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IN THE
INDIANA COURT OF APPEALS

Appellate Case No. 21A-PL-1046

GREG SERBON and JOHN ALLEN, *Appellants*, v. CITY OF EAST CHICAGO, et al., *Appellees*. STATE OF INDIANA, *Intervenor*.	On Appeal from Lake County Superior Court, Civil Division Room No. 3 Cause No. 45D03-1805-PL-000045 Hon. Thomas P. Hallett, Judge

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INTRODUCTION

This suit arises from a challenge to a public-safety measure adopted by the City of East Chicago 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—who do not live, pay taxes, or vote in the City—do not claim that they have been injured by the Ordinance in any way. 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 enforcement. This abstract harm is insufficient to invoke the courts' jurisdiction, so Plaintiffs' claims should be dismissed.

What is more, 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 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 correctly rejected the majority of Plaintiffs' theory in concluding that a number of the challenged provisions of the City's Ordinance do not violate state law. But it erred in concluding that certain limited portions of the Ordinance violate one provision of state law. Appellants' Appx. Vol II 28-29. Because that order rests on a misreading of state law, the City respectfully asks that it be reversed.

STATEMENT OF THE ISSUES

1. Whether Indiana Code § 5-2-18.2-5 creates a special rule of statutory standing that eliminates any need for plaintiffs to satisfy judicial standing requirements.

2. Whether the City of East Chicago'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 Greg Serbon and John Allen in 2018. Plaintiffs' complaint alleged that the City of East Chicago's "Welcoming City" Ordinance, enacted the prior year, violates Indiana Code § 5-2-18.2. Appellants' Appx. Vol. II 30-75 (Complaint). The State of Indiana intervened in support of Plaintiffs in October 2018. Appellants' Appx. Vol. III 184 (Order Granting Leave To Intervene).

On April 29, 2021, the trial court issued an order granting summary judgment in part to Plaintiffs and in part to the City.[1] The trial court enjoined the City from enforcing certain provisions of the Ordinance, upheld other challenged provisions of the Ordinance, and granted summary judgment to the City on Plaintiffs' claims that the Ordinance violates the U.S. Constitution. Appellants' Appx. Vol II 28-29 (Summary Judgment Order). Plaintiffs filed a timely appeal from that order in June 2021. The City now cross-appeals from the trial court's determination that certain provisions of its Ordinance violate section 18.2-3. Ind. R. App. P. 9(D).

[1] This brief refers to all defendants – the Common Council and its members, the Mayor, the Chief of Police, and the City itself – collectively as the "City."

STATEMENT OF FACTS

In the summer of 2017, the City of East Chicago enacted Ordinance 17-0010, colloquially known as the "Welcoming City" Ordinance. Appellants' Appx. Vol. II 77-83 (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. Appellees' Appx. Vol II 8 (Copeland 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. *Id.* Thus, the Ordinance requires that City agencies exchange information with federal authorities regarding individuals' "citizenship or immigration status," Appellants' Appx. Vol. II 82-83 (§ 10), but directs those agencies not to expend resources on actively collecting such information, Appellants' Appx. Vol. II 79 (§ 3).

Similarly, the Ordinance permits City agencies to transfer individuals into the custody of Immigration and Customs Enforcement (ICE) pursuant to a criminal warrant, Appellants' Appx. Vol. II 81 (§ 6(c)), but not pursuant to a mere administrative warrant, Appellants' Appx. Vol. II 80 (§ 6(1)-(3)). In short, the Ordinance reflected the City's efforts to carefully delineate its role within the Nation's broader immigration-enforcement regime.

Almost a year after the Ordinance was adopted, Plaintiffs filed this lawsuit challenging its validity. Appellants' Appx. Vol. II 30-75 (Complaint). They claimed that the Ordinance violates a 2011 state law known as "Chapter 18.2." Appellants' Appx. Vol. II 31. That law, which is codified at Indiana Code § 5-2-18.2,[2] contains two substantive provisions relevant to this case:

- **Section 18.2-3**, 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

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

- **Section 18.2-4**, which bars municipalities from limiting or restricting the enforcement of federal immigration laws, *id.* § 5-2-18.2-4.[3]

Chapter 18.2 also imposes a notice obligation on police departments. Specifically, Ind. Code § 5-2-18.2-7 requires that law enforcement officers receive a written notice of "a duty to cooperate . . . on matters pertaining" to immigration enforcement.

Finally, Chapter 18.2 includes two procedural provisions, one of which creates a cause of action for private citizens seeking to compel compliance with the statute's substantive provisions, *id.* § 5-2-18.2-5, and the other which 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.

Plaintiffs also asserted a smattering of claims alleging that the Ordinance is invalid under the U.S. Constitution. Plaintiffs have not pursued those claims on appeal.

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[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 East Chicago Ordinance, this brief focuses on the application of Chapter 18.2's prohibitions to municipalities.

In filing their suit, Plaintiffs did not allege any concrete injuries stemming from the Ordinance, nor did they point to any concrete application of the Ordinance that has caused anyone harm. Instead, they invoked Indiana's "public standing" doctrine and "statutory standing" under section 18.2-5.

The parties filed cross-motions for summary judgment, which the trial court heard in March 2021. In April 2021, the court issued its order granting summary judgment in part to Plaintiffs and in part to the City. Appellants' Appx. Vol. II 28-29. The trial court concluded that Plaintiffs have standing under section 18.2-5 to assert their claims under Chapter 18.2, but they do not have standing to assert their federal constitutional claims. The court further concluded that certain provisions of the Ordinance—namely, §§ 3, 6(a), and 6(c)—violate section 18.2-3. But the trial court found *no* violation of section 18.2-4, and it concluded that other challenged provisions of the Ordinance—namely, §§ 6(1)-(3), 6(b), 9(c), and 10—did not violate state law at all. Finally, the trial court found no violation of section 18.2-7 because "the East Chicago Police Department issued its notice in compliance" with that law. Appellants' Appx. Vol. II 29.

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. Ind. Code § 36-1-3-3. This principle applies with particular force to matters concerning public safety and the operation of local institutions.

The City of East Chicago relied on its broad home-rule authority in passing the Ordinance at issue in this case. The trial court's order enjoining certain aspects of that Ordinance under Chapter 18.2 should be reversed for several reasons:

I. Plaintiffs lack standing to bring their claims under Chapter 18.2. Plaintiffs do not live in East Chicago and have not claimed that they are harmed at all by East Chicago's ordinance. They do not assert standing under any previously recognized theory. Instead, Plaintiffs point to Indiana Code § 5-2-18.2-5, which provides that any "person lawfully domiciled in Indiana" can sue to enforce Chapter 18.2. But this section merely creates a cause of action; it doesn't eviscerate the longstanding constitutional requirement that a plaintiff must be injured before going to court. Interpreting the provision to allow someone to sue without any personal connection to the dispute would raise significant constitutional issues.

II. The Ordinance does not violate section 3 of Chapter 18.2. Section 18.2-3 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 § 10 of the Ordinance explicitly authorizes City officials to share "citizenship or immigration status" information with outside authorities (including the federal government), Appellants' Appx. Vol. II 82-83, it does not violate section 18.2-3.

Plaintiffs' claim that the Ordinance violates section 18.2-3 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 18.2-3 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 18.2-3'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 18.2-3 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 18.2-4 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 18.2-4 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 18.2-4, 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 18.2-4—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 18.2-4. 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.

IV. Indiana Code § 5-2-18.2-7 does not impose a freestanding duty to cooperate in immigration enforcement. It requires only that law enforcement officers receive a written notice of "a duty to cooperate . . . on matters pertaining" to immigration enforcement. As the trial court recognized, the East Chicago Police Department has issued the notice section 18.2-7 requires, so section 18.2-7 is no longer at issue in this case.

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. Plaintiffs lack standing.

The judicial doctrine of standing derives from Article 3, section 1 of the Indiana Constitution, which establishes the distribution of powers among the

"the Legislative, the Executive including the Administrative, and the Judicial" departments of the state government. *State ex rel. Cittadine v. Ind. Dep't of Transp.*, 790 N.E.2d 978, 979 & n.3 (Ind. 2003). "Standing is a key component in maintaining [Indiana's] state constitutional scheme of separation of powers," *Pence v. State*, 652 N.E.2d 486, 488 (Ind. 1995), as it prevents courts from issuing "advisory opinions" based on "hypothetical situations," *Snyder v. King*, 958 N.E.2d 764, 786 (Ind. 2011). Therefore, ordinarily, "only those persons who have a personal stake in the outcome of the litigation and who show that they have suffered or were in immediate danger of suffering a direct injury as a result of the complained-of conduct will be found to have standing." *Cittadine*, 790 N.E.2d at 979. "It is generally insufficient that a plaintiff merely has a general interest common to all members of the public." *Id.*

Plaintiffs do not claim that they have standing under traditional standing criteria. They could not, as the Ordinance has not injured them at all: they do not live or pay taxes in East Chicago, and have never pointed to any personal stake in this litigation. Instead, Plaintiffs contend that Indiana Code § 5-2-18.2-5 creates statutory standing for any "person lawfully domiciled in Indiana" to sue to enforce Chapter 18.2, regardless of whether they have suffered any injury. But section 18.2-5 provides a private right of action; it does not speak to standing. Implying statutory standing in section

18.2-5—that is, assuming the General Assembly intended to allow every Indiana resident to take it upon himself to police the immigration-related decisions of any town or city in the state, uniquely among all statutory schemes—would raise serious questions for the separation of powers in Indiana.

Section 18.2-5 provides that "a person lawfully domiciled in Indiana may bring an action to compel" compliance with Chapter 18.2. Ind. Code § 5-2-18.2-5. Appellees agree with Plaintiffs that section 18.2-5 provides the *form* of permissible action—an "action to compel"—and delineates *who* may assert that action—"a person lawfully domiciled in Indiana." Appellants' Br. 15. But neither of those elements conveys standing, a necessary prerequisite to any claim.

A statutory private right of action does not render a claim justiciable. Under well-established federal justiciability rules, courts have "rejected the proposition that 'a plaintiff automatically satisfies the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right.'" *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2205 (2021) (citation omitted). Thus, the legislature cannot erase "standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing." *Raines v. Byrd*, 521 U.S. 811, 820 n.3 (1997); *see also, e.g.*, *Steel Co. v. Citizens for a*

Better Env't, 523 U.S. 83 (1998) (clarifying that a statute created a cause of action but did not confer standing upon the plaintiffs). The same rule should apply here: Just because "a person lawfully domiciled in Indiana" is given a statutory right to file an action to compel under section 18.2-5 does not mean that person *also* has satisfied the requirement of a sufficient injury to justify judicial intervention. Rather, a plaintiff generally must satisfy judicial standing requirements—which Plaintiffs cannot do here.

Plaintiffs dismiss the relevance of analogies to federal justiciability principles because Indiana does not have a "case or controversy" requirement. *See* Appellants' Br. 16. "But the express distribution-of-powers clause in [Indiana's] fundamental law performs a similar function," to the "case or controversy" limit of federal law, *Horner v. Curry*, 125 N.E.3d 584, 589 (Ind. 2019) (opinion of Massa, J.), and Indiana courts regularly treat "[f]ederal limits on justiciability" as "instructive" because (1) "the standing requirement under both federal and state constitutional law fulfills the same purpose: ensuring that 'the litigant is entitled to have the court decide the merits of the dispute or of particular issues,'" and (2) "both are built on the same basic idea: separation of powers." *Schulz v. State*, 731 N.E.2d 1041, 1044 (Ind. Ct. App. 2000) (quoting *Allen v. Wright,* 468 U.S. 737, 750–51 (1984)); *see also Cittadine*, 790 N.E.2d at 979 ("the distribution of powers provision in Article 3, Section 1, of the Indiana Constitution" fulfills "an analogous function" to

the federal "case or controversy" requirement). Therefore, where Indiana courts have not expressly deviated from federal constraints, federal separation-of-powers principles remain relevant.

Plaintiffs contend that the General Assembly may lower the bar for standing and that, in section 18.2-5, it eliminated the need for potential plaintiffs to have been personally affected *at all*. Plaintiffs rely on *Cittadine* and *Huffman v. Ind. Off. of Envtl. Adjudication*, 811 N.E.2d 806 (Ind. 2004), for this proposition, Appellants' Br. 16, but those cases do not support Plaintiffs' argument. In *Cittadine*, the Indiana Supreme Court emphasized that the General Assembly imposed statutory requirements on plaintiffs raising claims under the Declaratory Judgment Act *in addition to* judicial standing limits—the very opposite of what Plaintiffs claim that section 18.2-5 does. 790 N.E.2d at 984. (Moreover, the Indiana Supreme Court recently assigned "no precedential weight to *Cittadine* on the question of standing," *Horner v. Curry*, 125 N.E.3d 584, 595 (Ind. 2019) (Massa, J.), further undermining the broad reliance that Plaintiffs seek to put on it.) In *Huffman*, the Supreme Court addressed only whether the General Assembly could "dictate access to *administrative review*" in administrative tribunals "on terms the same as or more or less generous than access to file a lawsuit." 811 N.E.2d at 809 (emphasis added). *Huffman* therefore says nothing about whether the General Assembly has the power to remove any injury

requirement by statute for claims brought in state court. *See id.* ("[W]hether [petitioner] is the proper person to file a lawsuit is not at issue in this case.").

This Court need not decide whether the General Assembly has the power to diminish judicial standing requirements by statute, however, because there is no good reason to believe that the General Assembly in fact did so in section 18.2-5. Plaintiffs fail to cite anything to support their assertion that the Indiana General Assembly "intended to establish domicile standing, without more." Appellants' Br. 15. Indeed, it is a far stretch to assume that the General Assembly intended to allow suit without any injury at all and without so much as mentioning "standing" or "injury" in section 18.2-5. Section 18.2-5 speaks only in terms of who "may bring an action"—the classic language of a cause of action—in contrast to Ind. Code § 4-21.5-5-3, which explicitly addresses "standing" for judicial review of agency actions. And Plaintiffs point to no other comparable statutes that grant similar, injury-free standing.

Plaintiffs' reading therefore requires an assumption that the General Assembly intended, without saying so, to convey standing on all Indiana residents without any showing of harm whatsoever. This evisceration of limits on judicial standing should not be lightly assumed. Such an approach would upset the constitutionally imposed distribution of powers in Indiana by

creating a roving mandate to weigh in on abstract issues of law and interfere with the political processes of cities throughout the state.

Finally, Plaintiffs contend that requiring a plaintiff to satisfy judicial standing requirements "would make it likely impossible" for any plaintiff to "bring an action to compel, contrary to the legislature's intent." Appellants' Br. 15. Of course, if an Indiana resident could show direct injury from a violation of Chapter 18.2, standing would not impose a barrier—just as in any other case in which a broad category of citizens is given a statutory cause of action. *These* plaintiffs, however, lack any connection to East Chicago or any personal stake in how East Chicago manages its affairs.

Nor can the Plaintiffs rely on the public-standing exception.[4] This narrow exception allows a plaintiff to enforce a public right where he or she suffered an injury but does not "have an interest in the outcome of the litigation different from that of the general public." *Cittadine*, 790 N.E.2d at 980 (citation omitted). Assuming that public standing remains a viable theory

[4] Appellants claimed standing under the public-standing doctrine in the trial court. The trial court appears to have concluded that Appellants cannot invoke public standing, as it held that Plaintiffs have standing only pursuant to section 18.2-5 & 18.2-6, and concluded that Plaintiffs do not have standing to assert their federal claims. Appellant's Appx. Vol. II 28. Plaintiffs have abandoned any claim to public standing in this Court.

in Indiana,[5] it is only available in "extreme circumstances" and it "will rarely be sufficient." *Pence v. State*, 652 N.E.2d 486, 488 (Ind. 1995). The problem for Plaintiffs is that their claims do not fall within the public-standing exception. The relevant members of the "public" for this exception are the residents, taxpayers, and voters of the local jurisdiction whose law is at issue. *See Cittadine*, 790 N.E.2d at 980 (quoting *Hamilton v. State ex rel. Bates*, 3 Ind. 452, 458 (1852), as establishing that the plaintiff had an interest in the county auditor's discharge of duties "as a citizen of the county"); 790 N.E.2d at 981 (noting that the plaintiffs in *Board of Comm'rs of Clay County v. Markle*, 46 Ind. 96 (1874) were "nine residents, citizens, taxpayers, and voters" of Clay County). Here, Plaintiffs are not voters, taxpayers, or residents in East Chicago, so they cannot avail themselves of the public-standing doctrine. That two unharmed, non-residents who simply do not like the City's policy do not have standing here under any judicially recognized doctrine does not mean that it is "likely impossible" for anyone to

[5] In a recent decision, a majority of the Indiana Supreme Court doubted whether public-standing doctrine was consistent with the Indiana Constitution. *Horner*, 125 N.E.3d at 595 & n. 14 (Massa, J.) (criticizing public-standing doctrine and "declin[ing] to consecrate" it); *id.* at 616 (Slaughter, J., concurring in part) ("That precedent cannot be reconciled with the system of divided governmental powers the People ratified in both our 1816 and 1851 Constitutions."); *id.* at 608 (Rush, J., concurring in part) (complaining that the lead opinion "imprudently drives a knife into . . . . this Court's precedent" on public-standing).

demonstrate standing. Appellants' Br. 15.[6] Reading section 18.2-5 to require simply a domicile in Indiana without any other personal interest in the litigation would extend standing under Chapter 18.2 even farther than the public-standing exception. Absent significant evidence that the General Assembly actually intended to alter the distribution-of-powers so dramatically, this Court should conclude that section 18.2-5 grants a cause of action, but does not diminish standing requirements. Plaintiffs therefore lack standing for their claims under Chapter 18.2, requiring dismissal.

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

The trial court concluded that certain, limited provisions of the Ordinance violate section 3 of Chapter 18.2. Section 18.2-3 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 18.2-3 contemplates. The trial court therefore erred in concluding that some

[6] In the analogous lawsuit against the City of Gary's welcoming city ordinance, for example, two plaintiffs were Gary residents, so that case does not raise the same issues as Plaintiffs' expansive statutory standing argument does here.

provisions of the Ordinance violate section 18.2-3;[7] Plaintiffs are even more incorrect that additional Ordinance provisions also violate section 18.2-3.

A. The Ordinance expressly authorizes the type of information-sharing described in section 18.2-3.

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 18.2-3 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, § 10 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

[7] The Summary Order concluded: "East Chicago Ordinance 17-0010 §3, §6(a), and §6(c) Violate Ind. Code §5-2-18.2-3." Appellants' Appx. Vol. II 29.

immigration status"—the exact same type of information on which section 18.2-3 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 § 10 of the Ordinance and section 3 of Chapter 18.2 both apply to the same category of information is hardly surprising. Both provisions borrow their language from the same federal statute: namely, 8 U.S.C. § 1373.[8] 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).[9] Just as § 10 of the Ordinance ensures that City officials comply with § 1373's requirements,

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

[9] 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.

it also ensures that they comply with the virtually indistinguishable requirements of section 18.2-3.

Importantly, § 10 is incorporated into §§ 6(a) and 6(c)(3) of the Ordinance as an exception to those provisions' restrictions on information-sharing in the course of immigration enforcement.[10] Therefore, citizenship and immigration-status information may be shared with federal immigration authorities, while other information—that not addressed by section 18.2-3, like a person's custody status, release date, and contact information—may not be. That balance is wholly consistent with state law. *Cf. United States v. California*, 921 F.3d 865, 890 (9th Cir. 2019) (where state law "expressly *permit[ted]* the sharing of" information covered by § 1373, it did not conflict with § 1373 even though it restricted sharing other information).

B. Plaintiffs' challenge rests on an overbroad and atextual reading of the phrase "information of . . . citizenship or immigration status" in section 18.2-3.

Despite § 10'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 section 18.2-3. Their claim rests on a strained reading of section 18.2-3's use of the phrase "information of . . . citizenship or immigration status." Rather than give that

[10] Section 10 is mistakenly cited as "section 11" in these cross-references, but this is a scrivener's error.

phrase its plain and ordinary meaning, Plaintiffs would construe that phrase to encompass any and all information that might be useful "in locating illegal aliens." Appellants' Br. 21. Relying on that overbroad reading, they argue that section 18.2-3 requires the City to collect and exchange any information—not just "citizenship or immigration status"—that federal immigration authorities might ever want. *See id.* at 25 (arguing that information as far afield as vehicle information and contact information for relatives and friends is covered by section 18.2-3).

Plaintiffs' reading of section 18.2-3 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.[11] Instead, these courts have consistently construed the phrase 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, 333 (E.D. Pa. 2018), *aff 'd in part, vacated in part on other grounds*, 916 F.3d 276 (3d Cir. 2019).

[11] "[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).

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.*, *California*, 921 F.3d at 890 ("[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*, 475 F. Supp. 3d 355, 371 (D.N.J. 2020) ("[S]ections 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[.]"), *aff'd*, 8 F.4th 176 (3d Cir. 2021). These courts have therefore roundly rejected efforts to construe "citizenship or immigration status" to include the types of information that Plaintiffs would read into that phrase. *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.").

Plaintiffs contend that "information regarding" in § 1373—and, similarly, "information of" in section 3—broadens the category of "citizenship and immigration status" information to encompass any information relevant to immigration enforcement. Appellants' Br. 20–21. But this reading would be virtually boundless, as "the range of facts that might have some

connection to federal removability or detention decisions is extraordinarily broad." *California*, 921 F.3d at 892 n.17. Instead, courts have cautioned against reading words like "regarding" too broadly in the context of preemptive statutes in order to give effect to the presumption against preemption. As the Ninth Circuit explained in rejecting this argument, "if the term 'regarding' were 'taken to extend to the furthest stretch of its indeterminacy, then for all practical purposes preemption would never run its course, for '[r]eally, universally, relations stop nowhere.'" *California*, 921 F.3d at 892 (quoting *N.Y. State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655 (1995)). Because § 1373 seeks to preempt state and local law, its use of "regarding" should be read narrowly. This is even *more* true of section 3, which uses the word "of," not "regarding." *See* Ind. Code § 5-2-18.2-3 ("information *of* the citizenship or immigration status . . . of an individual" (emphasis added)). "Of" simply does not mean "in any way relating to."

Failing on plain language, Plaintiffs claim that section 18.2-3 is ambiguous because some courts have casually described *§ 1373's* scope with imprecise language, requiring recourse to legislative history. Appellants' Br. 19–20. The Court should decline Plaintiffs' "invitation to find ambiguity where none exists." *Wayne Metal Prods. Co. v. Ind. Dep't of Env't Mgmt.*, 721 N.E.2d 316, 319 (Ind. Ct. App. 1999). Where "a statute is clear and

unambiguous on its face, this court need not, and indeed may not, interpret the statute. Instead [courts] must hold the statute to its clear and plain meaning." *S. Bend Trib. v. S. Bend Cmty. Sch. Corp.*, 740 N.E.2d 937, 938 (Ind. Ct. App. 2000).

Plaintiffs next concoct a theory that all of the recent decisions that have found § 1373 unambiguous and rejected Plaintiffs' preferred construction may be disregarded because they post-date the enactment of section 3 in 2011. According to this argument, regardless of the actual scope of § 1373, all that matters is what the Indiana General Assembly *thought* § 1373 covered when it enacted section 3 in 2011. *See* Appellants' Br. 21–24. This argument requires two difficult logical leaps. First, it assumes that the General Assembly did not intend the plain and unambiguous meaning of the words it chose. Second, it assumes that the General Assembly was aware of the legislative history of § 1373 and 8 U.S.C. § 1644 (a materially identical provision) and out-of-jurisdiction decisions briefly discussing the scope of these laws, despite Plaintiffs' failure to put forth any legislative history supporting this theory. The better assumption—one reflected in the ordinary rules of statutory interpretation—is that the General Assembly meant exactly what it said: that section 18.2-3 applies solely to citizenship and immigration-status information. *See California*, 921 F.3d at 892 n.18

(rejecting the relevance of §§ 1373's and § 1644's committee reports to the interpretation of § 1373).[12]

In any case, the discussions of § 1373 in the cases Plaintiffs cite were dicta. First, in *City of New York v. United States*, 179 F.3d 29 (2d Cir. 1999), the Second Circuit had no reason to define the range of information covered by § 1373. That 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

[12] The Ninth Circuit also commented that the language of the committee reports at issue does not actually support a broader reading of the operative statutory language. *See California*, 921 F.3d at 892 n.18 (noting that the reports' phrasing "suggests that 'information regarding the immigration status' does *not* include 'the presence, whereabouts, or activities' of noncitizens").

change the plain meaning of § 1373's statutory text—much less the plain meaning of section 18.2-3's text.

Stray observations about § 1373's reach also were wholly unnecessary to the courts' holdings in both *Bologna v. City and County of San Francisco* and *Sturgeon v. Brattan*. Appellants' Br. 23–24; *see Bologna*, 192 Cal. App. 4th 429, 439–40 (2011) (holding that § 1373 was not "designed to protect the public from violent crimes," such that it could form the basis for a negligence per se claim); *Sturgeon*, 174 Cal. App. 4th 1407 (2009) (rejecting a preemption challenge to a local policy that barred "the initiation of investigations" into immigration status because § 1373 does not regulate information-gathering). Because these cases did not purport to interpret § 1373's scope, it is far from clear that they intended Plaintiffs' broad reading of § 1373 when they used the phrase "immigration information" as shorthand. *See, e.g.*, *Sturgeon*, 174 Cal. App. 4th at 1423 (using the phrase "immigration information" in a context where only immigration-status information was at issue).

Finally, Plaintiffs suggest that the meaning of section 18.2-3 is ambiguous because the City's Ordinance includes a broader statutory definition of "citizenship or immigration status" information in one provision. *See* Appellants' Br. 19 (citing Ordinance § 2). But the Ordinance does not define the terms of section 18.2-3, much less 8 U.S.C. § 1373. The Ordinance provides a specialized definition for purposes of some provisions of the

Ordinance, and nothing more.[13] Ordinance § 2 therefore has no bearing on the ordinary meaning of the terms used in section 3 or § 1373. *See State v. Dugan*, 793 N.E.2d 1034, 1036 (Ind. 2003) ("[W]ords are to be given their plain, ordinary, and usual meaning, unless a contrary purpose is shown *by the statute itself*." (emphasis added) (internal quotation marks omitted)).

C. Section 18.2-3 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 would construe section 18.2-3 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

[13] By contrast, section 10 of the Ordinance supplies the ordinary definition of the term in compliance with section 3 of Chapter 18.2 and with 8 U.S.C. § 1373.

omitted). Nothing in the text of section 18.2-3 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 18.2-3. *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 18.2-3—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." Appellees' Appx. Vol. II 80 (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." Appellees' Appx. Vol. II 96 (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 18.2-3 was modeled—only casts further doubt on Plaintiffs' reading of section 18.2-3.

Finally, the legislative context surrounding Chapter 18.2 reaffirms that section 18.2-3 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 18.2-3 suggests that the General Assembly never intended to impose an affirmative information-collection mandate under that section.

For all of these reasons, section 18.2-3 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 bar cities from limiting their employees' ability to gather that information in the first place. Plaintiffs are therefore incorrect in

claiming that provisions of the Ordinance that limit the ability of City officials to *collect* information—namely, Ordinance §§ 3 and 9(c)—violate section 18.2-3. *See Sturgeon*, 174 Cal. App. 4th at 1422 (reaching this conclusion under § 1373 with respect to an analogous local policy).

Plaintiffs' arguments with respect to § 9(c) demonstrate the intolerable breadth of their reading of section 18.2-3. Section 9(c) requires the East Chicago Police Department to "consider the extreme potential negative consequences of an arrest," including a heightened risk of deportation, when exercising its discretion to arrest any individual. It then directs officers to make an arrest only if "less severe alternatives are unavailable or would be inadequate to effect a satisfactory resolution."[14] Plaintiffs contend that this section indirectly restricts the sharing of immigration-status information because the decision not to arrest someone means that that individual's fingerprints will not be shared with the FBI—and ultimately with DHS

[14] Plaintiffs seriously misread the City's policy in section 9(c). Plaintiffs claim the policy applies only to potential arrests of undocumented immigrants. Appellants' Br. 42–43. Although the prefatory language of § 9(c) includes the observation that "the arrest of an individual increases that individual's risk of deportation," the same arrest policy expressly applies to "all individuals." This makes sense in practice. Rarely, if ever, would a police officer know ahead of time whether an individual potentially subject to arrest is also at risk of deportation, so the policy only achieves its goal of reducing an existing disparate impact on certain communities if it applies to everyone. In that context, § 9(c) is merely a commonsense policing strategy—that no one should be arrested if a less drastic option is available to resolve the problem.

through the "Secure Communities" program. But section 18.2-3 does not ban policies that restrict the collection of immigration-status information—and, *a fortiori*, it does not ban policies that restrict actions that may lead to the collection of information (here, arrestees' fingerprints) that may indirectly result in DHS's discovery of immigration-status information.

D. The Home Rule Act requires any ambiguities in section 18.2-3 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 abrogated 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 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 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 18.2-3 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 18.2-3 precludes such enforcement, that ambiguity would have to be resolved in the City's favor under the Home Rule Act. The Act 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 18.2-3'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 § 3 of the Ordinance, that in any way limits a municipality's "assist[ance]" with federal immigration investigations. Appellants' Appx. Vol. II 79. Section 18.2-3'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 18.2-3 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, § 10 of the Ordinance explicitly permits the sharing of "information regarding an individual's citizenship or immigration status"—the same information covered by section 18.2-3. Appellants' Appx. Vol. II 82-83. Even if there were some doubt as to whether § 10 might conflict with section 18.2-3 (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 18.2-4 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.

The Ordinance in no way violates section 18.2-4 because it does not interfere with the federal government's enforcement of federal immigration law. The trial court therefore correctly granted summary judgment to the City on Plaintiffs' claims under section 18.2-4.

A. Section 18.2-4'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 18.2-4 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 18.2-4 was enacted, or the broader structure of the country's federal immigration-enforcement regime.

To start with the text: the only restrictions that section 18.2-4 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.[15] But those circumstances are merely "specific, limited" exceptions to the default regime of federal enforcement. *Id.* at 410. Thus, section 18.2-4'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

[15] *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, received appropriate training, and are supervised as if they are federal immigration officials. *See id.* § 1357(g)(1)–(3). Neither the State of Indiana nor any municipality in Indiana has entered into such an agreement. *See* U.S. Immigration & Customs Enforcement, *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, https://perma.cc/6CAC-Y5P8 (last updated Nov. 24, 2020).

matter, and, moreover, would imply that the General Assembly fundamentally misunderstood America's immigration system when it enacted section 18.2-4. *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 18.2-4 is as a prohibition on local policies that *actively interfere* with the federal government's efforts to enforce immigration law. In other words, section 18.2-4 operates to ensure that no Indiana city becomes a true "sanctuary" for undocumented immigrants, where they might be shielded from federal immigration authorities. Section 18.2-4 would thus bar cities from excluding federal immigration agents from public places like courthouses and libraries (as some other jurisdictions outside of Indiana have done[16]). And it would likewise bar any city's attempt to block federal agents from conducting raids using federal personnel and equipment. The East Chicago Ordinance does none of these things.

Plaintiffs' alternative reading of section 18.2-4—as a requirement that localities affirmatively assist in any federal enforcement efforts—rests on

[16] *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.").

their view that section 18.2-4 requires "[b]road [e]nforcement [c]ooperation." Appellants' Br. 25. But section 18.24 never uses the word "cooperation." In fact, the only substantive provision of Chapter 18.2 that addresses "cooperation" with the federal government is section 18.2-3.[17] And, as outlined 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 18.2-3's narrow focus on information-sharing thus further undercuts Plaintiffs' theory that section 18.2-4 mandates cooperation in all contexts: after all, if section 18.2-4's reference to "enforcement" was meant to serve as an all-encompassing cooperation mandate (as Plaintiffs believe), then section 18.2-3 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].").[18]

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[17] Section 18.2-7 also refers to a "duty to cooperate," but, as explained below, *see infra* Part IV, section 18.2-7 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.

[18] Plaintiffs' assertion that section 18.2-3 is not superfluous under their reading because it covers "the *ordinance* context," whereas section 18.2-4 "addresses enforcement-cooperation generally" makes little sense. Appellants'

Continued on next page.

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

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Br. 26 n.16. It is not at all clear why "the ordinance context" necessitates a separate set of rules.

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.15.

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 18.2-4'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 18.2-4 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 rely on a 2017 *Texas* statute as evidence of what the *Indiana* General Assembly sought to accomplish when it enacted section 4 in 2011. Appellants' Br. 32–33. 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 18.2-4 merely reaffirms that the City's (and the trial court'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 18.2-4 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 18.2-4 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*, 85 N.E. 362, 363 (Ind. 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 740.

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 18.2-4 does not contain the clear revocation of local authority needed to vindicate Plaintiffs' sweeping reading of the statute.

Reading an all-encompassing cooperation mandate into section 4's limited text would seriously—and improperly—undermine cities' express and implied powers. *See 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 18.2-4 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. [19] *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

[19] Plaintiffs address at length whether section 18.2-4 is unconstitutionally vague. Appellants' Br. 30–32. The City has not made that argument on appeal. Rather, the City's central point is that reading section 18.2-4 to bar any policy that could limit the City's ability to participate in immigration enforcement could impose a nearly boundless constriction on local policy-making, and home-rule principles require courts to assume that this was *not* the General Assembly's intent.

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 18.2-4 by defining the precise parameters of the City's role in immigration enforcement, while refraining from directly regulating federal immigration-enforcement efforts.[20] 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 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").

Contrary to Plaintiffs' view, the home-rule analysis in *City of El Cenizo v. Texas*, 890 F.3d 164 (5th Cir. 2018), is consistent with this analysis. Appellants' Br. 34. Unlike section 18.2-4, the Texas statute at issue made clear that its ban on "prohibit[ing] or materially limit[ing] the enforcement of immigration laws" included "*assisting or cooperating* with a federal

[20] As a practical matter, the City *does* cooperate with federal authorities in ways not prohibited by the Ordinance, including by participating in federally sponsored task forces. Appellees' Appx. Vol. II 13-14 (Rosario Affidavit).

immigration officer as reasonable or necessary, including providing *enforcement assistance*." Tex. Gov't Code Ann. § 752.053(a), (b)(3) (emphasis added). Thus, although the court in *El Cenizo* concluded that Texas did in fact preempt its cities' decisions whether to provide enforcement assistance, 890 F.3d at 191, the same conclusion does not follow here.

C. Even if section 18.2-4 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 18.2-4 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 18.2-4 because it does not restrict the *federal* government's immigration enforcement efforts). But even if section 18.2-4 were construed that broadly (in contravention of its text, context, and legislative history), much of the Ordinance would still remain lawful. Applying Plaintiffs' expansive reading of section 18.2-4 to each of the Ordinance provisions at issue here illustrates this point clearly.

Ordinance § 10. As noted above, § 10 of the Ordinance explicitly *authorizes* the exchange of "citizenship or immigration status" information with federal authorities. *See supra* Parts II & III.A. It does not prohibit cooperation and, therefore, cannot be construed to violate section 18.2-4—even under Plaintiffs' overbroad reading of the statute.

Ordinance § 3. Section 3 of the Ordinance also largely withstands Plaintiffs' atextual reading of section 18.2-4. Among other things, § 3 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. Appellants' Appx. Vol. II 79. Even if section 18.2-4 were construed to require the City's cooperation with requests by the federal government, 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 § 3 would plainly fall outside the domain of whatever section 18.2-4 might restrict under Plaintiffs' theory.

Ordinance § 9(c). Section 9(c) governs police-officer discretion in deciding whether to arrest any person for a state-law criminal offense. Appellants' Appx. Vol. II 82. Nothing in § 9(c) prevents officers from complying with federal immigration agents' requests for assistance in enforcing federal immigration laws. Nor does § 9(c) prevent any other forms of "cooperation" with federal agents. Taken to its logical extreme, Plaintiffs' argument that § 9(c) violates section 18.2-4 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 § 6. Section 6 is the lengthiest provision of the Ordinance that the trial court identified in its order. Subsections (1) through (3) of § 6 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." Appellants' Appx. Vol. II 80. In addition, § 6(b) 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." Appellants' Appx. Vol. II 81. Each of these subsections would remain valid even under Plaintiffs' reading of section 18.2-4.

As to § 6(1)–(3), these provisions merely ensure the City's compliance with the Fourth Amendment's prohibition on unreasonable searches and seizures.[21] 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

[21] Plaintiffs imply that the City should have "challenged Chapter 18.2" under the Fourth Amendment. Appellants' Br. 50. To be clear, the City does not claim that section 18.2-4 is unconstitutional. Rather section 18.2-4's prohibition extends only so far as "what is permitted by federal law." The Fourth Amendment's restrictions therefore are incorporated into the scope of what section 4 may demand of cities.

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 justification." *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).[22]

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 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.*

[22] *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.").

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").

Although Plaintiffs are correct that the Fifth Circuit 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 18.2-4).

Moreover, the City does not contest that federal officials may constitutionally engage in civil immigration arrests, so Plaintiffs' invocation of the special-needs doctrine, Appellants' Br. 52–54, is irrelevant to whether local officials, *without authority to do so*, may engage in separate detentions on the federal government's behalf. Plaintiffs' invocation of the collective-knowledge doctrine, *id.* at 55–56, likewise fails: If a local officer does not have the authority to detain an individual on suspicion of removability, then it does not matter *who* makes the probable-cause determination. *See People ex rel. Wells v. DeMarco*, 168 A.D.3d 31, 47 (N.Y. App. Div. 2018) (rejecting application of the collective-knowledge doctrine because, if the local officer

does not have "authority to arrest for a civil matter," the officer cannot "make a 'lawful' arrest"); *see also Lopez-Flores v. Douglas County*, No. 6:19-CV-00904-AA, 2020 WL 2820143, at *6 (D. Or. May 30, 2020) (declining to extend the collective-knowledge doctrine to the civil immigration context).

Finally, compliance with a detainer request is not permissible "cooperation" with ICE under § 1357 (g)(10)(B). *See* Appellants' Br. 54. The assistance that § 1357(g)(10) contemplates assumes close supervision by federal officials. *See* 8 U.S.C. § 1357(g)(1)–(3) (allowing direct immigration enforcement by state and local law enforcement only with federal training, certification, and supervision); *Arizona*, 567 U.S. at 410 (excluding compliance with detainer requests from a list of examples of cooperation). In fulfilling a detainer request, by contrast, state and local officials keep an individual in custody under their own power, independent of direct supervision by federal officials—and despite a total lack of authority to engage in civil immigration seizures on their own.

In short, law enforcement officers in Indiana have no authority under federal or state law to detain individuals for civil immigration offenses, and continuing to hold someone without authority after he otherwise would be released from custody is unreasonable under the Fourth Amendment. Sections 6(1)–(3) are therefore necessary to ensure that the City honors its Fourth Amendment obligations, so they cannot violate section 18.2-4.

Finally, § 6(b)'s prohibition on § 1357(g) agreements also comports with Plaintiffs' broad reading of section 18.2-4. 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 18.2-4. 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 § 6 of the Ordinance.

In sum, even if this Court were to disagree with the trial court and read section 18.2-4 to prevent localities from providing guidance to their own officials on when and how to cooperate with federal immigration authorities (which it should not), § 9(c) and § 10 of the Ordinance would still be consistent with that reading, as would much of § 3 and § 6.

IV. The trial court was correct that the City has satisfied the requirements of section 7 of Chapter 18.2.

Finally, Plaintiffs claim that East Chicago's Ordinance violates section 7 of Chapter 18.2 on the ground that section 18.2-7 supposedly imposes a broad duty on law enforcement officers to cooperate in any and all immigration enforcement. Appellants' Br. 17–18. But that is a gross overreading of what section 18.2-7 says. Section 18.2-7 is a notice

requirement, and, as the trial court recognized, the City has provided the required notice, so there is no violation of section 18.2-7.

Section 18.2-7 requires that every "law enforcement agency . . . provide each law enforcement officer *with 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." Ind. Code § 5-2-18.2-7 (emphasis added). The trial court noted—and Plaintiffs do not contest—that, after the commencement of this case, "the East Chicago Police Department issued a notice in compliance with" section 18.2-7. Appellants' Appx. 3. Because that is all that section 18.2-7 requires, the trial court correctly granted summary judgment to the City on Plaintiffs' claims under section 18.2-7.

Contrary to Plaintiffs' arguments, section 18.2-7 does not purport to create its own "duty to cooperate," nor does it explain what "matters" are covered by its terms, and Plaintiffs fail to explain the content or scope of the broad duty they perceive in section 18.2-7. Instead, section 18.2-7 obligates law enforcement agencies to provide notice of a duty located elsewhere—namely, in section 3 of Chapter 18.2. The limited scope of 18.2-7 is confirmed by 18.2-6, which allows a court to enjoin knowing violations of 18.2-3 or 4, but *not* 7.

Although section 18.2-3 is phrased as a restriction on certain policies, its logic requires that "a law enforcement officer" must be permitted to "communicat[e] or cooperat[e] with federal officials" with respect to "information of the citizenship or immigration status, lawful or unlawful, of an individual." Ind. Code § 5-2-18.2-3. Evidencing this relationship between the two provisions, section 18.2-7 fell within a chapter called "Citizenship and Immigration Status Information" in the original draft bill of Senate Bill 590, where it appeared alongside section 3. S.B. 590, Sec. 2, Ch. 18, § 5 (introduced Jan. 20, 2011), *available at* http://archive.iga.in.gov/2011/bills/PDF/IN/IN0590.1.pdf.[23] Thus, section 18.2-7 merely requires that law enforcement agencies provide notice of the duty underlying section 18.2-3 and does not create any additional freestanding duty. The trial court found that the City has provided the required notice, Appellants' Appx. Vol. II 29, and Appellants offer no basis for upsetting that conclusion.

[23] Section 18.2-4, by contrast, originally appeared in a subsequent chapter that bore a separate title. *See* S.B. 590, Sec. 3, Ch. 19, § 4.

CONCLUSION

For the foregoing reasons, the judgment of the trial court should be affirmed in part and reversed in part, and judgment should be granted in the City's favor.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Angela Jones, 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 13,199 words.

/s/ Angela Jones
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CERTIFICATE OF SERVICE

I certify that on the 15th day of November, 2021, service of a true and complete copy of the above and foregoing Corrected Brief of Appellees-Cross-Appellants was e-filed with the Clerk of the Court through the Indiana E-Filing System.

I further certify that on November 15, 2021, a copy of the foregoing Corrected Brief of Appellees-Cross-Appellants was served upon the following though the Indiana E-Filing System:

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