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Monroe Circuit Court 6
Monroe County, Indiana

STATE OF INDIANA	)	IN THE MONROE CIRCUIT COURT
	) SS:	
COUNTY OF MONROE	)	CAUSE NO. 53C06-2407-PL-001733

STATE OF INDIANA *ex rel.* TODD ROKITA, ATTORNEY GENERAL OF INDIANA,	)
	)
Plaintiff,	)
	)
v.	)
	)
RUBEN MARTÉ, in his official capacity as MONROE COUNTY SHERIFF and MONROE COUNTY SHERIFF'S OFFICE,	)
Defendants.	)

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases **Page**

Statutes, Regulations, and Rules

Other Authorities

INTRODUCTION

It is the policy of the State of Indiana to allow state and local law enforcement officers to cooperate to the fullest extent allowed under federal law with federal enforcement of immigration laws. Defendants, the Sheriff of Monroe County and his Office, have promulgated a different policy—one that impermissibly restricts the discretion of Defendants and Defendants' officers to engage in the permissible enforcement of federal immigration laws—and thus clearly violates state law. Defendants' policy must therefore yield. The Court should enjoin Defendants' lawless immigration policy and order Defendants into compliance with state law.

Indiana Code Chapter 18.2 prohibits localities from limiting or restricting their or their agents' participation in immigration enforcement activities to less than the full extent allowed by federal law. And it specifically prohibits local government entities from instituting policies that restrict communication and cooperation between their employees and federal immigration authorities in certain situations. Yet in direct contravention of Chapter 18.2, Defendants implemented Standard Operating Procedure MCSO-012 ("MCSO-12"), which strictly bars Defendants' officers and employees from engaging in various kinds of immigration-related enforcement activities. Plaintiff the State of Indiana by Todd Rokita, Attorney General of Indiana (the "Attorney General"), brought this action pursuant to Chapter 18.2 seeking to enjoin Defendants' unlawful policy. While Defendants may prefer a different approach to how their officers undertake immigration-related enforcement activities, Indiana law does not allow them that choice.

Defendants' motion to dismiss the Attorney General's Complaint should be denied. It improperly relies on materials extrinsic to the Complaint and rests on a clear misreading of state law. Defendants admit that their policy "sets . . . limits on" Defendants' engagement with federal immigration enforcement. Defendants' Mem. in Supp. of Their Mot. to Dismiss or, in the Alternative, for Summary Judgment at 4 (Sept. 4, 2024) ("Defs.' Br."). Those limits are in violation of Indiana law. While Indiana law does not *mandate* cooperation with federal immigration authorities or require local entities to undertake independent enforcement actions, it does prohibit local entities from restricting or limiting, *ex ante*, through a formal policy, their own ability to cooperate or undertake enforcement actions.

The distinction between a state *mandate* to undertake certain enforcement actions and a statutory *preservation of governmental discretion* to engage in those actions is key to understanding the state law that governs here, and defeats most of Defendants' arguments. Once this distinction is understood, it becomes apparent that Defendants' policy is unlawful. MCSO-12 violates Indiana Code § 5-2-18.2-3 ("Section 3") because it restricts the discretionary ability of Defendants' officers to communicate and cooperate with federal immigration authorities with regard to information of an individual's citizenship and immigration status. MCSO-12 also violates Indiana Code § 5-2-18.2-4 ("Section 4") because it restricts officers from taking enforcement actions concerning immigration matters that are fully permitted by federal law. In short, by implementing a policy that restricts their own and their

officers' discretion on immigration matters, Defendants are not compliant with state law.

Thus, properly interpreted, Indiana Code Chapter 5-2-18.2 plainly prohibits the policy that Defendants have promulgated. The Attorney General clearly alleged as much in his Complaint. Likewise, Defendants are wrong that a portion of their policy is required by the Fourth Amendment to the United States Constitution—a position that is contrary to binding U.S. Supreme Court and persuasive federal circuit court precedent. And while Defendants argue that the Attorney General has failed to state a claim because injunctive relief is inappropriate here under the traditional injunction factors, Indiana Code § 5-2-18.2-6 unambiguously supersedes those factors. And even if it did not, the factors are plainly satisfied.

The Court should deny Defendants' motion to dismiss and allow this action to proceed. For the reasons stated in the Attorney General's October 4, 2024 Motion to Exclude and reiterated below, the Court should also exclude the extrinsic evidence relied upon by Defendants and decline to convert their motion into one for summary judgment.

BACKGROUND

IV. Indiana's Prohibition on Interfering with Local Cooperation with Federal Immigration Enforcement Efforts.

Indiana law bars state and local agencies from preventing their officers and employees from cooperating with federal authorities in the enforcement of immigration laws and related criminal matters. Ind. Code ch. 5-2-18.2. Under Ind. Code § 5-2-18.2-5, "[i]f the attorney general determines that probable cause exists

that a governmental body or a postsecondary educational institution has violated this chapter, the attorney general shall bring an action to compel the governmental body or postsecondary educational institution to comply with this chapter."

Indiana Code § 5-2-18.2-3 states that a governmental body "may not enact or implement an ordinance . . . or a policy that prohibits or in any way restricts another governmental body or employee . . . , including a law enforcement officer, a state or local official, or a state or local government employee, from taking" specified "actions with regard to information of the citizenship or immigration status, lawful or unlawful, of an individual." The protected actions are: "(1) Communicating or cooperating with federal officials[;] (2) Sending to or receiving information from the United States Department of Homeland Security [("DHS")][;] (3) Maintaining information[;] [and] (4) Exchanging information with another federal, state, or local government entity." *Id.* Section 4 states that a governmental body "may not limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by federal law." *Id.* § 5-2-18.2-4. "If a court finds by a preponderance of the evidence that a governmental body or postsecondary educational institution knowingly or intentionally violated this chapter, the court shall enjoin the violation." *Id.* § 5-2-18.2-6.

V. Defendants' Standard Operating Procedure MCSO-12.

On June 29, 2024, Monroe County Sheriff Marté promulgated MCSO-12 to govern the actions of personnel of the Monroe County Sheriff's Office ("MCSO") on matters concerning immigration and citizenship status. Complaint to Compel

Compliance with Indiana Code 5-2-18.2 ¶ 9 (July 11, 2024) ("Compl."). MCSO-12 prohibits the MCSO's employees and officers from communicating and cooperating with federal officials in the enforcement of federal immigration laws and restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law in several ways.

MCSO-12 states that the MCSO will not "engage in enforcement of immigration or citizenship status unless required to do so by law." *Id.* ¶ 11. It prohibits personnel of the MCSO from "request[ing] or attempt[ing] to ascertain (i.e. run) immigration or citizenship status of an individual that they encounter related to their official duties for the [MCSO], unless required to do so in the execution of their official duties." *Id.* ¶ 13. It bars MCSO personnel from holding an individual "beyond their scheduled release date based on a non-criminal/administrative ICE detainer," *id.* ¶ 14, and it prohibits them from detaining individuals "solely based on a non-criminal/administrative ICE detainer," *id.* Ex. A, MCSO-12 § IV(E)(2). And it states that the MCSO "shall not enter into any agreement, including the 287(g) program, with [ICE] for enforcement of immigration or citizenship violations." *Id.* ¶ 12. Each of these provisions of Defendants' policy is plainly inconsistent with state law.

VI. The Attorney General's Suit to Enjoin MCSO-12.

On May 14, 2024, Attorney General Rokita sent a letter to Sheriff Marté regarding the MCSO's immigration-related policies. *Id.* ¶ 23. In the letter, the Attorney General informed Defendants of the requirements of state law pertaining to immigration enforcement and asked that Defendants rescind MCSO policies that

were inconsistent with state law if they were still in effect. *Id.* Through further communications with the MCSO, the Attorney General learned that Sheriff Marté intended to promulgate a revised policy concerning immigration and citizenship status. *Id.* ¶ 24. After reviewing a draft of the revised policy, the Attorney General determined that it would violate state law and informed Defendants accordingly. *Id.* Despite the Attorney General's determination, Defendants proceeded to promulgate the unlawful version of MCSO-12 currently in effect. *Id.* ¶ 25.

Consequently, on July 11, 2024, the Attorney General, on behalf of the State of Indiana, filed this suit to enjoin Defendants' violations of Indiana law. The Attorney General asserts that Defendants have violated Indiana law "by implementing a policy which limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law." *Id.* ¶ 1. Specifically, the Attorney General contends that MCSO-12 "violates Indiana Code §§ 5-2-18.2-3 and 5-2-18.2-4" and seeks an order enjoining Defendants from violating Indiana Code chapter 5-2-18.2. *Id.* at 6–7. In his Complaint, the Attorney General quoted in full the provisions of MCSO-12 that violate state law.

On September 4, 2024, Defendants filed a motion requesting that the Court dismiss the Complaint for failure to state a claim upon which relief can be granted under Indiana Trial Rule 12(B)(6), or, in the alternative, grant summary judgment pursuant to Indiana Trial Rule 56. On October 4, 2024, the Attorney General filed a motion to exclude the evidence extrinsic to the Complaint that Defendants filed with

their motion to dismiss. The Attorney General now respectfully submits this memorandum of law in opposition to Defendants' motion.

STANDARD OF REVIEW

"A motion to dismiss for failure to state a claim tests the legal sufficiency of the claim, not the facts supporting it." *City of East Chicago v. E. Chi. Second Century, Inc.*, 908 N.E.2d 611, 617 (Ind. 2009). In reviewing a motion to dismiss, the court "view[s] the pleadings in the light most favorable to the nonmoving party, with every reasonable inference construed in the nonmovant's favor." *Id.* "Motions to [d]ismiss are not favored in the law." *Sacks v. Am. Fletcher Nat'l Bank & Tr. Co.*, 279 N.E.2d 807, 812 (Ind. 1972). The court will grant a motion to dismiss "only when the allegations present no possible set of facts upon which the complainant can recover," or, in other words, where "it is apparent that the facts alleged in the challenged pleading are incapable of supporting relief under any set of circumstances." *City of East Chicago*, 908 N.E.2d at 617 (internal quotation marks and citations omitted).

Indiana's notice pleading standard requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." *McCalment v. Eli Lilly & Co.*, 860 N.E.2d 884, 890 (Ind. Ct. App. 2007) (quoting Indiana Trial Rule 8(A)). "[A] plaintiff essentially need only plead the operative facts involved in the litigation." *State v. Rankin*, 294 N.E.2d 604, 606 (Ind. 1973). "A complaint's allegations are sufficient if they put a reasonable person on notice as to why a plaintiff sues." *Shields v. Taylor*, 976 N.E.2d 1237, 1245 (Ind. Ct. App. 2012).

ARGUMENT

V. The Court Should Consider Only Defendants' Motion to Dismiss at this Time.

Defendants have moved to dismiss the Complaint, or, in the alternative, for summary judgment, and have attached materials extraneous to the Complaint to their motion. Ordinarily, under Ind. R. Trial P. 12(B)(6), the Court should exclude from its consideration of a motion to dismiss evidence extrinsic to the complaint, and it should do so here. *See, e.g.*, *Davis ex rel. Davis v. Ford Motor Co.*, 747 N.E.2d 1146, 1149 (Ind. Ct. App. 2001) (explaining that in considering a motion to dismiss under Indiana Trial Rule 12(B)(6), "the court may look only at the pleadings, with all well-pleaded material facts alleged in the complaint taken as admitted, supplemented by any facts of which the court will take judicial notice"); *see also Bd. of Comm'rs v. McGuinness*, 80 N.E.3d 164, 167 n.2 (Ind. 2017) (explaining that where evidence outside the pleadings was submitted in response to a motion to dismiss but played no part in the trial court's decision, "it was error for the trial court to not formally exclude the [evidence] in its order"). Moreover, the Court should not convert a motion to dismiss to a summary judgment motion without affording the parties a "reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Ind. Trial Rule 12(B); *see also Lanni v. Nat'l Collegiate Athletic Ass'n*, 989 N.E.2d 791, 796 (Ind. Ct. App. 2013). "When a trial court treats a 12(B)(6) motion as one for summary judgment and does not afford the parties a reasonable opportunity to present such material, the trial court commits reversible error." *Dixon v. Siwy*, 661 N.E.2d 600, 604 (Ind. Ct. App. 1996).

The Court should not convert Defendants' motion to dismiss and thus should exclude from its consideration of the motion the materials outside the Complaint filed by Defendants, as requested in the Attorney General's separate motion to exclude. This case is in its earliest stages. The Court has not yet considered the sufficiency of the allegations in the Complaint, and no discovery has been taken. In similar situations, where a trial court has converted a motion to dismiss to a motion for summary judgment without giving the parties a reasonable opportunity to present all materials relevant to the motion for summary judgment, including by taking discovery, the Court of Appeals has reversed the trial court. *See, e.g.*, *Lanni*, 989 N.E.2d at 794–97; *Carrell v. Ellingwood*, 423 N.E.2d 630, 633–34 (Ind. Ct. App. 1981); *Foster v. Littell*, 293 N.E.2d 790, 792–93 (1973). For the reasons explained below, the Court should deny Defendants' motion to dismiss. In the event the Court were to grant any part of the motion and dismiss the Complaint in whole or in part, the Attorney General will still have the opportunity to amend the Complaint to conform to the Court's determinations. *See* Ind. Trial Rule 12(B) ("When a motion to dismiss is sustained for failure to state a claim under subdivision (B)(6) of this rule the pleading may be amended once as of right pursuant to Rule 15(A) within ten [10] days after service of notice of the court's order sustaining the motion and thereafter with permission of the court pursuant to such rule."). The Court should not cut that process short and proceed directly to summary judgment, which would not allow for the normal amendment process. *See Criss v. Bitzegaio*, 420 N.E.2d 1221, 1223 (Ind. 1981) (explaining that "[t]he policy in this state is liberally to allow the amendment of

pleadings"). The Attorney General should have a full and fair opportunity to defend the adequacy of his Complaint.

Further, if the Court were to decide to convert Defendants' motion from a motion to dismiss to a motion for summary judgment under Trial Rule 12(B) and consider the extraneous evidence that Defendants have submitted, the Attorney General would be entitled to a "reasonable opportunity to present all material made pertinent to such a motion" under Trial Rule 12(B) and Trial Rule 56. *See Lanni*, 989 N.E.2d at 797 (holding that the trial court abused its discretion in converting a motion to dismiss to a motion for summary judgment without giving the non-movant a reasonable opportunity to "present any material made pertinent to a[n] [Ind. Trial Rule] 56 motion"). At the present juncture, the Attorney General has had no opportunity to depose Sheriff Marté concerning his affidavit or engage in other discovery that may be necessary. Summary judgment at this stage would therefore be improper.

VI. MCSO-12 Violates Indiana Law.

Defendants' policy plainly violates Indiana Code Chapter 5-2-18.2. Defendants' attempt to defend their policy rests on clear misinterpretations of that statute, which the Court should reject. Chapter 18.2 generally precludes governmental bodies from limiting or restricting federal immigration enforcement efforts to less than the full extent allowable by federal law, Ind. Code § 5-2-18.2-4, and specifically prohibits them from instituting policies that restrict communication and cooperation between their employees and federal immigration authorities in certain situations, Ind. Code

§ 5-2-18.2-3. These provisions must be interpreted "in their plain, ordinary, and usual sense," and under that plain and ordinary meaning, any limits or restrictions on governmental cooperation or participation in immigration enforcement are prohibited. *City of North Vernon v. Jennings Nw. Reg'l Utils.*, 829 N.E.2d 1, 4 (Ind. 2005).

Defendants all but admit that their policy "sets . . . limits on" Defendants' discretion to take enforcement actions related to immigration matters. Thus, under the proper interpretation of Section 3 and Section 4, several provisions of MCSO-12 clearly violate Indiana law.[1] Specifically, MCSO-12 violates Section 3 because it restricts communication and cooperation between MCSO's officers and employees and federal immigration authorities with regard to information of an individual's citizenship and immigration status. In particular, the policy bars officers and

[1] In supporting their position that MCSO-12 does not violate Indiana law, Defendants rely on an affidavit from Sheriff Marté submitted with their motion to explain Sheriff Marté's motivations for promulgating MCSO-12. *See, e.g.*, Defs.' Br. at 30–31. The Court should exclude this evidence that is outside the Complaint. But even if the Court considers it and converts Defendants' motion to a motion for summary judgment, Sheriff Marté's purported motivations for promulgating MCSO-12 do not affect whether MCSO-12 violates Indiana law. The provisions of MCSO-12 either violate Section 3 and/or Section 4, or they do not. Neither Section contains any carveouts for specific types of motivations as exempt from the law.

Defendants also rely on pre-litigation comments by the Chief Deputy Attorney General to the MCSO about why MCSO-12 violates Indiana law. *See, e.g.*, *id.* at 15–16. The Court should exclude this evidence that is extraneous to the Complaint, but even if the Court does not exclude the evidence and converts Defendants' motion to a motion for summary judgment, the evidence has no bearing on the proper interpretation of Section 3 and Section 4. The proper interpretation of a statute is a question of law, *Serv. Steel Warehouse Co. v. U.S. Steel Corp.*, 182 N.E.3d 840, 842 (Ind. 2022), one on which the Chief Deputy Attorney General's pre-litigation comments have no bearing.

employees from requesting such information from ICE. MCSO-12 also violates Section 4 because it restricts officers and employees from engaging in other immigration-related enforcement actions, such as detaining an individual in response to an ICE detainer or seeking to enter into an enforcement agreement with federal authorities, thereby restricting the enforcement of federal immigration laws to less than the full extent permitted by federal law. Defendants' policy thus cannot be reconciled with state law and must be enjoined.

A. Various Provisions of MCSO-12 Section II Violate Indiana Law.

MCSO-12 Section II, titled "Policy," states that "it is the policy of this Department to not engage in enforcement of immigration or citizenship status unless required to do so by law" and that "MCSO shall not enter into any agreement, including the 287(g) program, with [ICE] for enforcement of immigration or citizenship violations." Compl. Ex. A, MCSO-12 § II. Both policies violate Chapter 18-2.

Section II's policy *against* engaging in the enforcement of immigration law violates both Sections 3 and 4 of Chapter 18.2. First, it violates Section 3 because it bars MCSO officers and employees from taking the actions specified in Section 3 with regard to information of an individual's citizenship or immigration status. For example, the policy would not allow MCSO employees to investigate voluntarily the citizenship or immigration status of an individual in response to an ICE request unless that investigation was *required* by law. But Section 3 bars any policy that

"prohibits or in any way restricts" such cooperation, regardless of whether the cooperation is mandated by law.

Defendants insist that Section 3 does not cover such "cooperation" and instead addresses "only the sharing and maintenance of information, and only information about citizenship and immigration status," relying on a vacated and thus non-precedential Indiana Court of Appeals opinion. Defs.' Br. at 16 (citing *City of Gary v. Nicholson*, 181 N.E.3d 390 (Ind. Ct. App. 2021), *trans. granted*, 190 N.E.3d 349 (Ind. 2022)). But Section 3 bars governmental bodies from adopting a policy that "prohibits or in any way restricts" its officials or employees from "[c]ommunicating *or cooperating* with federal officials," "with regard to information of the citizenship or immigration status, lawful or unlawful, of an individual." Ind. Code § 5-2-18.2-3 (emphasis added). The terms "communicate" and "cooperate" have distinct meanings, meaning that Section 3 bars governmental bodies from restricting *either* type of action. Because these terms have distinct meanings, Subdivision 1 of Section 3 plainly cannot be limited to restrictions on *communicating* with regard to information of the citizenship or immigration status of an individual alone. The provision also obviously must apply to restrictions on *cooperating* with regard to that information—unless this distinct term be effectively read out of the statute. *See ESPN, Inc. v. Univ. of Notre Dame Police Dep't*, 62 N.E.3d 1192, 1199 (Ind. 2016).

Indeed, Indiana Code § 5-2-18.2-7 recognizes that law enforcement officers have a duty to cooperate with federal immigration enforcement efforts. That provision requires law enforcement agencies to provide written notice that each "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." *Id.* Section 7 thus confirms that the inclusion of "cooperating" in Section 3 not only bars policies limiting communication, but also bars policies limiting other cooperative actions relating to information of citizenship or immigration status in response to federal officials' requests for assistance with enforcement of federal immigration laws. This prohibition thus bars restrictions on many forms of "cooperation" that go beyond simple communication, such as gathering information at the request of a federal official. *See, e.g.*, *Arizona v. United States*, 567 U.S. 387, 410 (2012). MCSO-12 Section II's restrictions on "engag[ing] in enforcement of immigration or citizenship status" thus run afoul of Indiana Code § 5-2-18.2-3's limits on restricting cooperation in the enforcement of immigration laws.[2]

Section II of the policy also violates Section 4 because it limits MCSO employees' ability to engage in the enforcement of federal immigration laws to "the full extent permitted by federal law." Ind. Code § 5-2-18.2-4. Among other things,

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[2] Defendants argue at length that Section 3 does not impose a "general cooperation requirement" for governmental bodies to cooperate with federal officials in the enforcement of federal immigration laws regardless of the context of that cooperation. *See* Defs.' Br. at 15–18. To the extent that Defendants rely on material extraneous to the Complaint in making these arguments, *e.g.*, MCSO-012 with Tracked Changes by Chief Deputy Attorney General Lori Torres (Ex. 1-C), the Court should exclude that material, and the arguments based upon it, for the reasons explained above. *See supra* pp. 8–10. In any event, as discussed more fully herein, the Attorney General does not take the position that Section 3's reference to "cooperating with federal officials" "with regard to information of the citizenship or immigration status" of an individual encompasses the detention of individuals in response to a detainer. Rather, Defendants' prohibition on detaining individuals in response to an immigration detainer violates Section 4.

federal law permits state and local law enforcement officers, as part of their "investigative duties," to "conduct a status check during the course of an authorized, lawful detention or after a detainee has been released." *Arizona*, 567 U.S. at 394, 414. Federal law also allows local law enforcement to assist in the lawful, constitutional enforcement of federal immigration laws in response to a federal official's request, such as by detaining an individual in response to an ICE detainer request. Consequently, because MCSO-12 "limits or restricts" the MCSO's employees' ability to engage in this conduct, it violates Section 4. The vacated *City of Gary* opinion on which Defendants rely at length actually adopted this interpretation of the Indiana statute, holding that "[b]ecause 'the full extent' of federal law permits voluntary state and local cooperation with federal officials in the enforcement of immigration law, . . . under Section 4, [a governmental body] may not limit or restrict its agents or agencies, including law enforcement officers, from cooperating with the federal government, to less than the full extent permitted by federal law." 181 N.E.3d at 404. Thus, the court concluded that Section 4 "bars [a governmental body] from directing its employees, agents, or officials not to cooperate with federal immigration officials in the enforcement of immigration laws." *Id.*

In short, MCSO-12 Section II's policy *against* assisting in the enforcement of federal immigration laws to the fullest extent possible plainly violates Section 4. Defendants mistakenly resist this conclusion by claiming that Section 4 "is best understood as prohibiting only those policies that actively interfere with the *federal* government's enforcement of immigration laws," Defs.' Br. at 20; *see also id.* at 20–

23, and that Section 4 does not "bar[ ] local officials from limiting their cooperation with the federal government's immigration enforcement," *id.* at 25; *see also id.* at 23–29. Defendants misread Section 4, and the Court should reject their arguments.

Critically, Section 4 is in no way limited to prohibiting policies that limit or restrict solely *the federal government's* enforcement of immigration laws, as opposed to also prohibiting policies that limit or restrict a local governmental body's involvement in the enforcement of immigration laws. The limitation Defendants seek to impose on Section 4 is nowhere to be found in the plain language of the statute and cannot be reasonably implied from the text. Section 4 refers simply to "the enforcement of federal immigration laws," and there are many circumstances in which local law enforcement may, consistent with federal law, undertake enforcement activities, either on their own initiative or at the request of federal authorities. As the U.S. Supreme Court observed in *Arizona*, state and local participation in immigration enforcement "is an important feature of the immigration system," 567 U.S. at 411, and such participation includes situations where state and local officials honor detainer requests, "participate in a joint task force with federal officers, provide operational support in executing a warrant, . . . allow federal immigration officials to gain access to detainees held in state facilities," and respond "to requests for information about when an alien will be released from their custody," *id.* at 410. Likewise, local law enforcement is permitted to request citizenship or immigration information from federal immigration authorities. *See id.* at 411. Indeed, DHS is required by statute to respond to such requests initiated by local law

enforcement. *See* 8 U.S.C. § 1373(c). These actions all involve the "enforcement of federal immigration laws" for purposes of Ind. Code § 5-2-18.2-4. A governmental body therefore cannot limit or restrict its employees' ability to take these specific actions or any other action that constitutes lawfully permitted state and local cooperation or participation in federal immigration enforcement.

Unable to ground their interpretation in the text of Section 4, Defendants rely on the supposed "broader structure of the federal immigration-enforcement regime" and "the legislative context in which [Section 4] was enacted." Defs.' Br. at 20. But where the statutory text "is clear and unambiguous," this Court "need not apply any rules of construction other than to require that words and phrases be taken in their plain, ordinary, and usual sense." *City of North Vernon*, 829 N.E.2d at 4. Regardless, neither the structure of the federal immigration enforcement regime nor the legislative history of Section 4 supports Defendants' interpretation. As discussed, the structure of the federal immigration enforcement regime allows a role for state and local law enforcement agencies to participate in the enforcement of immigration law in various ways. *Arizona*, 567 U.S. at 410–11. By limiting its employees from engaging in these kinds of activities, a governmental body would be "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. That is what MCSO has done through its unlawful policy.

Legislative history also provides no support for Defendants' position. They argue that because the final version of the bill did not include provisions included in

prior drafts of the bill that would have *required* law enforcement officers to request verification of an individual's citizenship and immigration status in certain circumstances, and would have explicitly authorized local law enforcement to transfer an individual to federal custody in certain circumstances, "the General Assembly made clear that it was declining to mandate that state and local officials affirmatively participate in federal immigration enforcement." Defs.' Br. at 22. Thus, Defendants wrongly conclude, Section 4 "must be read as barring interference with *federal* enforcement rather than referring to *local* participation in such enforcement." *Id.* at 23.[3] But even if the meaning of the enacted version of Section 4 could be illuminated by the General Assembly's omission of certain provisions from the law—which is a dubious proposition from the start—Defendants' conclusions do not follow from their premises.

The fact that Section 4 does not *mandate* that local law enforcement affirmatively participate in federal immigration enforcement does not mean that it *permits* governmental bodies to *prohibit* their employees from engaging in immigration-related enforcement actions that are permissible under federal law,

[3] To substantiate their legislative history arguments, Defendants cite news articles reporting on the legislation that included Chapter 18.2 while the legislation was pending in the General Assembly. These articles are extraneous to the Attorney General's Complaint and should thus be excluded. Further, even if the Court were to consider these articles, and convert Defendants' motion to a motion for summary judgment, the information contained therein has no bearing on the proper interpretation of Section 4. As explained above, Section 4 is unambiguous and this Court therefore "need not apply any rules of construction other than to require that words and phrases be taken in their plain, ordinary, and usual sense." *City of North Vernon*, 829 N.E.2d at 4. The editorializations and opinions of reporters cannot change the plain meaning of Section 4.

such as by agreeing to cooperate with federal immigration officials upon those officials' request. To the contrary, Section 4 expressly forbids local authorities from exercising their enforcement discretion by promulgating policies that limit immigration enforcement activities.

The Attorney General agrees that Section 4 does not *require* local officials to agree to cooperate with federal officials in the enforcement of immigration law. *Id.* at 26–27. It does not, for example, *require* employees to gather proactively information or otherwise unilaterally enforce federal immigration laws. Enforcing Section 4 according to its plain terms will therefore not result in any of the "absurd results" that Defendants predict. *See id.* at 28–29. Likewise, Section 4 does not restrict the existing authority of local government employees to eschew unilateral action that the federal government has not requested. *Contra id.* at 28 (arguing that "the local government would be barred from reallocating resources from law enforcement to other priorities"). For example, Section 4 does not *require* a governmental body to pursue a 287(g) agreement with the United States. It does not *require* a governmental body to affirmatively structure its entire budget around cooperating with federal officials to enforce immigration laws. And it does not *require* law enforcement officers to participate in joint task forces with federal officers or provide operational support in executing a warrant. *Contra id.* at 29.

Instead, Section 4 bars local policies that limit employees' and officers' ability to engage in the enforcement of federal immigration laws to the full extent allowed under federal law, including assisting in the enforcement of immigration laws *at the*

request of federal immigration officials. In other words, while Section 4 does not entirely eliminate local governmental bodies' discretion over immigration matters, it does prohibit them from exercising that discretion in particular ways, namely by instituting a binding non-cooperation policy that eliminates their own or their employees' and officers' discretion. *See City of Gary*, 181 N.E.3d at 404 ("Section 4 simply requires that [local] employees, agents, or officials be given the opportunity to decide whether to cooperate when a request is made."). Because that is what Defendants have attempted to do through MCSO-12, they are in violation of state law and should be ordered to comply with Section 4.

Again, Section 4 plainly states that a governmental body "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. Because the "full extent" of "the enforcement of federal immigration laws . . . permitted by federal law" includes state and local participation in immigration enforcement in certain respects, including assisting in enforcement at the request of federal officials, *Arizona*, 567 U.S. at 410–11; *contra* Defs.' Br. at 24–25 (arguing that Section 4 "does not encompass enforcement powers that are not granted to local law enforcement by federal statute"), Section 4 thus prohibits governmental bodies from enacting a policy banning such actions. This straightforward interpretation of Section 4 refutes Defendants' argument that "Section 4 says nothing about cooperation with federal enforcement." *Id.* at 23.

Moreover, the Attorney General's interpretation of Section 4 does not, as Defendants suppose, *see id.* at 26, render Section 3's protection of specific forms of cooperation with federal officials regarding information of the citizenship or immigration status of an individual redundant. While certain conduct may violate both Section 3 and Section 4, the focus of the two provisions remains distinct. Section 3 protects an employee's freedom to "communicat[e] or cooperat[e] with federal officials" with regard to "information of [an individual's] citizenship or immigration status," Ind. Code. § 5-2-18.2-3, even if the exchange of such information does not directly relate to "the enforcement of federal immigration law," *id.* § 5-2-18.2-4. Section 4, by comparison, governs a wide variety of conduct that constitutes the "full extent" of "the enforcement of federal immigration laws" that *does not directly involve* "information of [an individual's] citizenship or immigration status." *Id.*

For similar reasons, MCSO-12 Section II's statement that "MCSO shall not enter into any agreement, including the 287(g) program, with [ICE] for enforcement of immigration or citizenship violations" also violates Section 4. Compl. Ex. A, MCSO-12 § II. Like the other provision of Section II identified in the Attorney General's Complaint, this provision limits Defendants' and their officers' ability to engage in the enforcement of federal immigration laws by prohibiting, through an office-wide policy, an action that is clearly permitted under federal law. *Contra* Defs.' Br. at 40–45.

In addition to allowing many informal methods of state cooperation in federal immigration enforcement, *see Arizona*, 567 U.S. at 410–12, federal law permits the

Secretary of DHS to formally delegate authority to state and local officers and employees to discharge directly the functions of federal immigration officers through what is colloquially known as a "287(g) agreement." 8 U.S.C. § 1357(g); *Arizona*, 567 U.S. at 408–09.[4] Although Section 4 does not *require* local authorities to enter into a 287(g) agreement with ICE, it does prohibit them from *limiting* through an official policy their own or their agents' ability to enter into such an agreement. Defendants are thus free to decide whether to pursue a 287(g) agreement with ICE, but pursuant to Section 4, they cannot pretermit that decision by adopting a policy affirmatively rejecting the option of entering into a 287(g) agreement. That is just what Section II of MCSO-12 does. It thus violates Indiana law.

Moreover, by its terms the policy statement encompasses "*any* agreement" with federal authorities "for enforcement of immigration or citizenship violations"—not just a 287(g) agreement. Compl. Ex. A, MCSO-12 § II. That expansive prohibition by its terms prevents the enforcement of federal immigration law to the full extent permitted by federal law.

The Court should thus enjoin Defendants from enforcing these policy statements.

[4] After Congress created DHS, the enforcement of nearly all immigration laws became DHS's responsibility. *See* Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135; *see also* Homeland Security Technical Corrections Act of 2003, H.R. 1416, 108th Cong. (2003).

B. MCSO-12 Section IV(A) Violates Indiana Law.

In a clear violation of Section 3 of Indiana Code chapter 5-2-18.2, MCSO-12 Section IV(A) states that Defendants' "[e]mployees . . . will not request or attempt to ascertain (i.e. run) immigration or citizenship status of an individual that they encounter related to their official duties for the Department, unless required to do so in the execution of their official duties." Compl. Ex. A, MCSO-12 § IV(A). By its terms, this provision prohibits MCSO employees both from affirmatively attempting to ascertain the immigration or citizenship status of an individual on their own initiative, *see* Defs.' Br. at 30–31, and from doing so in response to a request from federal officials. That prohibition violates Section 3. Specifically, the provision bars communicating with federal officials with regard to information of an individual's citizenship or immigration status. *Contra id.* at 31–32.

Defendants urge that Section 3 "does not create any affirmative obligation to collect citizenship and immigration status information" and that it "applies only to the sharing and maintenance of information already in the possession of a local law enforcement agency." *Id.* at 18. This contention is wrong twice over.

First, the Attorney General does not argue that Section 3 *requires* localities to affirmatively collect citizenship and immigration status information on their own initiative. As discussed above, Section 3 is not a mandate that local law enforcement engage in any particular immigration-related actions. Defendants' position thus rests, in part, on attacking an interpretation of the statute that the Attorney General does not advance.

Second, Section 3 plainly does bar a locality from prohibiting a law enforcement officer from, among other things, communicating with federal officials concerning citizenship and immigration status information or "[s]ending to or *receiving* [such] information from [DHS]." Ind. Code § 5-2-18.2-3 (emphasis added). In other words, Section 3 recognizes what is well-settled under federal law, namely that the exchange of immigration-related information between federal and local authorities is a two-way street—local law enforcement may request information from federal authorities, in addition to responding to requests from federal authorities. *See Arizona*, 567 U.S. at 411 ("Consultation between federal and state officials is an important feature of the immigration system."). Indeed, as noted above, federal law expressly requires that federal immigration authorities respond to inquiries from local law enforcement "seeking to verify or ascertain the citizenship or immigration status of any individual." 8 U.S.C. § 1373(c). Defendants' position that the information covered by Section 3 only includes information already in possession of a local law enforcement agency, and that Section 3 does not protect communications by local law enforcement to federal authorities seeking to verify the immigration status of an individual, therefore flies in the face of the text of Section 3—which nowhere limits its scope to information already in local law enforcement's possession or to communications concerning a request made by federal officials—and federal law.

In sum, MCSO-12 Section IV(A)'s prohibition on MCSO employees and officers requesting or attempting to ascertain the immigration or citizenship status of an individual is a clear restriction on communications with federal authorities about

information of an individual's citizenship or immigration status. Implementing such a policy is therefore a patent violation of Section 3. The Court should thus enjoin Defendants from maintaining Section IV(A) as an MCSO policy.

C. MCSO-12 Section IV(E) Violates Indiana Law.

MCSO-12 Section IV(E) provides, as relevant here, that "MCSO employees shall not detain individual(s) solely based on a non-criminal/administrative ICE detainer" and that "MCSO employees shall not hold an individual(s) beyond their scheduled release date based on a non-criminal/administrative ICE detainer." Compl. Ex. A, MCSO-12 § IV(E). But Section 4 prohibits governmental bodies from restricting their employees' cooperation with federal immigration enforcement to the full extent permitted by federal law. And federal law authorizes local cooperation with immigration detainers. Therefore, MCSO-12 Section IV(E) violates Section 4 because it restricts local officers' participation in the enforcement of immigration law to the full extent permitted by federal law.

One critical mechanism that federal immigration authorities use to request local assistance with the enforcement of federal immigration law is an immigration "detainer," a document issued by DHS to advise another law enforcement agency "that the Department seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien." 8 C.F.R. § 287.7(a). A detainer asks the custodial agency to advise DHS, "prior to release of the alien, in order for [DHS] to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible." *Id.* If DHS issues a detainer,

federal regulations direct the custodial agency to hold an alien for up to 48 hours after his scheduled release "in order to permit assumption of custody by [DHS]." *Id.* § 287.7(d).

To issue a detainer, an ICE officer must have "probable cause to believe that the subject is an alien who is removable from the United States." *Policy No. 10074.2: Issuance of Immigration Detainers by ICE Immigration Officers* § 2.4, U.S. IMMIGR. & CUSTOMS ENF'T (Mar. 24, 2017), https://www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf. In addition, a detainer must be accompanied by an administrative arrest warrant signed by an authorized ICE immigration officer. *Id.*; *see also City of El Cenizo v. Texas*, 890 F.3d 164, 174 (5th Cir. 2018); 8 U.S.C. § 1226(a) ("On a warrant issued by the [Secretary of DHS], an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.").

Local compliance with detainer requests is authorized by federal law. *See* 8 U.S.C. § 1357(g)(10)(B); 8 C.F.R. §§ 287.7, 241.2; *see also City of El Cenizo*, 890 F.3d at 187–88 (holding that federal law, including the Fourth Amendment, permits local law enforcement officers to comply with federal immigration detainer requests). Federal law expressly permits state and local officials "to cooperate with [DHS] in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States." 8 U.S.C. § 1357(g)(10)(B). Because local cooperation with ICE detainers is an enforcement activity that is fully permitted by federal law, Section

IV(E), by prohibiting MCSO employees from voluntarily cooperating with those detainers, violates Ind. Code § 5-2-18.2-4.

Defendants wrongly argue that Section IV(E) complies with Section 4 because detaining an individual solely based on a non-criminal/administrative ICE detainer, or holding an individual beyond their scheduled release date solely based on a non-criminal/administrative ICE detainer, would violate the Fourth Amendment. Defs.' Br. at 32–40. That is incorrect. To the contrary, as a matter of longstanding history and binding U.S. Supreme Court precedent, the Fourth Amendment permits federal and local officials to detain individuals already in custody, or to hold individuals beyond their scheduled release date, based on non-criminal/administrative ICE detainers.

To begin, the Fourth Amendment allows federal immigration officials to detain aliens when there is probable cause to believe that a civil immigration violation has been committed. Contrary to Defendants' insistence otherwise, the "Fourth Amendment does not require warrants to be based on probable cause of a crime, as opposed to a civil offense." *United States v. Phillips*, 834 F.3d 1176, 1181 (11th Cir. 2016). Probable cause of any legal violation, whether civil or criminal, may support an arrest. *See, e.g.*, *City of El Cenizo*, 890 F.3d at 187–88. For example, in *United States v. Brignoni-Ponce*, 422 U.S. 873, 881 (1975), the U.S. Supreme Court held that federal immigration officers could stop and briefly detain a vehicle to question the occupants about their immigration status without violating the Fourth Amendment, so long as the officers had reasonable suspicion "that a particular vehicle may contain

aliens who are illegally in the country." *See also, e.g.*, *United States v. Quintana*, 623 F.3d 1237, 1241–42 (8th Cir. 2010) (probable cause of an immigration violation justifies an arrest).

This understanding of the Fourth Amendment is consistent with longstanding practice in the immigration context. *Contra* Defs.' Br. at 34 n.6 (arguing that the history is "equivocal"). "In determining whether a search or seizure is unreasonable, [courts] begin with history," including "statutes and common law of the founding era." *Virginia v. Moore*, 553 U.S. 164, 168 (2008). There is "overwhelming historical legislative recognition of the propriety of administrative arrest[s] for deportable aliens." *Abel v. United States*, 362 U.S. 217, 233 (1960); *see also id.* at 234 (noting the "impressive historical evidence" of the validity of "administrative deportation arrest from almost the beginning of the Nation"). Indeed, aliens may be arrested and detained upon a warrant issued by the Secretary of DHS. 8 U.S.C. § 1226(a).

Defendants' position that the Fourth Amendment permits seizures based on probable cause of solely *criminal* conduct thus cannot be reconciled with precedent. Courts have upheld many statutes that allow seizures absent probable cause that a crime has been committed. *See, e.g.*, *City of El Cenizo*, 890 F.3d at 187–88 (collecting cases); *United States v. Shields*, 789 F.3d 733, 745 (7th Cir. 2015) (parking violation); *Bruce v. Guernsey*, 777 F.3d 872, 875–76 (7th Cir. 2015) (mental-illness-based detention); *United States v. Gilmore*, 776 F.3d 765, 770–71 (10th Cir. 2015) (intoxication); *United States v. Timms*, 664 F.3d 436, 452–53 (4th Cir. 2012) (sexual dangerousness); *United States v. Burtton*, 599 F.3d 823, 830 (8th Cir. 2010) (open-

container violation). Defendants' position also conflicts with the bedrock principle in immigration law that "civil removal proceedings necessarily contemplate detention absent proof of criminality." *City of El Cenizo*, 890 F.3d at 188. Congress has manifestly authorized the arrest and detention of removable aliens. 8 U.S.C. §§ 1226(a), 1231(a)(2); *Jennings v. Rodriguez*, 583 U.S. 281, 288–89, 303–04; *Abel*, 362 U.S. at 233 (citing statutes dating back to 1798). An arrest supported by probable cause that an alien is removable, therefore, does not violate the Fourth Amendment. *See, e.g.*, *Gonzalez v. U.S. Immigr. & Customs Enf't*, 975 F.3d 788, 816–19 (9th Cir. 2020).

Additionally, the fact that non-criminal/administrative ICE detainers are not accompanied by warrants signed by a judge—and instead are accompanied by warrants signed by an authorized ICE immigration officer—does not mean that a local law enforcement's agency's detention of an alien in response to a detainer violates the Fourth Amendment. *Contra* Defs.' Br. at 35–37. An immigration officer can constitutionally make the necessary probable cause determination under the Fourth Amendment. As binding U.S. Supreme Court precedent holds, "legislation giving authority to the Attorney General or his delegate to arrest aliens pending deportation proceedings under an administrative warrant, not a judicial warrant within the scope of the Fourth Amendment," has existed "from almost the beginning of the Nation." *Abel*, 362 U.S. at 232–34. "It is undisputed that *federal* immigration officers may seize aliens based on an administrative warrant attesting to probable cause of removability." *City of El Cenizo*, 890 F.3d at 187; *see also Sherman v. U.S.*

Parole Comm'n, 502 F.3d 869, 876–80 (9th Cir. 2007) (noting that in the immigration context, warrants may be issued "outside the scope of the Fourth Amendment's Warrant Clause" and that Congress has given authority to the Secretary of DHS or his delegate "to arrest aliens pending deportation proceedings under an administrative warrant, not a judicial warrant within the scope of the Fourth Amendment," *id.* at 877–78). Thus, the fact that the warrants that accompany non-criminal/administrative ICE detainers may not be signed by a judge does not violate the Fourth Amendment.

Further, because the Fourth Amendment allows *federal* immigration officers to arrest and detain based on an administrative warrant attesting to probable cause of removability, state and local officials can do the same when they act at the request or direction of the federal government. *Contra* Defs.' Br. at 37–38. The Fourth Amendment does not apply differently when a local official instead of a federal official is arresting or detaining. "The Fourth Amendment's meaning [does] not change with local law enforcement practices." *Virginia*, 553 U.S. at 172. To hold otherwise would cause Fourth Amendment "protections [to] vary if federal officers were not subject to the same statutory constraints as state officers." *Id.* at 176.

If a seizure is constitutional under the Fourth Amendment when a federal officer carries it out, then it is also, necessarily, constitutional when a state or local officer carries it out, even where state law does not independently authorize the arrest. A police officer's "violation of [state] law [in arresting alien based on a violation of federal immigration law] does not constitute a violation of the Fourth Amendment."

Martinez-Medina v. Holder, 673 F.3d 1029, 1036 (9th Cir. 2011). The Fourth Amendment thus does not bar local officials from carrying out seizures solely on the basis of a non-criminal/administrative ICE detainer if the local official is not acting unilaterally. And in the case of an ICE detainer, a local official is never acting unilaterally, because ICE detainers "always require[ ] a predicate federal request before local officers may detain." *City of El Cenizo*, 890 F.3d at 189.

Finally, detentions based on probable cause may lawfully be made where the probable cause determination is made by one official (*e.g.*, a federal ICE officer) and relied on by another official (*e.g.*, an MCSO officer). In other words, local officials may rely on ICE's findings of probable cause, as articulated in a detainer and administrative warrant, to detain an individual when the federal government so requests. It has long been the law that where one officer obtains an arrest warrant based on probable cause, other officers can make the arrest even if they are "unaware of the specific facts that established probable cause." *United States v. Hensley*, 469 U.S. 221, 231 (1985). An officer may thus arrest someone, even when the officer does not know the facts establishing probable cause, "so long as the knowledge of the officer directing the arrest, or the collective knowledge of the agency he works for, is sufficient to constitute probable cause." *Tangwall v. Stuckey*, 135 F.3d 510, 517 (7th Cir. 1998) (emphasis and citation omitted).

For the collective-knowledge doctrine to apply, (1) the officer seizing the person "must act in objective reliance on the information received, (2) the officer providing the information—or the agency for which he works—must have facts supporting the

level of suspicion required, and (3) the stop must be no more intrusive than would have been permissible for the officer requesting it." *United States v. Williams*, 627 F.3d 247, 252–53 (7th Cir. 2010). Consequently, a local officer may reasonably rely on an ICE detainer, which must be supported by probable cause, to detain an alien. *See City of El Cenizo*, 890 F.3d at 187–88 ("Compliance with an ICE detainer . . . constitutes a paradigmatic instance of the collective-knowledge doctrine, where the detainer request itself provides the required communication between the arresting officer and an officer who has knowledge of all the necessary facts." (internal quotation marks and citation omitted)). The knowledge forming the basis for ICE's probable cause to detain removable aliens is imputed to cooperating state and local officers. *See, e.g.*, *Mendoza v. U.S. Immigr. & Customs Enf't*, 849 F.3d 408, 419 (8th Cir. 2017); *City of El Cenizo*, 890 F.3d at 187–88.

As Defendants are forced to acknowledge (albeit in a footnote), the Fifth Circuit in *City of El Cenizo* upheld against a Fourth Amendment challenge to a Texas law substantially similar to the Indiana statute here where the ICE officer, in issuing a detainer, certified that he had probable cause for removability. 890 F.3d at 173, 187. The Fifth Circuit observed that "under the collective-knowledge doctrine . . . the ICE officer's knowledge may be imputed to local officials even when those officials are unaware of the specific facts that establish probable cause of removability." *Id.* at 187. Because local law enforcement officers who honor detainers do not act unilaterally in the enforcement of federal immigration law, the Fourth Amendment

imposes no special burden on the practice.[5] This conclusion is consistent with the U.S. Supreme Court's decision in *Arizona*, *contra* Defs.' Br. at 36 n.7, which recognized that consultation and cooperation "between federal and state officials," even absent a "formal agreement or special training," "is an important feature of the immigration system" Congress has established, *id.* at 411–12. Indeed, federal law explicitly provides that even without a 287(g) agreement state and local officials may "cooperate

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[5] Defendants point to several cases as purportedly showing that "federal courts have held that local officers who detained individuals solely on the basis of ICE detainers violated the Fourth Amendment," Defs.' Br. at 36, but none of them are persuasive. In *Lopez-Flores v. Douglas County*, 2020 WL 2820143, at *5–6 (D. Or. May 30, 2020), the court determined that defendants' extension of plaintiff's detention based on an ICE detainer violated the Fourth Amendment, but did so based in part on its determination that the collective-knowledge doctrine did not apply in the civil immigration context. As *City of El Cenizo* explains, this conclusion is incorrect. *See* 890 F.3d at 173. Defendants next cite *Lopez-Aguilar v. Marion County Sheriff's Department*, 296 F. Supp. 3d 959 (S.D. Ind. 2019), but not only was that decision reversed on other grounds by the Seventh Circuit, *see Lopez-Aguilar v. Marion County Sheriff's Dep't*, 924 F.3d 375 (7th Cir. 2019), its reasoning also conflicts with the weight of authority, explicated above, that holds that local law enforcement officials may cooperate with federal immigration officials pursuant to ICE detainers to detain aliens. And *Buquer v. City of Indianapolis*, 2013 WL 1332158, at *11 (S.D. Ind. Mar. 28, 2013), which held that certain ICE detainers "do[ ] not provide lawful cause for arrest under the Fourth Amendment," was decided before ICE's current detainer policy became effective in April 2017. Unlike at the time *Buquer* was decided, ICE detainers now must not only be supported by probable cause to believe that the subject is an alien who is removable from the United States, but also must be accompanied by an administrative arrest warrant signed by an authorized ICE immigration officer. *Policy No. 10074.2: Issuance of Immigration Detainers by ICE Immigration Officers* § 2.4, U.S. IMMIGR. & CUSTOMS ENF'T (Mar. 24, 2017), https://www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf. Finally, *Santos v. Frederick County Board of Commissioners*, 725 F.3d 451, 465 (4th Cir. 2013), held that "absent express direction or authorization by federal statute or federal officials, state and local law enforcement officers may not detain or arrest an individual solely based on known or suspected civil violations of federal immigration law." But when a local law enforcement officer detains an individual in response to an ICE detainer, the required authorization by federal officials is present, meaning that no constitutional issues arise.

with [DHS] in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States." 8 U.S.C. § 1357(g)(10)(B); *see also City of El Cenizo*, 890 F.3d at 177 (recognizing that "although Section 1357 creates a highly regulated scheme for adopting 287(g) agreements, it also expressly allows cooperation in immigration enforcement outside those agreements").

Defendants argue that *City of El Cenizo* is distinguishable because "Texas law expressly authorized detentions based on ICE detainer requests," whereas "Indiana law contains no such authorization, so officers lack the power to make a lawful arrest under state law." Defs.' Br. at 36 n.7. But Indiana law *does* authorize governmental bodies to undertake immigration-related enforcement actions to the full extent allowed by federal law, including complying with ICE detainer requests, *see* Ind. Code § 5-2-18.2-4, and, as explained above, even if a specific seizure were unlawful under state law—which is not the case here—that does not mean that the seizure is unconstitutional under the Fourth Amendment. Defendants next argue that the Fifth Circuit's reasoning in *City of El Cenizo* is "unpersuasive" based on the U.S. Supreme Court's decision in *Arizona* and the Ninth Circuit's decision in *Melendres v. Arpaio*, 695 F.3d 990 (9th Cir. 2012). Defs.' Br. at 36 n.7. But as already explained, *City of El Cenizo* is fully consistent with *Arizona*. And while *City of El Cenizo* squarely addressed the Fourth Amendment question presented here, *Melendres* did not. *Melendres* concerned unilateral detentions by local law enforcement officers to enforce federal immigration law in the absence of a 287(g) agreement *and in the absence of a federal request for assistance* before the detention, "based solely on

reasonable suspicion or knowledge that a person was unlawfully present in the United States." *See* 695 F.3d at 1000–01. That set of facts is entirely distinct from the situation where MCSO officers comply with a *request* to cooperate in the enforcement of federal immigration law pursuant to an ICE detainer.

Accordingly, the Fourth Amendment allows local officials to detain aliens in response to federal detainer requests where the United States presents probable cause of civil removability through a detainer and arrest warrant. Defendants' policy forbiding its officers from honoring ICE detainers therefore restricts the enforcement of immigration laws beyond any restrictions contained in federal law, and thus violates Section 4.

D. The Home Rule Act Does Not Support Defendants' Interpretation.

Unable to find support for their interpretation in the actual statutory text, Defendants invoke Indiana's Home Rule Act. Defs.' Br. at 12–14. Under that law, "[t]he policy of the state is 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. A county sheriff's office, however, is not a "unit" under Indiana law. *Id.* § 36-1-2-23 (defining "unit" as a "county, municipality, or township"); *see also Leslie v. Ind. State Police*, 2015 WL 13861111, at *6 (N.D. Ind. Feb. 10, 2015). The Home Rule Act, and its rule of construction on which Defendants attempt to rely, thus do not apply to the MCSO.

Even if the Home Rule Act did apply to the MCSO, however, units may exercise governmental power *only* to the extent such power "is not expressly denied by the Indiana Constitution or by statute." Ind. Code § 36-1-3-5(a)(1); *see also Indiana Dep't*

of Nat. Res. v. Newton County, 802 N.E.2d 430, 433 (Ind. 2004) (holding that a local ordinance was "not within the County's power" because it conflicted with and "frustrated" state law). Section 3 and Section 4 unambiguously prohibit governmental bodies from implementing policies that interfere with federal immigration enforcement efforts, and MCSO-12 is a policy that interferes with federal immigration enforcement efforts. Consequently, the Home Rule Act does not save MCSO-12 or require this Court to interpret the statutes in Defendants' favor.

E. Section IV(C) Does Not Save MCSO-12 from Invalidity.

Finally, Defendants attempt to waive away any conflict between MCSO-12 and Ind. Code chapter 5-2-18.2 by pointing to MCSO-12 Section IV(C) language stating that "[m]embers of the MSCO *[sic]* will not prohibit, or in any way restrict, any other member from doing any of the following regarding the citizenship or immigration status, lawful or unlawful, of any individual: 1. Communicating or cooperating with federal officials. 2. Sending to or receiving information from [DHS]. 3. Maintaining information. 4. Exchanging information with another federal, state, or local government entity." Compl. Ex. A, MCSO-12 § IV(C). This transparent attempt to circumvent state law fails to bring MCSO-12 into compliance with state law.

As an initial matter, despite Defendants' insistence that this section "explicitly incorporates Section 3," Defs.' Br. at 15 (emphasis omitted), the language in MCSO-12 Section IV(C) does not match Section 3. While Section 3 prohibits a governmental entity from prohibiting, or in any way restricting, its employees from taking certain actions "*with regard to information of the citizenship or immigration status*" of an

individual, MCSO-12 omits the "information of" phrase, stating only that MCSO will not prohibit, or in any way restrict, its employees from taking certain actions "regarding the citizenship or immigration status" of an individual. Because it omits the "information of" phrase, MCSO-12 Section IV(C) on its face does not protect the full range of conduct protected by Section 3. Section 3 covers more than just a statement of an individual's citizenship or immigration status; it also covers information *about* or *having a direct impact on* an individual's citizenship or immigration status. And because Section IV(C) does not *even attempt* to incorporate the protections provided by *Section 4* of Ind. Code chapter 5-2-18.2, the provision obviously does nothing to eliminate all of the ways in which MCSO-12 conflicts with that provision of Indiana law.

Moreover, Defendants' generic disclaimer provision does not change the fact that many specific provisions of MCSO-12, discussed above, directly violate Ind. Code chapter 5-2-18.2. Plainly, the fact that MCSO-12 includes those unlawful provisions in the first place means that Defendants do not believe that restricting the conduct of MCSO employees in those specific ways is in any tension with the assurance Section IV(C) purports to provide, even though they clearly are under a proper interpretation of state law. And Defendants' attempts to justify the specific challenged provisions of MCSO-12 at issue in this very case remove any doubt. Where a policy, ordinance, or statute includes *specific provisions* that *directly conflict with higher law*, the inclusion of a generic "we intend to act lawfully" clause cannot ameliorate the violation. *See, e.g.*, *Fisher v. King*, 232 F.3d 391, 395 (4th Cir. 2000)

(rejecting reliance on "savings clause for constitutionally protected rights" because it was "repugnant" to the language of the relevant statutory provisions); *CISPES (Comm. in Solidarity with People of El Salvador) v. F.B.I.*, 770 F.2d 468, 474 (5th Cir. 1985) (explaining that a provision in a statute stating that the statute shall not be "construed or applied" so as to violate the federal Constitution's First Amendment "cannot substantively operate to save an otherwise invalid statute"); *United Food & Com. Workers Local 99 v. Bennett*, 934 F. Supp. 2d 1167, 1206–07 (D. Ariz. 2013) (in determining whether statute was constitutional, rejecting reliance on clause stating that nothing in the law prohibits activity that "is authorized under the Arizona or federal constitution or federal law" because that clause "merely restates already-existing constitutional limits on any government activity"); *cf. Christian Healthcare Ctrs., Inc. v. Nessel*, 2024 WL 4249251, at *10 (6th Cir. Sept. 20, 2024) (in determining whether statutes arguably proscribed certain existing or intended First Amendment-related conduct, rejecting the argument that statutes did not proscribe that conduct because they "contain language instructing that they should not be applied where doing so would otherwise violate applicable law" (citing *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 152, 162–63 (2014))).

VII. The Complaint Gives Sufficient Notice to Defendants of the Operative Facts Supporting the Attorney General's Claim.

In addition to their attempts to defend MCSO-12 on the merits, Defendants argue that the Attorney General's Complaint lacks sufficiently "specific allegations" and thus leaves them "in the dark about the fundamentals of the plaintiff's claim." Defs.' Br. at 11. That is not so. The Complaint satisfies Indiana's notice pleading

standard because its allegations "put a reasonable person on notice as to why a plaintiff sues." *Shields*, 976 N.E.2d at 1245.

The Complaint alleges that Defendants have violated Indiana law—specifically, Indiana Code Chapter 18.2—"by implementing a policy which limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law." Compl. ¶¶ 1–2. The Complaint explains in detail the ways in which the policy restricts the enforcement of immigration law. *See, e.g.*, *id.* ¶¶ 10, 12, 13, 14. The Complaint then alleges that "MCSO-12's substantial restrictions on the ability of personnel of the Monroe County Sheriff's Office to cooperate with federal agencies or otherwise assist in the enforcement of federal immigration laws are clear violations of Indiana law," *id.* ¶ 15, namely, Chapter 18.2 Section 3 and Section 4. The Complaint thus gives ample notice of the basis on which the Attorney General sues.

Ignoring these straightforward pleadings, Defendants attempt to manufacture ambiguity in the Complaint's allegations, arguing that it lacks "specific allegations about what parts of the policy the Attorney General believes conflict with the state law and why." Defs.' Br. at 10. But a reasonable person reviewing the Complaint and these allegations would have ample notice of the Attorney General's claims that the specified provisions of MCSO-12 violate the specified provisions of Indiana law—the Complaint "plead[s] the operative facts involved in the litigation." *Rankin*, 294 N.E.2d at 606. As just explained, the Complaint alleges that specific sections of MCSO-12 violate Indiana law because they are impermissible restrictions on

immigration enforcement activities. Indeed, as Defendants themselves acknowledge, the Complaint "specifically cites a few provisions of the policy" in alleging that MCSO-12 violates Indiana law. Defs.' Br. at 11. That alone is enough to satisfy Indiana's pleading standards. Contrary to Defendants' suggestion, the Attorney General's complaint need not contain specific, detailed legal arguments about how exactly the provisions of Defendants' policy quoted in the Complaint violate state law. *See Binninger v. Hendricks Cnty. Bd. of Zoning Comm'rs*, 668 N.E.2d 269, 272 (Ind. Ct. App. 1996) ("Under Indiana's 'notice' pleading system, a pleading need not adopt a specific legal theory of recovery to be adhered to throughout the case.").

The Court should reject Defendants' attempt to create the appearance of ambiguity in the Attorney General's Complaint where none exists and deny Defendants' motion.

VIII. The Attorney General Has Adequately Stated a Claim For Injunctive Relief.

Finally, Defendants argue that the Complaint has "failed to state a claim on which any relief can be granted" because it purportedly does not show "that the Sheriff acted with the requisite intent" and because "the traditional injunction factors" are not satisfied. Defs.' Br. at 46. Defendants are wrong on both scores. Indiana Code § 5-2-18.2-6 states that "[i]f a court finds by a preponderance of the evidence that a governmental body or postsecondary educational institution knowingly or intentionally violated" Chapter 18.2, "the court shall enjoin the violation." Because Defendants knowingly or intentionally violated Section 3 and/or Section 4 by promulgating MCSO-12, this court should "enjoin the violation." That is

true quite apart from the traditional injunction factors, which Chapter 18.2 clearly supersedes; but even if it did not, those traditional factors are met in this case anyway.

A. Defendants Knowingly or Intentionally Violated Section 3 and Section 4.

"When the law speaks of intent or knowledge it usually means the intent to do the prohibited act, or the knowledge that one is doing so." *Bd. of Cnty. Comm'rs v. Tinkham*, 491 N.E.2d 578, 582 (Ind. Ct. Ap. 1986). Critically, establishing intent or knowledge under Indiana law "does not require knowledge that the act is in violation of the law or the intent to violate a statutory provision." *Id.* Consequently, to establish that Defendants "knowingly or intentionally" violated Section 3 or Section 4 by promulgating MCSO-12, the Attorney General need only show that (1) MCSO-12 violates Section 3 and/or Section 4; and (2) Defendants intended to promulgate MCSO-12 or knew that they were promulgating MCSO-12.

There can be no doubt that Defendants *intentionally* and *knowingly* promulgated MCSO-12—whether taking the allegations in the Complaint as true under a motion to dismiss standard or examining whether there is a genuine issue of material fact under a motion for summary judgment standard—and Defendants have no serious argument to the contrary. Instead, Defendants maintain that proving an intentional or knowing violation of the law requires "an intentional or knowing *effort to violate the law*," and that Sheriff Marté did not engage in any such effort because he "follow[ed] his best understanding of an ambiguous law" and allegedly took into account the Attorney General's objections to the prior version of MCSO-12 in revising

the policy. *See* Defs.' Br. at 47–48. But as *Board of County Commissioners* instructs, establishing intent or knowledge "does not require knowledge that the act is in violation of the law or the intent to violate a statutory provision." 491 N.E.2d at 582. All that is required is "the intent to do the prohibited act"—*i.e.*, the intent to promulgate MCSO-12, which violates Indiana law—or "the knowledge that one is doing so"—*i.e.*, the knowledge that Sheriff Marté was promulgating MCSO-12. *Id.* These necessary showings are patent from the face of the Complaint, and Defendants cannot refute them.

The Attorney General has thus established that Defendants knowingly or intentionally violated Section 3 or Section 4.

B. Under Indiana Code § 5-2-18.2-6, the Attorney General Does Not Need to Satisfy the Traditional Injunction Factors.

Indiana Code §5-1-18.2-6 is clear: should this Court find that Defendants knowingly or intentionally violated Chapter 18.2, the Court "shall enjoin the violation[s]." Section 6 contains no reference to the traditional injunction factors, whether explicit or implied. The Attorney General thus does not need to make any showing concerning the traditional injunction factors, including on irreparable injury or the balance of the equities.

Defendants note that "[i]n order to permit an injunction on a lesser showing than the traditional four-pronged test, Indiana law requires the General Assembly to 'expressly' state its intent to alter the standards applicable to injunctions." Defs.' Br. at 49 (citing *Cobblestone II Homeowners Ass'n, Inc. v. Baird*, 545 N.E.2d 1126, 1129

(Ind. Ct. App. 1989)).[6] But the General Assembly has done so here: Section 5-1-18.2-6 sets forth an explicit test for granting an injunction for violations of Chapter 18.2. If the Court finds by a preponderance of the evidence that a governmental body "intentionally or knowingly" violated Chapter 18.2, the Court "shall enjoin the violation," with no other showing even impliedly required.

In any event, even if the traditional injunction factors apply under § 5-1-18.2-6, they are satisfied here. In general, to grant permanent injunctive relief, this Court must find that plaintiff "has in fact succeeded on the merits," that "plaintiff's remedies at law are inadequate," *i.e.*, that plaintiff will suffer irreparable harm in the absence of an injunction, that "the threatened injury to the plaintiff outweighs the threatened harm a grant of relief would occasion upon the defendant, and that "the public interest would [not] be disserved by granting relief." *Ferrell v. Dunescape Beach Club Condos. Phase I, Inc.*, 751 N.E.2d 702, 712–13 (Ind. Ct. App. 2001). Importantly, "when the acts sought to be enjoined are unlawful, the plaintiff need not make a showing of irreparable harm or a balance of the hardship in his favor." *Id.* at 713; *see also Cobblestone II*, 545 N.E.2d at 1129. Consequently, even if Section 6 does incorporate the traditional injunction factors, the Attorney General need only succeed

[6] In *Cobblestone II*, the Indiana Court of Appeals considered a statute that provided that failure to comply with certain obligations served as grounds for an action for injunctive relief. 545 N.E.2d at 1129. By contrast, Section 6 does not merely *authorize* the Attorney General to seek injunctive relief for violations of Indiana law—it expressly mandates that courts "shall enjoin" violations of Chapter 18.2 if the violations were "intentional" or "knowing."

on the merits of his claim and show that the public interest would not be disserved by granting relief.

As explained above, the Attorney General has stated a viable claim on the merits that MCSO-12 violates Section 3 and Section 4. Furthermore, the public interest would be served by granting a permanent injunction enjoining Defendants from enforcing the violative portions of MCSO-12, thereby preventing Defendants from continuing to violate Indiana law. If the Court permits Defendants to continue to enforce MCSO-12 in full, by contrast, the public interest would suffer irreparable harm because Defendants would be allowed to continue an unlawful practice that directly frustrates the public policy of the State as enacted by the General Assembly. The General Assembly has decided that it is the public policy of the State of Indiana to allow for cooperation with federal immigration officials on matters of enforcement of federal immigration law. Allowing Defendants to ignore that policy would be to countenance the nullification of the General Assembly's lawfully enacted legislation. Moreover, the logical result of MCSO-12's prohibitions on cooperation with federal officials in enforcing immigration law is that the immigration laws will not be enforced as fully in Monroe County, leading to disparate enforcement throughout the State and the significant policy harms that federal immigration law is designed to prevent.

CONCLUSION

The Attorney General respectfully requests that the Court deny Defendants' motion to dismiss and exclude from its consideration of the motion the extrinsic

materials Defendants filed with their motion. If the Court were to treat Defendants' motion as one for summary judgment and consider the extraneous material that Defendants have submitted, any decision on summary judgement should be deferred until the Attorney General has had a "reasonable opportunity to present all material made pertinent to such a motion" to which he is entitled under Trial Rule 12(B)(6) and Trial Rule 56.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 8, 2024, the foregoing document was served upon the following person(s) via IEFS, if Registered Users, or by depositing the foregoing document in the U.S. Mail, first class, postage prepaid, if exempt or non-registered user:

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