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, **Monroe County Sheriff's Office,** *Defendants.*	

DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

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INTRODUCTION

In his baseless complaint against Sheriff Ruben Marté and the Monroe County Sheriff's Office (collectively, "the Sheriff"), the Attorney General makes only vague and generalized allegations that the Sheriff's Standard Operating Procedure MCSO-012—a policy statement clarifying the Department's position on the sharing of immigration and citizenship information, enforcement of civil immigration laws, and participation in the U visa program—conflicts with Indiana Code Sections 5-2-18.2-3 and -4. But he can identify no actual conflict between MCSO-012 and state law, because none exists. The policy fully complies with both provisions of Chapter 18.2. It permits sharing the exact information required by Section 3, and indeed incorporates verbatim the full text of that provision. And it does not restrict the federal enforcement of federal immigration law, as Section 4 prohibits. Nothing more is required under state law.

Even if the Court were to read Section 4 as preventing Indiana governmental bodies from limiting or restricting their own cooperation in federal immigration enforcement, MCSO-012 would fully comply with that requirement. Section 4 is cabined by the language limiting its reach to what is permitted by federal law. The Sheriff's policy prohibiting the detention of individuals solely on the basis of an ICE detainer, a policy required by the Fourth Amendment and federal law, could not possibly conflict with the requirements of Section 4. And as the State acknowledged in pre-litigation negotiations, no part of Section 4 can be read to require the Sheriff to seek federal immigration enforcement powers by applying for a 287(g) agreement with the federal government. The decision about whether to undertake the difficult,

intensive process to enter into such an agreement—and, more broadly, about how to manage the Department's limited resources to protect public safety—are best left to the discretion of the Sheriff.

Nor has the Attorney General met the requirements for an injunction to issue. Although he broadly asserts that the Sheriff has "knowingly or intentionally" violated state law, the Sheriff has in fact made diligent efforts to comply with state law at every turn, including writing provisions of state law into his policy. And the Attorney General cannot show that the other prerequisites for equitable relief have been met. In fact, given the harm that enjoining the policy would cause to Monroe County and the public interest, the balance of interests tips sharply against issuing an injunction. This Court should therefore dismiss the complaint or, in the alternative, grant summary judgment to the Sheriff.

STATEMENT OF FACTS

I. Sheriff's Law Enforcement Policy

Elected sheriffs play a vital role in protecting the health, safety, and welfare of their communities. Under the Indiana Constitution, every county in the state has an elected position of sheriff. Ind. Const. Art. 6, § 2(a). State law vests the sheriff with broad power to enforce criminal laws within the county, *see* Ind. Code § 36-2-13-5(a), and with the power to oversee members of the county police force, *id.* § 36-8-10-4(a). The sheriff also oversees "[t]he expenses of the county police force," *id.* § 36-8-10-4(b), and must exercise his discretion to manage those resources and the departmental budget as a whole. By vesting the sheriff with these rights and

responsibilities, the State Constitution and state law make clear that sheriffs should generally have discretion to decide how to utilize local resources to ensure public safety. That policy determination makes sense: as constitutional officers electorally responsible to their communities, sheriffs are best positioned to make decisions about how to allocate limited resources.

Sheriff Ruben Marté has done just that. In furtherance of his obligation to manage his Office's resources efficiently and to effectively enforce criminal laws in the County, the Sheriff adopted Standard Operating Procedure MCSO-012 in 2023 and revised the policy in 2024. MCSO-012 establishes a Department policy of "treat[ing] all individuals fairly and equally, during law enforcement encounters, regardless of their immigration or citizenship status." MCSO-012 1 (June 29, 2024) (Ex. 1-D). In adopting MCSO-012, the Sheriff sought to strike a balance between safeguarding constitutional rights and supporting the federal government's immigration-enforcement efforts in compliance with state law. Sheriff Aff. ¶¶ 5-6 (Ex. 1). Drawing on his knowledge of the community and law enforcement experience, Sheriff Marté decided that his office should prioritize building strong relationships with residents to ensure that they felt comfortable reporting violations of law and assisting in any resulting investigations and prosecutions. Sheriff Aff. ¶¶ 7-8 (Ex. 1).

The policy provides that the Monroe County Sheriff's Office ("MCSO") will not "in any way restrict" employees of the Department from "[c]ommunicating or cooperating with federal officials" with regard to "the citizenship or immigration

status, lawful or unlawful, of any individual." MCSO-012 1 (June 29, 2024) (Ex. 1-D). And it authorizes the Department to assist a victim of a crime in seeking protective immigration status from the federal government if the victim is helpful to a criminal investigation. *Id.* at 2. MCSO-012 also sets reasonable limits on the Department's engagement with federal immigration enforcement. For example, the policy prohibits employees 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 Department, unless required to do so in the execution of their official duties." *Id.* at 1. It also notes that "it is generally not the responsibility of the MCSO or its employees to notify federal immigration officials when a non-citizen is taken into custody." *Id.* And it states that the Department will not "enter into any agreement, including the 287(g) program, with the Department of Homeland Security – Immigration and Customs Enforcement (ICE) for enforcement of immigration or citizenship violations."[1] *Id.* Similarly, although the policy requires the Sheriff's Office to notify a jurisdiction of a detainee if there is an active criminal warrant for him in that jurisdiction, the policy directs officers not to detain someone who otherwise would be released solely based on a "non-criminal/administrative ICE detainer."[2] *Id.* at 2.

[1] A "287(g) agreement" refers to a provision of federal law that authorizes state and local law-enforcement departments to enter into formal agreements with the federal government to engage in enforcement of federal immigration laws with the training and supervision of federal law enforcement officials. 8 U.S.C. § 1357(g).

[2] An immigration detainer, commonly known as an "ICE detainer," is a notice sent by the U.S. Immigration and Custom enforcement to state and local law

II. The Attorney General's Complaint

On May 14, 2024, Attorney General Rokita sent a letter to the Sheriff "regarding the Office's immigration-related policies." Compl. ¶ 23. That letter explained that the Attorney General's office had "reviewed the Monroe County Correctional Center Operation's Directive regarding 'Ice [sic] Immigration Detainers'" and demanded that Sheriff Marté rescind it. Letter from Attorney General Rokita to Sheriff Marté 1 (May 14, 2024) (Ex. 1-B). The letter asserted that "[t]he detainer directive violates Chapter 18.2" and cited generally to two provisions of that chapter:

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

Id.

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enforcement agencies that "asks the other law enforcement agency to notify ICE before a removable individual is released from custody and to maintain custody of the non-citizen for a brief period of time so that ICE can take custody of that person in a safe and secure setting upon release from that agency's custody." *Detainers 101*, U.S. Immigr. & Customs Enf't (Sept. 27, 2022), https://perma.cc/9FS8-AM6W. Federal law also authorizes federal law enforcement officers to issue arrest warrants for civil immigration violations. *See* 8 C.F.R. § 287.5(e)(2). But these administrative warrants are not criminal warrants—they do not assert probable cause for a criminal offense and are not issued by a neutral magistrate. *See* John Seaman & Jonna Solari, *ICE Administrative Removal Warrants (Transcript)*, Fed. L. Enf't Training Ctrs. (last visited Aug. 23, 2024), https://perma.cc/F6PC-XQRR.

In subsequent conversations, Compl. ¶ 24, Deputy Attorney General Lori Torres communicated the Attorney General's view that the Sheriff's prohibition on detaining or holding someone past their scheduled release date solely "based on a non-criminal/administrative ICE detainer" violated Section 18.2-3 because it prohibited "communicating or cooperating with federal officials." MCSO-012 with Tracked Changes by Deputy Attorney General Lori Torres 2 (Ex. 1-C). She said that the Department should honor the ICE detainer and hold individuals for up to 48 hours when requested, although she emphasized that she did not mean to suggest that the Office should be "going out and arresting or otherwise 'detaining' someone not in custody" based on an ICE detainer. *Id*. Deputy Attorney General Torres proposed that MCSO-012 be amended to provide: "Upon receipt of a completed and executed Immigration Detainer-Notice of Action (Form I-247), under 8 CFR 287.7, officers shall detain any individual in custody and shall comply with 8 CFR 287.7 and any other applicable state or federal law relating to immigration detainers while a detainee is in their custody." *Id*.

Deputy Attorney General Torres also commented on the provision in MCSO-012 that prohibits the Department from entering into a 287(g) agreement with the federal government. Deputy Attorney General Torres acknowledged that she did not "think the Indiana statute's requirement to 'cooperate' could be read so broadly as to require the MCSO to enter into such an agreement." *Id*. at 1. She noted, however, that the Office's "specific prohibition against doing so could be argued to be a prohibition against 'cooperation.'" *Id*. At no point in her edits did Deputy Attorney

General Torres cite Section 4 or identify a conflict between the policy and that provision.

The Sheriff declined to implement the specific suggestions offered by the Deputy Attorney General. However, the Sheriff did amend MCSO-012 to make explicit the obligations employees have under state law to cooperate with federal immigration enforcement. Specifically, the Sheriff added a provision that largely restated the requirements of Ind. Code § 5-2-18.2-3:

> 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.

MCSO-012 1 (June 29, 2024) (Ex. 1-D).

Unsatisfied with this revised policy, the Attorney General filed this lawsuit. Compl. ¶ 24. He argues that MCSO-012 "violates Indiana Code §§ 5-2-18.2-3 and 5-2-18.2-4 in whole or in part," Compl. ¶ 26, and seeks a permanent injunction against it under Indiana Code § 5-2-18.2-6.

This is not the Office of the Attorney General's first attempt to wield its overly broad view of these statutory provisions to displace local prerogatives. The State, through the Attorney General, intervened in a pair of cases filed in 2018 by private plaintiffs against the cities of Gary and East Chicago, arguing that the same

provisions of state law prohibited local governments from refusing to comply with ICE detainers. *See generally* Br. for Intervenor State of Indiana, *City of Gary v. Nicholson*, 181 N.E.3d 390 (Ind. Ct. App. 2021) (Ex. 2). The Court of Appeals largely rejected the arguments made by both the State and the private plaintiffs. First, the Court of Appeals concluded that the interpretation of Section 5-2-18.2-3 advanced by the state conflicted with the statute's "unambiguous" language and its "plain meaning." *City of Gary v. Nicholson*, 181 N.E.3d 390, 402 (Ind. Ct. App. 2021), *dismissed*, 190 N.E.3d 349 (Ind. 2022). Second, the Court concluded that detentions by state and local law enforcement based only on ICE detainers are not required under Section 5-2-18.2-4 because they violate the Fourth Amendment and federal law. *Id*. at 412-13.

On petitions to transfer, the Indiana Supreme Court dismissed the case because the private plaintiffs lacked standing. 190 N.E.3d 349, 350 (Ind. 2022). The court made it clear that a plaintiff alleging that a local policy violated state law must do more than point to a statutory cause of action; they must also allege an injury, which the private plaintiffs had failed to do. *Id*. at 351; *see also Serbon v. City of East Chicago*, 194 N.E.3d 84, 87 (Ind. Ct. App. 2022) (rejecting similar challenge against the City of East Chicago's welcoming city ordinance for lack of standing).

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." *Thornton v. State*, 43 N.E.3d 585, 587 (Ind.

2015) (citation omitted). Indiana's notice pleading standard requires "(1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for the relief to which the pleader deems entitled." *Miller ex rel. Miller v. Mem'l Hosp. of S. Bend, Inc.*, 679 N.E.2d 1329, 1332 (Ind. 1997) (quoting Ind. Trial Rule 8(A)). "Although the plaintiff need not set out in precise detail the facts upon which the claim is based, she must still plead the operative facts necessary to set forth an actionable claim." *Trail v. Boys & Girls Clubs of Nw. Ind.*, 845 N.E.2d 130, 135 (Ind. 2006). "[T]he sufficiency of a complaint depends upon whether the opposing party has been adequately notified concerning the operative facts of a claim so as to be able to prepare to meet it." *Graves v. Kovacs*, 990 N.E.2d 972, 976 (Ind. Ct. App. 2013).

Although this matter can be resolved solely on the insufficiency of the complaint, Defendants also move, in the alternative, for summary judgment. *See* Ind. Trial Rule 12(b) (providing that when "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56"). A defendant "may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part" of a claim against him. Ind. Trial Rule 56(b). A party is entitled to summary judgment if there is no "genuine issue of material fact and if the moving party is entitled to judgment as a matter of law." *Siwinski v. Town of Ogden Dunes*, 949 N.E.2d 825, 827 (Ind. 2011) (citing Ind. Trial Rule 56(C)). "In resolving the matter, the Court will accept as true the facts established by evidence

in favor of the nonmoving party while resolving all doubts against the moving party." *Id.* at 828. To the extent "the facts are not in dispute" and the Court need only interpret the meaning of a statute or ordinance, the claim "presents a pure issue of law reserved for the courts." *Id.*

ARGUMENT

I. The Complaint Does Not Specifically Allege Any Conflict Between MCSO-012 and State Law

The Attorney General's complaint does not meet Indiana's pleading standard. The Attorney General fails in his obligation to put the Sheriff on notice of his claim because he nowhere explains which provisions of MCSO-012 he believes conflict with state law or how. Although the complaint broadly alleges that "Monroe County Sheriff Ruben Marté and the Monroe County Sheriff's Office 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," Compl. ¶ 1, and "MCSO-12 purports to prohibit or limit voluntary cooperation by personnel of the Monroe County Sheriff's Office with federal officials in the enforcement of federal immigration laws," Compl. ¶ 10, the Attorney General identifies no specific conflict between Indiana state law and the policy. Instead, he merely lists a handful of provisions of MCSO-012, *see* Compl. ¶¶ 11-14, without explaining whether those are the provisions he believes are in violation of state law and whether his complaint is limited to those selected provisions. He then quotes from Indiana Code §§ 5-2-18.2-3 and -4, *see* Compl. ¶¶ 16-18, but does nothing to identify which section he believes MCSO-012 violates or why. That is not enough to "put a reasonable

person on notice as to why a plaintiff sues." *Graves*, 990 N.E.2d at 976 (citing *Shields v. Taylor*, 976 N.E.2d 1237, 1245 (Ind. Ct. App. 2012)).

Without any specific allegations about what parts of the policy the Attorney General believes conflict with the state law and why, the complaint leaves Sheriff Marté guessing about what exactly he is accused of having done wrong. For example, although the Attorney General specifically cites a few provisions of the policy, he also broadly asserts that it violates state law "in whole." Compl. ¶ 26. But it is difficult to understand how every provision of MCSO-012 could possibly violate state law. For example, the Sheriff can only guess why the Attorney General believes that the provision requiring the Department "to treat all individuals fairly and equally, during law enforcement encounters" conflicts with state law. Nor can he see how the provision incorporating Section 3 verbatim could be in violation. Although the notice pleading standard is a generous one, it does not allow a plaintiff to leave a defendant in the dark about the fundamentals of the plaintiff's claim. The complaint should therefore be dismissed.

II. The Attorney General's Complaint Rests on a Misinterpretation of State Law

The Attorney General's complaint broadly asserts that the policy'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." Compl. ¶ 15. But no part of MCSO-012 prohibits or limits any law enforcement activity addressed by either Section 3 or Section 4. Instead, MCSO-012 is an allowable exercise of the

Sheriff's discretion to adopt reasonable policies not explicitly barred by state law. Any allegation otherwise rests on a clear misreading of the provisions of state law.

a. Any Ambiguity in the State Statute Should be Construed Against Preemption

The Indiana Home Rule Act, Ind. Code § 36-1-3, establishes a strong presumption in favor of localities' authority to manage their own affairs and places a heavy burden on parties asserting state law preemption. Reading Sections 3 and 4 broadly, in a manner that might conflict with MCSO-012, would violate these bedrock principles.

In adopting the Home Rule Act, the Indiana legislature "abrogated the traditional rule that local governments possessed only those powers expressly authorized by statute." *Beta Steel Corp. v. Porter County*, 695 N.E.2d 979, 982 (Ind. Ct. App. 1998). Adopting the opposite rule, the Home Rule Act declares that a local government has "all powers granted it by statute" and "all other powers necessary or desirable in the conduct of its affairs, even though not granted by statute." Ind. Code § 36-1-3-4(b). This policy demonstrates a clear preference for transferring authority to "local units of government . . . to allow them to manage their own local affairs." *Hochstedler v. St. Joseph Cty. Solid Waste Mgmt. Dist.*, 770 N.E.2d 910, 920 (Ind. Ct. App. 2002).

The same principle applies to policies promulgated by the sheriff, a county officer elected by and beholden to the residents of Monroe County. *See* Ind. Const. Art. 6, § 2(a); *see also* Ind. Code. § 3-8-1-20 (listing sheriff as a county officer). The sheriff is vested by statute with the responsibility to maintain public safety and

protect the public welfare. *See* Ind. Code. § 36-2-13-5. He has broad power to enforce criminal laws within the county, *id*. § 36-2-13-5(a), and to oversee "[t]he expenses of the county police force," *id*. § 36-8-10-4(b). Like local governments, sheriffs are well-positioned to be responsive to the needs of their communities, and they maintain the discretion to manage the resources of their departments to best serve the public interest. Indiana's policy "strongly favor[ing]" allowing local officials to manage local affairs, *Hochstedler*, 770 N.E.2d at 920, therefore applies with equal force to sheriffs.

Likewise, the Home Rule Act's rule of statutory interpretation should apply here. The Home Rule Act requires courts to harmonize local and state law whenever possible. The Act explicitly requires courts to resolve "[a]ny doubt as to the existence of a power of a unit . . . in favor of its existence." Ind. Code § 36-1-3-3(b). Courts therefore assume that local authority is maintained "unless the Indiana Constitution or a statute expressly denies the unit that power, or expressly grants it to another entity." *Kole v. Faultless*, 963 N.E.2d 493, 496 (Ind. 2012). A state statute cannot restrict municipal power by implication, or with a general and imprecisely worded statement of principles. *See Tippecanoe County v. Ind. Mfr.'s Ass'n*, 784 N.E.2d 463, 466–67 (Ind. 2003) (explaining that a statute "does not diminish the presumed power of other local officials" unless it does so explicitly and cautioning that reading a state statute as broadly preclusive violates Home Rule principles). Where there is no clear conflict, local governments are free to "impose additional, reasonable regulations, and to supplement burdens imposed by non-penal state law,

provided the additional burdens are logically consistent with the statutory purpose." *Ind. Dep't of Nat. Res. v. Newton County*, 802 N.E.2d 430, 433 (Ind. 2004) (brackets omitted) (quoting *Hobble ex rel. Hobble v. Basham*, 575 N.E.2d 693, 697 (Ind. Ct. App. 1991)).

Applying the same principles of statutory interpretation here would advance Indiana's strong policy preference for allowing local officials the discretion to manage local affairs. *See Hochstedler*, 770 N.E.2d at 920. Accordingly, in the absence of a clear conflict, any ambiguity in the scope of the state law provisions should be resolved in a manner that avoids conflict between those provisions and the Sheriff's policy.

b. Section 3 Imposes Only a Narrow Obligation to Provide Citizenship Information

By its plain language, Section 3 of Chapter 18.2 applies narrowly to require the maintenance and sharing (but not the gathering) of information about immigration and citizenship status. Section 3 provides that local governments may not restrict their employees from "taking [certain] actions with regard to information of the citizenship or immigration status, lawful or unlawful, of an individual." Ind. Code § 5-2-18.2-3. Specifically, the provision prohibits local governments from imposing restrictions on: "(1) [c]ommunicating or cooperating with federal officials[;] (2) [s]ending to or receiving information from the United States Department of Homeland Security[;] (3) [m]aintaining information[;] [and]

(4) [e]xchanging information with another federal, state, or local government entity." *Id.*

The Attorney General provides no specific explanation about why he believes MCSO-012 conflicts with Section 3. He merely notes that the provision bars government bodies "from taking certain actions with regard to information of the citizenship or immigration status, lawful or unlawful, of an individual," Compl. ¶ 16, and then recites the text of the statute, Compl. ¶ 17. But MCSO-012 complies fully with Section 3. Indeed, it *explicitly incorporates* Section 3:

> 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.

MCSO-012 1 (June 29, 2024) (Ex. 1-D). This tracks precisely the County's obligation under Section 3. To the extent the Attorney General believes otherwise, that belief is based on a misreading of the requirements of the statute.

i. Section 3 Imposes a Duty to Cooperate Only "With Regard to" Specified Information

In past communications with the Sheriff's Office, the Attorney General has appeared to take the position that the phrase "cooperating with federal officials" in Section 3 imposes a standalone, sweeping cooperation mandate, divorced from the context in which it arises. For example, the Deputy Attorney General asserted in

pre-litigation comments on the policy that its prohibition on detaining someone based solely on an administrative warrant may violate Section 3 because it "prevents 'cooperation' with federal officials." MCSO-012 with Tracked Changes by Deputy Attorney General Lori Torres 2 (Ex. 1-C).

This argument fails as a matter of plain language. Section 3 addresses only the sharing and maintenance of information, and only information about citizenship and immigration status.[3] It bars a local government from adopting a policy that prohibits taking certain actions, including "cooperating with federal officials," *only* "with regard to information of the citizenship or immigration status, lawful or unlawful, of an individual." Ind. Code § 5-2-18.2-3. It does not purport to impose a general cooperation requirement outside of that context. *See City of Gary v. Nicholson*, 181 N.E.3d 390, 402 (Ind. Ct. App. 2021) ("Under the plain meaning of Section 3, [a local government] is barred from prohibiting or in any way restricting another governmental body from taking the enumerated actions with regard to information of the citizenship or immigration status of an individual, *and nothing more*." (emphasis added)), *dismissed*, 190 N.E.3d 349 (Ind. 2022). The context of the provision makes clear that the word "cooperating" was intended to encompass only

[3] As the Indiana Court of Appeals has previously held, "the only relevant information" addressed by Section 3's limitation is "that information which identifies the person's citizenship and immigration status." *City of Gary v. Nicholson*, 181 N.E.3d 390, 402 (Ind. Ct. App. 2021) (internal quotation marks omitted), *dismissed*, 190 N.E.3d 349 (Ind. 2022). The Court of Appeals' decision in *City of Gary* was vacated by the Indiana Supreme Court on transfer because the Supreme Court determined that the plaintiffs lacked standing. 190 N.E.3d 349 (2022). Because the decision was vacated on grounds not addressed by the Court of Appeals, however, its reasoning remains persuasive.

those actions required to facilitate the sharing and maintenance of information; it is not a broad catch-all. *See 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)).

The list of verbs included in Section 3 reaffirms this reading. All of the other "actions" that Section 3 prohibits are things that one would do with information: "[c]ommunicating," "[s]ending to," "receiving … from," "[m]aintaining," and "[e]xchanging." Ind. Code. § 5-2-18.2-3. Under the *noscitur a sociis* canon of statutory construction, "if a statute contains a list, each word in that list should be understood in the same general sense." *Mi.D. v. State*, 57 N.E.3d 809, 814 (Ind. 2016) (internal quotation marks and citation omitted). Reading "cooperating" to encompass a broad array of actions not at all related to the preservation or sharing of information—including the continued detention of individuals after their scheduled release dates—is not in line with the other actions listed and would be a massive expansion of the requirement imposed by the statute. That is clearly not what the legislature intended. *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.").

Nothing in MCSO-012 prevents the Sheriff's employees from cooperating with other law enforcement agencies or the federal government to share information regarding a person's citizenship and immigration status—and, indeed, MCSO-012 includes the full text of Section 3 as a provision of the policy. MCSO-012 1 (June 29,

2024) (Ex. 1-D). There is therefore no conflict between Section 3 and MCSO-012. *See City of Gary*, 181 N.E.3d at 402 (holding that a city ordinance barring compliance with ICE detainers and administrative warrants did not "limit or restrict a governmental body from communicating, sending, receiving, maintaining, or exchanging information of the citizenship or immigration status of an individual" and therefore did "not violate Section 3").

ii. Section 3 Does Not Impose an Affirmative Obligation to Collect Citizenship Information

Although neither the Attorney General nor the Deputy Attorney General identified any problem with Paragraph IV.A, of MCSO-012 before filing suit, the Attorney General lists the provision among the "Factual and Legal Allegations" in the complaint. *See* Compl. ¶ 13. That provision states that "[e]mployees of the Department 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." MCSO-012 1 (June 29, 2024) (Ex. 1-D). Assuming that the Attorney General's vague reference to this portion of the policy is meant to challenge it as a violation of Section 3, that challenge fails. Section 3 does not create any affirmative obligation to collect citizenship and immigration status information. Rather, by its plain language, the provision applies only to the sharing and maintenance of information already in the possession of a local law enforcement agency. There is therefore no conflict between Paragraph IV.A of MCSO-012 and Section 3.

As the Indiana Court of Appeals previously held, Section 3 does not require law enforcement to take steps to affirmatively gather new information. *See City of Gary*, 181 N.E.3d at 403 (holding that it is "lawful to prohibit a governmental body from initiating an inquiry or investigation concerning a person's citizenship or immigration status"); *see also, e.g.*, Br. for Intervenor State of Indiana 23, *City of Gary v. Nicholson*, 181 N.E.3d 390 (Ind. Ct. App. 2021) (Ex. 2) (arguing that Chapter 18.2 does not "*require*[] employees to affirmatively gather information outside of their ordinary practices"). The statute bars policies that restrict "[c]ommunicating or cooperating with federal officials," as well as "[s]ending to or receiving" from the Department of Homeland Security (DHS), "[m]aintaining," and "[e]xchanging" citizenship or immigration status information. Ind. Code § 5-2-18.2-3. Each of these verbs describes an action to be taken with respect to information already in the possession of a governmental body. Notably absent are verbs like "investigating," "gathering," or "inquiring," which would have called to mind the acquisition of information in the first instance. Indeed, the U.S. Department of Justice has recognized that Section 3's federal analogue, 8 U.S.C. § 1373, "does not impose on states and localities the affirmative obligation to collect information from private individuals regarding their immigration status." *Office of Justice Programs Guidance Regarding Compliance with 8 U.S.C. § 1373*, U.S. Dep't of Just. (last visited Sept. 4, 2024), https://perma.cc/8R8M-XTL2.

c. Section 4 Does Not Impose a Blanket Duty to Cooperate

In her pre-litigation comments on MCSO-012, the Deputy Attorney General did not raise any concerns about a conflict between the provisions of the policy and Section 4. *See generally* MCSO-012 with Tracked Changes by Deputy Attorney General Lori Torres (Ex. 1-C). Although the complaint does not make clear whether the Attorney General alleges such a conflict now, *see supra* pp. 10-11, any such argument would be meritless. MCSO-012 is fully in compliance with Section 4 as it is properly understood.

i. Section 4 Addresses Only Federal Enforcement of Federal Immigration Law

Section 4 provides 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. In light of the text, the legislative context in which it was enacted, and the broader structure of the federal immigration-enforcement regime, this is best understood as prohibiting only those policies that actively interfere with the *federal* government's enforcement of immigration laws.

The Supreme Court has been clear that responsibility for enforcing federal immigration laws belongs to the federal government; state and local officials generally lack the authority to enforce federal immigration laws on their own. *Arizona v. United States*, 567 U.S. 387, 408-09 (2012). Although there are certain "limited circumstances" in which federal law authorizes state and local officials to engage directly in the enforcement of immigration laws, *id.* at 408, those are exceptions to the default regime of federal enforcement, *id.* at 410. None of the

limited circumstances identified by the Supreme Court convey authority on state or local officials to generally enforce federal immigration law. *See id.* at 408-09. Therefore, the most natural reading of Section 4's reference to the "enforcement of federal immigration laws"—and the one most consistent with federal law and Supreme Court precedent—is that it refers to enforcement of those laws by *federal* officials.

In practice, that means that Section 4 operates to ensure that no Indiana locality becomes a true "sanctuary" for undocumented immigrants, where they might be shielded from federal immigration authorities. It would, for example, bar Indiana cities from prohibiting ICE from using airport facilities to deport immigration detainees. *See, e.g.*, *United States v. King County*, 666 F. Supp. 3d 1134, 1140 (W.D. Wash. 2023) (discussing a county order barring cooperation with ICE deportation flights from the local airport). And it would prohibit local policies that exclude federal immigration agents from public places like courthouses and libraries, *see, e.g.*, *New York State Courts' Policy on ICE Arrests in Courthouses*, N.Y. State Unified Court System (last visited Aug. 31, 2024), https://perma.cc/QCR6-NQZE ("Immigration and Customs Enforcement (ICE) agents can only come into courthouses to take a person into custody if they have a warrant signed by a judge."), or that bar federal immigration authorities from opening local facilities, *see, e.g.*, Bill Moss, *City Blocks ICE from Opening Intake Office*, Hendersonville Lightning (May 30, 2012), https://perma.cc/L4TY-8UXP (describing city officials' decision to withhold a certificate of occupancy from an ICE

facility). But it does not address policies like MCSO-012, which do nothing to interfere with the federal government's ability to enforce immigration laws in the jurisdiction.

This reading of Section 4 is further bolstered by the drafting history of the legislation that included Chapter 18.2. The original draft of the bill would have required law enforcement officers to request verification of an individual's citizenship and immigration status if an officer, in the course of an otherwise lawful stop or detention, had reasonable suspicion to believe that the individual was not lawfully present in the United States. *See* S.B. 590, Sec. 3, ch. 19, § 5(c), 117th Gen. Assemb., Reg. Sess. (Ind. 2011), https://perma.cc/VEC8-JAMT. The bill also would have allowed the officer to transfer an individual to federal custody once federal authorities "verified" that the individual was "unlawfully present in the United States." *Id*. § 6. These provisions, however, were excluded from the final bill. Meanwhile, a provision *prohibiting* law enforcement officers from requesting verification of immigration status and citizenship information for witnesses and victims of crimes remained in the enacted version. *See* Ind. Code § 5-2-20-3.

In deleting Sections 5 and 6 of the original draft from the final bill, the General Assembly made clear that it was declining to mandate that state and local officials affirmatively participate in federal immigration enforcement. That decision was responsive to the concerns of affected constituencies. When the legislation was first introduced, a number of individuals (including local officials) expressed concerns that it would "mak[e] federal immigration enforcement the responsibility

of police officers," thereby "burdening police departments, alienating citizens who raise officers' suspicions, and chasing away companies, conventions and prospective employees." Heather Gillers, *Kenley: Revamp Immigration Proposal*, Indianapolis Star, Mar. 15, 2011 (Ex. 3). Based on these criticisms, the final version of the bill was "stripped of provisions that . . . would have required local and state police to enforce federal immigration laws." Mary Beth Schneider, *Immigration Bill Shifts Its Emphasis to Employers*, Indianapolis Star, Apr. 15, 2011 (Ex. 4). Understood in light of the legislature's decision not to include mandates for state and local involvement in immigration enforcement as part of the final law, Section 4's reference to the "enforcement of federal immigration laws" must be read as barring interference with *federal* enforcement rather than referring to *local* participation in such enforcement.

ii. Section 4 Says Nothing About Cooperation with the Federal Government

Even if Section 4 were read more broadly as addressing not only local interference with federal immigration enforcement but also local officials' *own* enforcement of immigration law, it would not conflict with MCSO-012. On this reading, Section 4 would conflict only with local policies that interfere with powers of immigration enforcement vested in local law enforcement by federal law—which MCSO-012 does not do. And because Section 4 says nothing about cooperation with federal enforcement, it neither prohibits policies against such cooperation nor mandates that local officials enter into cooperation agreements with the federal government. MCSO-012 is thus fully compliant with the requirements of Section 4.

The plain text of Section 4 prohibits local governments from limiting or restricting only those enforcement powers "permitted by federal law." Ind. Code § 5-2-18.2-4. As noted above, there are "limited circumstances" in which federal law explicitly gives local law enforcement officers the power to exercise immigration-enforcement powers. *Arizona*, 567 U.S. at 408. For example, 8 U.S.C. § 1103(a)(10) allows the U.S. Attorney General to authorize state and local law enforcement officers to exercise the powers of a federal immigration officer in the event of "an actual or imminent mass influx of aliens"; section 1252c(a) allows state and local law enforcement officers to arrest an individual who is "illegally present" and had previously left the country after a felony conviction, after confirming with federal officials the status of such individual; and section 1324(c) grants authority to "all other officers whose duty it is to enforce criminal laws" to arrest individuals for the criminal transportation or harboring of illegal aliens. These provisions affirmatively empower state and local law enforcement officers to exercise immigration enforcement powers once certain conditions are met, "permitt[ing]" them to engage in immigration enforcement. Ind. Code § 5-2-18.2-4.

But nothing in Section 4 indicates that it extends more broadly, applying to enforcement powers that are *not* granted to local law enforcement officers by federal law. Section 1357(g)(1), for example, establishes a voluntary program in which localities can apply to participate and which allows local officers to perform the functions of federal immigration officers under the supervision of federal officials. While that statute offers localities the opportunity to apply for a partnership with

the federal government, it does not vest any *enforcement power* in local law enforcement. Section 4's reference to "enforcement of federal immigration laws . . . permitted by federal law" does not encompass enforcement powers that are not granted to local law enforcement by federal statute and which local officials would have to take affirmative steps to seek out. Section 4 does not infringe on the authority of local decisionmakers to set their own policies about whether to pursue such a program.

Nor does the text of Section 4 contain any language either barring local officials from limiting their cooperation with the federal government's immigration enforcement or requiring such cooperation. In its now-vacated opinion, the Court of Appeals determined that nothing in Section 4 requires that local officials "agree to cooperate with federal officials in the enforcement of immigration law." *City of Gary,* 181 N.E.3d at 404. But it nonetheless held that a provision of Gary's ordinance setting a policy *against* cooperation violated Section 4 because it read that section to prohibit local officials from issuing a law or policy statement "directing [their] employees, agents, or officials not to cooperate with federal immigration officials in the enforcement of immigration laws." *Id.*

That conclusion, as well as the Attorney General's broad assertions in the complaint and in pre-litigation correspondence, are based on a misreading of the statute that conflicts with both basic rules of statutory interpretation and the appellate court's own insistence that it would "not add words that are not there" to the text. *Id*. The word "cooperate" does *not* appear in Section 4—despite the fact

that it appears elsewhere in the statute, including in Section 3. Under a "long-standing rule of statutory construction," *expressio unius est exclusio alterius*, that exclusion carries significant weight: "the enumeration of certain things in a statute necessarily implies the exclusion of all others," especially when "the same term is present in certain portions of the same enactment, but not in other portions." *Brandmaier v. Metro. Dev. Comm'n of Marion Cty.*, 714 N.E.2d 179, 180 (Ind. Ct. App. 1999) (citations omitted). The same is true under the rule of superfluity, a canon that requires courts to give "every word" of a statute "effect and meaning" and to ensure that "no part" is "held to be meaningless." *Siwinski*, 949 N.E.2d at 828. Reading Section 4 to include a prohibition on policies that limit "cooperation" with enforcement of federal immigration laws would render Section 3's command that local jurisdictions not limit "cooperat[ion] with federal officials" *only* with respect to citizenship or immigration-status information superfluous. Such a reading would therefore not only be strained, it would also fail to give effect to the different terms used in Chapter 18.2's distinct provisions.

The idea that Section 4 contains a broad enforcement-cooperation *mandate* is even farther afield from the text of that provision. As the Court of Appeals held, "Section 4 does not require that [local officials] agree to cooperate with federal officials in the enforcement of immigration law." *City of Gary*, 181 N.E.3d at 404. And the Deputy Attorney General disclaimed such a reading of Section 4 in pre-litigation negotiations. MCSO-012 with Tracked Changes by Deputy Attorney General Lori Torres 1 (Ex. 1-C) (noting that state law could not "be read so broadly

as to require the MCSO to enter into" a 287(g) agreement). Discretion about whether to choose to assist with federal immigration enforcement remains, as it should, with local officials like Sheriff Marté.

Indeed, it is clear that the General Assembly did not intend to either require cooperation with federal officials or bar limitations on such cooperation. When Indiana adopted Chapter 18.2 in 2011, other states already had enacted statutes that explicitly prohibited limitations on local assistance to federal immigration authorities. *See, e.g.*, 2011 Utah Laws Ch. 21, H.B. 497, § 6 (Mar. 15, 2011) (codified at Utah Code § 76-9-1006) ("A state or local governmental agency of this state, or any representative of the agency, may not (1) limit or restrict by ordinance, regulation, or policy the authority of any law enforcement agency or other governmental agency *to assist* the federal government in the enforcement of any federal law or regulation governing immigration." (emphasis added)); 2005 Ohio Laws File 61, Am. Sub. S.B. No. 9, § 1 (Jan. 11, 2006) (codified at Ohio Rev. Code Ann. § 9.63(A)) ("[N]o state or local employee shall unreasonably fail to comply with any lawful *request for assistance* made by any federal authorities carrying out . . . any federal immigration . . . investigation."). But the language chosen by the General Assembly contrasts sharply with the language used by those states. If the General Assembly had intended to adopt an enforcement-cooperation mandate here, they had plenty examples of the clear language they could use to do so. The fact that the statute contains much narrower language and does not use the words "cooperate" or "assist" at all illustrates that that was not the legislature's intent.

See Mi.D., 57 N.E.3d at 812-13 (when the "legislature could have readily adopted" a term "but omitted it instead," the court should conclude that "rejection was intentional, not accidental").

Moreover, reading the statute to require cooperation with or assistance in enforcement of federal immigration law to nothing "less than the full extent permitted by federal law" would lead to absurd results. Ind. Code § 5-2-18.2-4. If Section 4 were read to bar any local action that has the effect of limiting a locality's ability to cooperate in federal immigration enforcement, a sheriff could be required to allocate his entire budget and all of his officers to such assistance. And the local government would be barred from reallocating resources from law enforcement to other priorities, such as education or wastewater treatment, because that reallocation would limit officers' ability to assist in immigration enforcement. This Court should hesitate to conclude that every ordinance, rule, policy, guideline, or budgetary decision issued by any governmental body at the state or local level violates Section 4 unless it somehow ensures the maximum amount of cooperation in immigration enforcement conceivably allowed under federal law.[4] Surely local

[4] Even if the Attorney General were to disclaim such a reading of the law, Section 4 contains no limiting principle beyond "the full extent prohibited by federal law." Ind. Code § 5-2-18.2-4. If it were read to include a broad enforcement-cooperation mandate, it might run afoul of the Fourteenth Amendment's due process prohibition on excessively vague laws. A statute may be invalidated for vagueness if it "fails to provide 'fair warning' as to what conduct will subject a person to liability." *Karlin v. Foust*, 188 F.3d 446, 458 (7th Cir. 1999). Read to broadly require cooperation, Section 4 would fail to provide sufficient notice of what is prohibited, putting governmental entities in an impossible bind. If they were to adopt fiscally responsible policies conducive to public health and safety, they would run the risk—and face the associated costs—of defending a lawsuit like this one. If

jurisdictions such as Monroe County need not "participate in a joint task force with federal officers" or "provide operational support in executing a warrant," *Arizona*, 567 U.S. at 410, if their limited resources would be better spent protecting their communities in other ways—for example, by investigating violent criminal offenses. *See City of Gary*, 181 N.E.3d at 404 ("Section 4 simply requires that Gary's employees, agents, or officials be given the opportunity to decide whether to cooperate when a request is made."). This Court should not drastically "expand the plain meaning" of Section 4 by reading into it either a bar on policies that limit cooperation with federal officials or an enforcement-cooperation mandate when no such language exists in the text. *George P. Todd Funeral Home, Inc. v. Est. of Beckner*, 663 N.E.2d 786, 788 (Ind. Ct. App. 1996).

III. MCSO-012 Fully Complies with State Law

The Attorney General does not identify which portions of MCSO-012 conflict with state law because he cannot—the policy is fully consistent with the requirements of both Section 3 and Section 4. However, to the extent he intends to challenge the specific provisions he quotes, *see* Compl. ¶¶ 11-14, his allegations are

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they instead declined to adopt such policies, they would forsake the well-being of the very citizens they are charged with serving, while also subjecting themselves to suit if they inadvertently overstepped their limited roles in immigration enforcement.

unavailing. None of the identified provisions are in conflict with state law, and the complaint therefore fails to state a claim.

a. The Policy of Not Engaging in Immigration Enforcement Unless Required By Law Cannot Violate State Law

Section II of MCSO-012 explains the general policy of the Department with regard to federal immigration enforcement. In relevant part, the Section explains 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." MCSO-012 1 (June 29, 2024) (Ex. 1-D). The Attorney General quotes this language in his complaint, Compl. ¶ 11, but he does not explain how the Department's general policy statement violates state law. Nor could he—by its own terms, the policy does not apply when the Department is "required" to engage in immigration enforcement "by law." It therefore implicitly incorporates all requirements contained in Sections 3 and 4 and cannot be read to violate state law.

b. No Provision of State Law Requires the Department to Investigate Immigration or Citizenship Status

Section IV.A of MCSO-012 states that "[e]mployees of the Department 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." MCSO-012 1 (June 29, 2024) (Ex. 1-D). This policy does not violate Section 3 because Section 3 does not require law enforcement officers to affirmatively collect citizenship and immigration information. *See supra* at pp. 18-19. Sheriff Marté is therefore free to exercise his discretion over whether to direct his officers to do so. *See Newton County*, 802

N.E.2d at 433 (holding that in the absence of a state statute saying otherwise, local governments are free to "impose additional, reasonable regulations, and to supplement burdens imposed by non-penal state law" (brackets omitted)). His determination that his officers should not collect such information serves an important purpose: it was added to MCSO-012 as a guard against racial profiling. *See* Sheriff Aff. ¶ 9 (Ex. 1). Recognizing that a person's immigration status will not usually be obvious and that some officers may assume a person's immigration status based on his Hispanic or Latino ethnicity, the Sheriff adopted a limitation on investigation of immigration status to prioritize the strength of community relationships. *See* Sheriff Aff. ¶¶ 7, 9 (Ex. 1); *see also, e.g.*, *Glob. Neighborhood v. Respect Wash.*, 434 P.3d 1024, 1050 (Wash. Ct. App. 2019) (holding that a policy "limiting questioning of individuals about immigration status and citizenship status also fulfills strictures of federal law" and furthers law enforcement's obligation to avoid racial profiling). Racial profiling is contrary to the values and mission of the Sheriff's Office, Sheriff Aff. ¶ 9 (Ex. 1), and Sheriff Marté exercised his discretion to appropriately strike a balance between competing law enforcement priorities. That decision is not in conflict with the requirements of Section 3.

Nor does the policy implicate Section 4, which bars only interference with federal enforcement of immigration laws. *See supra* at pp. 20-23. Section IV.A does nothing to interfere with federal law enforcement's ability to investigate individuals' citizenship and immigration status, and it therefore complies with Section 4. And even if Section 4 were understood to apply to local officials'

enforcement of immigration law in the limited circumstances where such enforcement is permitted by federal law, there would still be no conflict. "Section 4 prohibits only limitations or restrictions on a governmental body's ability to cooperate in the enforcement of immigration laws *at the request* of a federal immigration official." *City of Gary*, 181 N.E.3d at 405 (emphasis added). Local governments are free to "prohibit[] an agent or agency *from initiating* a request for information *sua sponte*." *Id.*

c. The Policy Against Holding an Individual Solely on an Immigration Detainer or Administrative Warrant is Mandated by the Fourth Amendment

Sections IV.E.2 and .3 of MCSO-012 bar members of the Department from detaining people "solely based on a non-criminal/administrative ICE detainer" and from using ICE detainers to hold people "beyond their scheduled release date." MCSO-012 2 (June 29, 2024) (Ex. 1-D). These provisions are fully consistent with state law. Section 3 has no application to this policy, since that section deals only with the sharing of information. *See supra* at pp. 15-18. And whether the Court were to read Section 4 as addressing federal enforcement or state and local enforcement of immigration law, that provision requires that officers act only to "the full extent permitted by federal law." Ind. Code § 5-2-18.2-4. As the Court of Appeals explained at length in its 2021 decision, *City of Gary*, 181 N.E.3d at 406-413, the policy prohibiting the detention of individuals solely on the basis of an ICE

detainer is fully in line with this requirement because it ensures that the Sheriff's Office is complying with both the Fourth Amendment and federal law.

ICE detainers notify federal, state, and local law enforcement agencies holding an individual in custody that DHS seeks custody of that individual so that it may remove him. 8 C.F.R. § 287.7(a). They ask the agency to "maintain custody" of the individual for up to 48 hours beyond when he would otherwise be released so that ICE can arrange to take him into custody. *Id.* § 287.7(a), (d). During that time period, the local agency's authority to detain the individual under state law is expired and he would be "otherwise entitled to be free." *See Lunn v. Commonwealth*, 78 N.E.3d 1143, 1154 (Mass. 2017). ICE detainers are merely requests; they "do not and cannot compel a state or local law enforcement agency to detain suspected aliens subject to removal." [5] *Galarza v. Szalczyk*, 745 F.3d 634, 636 (3d Cir. 2014).

Because an individual held pursuant to an ICE detainer or administrative warrant is "kept in custody for a new purpose after she [is] entitled to release," that detention is a "new seizure for Fourth Amendment purposes." *Morales v. Chadbourne*, 793 F. 3d 208, 217 (1st Cir. 2015); *see also Ramon v. Short*, 460 P.3d 867, 875 (Mont. 2020) ("There is broad consensus around the nation that an immigration detainer constitutes a new arrest."). It must therefore comply with the

[5] The Tenth Amendment prevents ICE from compelling local law enforcement agencies to detain individuals for civil immigration violations. *See City of El Cenizo v. Texas*, 890 F.3d 164, 178 (5th Cir. 2018); *Lopez-Aguilar v. Marion Cty. Sheriff's Dep't*, 296 F. Supp. 3d 959, 974 (S.D. Ind. 2017) (citing *Galarza v. Szalczyk*, 745 F.3d 634, 636 (3d Cir. 2014)), *vacated on other grounds*, 924 F.3d 375 (7th Cir. 2019).

Fourth Amendment requirement that all seizures be "reasonable"—that is, "based on probable cause to believe that the individual has committed a crime." *Bailey v. United States*, 568 U.S. 186, 192 (2013) (internal quotation marks and citation omitted). And "inferences of probable cause" must be "drawn by 'a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.'" *Shadwick v. City of Tampa*, 407 U.S. 345, 350 (1972) (quoting *Johnson v. United States*, 333 U.S. 10, 14 (1948)).

Seizures pursuant to ICE detainers and administrative warrants do not comport with these requirements for two reasons: they do not state probable cause that a *crime* has been committed, and they are not issued by a detached and neutral magistrate. First, ICE detainers are based on only civil immigration violations. As the Supreme Court has recognized, "it is not a crime for a removable alien to remain present in the United States." *Arizona*, 567 U.S. at 407. Because the Fourth Amendment requires probable cause to believe that a *crime* has occurred, *see Bailey*, 568 U.S. at 192, a seizure "based on nothing more than possible removability" does not satisfy the probable cause requirement, *Arizona*, 567 U.S. at 407. Without additional evidence of criminality, "the Fourth Amendment does not permit a stop or detention based solely on unlawful presence."[6] *Melendres v. Arpaio*, 695 F.3d 990, 1000 (9th Cir. 2012).

[6] Nor could such a seizure be considered "reasonable." "History and the balance of public and private interests define reasonableness within the meaning of the Fourth Amendment." *Lopez-Aguilar*, 296 F. Supp. 3d at 976. Here, history is "equivocal" and "the balance of interests" weighs "decisively in favor of individual

Second, although ICE detainers may be stylized as "warrants," they are not the warrants referred to by the Fourth Amendment, which must be issued by "neutral and detached magistrate[s]." *City of Tampa*, 407 U.S. at 350 (citation omitted). An ICE detainer request is simply a document signed by an ICE agent. *See N.S. v. Hughes*, 335 F.R.D. 337, 346–47 (D.D.C. 2020) (holding that ICE agents are not independent, neutral judicial officers). Holding an individual on the basis of an ICE detainer is therefore a warrantless seizure, and the Fourth Amendment requires that the detainee be brought before a neutral judicial officer for a probable cause determination "promptly." *Gerstein v. Pugh*, 420 U.S. 103, 125 (1975). But no such hearing is granted during the up to 48 hours an individual may be held on an ICE detainer, making the detention constitutionally deficient. *See Buquer v. City of Indianapolis*, 797 F. Supp. 2d 905, 918-19 (S.D. Ind. 2011) (noting that the now-enjoined Indiana law authorizing warrantless arrests on the basis of ICE detainers did not "mention . . . any requirement that the arrested person be brought forthwith before a judge for consideration of detention or release").

Because ICE detainers and administrative warrants do not satisfy the requirements of the Fourth Amendment, they alone cannot justify the detention of an individual by local law enforcement. The Indiana Court of Appeals has recognized as much. *City of Gary*, 181 N.E.3d at 409 ("An immigration detainer is not a criminal warrant. Neither is an administrative warrant. And neither a

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privacy." *Id*. at 977. Therefore, seizures by local law enforcement based on an ICE detainer alone are not "constitutionally reasonable." *Id*.

detainer nor an administrative warrant is issued by a neutral and detached magistrate. Accordingly, on the narrow question presented here, we hold that the detention of a person . . . based on an immigration detainer or an administrative warrant would violate the Fourth Amendment." (citations omitted)). And numerous federal courts have held that local officers who detained individuals solely on the basis of ICE detainers violated the Fourth Amendment.[7] *Lopez-Flores v. Douglas County*, No. 6:19-CV-00904-AA, 2020 U.S. Dist. LEXIS 94847, at *18, 2020 WL 2820143, at *6 (D. Or. May 30, 2020) (finding a violation of the plaintiff's Fourth Amendment rights because "defendants [did] not have authority to detain plaintiff as there was no formal agreement allowing them to do so"); *C.F.C. v. Miami-Dade County*, 349 F. Supp. 3d 1236, 1259 (S.D. Fla. 2018) ("[T]he County violated [plaintiffs'] Fourth Amendment rights when it arrested [them] based on a detainer

[7] *City of El Cenizo v. Texas*, 890 F.3d 164 (5th Cir. 2018), is distinguishable. There, the Court emphasized that Texas law expressly authorized detentions based on ICE detainer requests. *Id*. at 185, 188. But Indiana law contains no such authorization, so officers lack the power to make a lawful arrest under state law. *See infra* p. 39. And in any event, the Fifth Circuit's analysis is also unpersuasive. Its reasoning that probable cause of removability, rather than criminality, could justify detention, and that the collective knowledge doctrine worked to impute to local law enforcement probable cause of removability known the ICE agents, *id.* at 187-88, is in tension with the Supreme Court's decision in *Arizona*, which struck down a state law purporting to authorize state and local officers to conduct arrests for civil immigration violations, and with the Ninth Circuit's far more persuasive reasoning in *Melendres*, which concluded that officers lacked the authority to detain individuals for civil immigration violations except as authorized as part of a 287(g) agreement. Moreover, it is not obvious that the collective-knowledge doctrine properly applies to the civil immigration context, as the Fifth Circuit assumed. *See Lopez-Flores v. Douglas County,* No. 6:19-CV-00904-AA, 2020 U.S. Dist. LEXIS 94847, at *18, 2020 WL 2820143, at *6 (D. Or. May 30, 2020). The Fifth Circuit's conclusory reasoning should therefore be given only limited weight.

and without probable cause that either of them had committed a crime."). Among these courts is the United States District Court for the Southern District of Indiana, the very court in which the Sheriff's Office could face a federal lawsuit should it improperly detain someone. *Lopez-Aguilar v. Marion Cty. Sheriff's Dep't*, 296 F. Supp. 3d 959, 975 (S.D. Ind. 2017) ("[S]eizures conducted solely on the basis of known or suspected civil immigration violations violate the Fourth Amendment when conducted under color of state law."), *vacated on other grounds*, 924 F.3d 375 (7th Cir. 2019); *Buquer v. City of Indianapolis*, No. 1:11-CV-00708-SEB, 2013 U.S. Dist. LEXIS 45084, at *39, 2013 WL 1332158, at *11 (S.D. Ind. Mar. 28, 2013) ("[ICE detainers] do[] not provide lawful cause for arrest under the Fourth Amendment."). The Attorney General seeks to compel the Sheriff's Office to violate the principle announced in these federal cases, subjecting its office and its officers to potential lawsuits and liability under federal law. *See* Sheriff Aff. ¶ 12 (Ex. 1). That result was surely not intended by the legislature, and it cannot be required by Section 4. *City of Gary*, 181 N.E.3d at 413 ("Our legislature would not have intended that local units of government risk Fourth Amendment violations in order to cooperate with federal immigration authorities, thereby subjecting local officials to actions brought under 42 U.S.C. § 1983.").

Not only would detaining someone based on an ICE detainer violate the Fourth Amendment, such detention is nowhere authorized by federal law. *See id.* at 408 ("[W]e hold that federal law does not permit detentions by state and local officers based solely on civil immigration detainers or administrative warrants.").

Although federal law authorizes *federal* immigration officers to engage in civil immigration detentions, *see, e.g.*, 8 C.F.R. § 287.5(e)(2), it does not authorize state and local officers to do so. *See Melendres*, 695 F.3d at 1001. As the Supreme Court has observed, "the system Congress created" specifies only "limited circumstances in which state officers may perform the functions of an immigration officer." *Arizona*, 567 U.S. at 408. And "it would disrupt the federal framework to put state officers in the position of holding aliens in custody for possible unlawful presence without federal direction *and* supervision." *Id*. at 413 (emphasis added). Thus, "[o]nly when acting under color of federal authority, that is, as directed, supervised, trained, certified, and authorized by the federal government, may state officers effect constitutionally reasonable seizures for civil immigration violations." *Lopez-Aguilar*, 296 F. Supp. 3d at 977. But ICE detainers do not provide any such "training or supervision." *City of Gary*, 181 N.E.3d at 407; *see also Lopez-Aguilar*, 296 F. Supp. 3d at 977 (explaining that "detainers, standing alone, do not supply the necessary direction and supervision"). "[T]he full extent of federal permission for state-federal cooperation in immigration enforcement" therefore "does not embrace detention of a person based solely on either a removal order or an ICE detainer." *Lopez-Aguilar*, 296 F. Supp. 3d at 973.

The only provision of federal law that provides such authority, direction, supervision, and training is § 1357(g)(1), which allows jurisdictions to enter into written agreements (known as 287(g) agreements) with DHS that specifically authorize state or local law enforcement to enforce federal immigration laws. But

the Sheriff's Office—like every other law enforcement entity in the state—has chosen not to enter into such an agreement. Monroe County officers therefore lack the federal authorization necessary to detain individuals solely on the basis of an ICE detainer. *See Lopez-Flores*, 2020 U.S. Dist. LEXIS 94847, at *18 (sheriff and county lacked authority to detain plaintiff "as there was no formal [287(g)] agreement allowing them to do so"); *see also Santos v. Frederick Cty. Bd. of Comm'rs*, 725 F.3d 451, 464 (4th Cir. 2013).

Nor does Indiana law confer this authority. *City of Gary*, 181 N.E.3d at 408. Law enforcement officers in Indiana are authorized to effectuate arrests only in specific circumstances, which do not include arrests for civil immigration violations. *See* Ind. Code. § 35-33-1-1. Although Sections 3 and 4 prohibit certain policies that *limit* what law enforcement agents can do, those provisions do not supply positive authorization for any particular activity. Indeed, as originally enacted, the law creating Chapter 18.2 included a provision that expressly authorized detention of individuals based on ICE detainers. Ind. P.L. No. 171-2011 § 20. However, that provision was permanently enjoined by a federal court, *Buquer*, 2013 U.S. Dist. LEXIS 45084, at *39, and as the Attorney General has conceded, "is no longer applicable law," Br. for Intervenor State of Indiana 20, *City of Gary v. Nicholson*, 181 N.E.3d 390 (Ind. Ct. App. 2011) (Ex. 2). Nor *could* state law authorize state and local officers to arrest or detain individuals for civil immigration offenses without federal oversight. *City of Gary*, 181 N.E. 3d at 408 (citing *Arizona*, 567 U.S. at 408);

see also Santos, 725 F.3d at 465. The Sheriff's Office therefore has no power to continue to hold someone when they are otherwise slated to be released.

Because ICE detainers and administrative warrants do not satisfy the requirements of the Fourth Amendment, and because there is neither federal or state law authorization for its officers to engage in seizures based on detainer requests, the Sheriff's Office could not lawfully continue to hold individuals beyond their release dates based solely on such a request. Compliance with ICE detainers would therefore not be acting within "the full extent permitted by federal law," and there is no conflict between Section 4 and the Sheriff's policy of choosing not to honor such detainers. *See City of Gary*, 181 N.E.3d at 413.

d. The Provisions Providing that the Sheriff's Office Will Not Enter into a 287(g) Agreement Do Not Conflict with State Law

In Section II, MCSO-012 provides that the Sheriff's Office "shall not enter into any agreement, including the 287(g) program, with the Department of Homeland Security – Immigration and Customs Enforcement (ICE) for enforcement of immigration or citizenship violations." MCSO-012 1 (June 29, 2024) (Ex. 1-D). As briefly described *supra* at pp. 4 n.1 and 38, 287(g) is a provision of federal law that allows state and local law enforcement agencies to voluntarily enter written agreements with the Secretary of DHS.[8] *See* 8 U.S.C. § 1357(g)(1); *Memorandum of*

[8] Initially, 287(g) agreements were under the U.S. Attorney General's control. After DHS was created, the oversight of 287(g) agreements became a responsibility of the Secretary of DHS. *See* Randy Capps et al., *A Study of 287(g) State and Local Immigration Enforcement* 8, Migration Policy Institute (January 2011), https://perma.cc/A9LS-W3HQ.

Agreement: *287(g) Jail Enforcement Model* (2016), U.S. Immigr. & Customs Enf't, https://perma.cc/4RDJ-LAMC. Under these agreements, ICE determines which officers are qualified and grants them the authority to carry out specific immigration officer functions under the "direction and supervision" of the Secretary of DHS. 8 U.S.C. § 1357(g)(3); *see also id*. § 1357(g)(1).

The Sheriff's policy of declining to enter into 287(g) agreements is fully in accordance with state law. The policy does not implicate Section 3 at all, because that provision deals only with the sharing of information. *See supra* at pp. 15-18. Nor does it conflict with Section 4. As previously discussed, that provision only bars limitations on *federal* enforcement of immigration law. *See supra* at pp. 20-23. The Sheriff's policy of declining to enter into 287(g) agreements, however, does nothing to interfere with the federal government's efforts to undertake enforcement. As properly understood, Section 4 is not in any tension with the Sheriff's 287(g) policy.

Even if Section 4 were read to apply to limitations on *local* enforcement of immigration law, it would not conflict with the policy. As discussed above, *see supra* at pp. 24-25, Section 4 bars local officials from "limit[ing] or restrict[ing]" only those enforcement powers "permitted by federal law," Ind. Code § 5-2-18.2-4. But § 1357(g)(1) does not offer local officials any powers—it merely establishes a voluntary program through which state and local law enforcement agencies can apply to perform the functions of federal immigration officers under the supervision of federal officials. It is an opportunity for partnership with the federal government,

not a grant of immigration-enforcement powers. Section 4 is therefore inapplicable to the Sheriff's policy against entering into such a partnership.

Indeed, as the Attorney General has acknowledged, nothing in Section 4 requires Sheriff Marté to affirmatively seek out additional enforcement powers. "[Section 4] does not 'restrict' the existing authority of local-government employees for a locality to eschew unilateral action that the federal government has not requested. Merely declining to request agreed 287(g) authority from the federal government does not thwart immigration-enforcement efforts." Br. for Intervenor State of Indiana 23, *City of Gary v. Nicholson*, 181 N.E.3d 390 (Ind. Ct. App. 2011) (Ex. 2). In pre-suit negotiations, the Deputy Attorney General acknowledged these limitations, noting that state law could not "be read so broadly as to require the MCSO to enter into" a 287(g) agreement. MCSO-012 with Tracked Changes by Deputy Attorney General Lori Torres 1 (Ex. 1-C). And such agreements are voluntary under federal law. *See* 8 U.S.C. § 1357(g)(9), (10). Therefore, by choosing not to enter into any 287(g) agreements—like every other county in Indiana—the Sheriff is not limiting or restricting his officers from doing anything already within their power to assist in the enforcement of federal immigration laws, nor is he preventing his officers from doing so to the fullest extent possible in the manner required by state and federal law.

Indeed, the decision about whether to enter into a 287(g) agreement is one intentionally left to the judgment of local officials, who are best positioned to determine how to use limited resources. *See* Sheriff Aff. ¶ 10 (Ex. 1). Entering a

287(g) agreement requires a local law enforcement agency to expend significant resources and to turn over command to federal immigration officers. *See generally Memorandum of Agreement*, *supra*. The law enforcement agency is responsible for providing security equipment, administrative supplies, and most significantly, the "salaries and benefits, including any overtime, of all of its personnel being trained or performing duties." *Id*. at 3. Additionally, it is liable for the actions of its officers, even when the officers are using the immigration enforcement authority granted to them under 287(g). *See id.* at 4. And the law enforcement agency must "cooperate with Federal personnel conducting reviews to ensure compliance with the terms of [the] Memorandum of Agreement and to provide access to appropriate databases and documents necessary to complete such compliance review." *Id.* at 5.

Home Rule principles confirm that absent an explicit statutory requirement that municipalities cannot adopt a policy against entering into 287(g) agreements or that they must choose apply to enter such an agreement, the discretion to make that decision should remain with local authorities. *See Tippecanoe County*, 784 N.E.2d at 466–67. But Section 4 contains no such clear statement. Instead, it refers more generally to policies that limit or restrict the enforcement of immigration law. As previously explained, that general provision is not enough to displace local power to conduct their own affairs. *See supra* at pp. 12-14; *see also City of N. Vernon v. Jennings Nw. Reg'l Utils.*, 829 N.E.2d 1, 5 (Ind. 2005).

Moreover, even if this Court were to read Section 4 to contain some implicit requirement to cooperate with federal requests for assistance in immigration

enforcement, that requirement would not encompass 287(g) agreements. Assistance and cooperation "require[] a predicate federal *request* for assistance." *City of El Cenzio*, 890 F.3d at 179. The Attorney General agrees. Br. for Intervenor State of Indiana 23, *City of Gary v. Nicholson*, 181 N.E.3d 390 (Ind. Ct. App. 2011) (Ex. 2) (explaining that Section 4 does not restrict the authority of local governments to "eschew unilateral action that the federal government has not requested"); *City of Gary*, 181 N.E.3d at 404 ("As the State asserts, Section 4 'simply bars [Gary] from limiting its employees' ability to assist in the enforcement of immigration laws *at the request* of a federal immigration official.'" (quoting Br. for Intervenor State of Indiana at 24)). But under Section 1357, local law enforcement agencies are the ones charged with initiating the process to enter into a 287(g) agreement. *See Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, U.S. Immigr. & Customs Enf't (last visited Sept. 4, 2024), https://perma.cc/KZ8P-RSR4. And they cannot unilaterally enter into a 287(g) agreement—ICE must decide whether it is interested in partnering with the local agency, and then requires the agency and its employees to go through a rigorous screening process. *See* 8 U.S.C. § 1357(g)(5); *Memorandum of Agreement*, *supra*, at 1-2.

A policy against applying for such agreements thus does not constitute a limit on "cooperation" with federal authorities as contemplated by Section 4. Indeed, if a law enforcement agency's choice to not participate in the 287(g) program were a violation of Section 4, then the State itself, along with every local law enforcement

agency across the state, would be violating this statute: no 287(g) agreements exist between any governmental body in Indiana and the DHS. *See Delegation of Immigration Authority*, *supra*.

In an exercise of his discretion to allocate his Department's limited resources among competing priorities, Sheriff Marté set a policy against participating in the expensive, complex, and *voluntary* federal 287(g) program. All other law enforcement agencies in Indiana have made the same choice. *See id*. That decision does not violate the requirements of Section 4.

IV. The Policy is not Invalid "In Whole"

The Attorney General broadly asserts that MCSO-012 "violates Indiana Code §§ 5-2-18.2-3 and 5-2-18.2-4 *in whole* or in part." Compl. ¶ 26 (emphasis added). He offers no argument to support the sweeping conclusion that every provision of the Policy is invalid in every application. The clear language of the policy attached to the complaint belies any such conclusion.

For example, beyond those provisions already discussed above, the policy:

- States that that "[i]t is the policy of this Department to treat all individuals fairly and equally, during law enforcement encounters, regardless of their immigration or citizenship status";
- Sets forth a process by which the Sheriff's Office can assist victims of crime to obtain temporary immigration status under federal law so that they can more safely and effectively aid law enforcement; and
- Expressly incorporates the prohibitions of Section 3.

The Attorney General offers no reason that these provisions of the policy should be invalidated, nor could he—there is no colorable argument that these provisions violate state law. And these provisions are fully severable from other portions of the policy that appear to be more directly challenged in this lawsuit. The policy "can stand on its own" without the challenged provisions, and the Sheriff intended that it do so. *City of Hammond v. Herman & Kittle Props., Inc.*, 119 N.E.3d 70, 87 (Ind. 2019). Therefore, even if this court were to find that some provisions of MCSO-012 were in conflict with state law, it should uphold the remaining portions of the policy. *See id.*

V. Plaintiff Lacks Grounds for an Injunction

The only relief the Attorney General seeks—and the only relief authorized by Ind. Code § 5-2-18.2-6 for a violation of Section 3 or 4—is an injunction against the violation. But even if this Court were to find that MCSO-012 conflicts with state law, that relief would not be available. Although Section 6 requires that any violation be knowing or intentional for an injunction to issue, the Attorney General offers no reason to believe that the Sheriff acted with the requisite intent. Nor are any of the traditional injunction factors met. The Attorney General has therefore failed to state a claim on which any relief can be granted.

a. Any Violation of State Law is Neither "Knowing[]" nor "Intentional[]," as Required by Section 6

The Attorney General asks this Court to enter an injunction under Ind. Code § 5-2-18.2-6, which provides: "If a court finds that a governmental body . . . knowingly or intentionally violated section 3 or 4 of this chapter, the court shall

enjoin the violation." By the plain language, of the provision, the Court may enter an injunction only if it finds that Sheriff Marté engaged in "knowing[] or intentional[]" violations of Sections 3 and 4. But the Attorney General provides no reason to believe that any potential violation would meet the requisite intent requirement.

There is an earnest disagreement between the parties over the meaning and application of state law. Even if the Court were to side with the Attorney General's view, that decision would not imply that the Sheriff's policy is an intentional or knowing effort to violate the law. MCSO-012 closely follows the holding and reasoning of the Indiana Court of Appeals in its now-vacated decision in *City of Gary v. Nicholson*, which remains persuasive precedent. *See* Sheriff Aff. ¶ 5 (Ex. 1). Sheriff Marté should not be faulted for following his best understanding of an ambiguous law, especially when, in doing so, he adhered to the reasoning of Indiana's intermediate appellate court.

Furthermore, the negotiations between the Attorney General and the Sheriff leading up to the filing of this Complaint belie any argument that the Sheriff is knowingly or intentionally violating state law. The Attorney General's letter to the Sheriff asserted that MCSO-012 conflicted with state law only in general terms and identified only the detainer provision as a point of concern. Letter from Attorney General Rokita to Sheriff Ruben Marté 1 (May 14, 2024) (Ex. 1-B). In her subsequent communications with the office, the Deputy Attorney General identified only a few limited aspects of MCSO-012 that, in the Attorney General's view, were

invalid. MCSO-012 with Tracked Changes by Deputy Attorney General Lori Torres 1-2 (Ex. 1-C). And in raising those issues, she argued only that these provisions violated Section 3, making no reference to Section 4. *Id*. In response to these conversations, Sheriff Marté clarified MCSO-012 by amending it to explicitly incorporate Section 3's language. MCSO-012 (June 29, 2024) (Ex. 1-D). The Sheriff's commitment to addressing the issues raised by the Deputy Attorney General and eagerness to comply with the law make clear that any potential violation would be neither knowing nor intentional. *See* Sheriff. Aff. ¶¶ 5, 15 (Ex. 1).

Moreover, the Attorney General's complaint seeks to challenge the validity of other aspects of the policy (such as the restriction on affirmatively collecting immigration-related information) that were not mentioned at all in his letter to the Sheriff or in the pre-suit negotiations with the Deputy Attorney General. Having used his best judgment about the requirements of state law in adopting the policy, and having no notice of the Attorney General's concerns, Sheriff Marté had no reason to believe these aspects of MCSO-012 violated state law. Any allegation that he was knowingly and intentionally violating state law by leaving those unmentioned provisions in place is not supported by the evidence.

b. Other Equitable Factors Necessary to an Injunction Are Not Met

An injunction is not a matter of right; instead, "[t]he grant or denial of injunctive relief lies within the sound discretion of the trial court and will not be overturned unless it was arbitrary or amounted to an abuse of discretion." *Warriner Invs., LLC v. Dynasty Homeowners Ass'n, Inc.*, 189 N.E.3d 1119, 1126 (Ind. Ct. App.

2022). When considering whether to grant permanent injunctive relief, the trial court must find not only that the Plaintiff "has in fact succeeded on the merits," but also that the movant faces "certain and irreparable" injury, "the threatened injury to the plaintiff outweighs the threatened harm a grant of relief would occasion upon the defendant," and "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). The burden is on the party seeking the injunction to establish that each factor weighs in its favor. *See Ind. Fam. & Soc. Servs. Admin. v. Walgreen Co.*, 769 N.E.2d 158, 161 (Ind. 2002) (discussing the preliminary injunction standard). The Attorney General has failed to establish that these factors are met. Therefore, his request for injunctive relief should be denied.

i. The Attorney General Must Meet the Traditional Equitable Factors Before an Injunction May Issue

Section 6 does not abrogate the traditional requirements a party must meet for an injunction to issue. In 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. *Cobblestone II Homeowners Ass'n, Inc. v. Baird*, 545 N.E.2d 1126, 1129 (Ind. Ct. App. 1989). If the legislature were to depart from the traditional factors governing the issuance of injunctions, it would have to say so explicitly. It has not done so

here, and the Court must therefore determine whether the traditional equitable factors are met.

ii. The Attorney General Identifies No Irreparable Harm

The only injury asserted by the Attorney General in his complaint is a violation of the "sovereignty of the State," Compl. ¶ 20, a harm predicated on the idea that MCSO-012 violates state law. But as explained above, the policy is fully consistent with state law and therefore does nothing to interfere with the sovereignty of the state. This is not only fatal to the Attorney General's claim for an injunction under Section 6, it also means he cannot demonstrate the irreparable harm necessary to obtain an injunction under the traditional equitable factors. *See Warriner Invs.*, 189 N.E.3d at 1126.

iii. The Harm to Monroe County and the Public Interest Outweighs any Possible Injury to the State

While the Attorney General has failed to demonstrate that he is harmed in any way by a policy that complies fully with state law, Monroe County and its residents would be severely harmed by an injunction against MCSO-012. In enacting the policy, Sheriff Marté exercised his judgment that the law enforcement needs of the County are best met by prioritizing enforcement of criminal, rather than civil, laws. *See* Sheriff Aff. ¶¶ 6, 10. He determined that his office's resources were best spent on efforts that protect public safety and build strong relationships

between the police and the community, and he worked to eliminate opportunities for racial bias to infect his office's policing. *See* Sheriff Aff. ¶¶ 7-9.

The Attorney General's lawsuit asks this Court to force the Sheriff to divert his limited resources away from fighting and investigating crime and towards helping the federal government with its responsibility to enforce civil immigration laws. The people of Monroe County, through their elected Sheriff, reasonably concluded that spending the Department's limited time and resources on assisting in federal immigration enforcement rather than criminal law enforcement would undermine, rather than advance, public safety. Moreover, the Department's active engagement in immigration enforcement could build harmful walls between officers and the community. Communities are most secure when residents feel free to report violations of state criminal law and assist with any resulting investigations and prosecutions. *See* Sheriff Aff. ¶ 7. But undocumented immigrants—and their U.S. citizen relatives—who are victims of or witnesses to crime, including domestic violence and sexual assault, may be reluctant to report those crimes if they fear removal from the country and separation from their families. *See* Sheriff Aff. ¶ 8. Protecting these interests requires all members of a community to feel welcome, trust their local government, and participate fully in the County's affairs. Without that trust, all Monroe County residents would suffer—immigrants and U.S. citizens alike.

Forcing Monroe County to hold people in extended custody on purely non-criminal grounds without a judicial warrant, or otherwise take steps to enforce

federal immigration laws, could also subject the County to substantial risk of liability for federal civil rights violations. *See, e.g.*, *Lopez-Aguilar*, 296 F. Supp. 3d at 963 (lawsuit challenging officers' role in fulfilling an ICE detention request). This liability would be borne by the Sheriff's Office—not the Attorney General—and would further deplete the pool of money to be used in the way that the Sheriff views as best for the residents of the County. *See* Sheriff Aff. ¶ 12.

In comparison to these clear harms to Monroe County, its residents, and the public interest, the Attorney General's conclusory assertion of harm to state sovereignty cannot sustain his request for an injunction.

CONCLUSION

This Court therefore should dismiss the complaint or, in the alternative, grant summary judgment to the Sheriff Ruben Marté and the Monroe County Sheriff's Office.

September 4, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 4, 2024, 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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