g.*, *N.Y. State Unified Court System, New York State Courts' Policy on ICE Arrests in Courthouses* (last visited Apr. 20, 2021), https://perma.cc/QCR6-NQZE ("Immigration and Customs Enforcement (ICE) agents can only come into courthouses to take a person into custody if they have a warrant signed by a judge.").

[11] Plaintiffs argued below that section 7 of Chapter 18.2 also imposes an affirmative duty to cooperate. But the trial court correctly rejected that argument. *See* App. Appx. 3 (Summary Judgment Order) (concluding that certain provisions of the Ordinance violate sections 3 and 4 of Chapter 18.2, but declining to mention or cite section 7). Section 7 merely requires local law-enforcement agencies to provide their officers with a "written notice" of the officers' obligations under section 3 of Chapter 18.2. *See* Ind. Code 5-2-18.2-7 (requiring localities to provide "a written notice that the law enforcement officer has a duty to cooperate with state and federal agencies and officials on matters pertaining to enforcement of state and federal laws governing immigration").

above, that provision is limited to the exchange of "citizenship and immigration status" information—it does not require cooperation with respect to other aspects of immigration enforcement (e.g., the arrest, detention, and removal of unlawfully present individuals). *See supra* Part II.B. Section 3's narrow focus on information-sharing thus further undercuts Plaintiffs' theory that section 4 mandates cooperation in all contexts: after all, if section 4's reference to "enforcement" was meant to serve as an all-encompassing cooperation mandate (as Plaintiffs believe), then section 3 would serve no independent purpose. *See Siwinski*, 949 N.E.2d at 828 ("If possible, every word must be given effect and meaning, and no part should be held to be meaningless if it can be reconciled with the rest of the [statute].").

Plaintiffs' reading is further undermined by the drafting history of the legislation that included Chapter 18.2. The final version of the legislation was a product of compromise responsive to the concerns of affected constituencies. That compromise included the deliberate deletion of two provisions that would have required state and local law enforcement officers to participate in immigration enforcement. ***First***, the original draft of the bill would have required law enforcement officers to request verification of an individual's citizenship and immigration status if

the officer, in the course of an otherwise lawful stop or detention, had reasonable suspicion to believe that the individual was not lawfully present in the United States. The bill also would have allowed the officer to transfer the individual to federal custody to verify the individual's immigration status. *See* S.B. 590, Sec. 3, ch. 19, §§ 5(c), 6 *available at* https://perma.cc/VEC8-JAMT. These provisions, however, were excluded from the final bill. Meanwhile, a provision *prohibiting* law enforcement officers from requesting verification of immigration status and citizenship information from witnesses and victims of crimes remained in the enacted version. *See* Ind. Code § 5-2-20-3. ***Second***, the original bill directed the superintendent of the state police to negotiate an agreement with DHS under 8 U.S.C. § 1357 (g) authorizing state law enforcement officials to enforce federal immigration laws. S.B. 590, Sec. 8, § 21.5(a). The enacted version, however, omitted that provision and instead merely urged the legislative council to study the feasibility of such an agreement. Senate Enrolled Act 590, § 25, *available at* https://perma.cc/YU2N-FLX5. To this day, no state or local officials have entered into such an agreement. *See supra* n.9.

The General Assembly's purpose in deleting these provisions of the bill—and *declining* to mandate a role for state and local officials in federal

immigration enforcement—was hardly mysterious. When the legislation was first introduced, a number of the bill's critics (including many local officials), expressed concerns that it would "mak[e] federal immigration enforcement the responsibility of police officers," thereby "burdening police departments, alienating citizens who raise officers' suspicions, and chasing away companies, conventions and prospective employees." Heather Gillers, *Kenley: Revamp Immigration Proposal*, Indianapolis Star, Mar. 15, 2011, at A1. Based on these criticisms, the final version of the bill (which ultimately focused on deterring employers from hiring undocumented immigrants) was "stripped of provisions that . . . would have required local and state police to enforce federal immigration laws." Mary Beth Schneider, *Immigration Bill Shifts Its Emphasis to Employers*, Indianapolis Star, Apr. 15, 2011, at A1. Section 4's reference to the "enforcement of federal immigration laws" must be read in light of those criticisms and the legislative changes they wrought.

The language the General Assembly adopted in section 4 contrasts sharply with the language of statutes adopted by other states. Indeed, when Indiana adopted Chapter 18.2 in 2011, other states already had enacted statutes that explicitly prohibited limitations on local assistance to federal immigration authorities. *See, e.g.*, 2011 Utah Laws Ch. 21, H.B.

497, § 6 (Mar. 15, 2011) (codified at Utah Code § 76-9-1006) ("A state or local governmental agency of this state, or any representative of the agency, may not (1) limit or restrict by ordinance, regulation, or policy the authority of any law enforcement agency or other governmental agency *to assist* the federal government in the enforcement of any federal law or regulation governing immigration . . . ." (emphasis added)); 2005 Ohio Laws File 61, Am. Sub. S.B. No. 9, § 1 (Jan. 11, 2006) (codified at Ohio Rev. Code § 9.63(A)) ("[N]o state or local employee shall unreasonably fail to comply with any lawful request for assistance made out by any federal authorities carrying out . . . any federal immigration . . . investigation").

Plaintiffs sought to rely below on a 2017 *Texas* statute as evidence of what the *Indiana* General Assembly sought to accomplish when it enacted section 4 in 2011. Pls.' Summary-Judgment Opp. 33–35. But the Texas law that they cite uses very different language and explicitly bars localities from restricting their "*assist[ance] or cooperati[on]* with a federal immigration officer as reasonable or necessary, including providing *enforcement assistance*." Tex. Gov't Code Ann. § 752.053 (b)(3) (emphases added). The Indiana General Assembly's decision not to include any similar language in section 4 merely reaffirms that the City's text-based construction of the provision is the correct one. *See Day*, 57 N.E.3d at

812–13 (comparing statute to model provision and concluding that the rejection of a particular term "was intentional, not accidental"). And under that text-based reading of the statute, the Ordinance is plainly valid.

B. Plaintiffs' expansive reading of section 4 would violate the Home Rule Act.

As noted above, the Indiana Home Rule Act establishes a strong presumption in favor of localities' authority to manage their own affairs and places a heavy burden on parties asserting state-law preemption. *See supra* Part II.D. That bedrock principle precludes a reading of section 4 that would bar localities from regulating—in any way—their own participation in federal law-enforcement efforts.

As the Indiana Supreme Court has explained, the Home Rule Act "demonstrates a legislative intent to provide counties, municipalities, and townships with expansive and broad-ranging authority to conduct their affairs." *City of N. Vernon v. Jennings Nw. Reg'l Utils.*, 829 N.E.2d 1, 5 (Ind. 2005). A municipality may exercise any power that "is not expressly denied [to it] by the Indiana Constitution or by statute; and . . . is not expressly granted to another entity." Ind. Code § 36-1-3-5 (a). Moreover, a properly enacted city ordinance "stands on the same general footing as an act of the Legislature," *Pittsburgh, Cincinnati, Chi. & St. Louis Ry. Co. v.*

Hartford City, 170 Ind. 674; 85 N.E. 362, 363 (1908), and is "presumptively valid" until "clearly proven" otherwise, *City of Indianapolis v. Clint's Wrecker Serv., Inc.*, 440 N.E.2d 737, 740 (Ind. Ct. App. 1982). For all of these reasons, Plaintiffs face a "heavy burden" in seeking to have an ordinance invalidated on state-law preemption grounds. *Clint's Wrecker Serv.*, 440 N.E.2d at 746.

Indiana law expressly authorizes localities to manage their government, personnel, equipment, finances, operations, and police powers in sweeping terms. *See, e.g.*, Ind. Code § 36-8-2-4 (granting power to "regulate conduct, or use or possession of property, that might endanger the public health, safety, or welfare"); *id.* § 36-8-2-2 (granting power to "establish, maintain, and operate a police and law enforcement system to preserve public peace and order," including by "provid[ing] facilities and equipment for that system"). Each locality also enjoys the authority to "pass ordinances" and other regulations "for the government of the city, the control of the city's property and finances, and the appropriation of money," *id.* § 36-4-6-18. Finally, state law places the burden of managing a city's liability squarely on its own shoulders by withholding the "power to condition or limit its civil liability, except as expressly granted by statute." *Id.* § 36-1-3-8.

In light of these expressly granted powers, as well as the City's broad home-rule authority, the Ordinance must be upheld absent some clear revocation of the City's authority under state law. *See, e.g.*, *City of Carmel v. Martin Marietta Materials, Inc.*, 883 N.E.2d 781, 787 (Ind. 2008) (approving extensive mining regulations that did not comply with statutory requirements for zoning ordinances because, under Indiana's "'home rule' philosophy," the city could separately regulate under its general power to regulate for public safety and welfare); *Beta Steel Corp. v. Porter Cty.*, 695 N.E.2d 979, 981–82 (Ind. 1998) ("Cities and counties are each granted the broad authority to regulate conduct that might endanger the public health, safety, or welfare.") (citing Ind. Code § 36-8-2-4). Section 4 does not contain the clear revocation of local authority needed to vindicate Plaintiffs' sweeping reading of the statute.

For starters, section 4 is far too vague to "preempt[] the immigration-law field." Pls.' Summary-Judgment Br. 19.[12] Indiana courts have rejected field preemption claims predicated on significantly more

[12] Section 4's lack of clarity distinguishes this case from *City of El Cenizo v. Texas*, 890 F.3d 164, 191 (5th Cir. 2018). The City does not contend that the state *cannot* direct its municipalities to assist in federal immigration enforcement under home-rule principles; it merely notes that the General Assembly did not do so here.

exhaustive and detailed statutory schemes. In *Town of Cedar Lake v. Alessia*, for example, the court rejected an argument that Indiana law had established a "comprehensive legislative scheme that preempts the Town's authority to abolish the Parks Department and the Park Board." 985 N.E.2d 55, 62 (Ind. App. 2013). The state law at issue specified such precise terms as the number of Park Board members, how they should be appointed, their duties and salaries, the timing of Board meetings, and the manner of leasing and selling property. Ind. Code §§ 36-10-3-1 to -45. But "conspicuously absent" from the state regulatory scheme was "any restriction on a municipal corporation's authority to dissolve a park board and parks department"; thus, the court concluded that the town retained that authority. 985 N.E.2d at 62–63; *see also, e.g.*, *Allen v. City of Hammond*, 879 N.E.2d 644, 648–49 (Ind. App. Ct. 2008) (upholding an ordinance imposing business license requirements on law offices within city limits, despite the State's general regulation of attorney licensure). Because Chapter 18.2 is even less pervasive that the statutes at issue in *Alessia* and *Allen*, it cannot reasonably be construed to occupy all aspects of the immigration-law field not already regulated at the federal level. And section 4's single-sentence prohibition, in particular, cannot

reasonably be construed as a "harmonious whole" of regulations. *Arizona*, 567 U.S. at 401.

Moreover, reading an all-encompassing cooperation mandate into section 4's limited text would seriously—and improperly—undermine cities' express and implied powers. *Tippecanoe Cty. v. Ind. Mfr.'s Ass'n*, 784 N.E.2d 463, 466 (Ind. 2003) (emphasizing that the Home Rule Act "completely . . . reversed" Indiana's prior restrictive approach toward local authority). Indeed, grafting such a mandate onto section 4 would infringe the City's local power in myriad unpredictable ways. If the City were barred from regulating its agencies' interactions with the community and the federal government on immigration matters, the City's agencies could be exposed to unwelcome risks. Local participation in federal immigration enforcement carries a substantial potential for liability, particularly absent clear parameters for when and how local authorities may assist the federal government. *See, e.g.*, *Hernandez v. United States*, 939 F.3d 191, 206 (2d Cir. 2019) (denying a motion to dismiss a claim for municipal liability under 42 U.S.C. § 1983 based on a city's policy of complying with immigration detainers). Section 4 provides no guidance for how local law-enforcement officers should go about fulfilling their "limited" role in immigration enforcement without running afoul of constitutional and

statutory constraints. *See Arizona*, 567 U.S. at 408 (describing the "limited circumstances in which state officers may perform the functions of an immigration officer").

Finally, even when the state has chosen to regulate in an area, "local governments may 'impose additional, reasonable regulations, . . . provided the additional burdens are logically consistent with the statutory purpose.'" *Ind. Dep't of Nat. Res. v. Newton Cty.*, 802 N.E.2d 430, 433 (Ind. 2004) (quoting *Hobble*, 575 N.E.2d at 696–97). The Ordinance is "logically consistent" with section 4 by defining the precise parameters of the City's role in immigration enforcement, while refraining from directly regulating federal immigration-enforcement efforts.[13] The Ordinance thus fills in the substantial gaps left by section 4's indefinite pronouncement. Construing section 4 to bar only restrictions on federal immigration enforcement therefore vindicates Indiana's home-rule principles by avoiding an unnecessary clash between two enactments. *See Town of*

[13] As a practical matter, the City *does* cooperate with federal immigration authorities. The City's police chief explained in his affidavit how his department provides security at the Gary/Chicago International Airport when federal authorities transport immigration detainees out of the airport from surrounding jurisdictions. App. Appx. 62 (Allen Affidavit). And he likewise noted that the City was in the process of negotiating with DHS to permit the agency to use the City's police-department firing range. *Id.*

Avon v. W. Cent. Conservancy Dist., 957 N.E.2d 598, 606 (Ind. 2011) (choosing an interpretation that "harmonizes the effect of both sets of statutes—our first objective when confronted with two seemingly-conflicting provisions").

C. Even if section 4 required the City to actively cooperate with federal immigration enforcement, most of the Ordinance would remain valid.

For all of the reasons set forth above, section 4 cannot reasonably be construed to mandate local cooperation with the federal government on all aspects of federal immigration-law enforcement. *See supra* Part III.A–B (explaining that the Ordinance does not violate section 4 because it does not restrict the *federal* government's immigration enforcement efforts). But even if section 4 were construed that broadly (in contravention of its text and legislative history), much of the Ordinance would still remain lawful. Applying Plaintiffs' expansive reading of section 4 to each of the Ordinance provisions at issue here illustrates this point clearly.

Ordinance § 26.59. As noted above, § 26.59 of the Ordinance explicitly *authorizes* the exchange of "citizenship or immigration status" information with federal authorities. *See supra* Parts I & II.A. It does not prohibit cooperation and, therefore, cannot be construed to violate section 4—even under Plaintiffs' overbroad reading of the statute.

Ordinance § 26-52. Section 26-52 of the Ordinance also largely withstands Plaintiffs' atextual reading of section 4. Among other things, § 26-52 provides that the City's agencies shall not *independently* "request[] information about or otherwise investigate" an individual's citizenship or immigration status, entirely apart from any federal requests for assistance. App. Appx. 53. Even if section 4 were construed to require the City's "full cooperation" with the federal government, Pls.' Summary-Judgment Br. 27, the statute would have no bearing on the City's efforts to regulate the conduct of its own agencies in situations entirely detached from federal enforcement efforts. Thus, most of § 26-52 would plainly fall outside the domain of whatever section 4 might restrict under Plaintiffs' theory.

Ordinance § 26-58(c). Section 26-58(c) governs police-officer discretion. The provision recognizes that "the arrest of an individual increases that individual's risk of deportation even in cases where the individual is found to be not guilty." App. Appx. 56–57. The provision thus cautions local police officers to be aware of that risk and to exercise discretion in arresting any person for a state-law criminal offense. *Id.* But nothing in § 26-58(c) prevents officers from complying with federal immigration agents' requests for assistance in enforcing federal

immigration laws. Nor does § 26-58(c) prevent any other forms of "cooperation" with federal agents. Taken to its logical extreme, Plaintiffs' argument that § 26-58(c) violates section 4 would mean that local law-enforcement officers are *required* to make arrests—*whenever possible*—in order to better share any information that might be of value to DHS. Conscripting local police officers in that way would severely impinge on localities' broad police powers.

Ordinance § 26-55. Section 26-55 is the lengthiest provision of the Ordinance that the trial court identified in its order. Subsections (a) through (c) of § 26-55 generally preclude City officials from stopping, arresting, or detaining a person based solely on an immigration detainer, administrative warrant, or "the belief that a person is not present legally in the United States, or that the person has committed a civil immigration violation." App. Appx. 54. In addition, subsection (e) of § 26-55 provides that none of the City's agencies "shall enter into an agreement under Section 1357(g) of Title 8 of the United States Code." App. Appx. 55. Each of these subsections would remain valid even under Plaintiffs' reading of section 4.

As to §§ 26-55(a)–(c), these provisions merely ensure the City's compliance with the Fourth Amendment's prohibition on unreasonable

searches and seizures. Under the Fourth Amendment, "seizures are reasonable only if based on probable cause to believe that the individual has committed a crime." *Bailey v. United States*, 568 U.S. 186, 192 (2013) (internal quotation marks omitted). Because an individual held pursuant to an Immigration and Customs Enforcement (ICE) detainer or administrative warrant is "kept in custody for a new purpose after she [is] entitled to release," that detention constitutes a "new seizure for Fourth Amendment purposes—one that must be supported by a new probable cause determination." *Morales v. Chadbourne*, 793 F. 3d 208, 217 (1st Cir. 2015). Indeed, "[t]here is broad consensus around the nation that an immigration detainer constitutes a new arrest." *Ramon v. Short*, 460 P.3d 867, 875 (Mont. 2020).[14]

Deportation and removal proceedings—the underlying bases for immigration detainers and administrative warrants—are civil in nature. *See INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984). As the Supreme Court recognized in *Arizona*, "[a]s a general rule, it is not a crime for a

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[14] *See, e.g.*, *People ex rel. Wells v. DeMarco*, 168 A.D.3d 31, 39 (N.Y. App. Div. 2018) (reaching the same conclusion); *Miranda-Olivares v. Clackamas Cty.*, No. 3:12-cv-02317-ST, 2014 WL 1414305, at *10 (D. Or. Apr. 11, 2014) ("[T]he continued detention exceeded the scope of the Jail's lawful authority over the released detainee, constituted a new arrest, and must be analyzed under the Fourth Amendment.").

removable alien to remain present in the United States." *Arizona*, 567 U.S. at 407. However, because the Fourth Amendment requires probable cause to believe that a *crime* has occurred, "[i]f the police stop someone based on nothing more than possible removability, the usual predicate for an arrest is absent.'" *Id.*

Federal law authorizes federal law enforcement officers to issue warrants of arrest for civil immigration violations. *See* 8 C.F.R. § 287.5(e)(2). But these administrative warrants are not criminal warrants—they do not state probable cause of a criminal offense and are not issued by a neutral magistrate. And, importantly, federal law authorizes only *federal* officers to make civil immigration arrests—not state and local officers. *See* 8 U.S.C. § 1357 (a) (allowing federal officers to conduct warrantless arrests in limited circumstances); 8 C.F.R. §§ 241.2(b), 287.5(e)(3) (listing federal officers permitted to execute administrative arrest and removal warrants); *see also, e.g.*, *Santos v. Frederick Cty. Bd. of Comm'rs*, 725 F.3d 451, 464 (4th Cir. 2013) (noting that state and local officers "generally lack authority to arrest individuals suspected of civil immigration violations" (citing *Arizona*, 567 U.S. at 407)); *Roy v. Cty. of Los Angeles*, No. 2:12-cv-09012, 2018 WL 914773, at *23 (C.D. Cal. Feb. 7, 2018) (explaining that local "officers have no

authority to arrest individuals for civil immigration offenses" and, thus, that "detaining individuals beyond their date for release violate[s] the individuals' Fourth Amendment rights"). Thus, given that §§ 26-55(a)–(c) are necessary to ensure that the City honors its Fourth Amendment obligations, the provisions cannot violate section 4.

Although the Fifth Circuit recently rejected a Fourth Amendment challenge to a Texas statute requiring state and local officials to honor detainer requests, *see City of El Cenizo v. Texas*, 890 F.3d 164, 187–89 (5th Cir. 2018), its analysis was substantially flawed. The Fifth Circuit's reasoning is in tension with the Supreme Court's decision in *Arizona*, 567 U.S. at 410, which struck down a state law purporting to authorize state and local officers to conduct arrests for civil immigration violations. And it is likewise in tension with the Ninth Circuit's reasoning in *Melendres v. Arpaio*, 695 F.3d 990, 1000–01 (9th Cir. 2012), which held that, absent a § 1357 (g) agreement, local law-enforcement officials may "enforce only immigration-related laws that are criminal in nature." More to the point, the Fifth Circuit's isolated decision in *El Cenizo*—which is not binding in Indiana—is not sufficient to ensure that the City would not face a serious Fourth Amendment lawsuit if it were forced to honor all detainer requests (as it would have to do under Plaintiffs' expansive reading of section 4).

Finally, § 26-55(e)'s prohibition on § 1357 (g) agreements also comports with Plaintiffs' broad reading of section 4. An agreement under § 1357 (g) is not a form of "cooperation"; rather, it grants a locality permission to enforce federal immigration law unilaterally. Such agreements therefore cannot fall within Plaintiffs' cooperation-based reading of section 4. What's more, § 1357(g)(1) explicitly states that local officers may perform the functions of federal immigration officers *only* to the extent "consistent with . . . local law." Consequently, what § 1357 (g)(1) permits is itself limited by local laws like § 26-55 of the Ordinance.

* * * * *

In sum, even if this Court were to read section 4 to prevent localities from providing guidance to their own officials on when and how to cooperate with federal immigration authorities, § 26-58(c) and § 26-59 of the Ordinance would still be consistent with that reading, as would much of § 26-52 and § 26-55. Accordingly, even if this Court accepted that reading of section 4—which it should not do—the trial court's order would still have to be reversed in part, and its injunction narrowed significantly.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed. The matter should be remanded with instructions to enter summary judgment in the City's favor.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Rodney Pol, Jr., verify that this brief complies with Rule of Appellate Procedure 44 and contains no more than 14,000 words. I verify that this brief contains 10,430 words.

/s/ Rodney Pol, Jr.
RODNEY POL, JR.

CERTIFICATE OF SERVICE

I, Rodney Pol, Jr., certify that on April 27, 2021, service of a true and complete copy of the above and foregoing pleading or paper was served electronically through the Indiana E-Filing System upon the following persons:

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