Monroe County Circuit Court
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 the **Monroe County Sheriff's Office,** *Defendants.*	

DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS THE FIRST AMENDED COMPLAINT

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INTRODUCTION

As this Court already recognized in granting in part the first motion to dismiss filed by Sheriff Ruben Marté and the Monroe County Sheriff's Office (collectively, "the Sheriff"), Standard Operating Procedure MCSO-012 complies fully with Indiana Code § 5-2-18.2-3 ("Section 3"). The Attorney General contends that understanding Chapter 18.2 as "a statutory *preservation of governmental discretion*" rather than a mandate to undertake certain enforcement actions "fundamentally undermines Defendants' arguments." State's Br. 2. But MCSO-012 explicitly incorporates Section 3 and preserves all of the discretion required by state law. And the Sheriff, in an exercise of the discretion he retains in the absence of a contrary directive in state law, has set reasonable guidelines for his officers in order to protect public safety and efficiently manage scarce resources.

The Attorney General's attempt to create daylight between Section 3 and MCSO-012 where none exists is unavailing. The Attorney General offers no reason why this Court should reverse its previous decision to dismiss the claims that MCSO-012 violates Section 3; instead, he merely recycles arguments already made and rejected in briefing on the first motion to dismiss. A policy that precisely tracks the requirements of state law cannot be contrary to that state law in any of its applications, and the Attorney General's Section 3 claims should therefore be dismissed with prejudice.

ARGUMENT

I. MCSO-012 Incorporates Section 3

This Court was correct in previously dismissing the Attorney General's Section 3 claims: there neither is nor can be any conflict between MCSO-012 and Section 3 because the policy incorporates the language of the statute. The Attorney General offers no new theory about how the two provisions could conflict. Instead, he merely repeats his previous assertion that "information of," a phrase that appears in Section 3 but not in MCSO-012, means that the statute applies to a broader range of conduct than the policy. State's Br. 13-14, 21. This argument runs headlong into both the clear language of the provisions and the previous holding of the Indiana Court of Appeals.

As this Court noted in its Order on Defendants' Motion to Dismiss, "MCSO-12 essentially incorporates" Section 3. Order on Mot. to Dismiss 1 (Dec. 23, 2024). Indeed, comparing the two provisions side-by-side makes clear that they are nearly identical and that Sheriff Marté drafted MCSO-012 to explicitly incorporate the directives of Section 3:

Ind. Code § 5-2-18.2-3	**MCSO-012 § IV.C**
A governmental body or a postsecondary educational institution may not enact or implement an ordinance, a resolution, a rule, or a policy that prohibits or in any way restricts another governmental body or employee of a postsecondary educational institution, including a law enforcement officer, a state or local official, or a state or local government employee, from taking the following actions with regard to information of the citizenship or immigration status, lawful or unlawful, of an individual: (1) Communicating or cooperating with federal officials. (2) Sending to or receiving information from the United States Department of Homeland Security. (3) Maintaining information. (4) Exchanging information with another federal, state, or local government entity.	In accordance with the requirements and provisions of Indiana Code 5-2-18.2-3, members of the [Monroe County Sheriff's Office] 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 the United States Department of Homeland Security. 3. Maintaining information. 4. Exchanging information with another federal, state, or local government entity.

The Attorney General's sole theory about how MCSO-012 could violate a statute it incorporates is that MCSO-012 prohibits limiting the listed actions "regarding the citizenship or immigration status" of any person while Section 3 prohibits policies that limit the same actions "with regard to information of the citizenship or immigration status" of any person. State's Br. 20-23. But as the Sheriff has explained—citing to the traditional rules of statutory interpretation—the inclusion of the phrase "information of" in Section 3 does not extend the scope of

that provision.[1] *See* Sheriff's Mot. to Dismiss FAC Br. 9-11, 16-17; *see also infra* 6-7. Indeed, the Court of Appeals was clear in its previous interpretation of Section 18.2 that "the only relevant 'information of'" encompassed by Section 3 "is that information which identifies the person's citizenship and immigration status"—the exact same information addressed by MCSO-012. *See City of Gary v. Nicholson*, 181 N.E.3d 390, 402 (Ind. Ct. App. 2021), *on transfer*, 190 N.E.3d 349 (Ind. 2022).[2]

The Attorney General argues that the two provisions cannot mean the same thing because that would render Section 3's use of the phrase "information of" superfluous. State's Br. 21-22. But the rule of superfluity is based on the presumption that a legislature writing a single statute would not have intended to enact a "useless provision," *Robinson v. Wroblewski*, 704 N.E.2d 467, 475 (Ind. 1998)—it is less relevant in a situation like the one here, where the court is comparing provisions written by two *different* policymakers. And in any event, the Attorney General offers no reason to believe that the difference in wording means that the two provisions should be read differently at all, let alone that it would render Section 3 broader than MCSO-012. As the Indiana Court of Appeals has

[1] The Sheriff's motion to dismiss the first amended complaint explains that the difference in *wording* between the two provisions is slight and does not change the fact that MCSO-012 incorporates Section 3 in full. Sheriff's Mot. to Dismiss FAC Br. 16-17. Contrary to the Attorney General's contention, the Sheriff has never claimed that MCSO-012 violates state law, even "slight[ly]." State's Br. 22.

[2] As the Sheriff explained in his motion to dismiss, *see* Sheriff's Mot. to Dismiss FAC Br. 10 n.4, the Court of Appeals' decision in *City of Gary* was vacated by the Indiana Supreme Court on transfer. The reasoning of the opinion, however, remains highly persuasive.

already held, Section 3 is "unambiguous" in referring only to "that information which identifies the person's citizenship and immigration status" and nothing more. *See City of Gary*, 181 N.E.3d at 402. The same is true of Section IV.C of MCSO-012.

The Attorney General's disagreement with this reading of Section 3 does not change this Court's conclusion that there is no conflict between the statute and MCSO-012. As the Sheriff has explained, the Attorney General's view of state law is not determinative; this Court has the responsibility to determine the meaning of state law, and it has already held that the Attorney General failed to state a claim that MCSO-012 violates Section 3. *See* Sheriff's Mot. to Dismiss FAC Br. 17. That holding is in line with how the Indiana Court of Appeals previously interpreted Section 3, *see City of Gary*, 181 N.E.3d 401-02, and the Attorney General offers no reason to disturb it here. That is reason enough to once again dismiss the Attorney General's Section 3 claims.

II. MCSO-012 Fully Complies With Section 3

The Attorney General similarly fails to raise any new arguments about why MCSO-012 §§ II and IV.A violate Section 3, instead merely repeating points already raised in the briefing on the first motion to dismiss and rejected by this Court. Those arguments are based on a sweeping reading of Section 3 that is untethered from the text and contrary to the reading of that provision previously adopted by the Indiana Court of Appeals. Section 3 bars only policies that limit the maintenance, sharing, and receipt (but not the gathering) of information specifically identifying an individual's immigration or citizenship status. The provisions of

MCSO-012 challenged by the Attorney General fall outside the scope of Section 3, and there is therefore no conflict between the policy and the state law.

A. Section 3 encompasses only policies that involve certain specified information.

Relying heavily on the inclusion of the single word "cooperate" in Section 3, the Attorney General repeats his argument that the law addresses policies on the maintenance and sharing of a broad range of information beyond an individual's immigration or citizenship status. State's Br. 10-13. But as the Sheriff has explained at length, *see* Sheriff's Mot. to Dismiss Br. 15-18, Sheriff's Mot. to Dismiss FAC Br. 9-11, Section 3 by its plain language addresses only actions taken specifically "with regard to information of the citizenship or immigration status, lawful or unlawful, of an individual," Ind. Code § 5-2-18.2-3. The Indiana Court of Appeals previously said as much, holding that Section 3 encompasses only the information necessary to answer two questions: "whether a person's immigration status is lawful or unlawful" and what category of immigration status ("for example, that of a citizen, a non-citizen but lawful resident, a non-immigrant such as a student admitted to the United States on a student visa, or an undocumented immigrant") that person falls into. *City of Gary*, 181 N.E.3d at 402. Section 3 does not address policies regarding the exchange of *other* types of information, including the type of information that the Attorney General acknowledges would be necessary "[t]o complete a status check" like a person's "name, date of birth, or Social Security Number." State's Br. 9. The Sheriff is therefore free to set a policy directing his officers not to run status checks without conflicting with Section 3.

The Attorney General's bare assertion that the words "information of" have "a broadening effect on the statute," State's Br. 13, is unconvincing and unsupported by both precedent and by the text of the statute itself. Indeed, the Court of Appeals in *City of Gary* was "not persuaded" by that very argument, rejecting the idea that "the information described in Section 3 encompasses such immigration-related information as an individual's release date, home address, and employment address." 181 N.E.3d at 401. The "unambiguous" meaning of Section 3, reading the text in its "ordinary or usual sense," is that it refers to "information of the citizenship or immigration status of an individual, and nothing more." *Id*. at 402.

Finding no support for his reading of Section 3 in the text of the statute, the Attorney General relies instead on an unfounded and overly broad reading of the word "cooperation," arguing that Section 3 must encompass policies restricting the sharing of personal identifying information because sharing such information "with ICE to ascertain a person's status" is part of the cooperation Section 3 protects. State's Br. 13. But the scope of the information covered by the statute is clearly limited by the text to "information of . . . citizenship or immigration status." Ind. Code § 5-2-18.2-3. There is no reason to believe that the legislature's inclusion of the word "cooperation" elsewhere in the statute was intended to drastically alter the plain meaning of that phrase. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001) (explaining that legislatures do not generally "alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions"). If the

legislature had intended the statute to apply to a broader range of information, it would have used language to that effect; reading such sweeping intent into the use of a single word is illogical. *See State v. Oddi-Smith*, 878 N.E.2d 1245, 1248 (Ind. 2008) ("The primary purpose in statutory interpretation is to ascertain and give effect to the legislature's intent. The best evidence of that intent is the language of the statute itself, and we strive to give the words in a statute their plain and ordinary meaning.").

The Attorney General nevertheless argues that Section 3 is not limited to the actions involving "information of the citizenship status, lawful or unlawful, of an individual," but instead also bans policies restricting actions involving *other* forms of information that the Attorney General believes have a "direct relation" to information about an individual's immigration status. State's Br. 12. In support, the Attorney General cites a Supreme Court case interpreting the meaning of the word "respecting" in the Bankruptcy Code. State's Br. 11-12 (citing *Lamar, Archer & Cofrin, LLP v. Appling*, 584 U.S. 709 (2018)). But that case is inapposite several times over. Not only is the Supreme Court's analysis in *Lamar* limited to a very different statutory context, but it also focuses on the import of a word that appears nowhere in Section 3. *See Lamar*, 584 U.S. at 716-20 (acknowledging that the word "respecting" can have different meanings in different contexts and reading it to have a broadening effect in the specific context at issue). That opinion sheds little light on how to read Section 3, which uses different language in a different way.

Far more helpful are the cases cited by the Sheriff, which involved the interpretation of 8 U.S.C. § 1373, a federal provision analogous to Section 3.[3] *See* Sheriff's Mot. to Dismiss FAC Br. 10-11. In each of those cases, the courts held that the language and context of § 1373 made clear that it encompasses only information communicating the legal status of an individual, not any additional personal identifying information. *See United States v. California*, 921 F.3d 865, 891-92 (9th Cir. 2019) (holding that *Lamar*'s expansive reading of "respecting" was inapplicable because the plain meaning of the statute was that it was strictly limited to "a person's legal classification under federal law" and in the immigration context, Congress "used more expansive phrases . . . when intending to reach broader swaths of information" (citations omitted)); *County of Ocean v. Grewal*, 475 F. Supp. 3d 355, 376 (D.N.J. 2020) ("There is simply nothing in the statute to suggest that the inclusion of the word 'regarding' requires States and local governments to share personal identifying information . . . as such information does not directly relate to, or regard, an individual's immigration status."), *aff'd sub nom. Ocean Cty. Bd. of Comm'rs v. Att'y Gen. of State of N.J.*, 8 F.4th 176 (3d Cir. 2021). Indeed, the court in *City of Philadelphia v. Sessions* held that § 1373 extended only to the information necessary to answer the same two questions—whether a person has lawful status

[3] The Attorney General argues that 8 U.S.C. § 1373 and Section 3 are different because the latter contains a longer list of actions that may not be restricted, *see* State's Br. 14, but his only explanation for why this difference would affect the scope of the information covered rests on his unpersuasive reading of the word "cooperation," *see supra* 7-8. And in any event, these cases interpret statutory language regarding immigration enforcement and are therefore far more relevant to the context of this case than *Lamar*'s interpretation of the Bankruptcy Code.

and what type of immigration status they have—identified by the Indiana Court of Appeals as defining the scope of Section 3. *Compare* 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), *with City of Gary*, 181 N.E.3d at 402. The Attorney General's efforts to advocate for an expansive reading of Section 3 run headlong into the clear language of that provision: it addresses only policies involving the information of an individual's citizenship or immigration status, and nothing more.

B. Section 3 does not address policies regarding the collection of citizenship information.

The Attorney General also repeats his argument that Section 3 encompasses policies governing when and whether officers will engage in the investigation and collection of immigration information. This argument is no more persuasive the second time around. As the Sheriff has explained, *see* Sheriff's Mot. to Dismiss Br. 18-19, Sheriff's Mot. to Dismiss FAC Br. 11-13, Section 3 bars only policies that restrict the maintenance and sharing of information already in the possession of law enforcement officers or offered to those officers without prompting—it does not address or limit policies regarding the *collection* of citizenship or immigration status information. That is the only natural reading of the statute: all of the verbs used in Section 3 describe an action to be taken with respect to sharing information someone already has or receiving information proactively offered by another. Notably missing are any verbs that refer to the affirmative investigation or acquisition of new information. The Indiana Court of Appeals has previously adopted that reading of the statute, *see City of Gary*, 181 N.E.3d at 402-03 (holding

that it is "lawful to prohibit a governmental body from initiating an inquiry or investigation concerning a person's citizenship or immigration status"), and the Attorney General offers no reason this Court should reinterpret the law.

The Attorney General's argument that MCSO-012 limits the two-way "exchange of immigration-related information between federal and local authorities," State's Br. 16, misunderstand both the policy and the Sheriff's argument. MCSO-012 allows officers to share any citizenship or immigration information in their possession with other government entities and to receive any information that those other entities choose to offer, consistent with the requirements of Section 3. *See* MCSO-012 1 (June 29, 2024) (First Am. Compl. Ex. A) (requiring that officers "not prohibit, or in any way restrict, any other member from . . . [s]ending to or receiving information from the United States Department of Homeland Security"). But because nothing in Section 3 limits policies governing the proactive *investigation* or *collection* of immigration status information, the Sheriff was free to exercise his discretion to direct his officers not to spend their limited time and resources affirmatively collecting immigration information. His decision to do so does not conflict with Section 3.

Ignoring the plain language of Section 3, the Attorney General again insists that the word "cooperation" should be read capaciously, expanding the meaning of Section 3 to bar both policies limiting the affirmative collection of information by local law enforcement and policies limiting the exchange of a broader range of personal identifying information. But this Court was unpersuaded by that

argument in considering the previous motion to dismiss, and for good reason: given the context and language of the provision, the word "cooperating" in Section 3 encompasses only those actions required to facilitate the sharing and maintenance of the limited information describing a person's immigration or citizenship status. It is not a broad catch-all. *See Mi.D. v. State*, 57 N.E.3d 809, 814 (Ind. 2016) ("[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)); *State v. Dugan*, 793 N.E.2d 1034, 1036 (Ind. 2003) ("Words are to be given their plain, ordinary, and usual meaning, unless a contrary purpose is shown by the statute itself." (brackets and citation omitted)).

This interpretation would not, as the Attorney General argues, read the word "cooperating" out of the law by making it redundant of the word "communicating." State's Br. 13-14. The two words address different conduct. For example, the General Assembly could have understood "communicating" to encompass only affirmatively offering information, and "cooperating" as addressing local officers' sharing of information in response to a federal request. Such a reading would render both words meaningful while remaining consistent with Section 3's overall focus on the sharing, receipt, and maintenance of information already in an officer's possession.[4]

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[4] Home rule principles further support the Sheriff's reading of state law. As the Sheriff has explained, the Court should read the statute narrowly in accordance with Indiana's strong commitment to home rule principles, which apply to policies promulgated by the Sheriff even though the Home Rule Act itself does not. *See* Sheriff's Mot. to Dismiss FAC Br. 13-15; *see also Tippecanoe County v. Ind. Mfr.'s*

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C. The Attorney General's remaining arguments are unavailing.

As the Sheriff has explained, Section II of MCSO-012 is simply a general policy statement that sets out the priorities of the Sheriff's Office. *See* Sheriff's Mot. to Dismiss FAC Br. 18. It does not limit or restrict any behavior, and indeed, MCSO-012's explicit incorporation of Section 3 clearly communicates to officers that they must maintain and exchange immigration and citizenship information. The Attorney General's preference that Section II not be included, *see* State's Br. 19, does not change the fact that the provision fully complies with state law. It is the Sheriff who has the responsibility to set priorities for his department in accordance with state law and local needs and to share those priorities with his officers; the Attorney General has no authority to interfere with that process. Indeed, the Sheriff's power as the local policymaker to determine when and how his office should allocate resources to assist in immigration enforcement, a matter of federal responsibility, is exactly the sort of "preservation of governmental discretion" that the Attorney General demands. *See* State's Br. 2 (emphasis omitted).

The Attorney General's argument that his Section 3 claims should not be dismissed with prejudice is also unconvincing. The Attorney General has now failed twice to identify any conflict between the policy and the state law, and the Sheriff

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Ass'n, 784 N.E.2d 463, 466-67 (Ind. 2003) (cautioning against reading state statutes broadly to infringe on local powers in the absence of an explicit statement denying a local entity that power). To the extent the Court believes that the intended scope of Section 3 is unclear, the state law should be read narrowly so as not to conflict with the powers reserved to Sheriff Marté.

has twice offered evidence that that the provisions are completely consistent. With no daylight between the provisions, there is no possible application of MCSO-012 that could possibly violate Section 3. The Attorney General should not be given a third bite at the apple; this Court should dismiss the Section 3 claims with prejudice.

CONCLUSION

For the foregoing reasons, the Court should dismiss the First Amended Complaint and dismiss with prejudice the Section 3 claims.

April 3, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 3, 2025, service of a true and complete copy of the above and foregoing pleading or paper was made upon all counsel of record herein by electronic service using the Indiana E-Filing System:

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