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St. Joseph Circuit Court
St. Joseph County, Indiana

STATE OF INDIANA	)	IN THE ST. JOSEPH CIRCUIT COURT
	)SS:	
ST. JOSEPH COUNTY	)	CAUSE NO: 71C01-2501-PL-000026

STATE OF INDIANA ex rel.
TODD ROKITA,
ATTORNEY GENERAL OF INDIANA,

Plaintiff,

v.

WILLIAM REDMAN, in his official capacity as ST. JOSEPH COUNTY SHERIFF, and ST. JOSEPH COUNTY POLICE DEPARTMENT,

Defendants.

MOTION TO DISMISS

COME NOW the Defendants, William Redman in his official capacity as St. Joseph County Sheriff and the St. Joseph County Police Department (collectively "Sheriff"), by counsel Andrew B. Jones and Michael P. Smyth, and file their motion to dismiss the instant complaint. In support of their motion, the Defendants set forth grounds fully developed herein. In brief, however: (1) the Attorney General lacks standing to bring the complaint at bar; (2) that complaint is facially defective under Indiana Trial Rule 12(B)(6); and (3) the Attorney General is impermissibly attempting to deputize local law enforcement agencies to enforce federal immigration law, which, while potentially politically attractive, is a violation of the principles of separation of powers, Home Rule Law, our State Constitution, and the Tenth Amendment to the Constitution of the United States.

Introduction

The Attorney General's complaint,[1] to the extent that it can be discerned, appears to allege that the Sheriff committed unspecified violations of Indiana Code Chapter 5-2-18.2.[2,3] Section three of that Chapter reads as follows:

> A governmental body or a postsecondary educational institution4 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.

Section four of the same Chapter reads: "A governmental body or a postsecondary educational institution may not limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by federal law." I.C. § 5-2-18.2-4. The Attorney General purports to make allegations under both sections.

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[1] The complaint was filed on January 24, 2025.

[2] It is worthy of note that this legislation is redundant. In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), which includes a provision that made it illegal for state or local governments to "prohibit, or in any way restrict, any government entity or official from sending to, or receiving from [federal immigration authorities] information regarding the citizenship or immigration status, lawful or unlawful, of any individual." 8 U.S.C. § 1373; *see also* 8 CFR § 287.7.

[3] As addressed more fully below, the allegations in the complaint are vague and conclusory.

The complaint claims that the Attorney General gained access to a public report that categorizes the Sheriff as being uncooperative with Immigration and Customs Enforcement ("ICE"), a federal agency (the report was not included with the complaint). The Attorney General himself was in contact with ICE. The complaint then goes on to allege that a series of detainer requests were not honored in 2024.[4] Complaint pp. 3-4. After several correspondences, the Attorney General remained ostensibly convinced that the Sheriff was implementing policies and/or practices (it is not at all clear what those might be) that ran afoul of State law and then filed this case. The Sheriff now moves this Court to dismiss said case.

I. The Attorney General is incapable of alleging injury to either his office or to the State. He therefore lacks standing, and the suit must be dismissed.

In *Serbon v. City of East Chicago*, two private plaintiffs sued a number of municipal bodies in the City of East Chicago, including the police department and its chief.[5] 194 N.E.3d 84 (Ind. Ct. App. 2022). Under facts strikingly similar to the case

[4] An immigration detainer, commonly known as an "ICE detainer," is a notice sent by ICE to state and local law 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. Thus, while not before this Court in the motion at bar, ICE detainers may place local law enforcement agencies in materially difficult situations. ICE may seek to have such agencies detain an individual beyond the point at which probable cause would allow them to ordinarily do so, almost certainly violating the Fourth Amendment to the United States Constitution. Removal of illegal aliens is, of course, a civil rather than a criminal matter.

[5] Notably, the Attorney General filed a brief in this case as an intervenor. *See generally* Br. for Intervenor State of Indiana, *City of Gary v. Nicholson*, 181 N.E.3d 390 (Ind. Ct. App. 2021).

at bar, the complaint in *Serbon* alleged that local ordinances in the City "violate[d] Indiana Code Chapter 5-2-18.2 ("Chapter 18.2"), which requires local officials to cooperate with federal immigration authorities." *Id.* at 87. At the time, the City was a so-called "sanctuary city," a fact with which the State and the private plaintiffs took issue.[6] The statutes at issue in *Serbon* were the same as the ones at issue here.

The *Serbon* case was disposed of on a threshold matter: standing grounds. Standing is a purely legal issue, and as a principle of justiciability, it is reviewed by this Court *de novo*. *City of Gary v. Nicholson*, 190 N.E.3d 349 (Ind. 2022) (citing *Holcomb v. Bray*, 187 N.E.3d 1268, 1275 (Ind. 2022)).[7] Pertinent to the standing question involved here: "Section 18.2-5 states: 'If a governmental body or a postsecondary educational institution violates this chapter, *a person lawfully domiciled in Indiana* may bring an action to compel the governmental body or postsecondary educational institution to comply with this chapter.'" I.C. § 5-2-18.2-5 (emphasis original). *Id.* at 89. This is precisely the section under which the Attorney General purports to have standing, though its language was altered in 2024 after the relevant sections were initially enacted in 2011, presumably as a result of the rulings in *Serbon* and its companion case, *Nicholson*. The 2024 amendment by P.L.76-2024 added "the attorney general determines that probable cause exists that" and

[6] The Attorney General appears to have maintained this animus. *See* https://events.in.gov/event/lake-county-sheriffs-department-now-cooperating-with-ice-following-warning-from-attorney-general-todd-rokita?utm_campaign=widget&utm_medium=widget&utm_source=State+of+Indiana (Last accessed March 11, 2025).

[7] This was essentially a sister case to *Serbon*, handed down by the Indiana Supreme Court shortly before *Serbon* was handed down by the Indiana Court of Appeals.

substituted "has violated this chapter, the attorney general shall" for "violates this chapter, a person lawfully domiciled in Indiana may." I.C. § 5-2-18.2-5. In other words, the General Assembly saw that both the Indiana Court of Appeals and the Indiana Supreme Court had ruled that this section was not adequate to provide standing to any citizen lawfully domiciled in the State and purported to confer standing on the Attorney General via statute. Because our Courts ruled that the General Assembly could not lawfully deputize our citizenry to enforce federal immigration law, it attempted to empower the Attorney General to deputize our local law enforcement agencies to do the same. It failed.

Indiana Courts recognize four types of standing. (1) common-law standing, sometimes referred to as judicial standing or constitutional standing; (2) public standing;[8] (3) the related concept of taxpayer standing; and (4) statutorily defined standing. *Serbon*, 194 N.E.3d at 92. "Regardless of the type of standing invoked, *an allegation of injury to the party invoking standing is a constitutionally irreducible* ***minimum requirement***." *Id.* (citing *Nicholson*, 190 N.E.3d at 351 ("Indiana law is clear that standing requires an injury[.]")) (emphasis supplied). Our State Constitution is the supreme law of the State. The Attorney General does not appear to claim constitutional standing, public standing, or taxpayer standing in his complaint. Rather, he appears to rely purely on the doctrine of statutory standing.

[8] It is not clear why the Attorney General did not attempt to claim public standing, Regardless, ". . . even if plaintiffs claim public standing, there must be some injury, even if that injury is common to any member of the public." *Serbon*, 194 N.E.3d at 93. Here there is no injury claimed because there is no injury. Because of the potentially broad scope of the public standing doctrine, it is limited to 'extreme circumstances.' *Cittadine*, 790 N.E.2d at 983 (citing *Pence*, 652 N.E.2d at 488); *accord Horner*, 125 N.E.3d at 593 (Massa, J., with Goff, J. concurring).

The General Assembly, may not, however, as the *Serbon* Court made abundantly clear, escape a constitutionally irreducible minimum requirement by attempting to legislate around it. The 2024 amendment to the statutes cited in the complaint did nothing to remedy the statutory defect, nor did it alter the relationship between our State Constitution and statutory law.[9] "[U]nder the common-law/constitutional doctrine of standing, 'the legislature cannot expand—or restrict—beyond constitutional limits the class of persons who possess standing.' Thus, the constitutional underpinnings of common-law standing act as a limit regarding those to whom the legislature may confer, or deny, standing." *Serbon*, 194 N.E.3d at 93 (quoting *Solarize*, 182 N.E.3d at 216).

In short, the Attorney General cannot possess standing that falls short of the requirements of our State Constitution merely because the General Assembly says he does. A statute which reads "this person or category of persons has standing even when uninjured" is patently unconstitutional. The same is true of our federal constitution. *TransUnion LLC v. Ramirez,* 141 S. Ct. 2190, 2205, 210 L. Ed. 2d 568 (2021) (holding that merely because a statute grants a person a statutory right and authorizes a person to sue to vindicate that right does not grant to such a plaintiff automatic standing); *Raines v. Byrd*, 521 U.S. 811, 820 n.3 (1997) (holding that a statute cannot eliminate "standing requirements by statutorily granting the right to

[9] "Thus, 'a person lawfully domiciled in Indiana' may have a statutory cause of action. But this does not mean the person has necessarily sustained an injury essential to obtaining judicial relief." *Nicholson*, 190 N.E.3d at 351. Merely substituting "the Attorney General" for "a person lawfully domiciled in Indiana" changes precisely nothing from a constitutional standpoint.

sue to a plaintiff who would not otherwise have standing"). "We agree that Section 18.2-5 creates a private cause of action and does not confer standing to those who cannot otherwise establish standing." *Serbon,* 194 N.E.3d at 95. The Attorney General's complaint does not identify any injury to either him or to the State. It cannot. There isn't one. If there is any injury here it is to federal immigration authorities, which would have nothing whatsoever to do with this suit or the manner in which it was raised. Moreover, even were it possible to imagine an injury or to fabricate one, it is not clear how such an injury could possibly be redressable by an injunction. That reality should end this Court's inquiry, and the case should, accordingly, be dismissed.

II. The Attorney General's complaint fails to state grounds upon which relief can be granted. It therefore runs afoul of Indiana Trial Rule 12(B)(6) and should be dismissed.

The Attorney General claims that the Sheriff has "implemented and maintain[s] policies and practices of impermissibly restricting Defendants' and Defendants' officers' cooperation and communications with federal immigration authorities." Complaint p. 2. He does not attempt to explain or even mention what those policies could possibly be. In point of fact, no such practices or policies exist in the Sheriff's office at any level, nor have they ever.[10] The Attorney General claims that he

[10] While not necessarily relevant to a Rule 12(B)(6) motion, it is the consistent practice of the Sheriff and his deputies to comply completely with detainer requests made by ICE. The Sheriff maintains that he has done so and continues to do so without fail. The Sheriff fully communicates and cooperates with ICE in accordance with both State and Federal law, and the Attorney General's complaint specifies nothing contradicting that truth. The Sheriff does not allow practices or policies that would prohibit or restrict cooperation with federal authorities. It should further be noted that when the Sheriff honors a detainer request, as he always does, ICE agents frequently do not appear to take the subject of the request into custody.

personally determined that probable cause existed to take legal action against the Sheriff for alleged violations of Indiana Code. *Id.* He fails to mention what comprises that alleged probable cause, nor does he explain how he arrived at such a determination. Indeed, the inclusion of the "probable cause" requirement in the amendment to the statute is an oddity, given that failure to "cooperate" with federal officials in this context is certainly no crime.

The Attorney General claims to have personally had contact with ICE and to have received "verification" that the Sheriff was non-cooperative with federal authorities. *Id.* at 3. He fails to indicate with whom he supposedly spoke; fails to detail the contents of those communication; and he fails to explain what form the so-called verification took. The complaint further claims "Attorney General's belief that SJCPD maintains a policy or otherwise engages in a pattern and practice that violates state law[,]" has not been dispelled. *Id.* at 5. He does not explain why. He does not explain what that belief is based upon. He claims that the Sheriff failed to honor detainer requests and limits communication with ICE. Additional detail has not been provided.

He further claims: "Defendants' deliberate and persistent refusal to cooperate with ICE is inconsistent with the requirements of state law and constitutes a clear restriction on the ability of Defendants' officers and agents to cooperate with federal agencies or otherwise assist or engage in the enforcement of federal immigration laws." *Id.* at 7. He does not assert a basis for contesting that the Sheriff has acted

deliberately or persistently refused to cooperate with ICE. He fails to elucidate upon how any officers have been "restricted" in any way.[11]

In other words, the Attorney General has not pleaded any operative facts to support his vague and conclusory accusations. Those accusations seem to be based on little more than guesswork. Indiana Trial Rule 12(B)(6) provides that a dispositive motion such as this one shall be filed in lieu of a responsive pleading when a complaint fails "to state a claim upon which relief can be granted . . . ." "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) (emphasis supplied). This, the Attorney General has not done. In fact, the complaint appears to be designed to *avoid* precision. "[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). Nothing in the complaint puts the Sheriff on notice as to what he is doing, or failing to do, that is somehow inconsistent with state law. Thus, the complaint is both legally insufficient and unavailing and should fail. To be unequivocal: the Sheriff has no policies, formal or otherwise, that remotely limit either state or federal employees from complying with the law, and the Attorney

[11] Though not at issue here, this allegation is based on a misreading of the applicable statutes. By their plain text, they refer to restrictions of the enforcement of federal law, not restrictions placed on local law enforcement. The Attorney General's reading of the statutes suggests that he believes the General Assembly, and by extension, his office, is empowered to tell our local law enforcement agencies what they can and cannot do. As the chief law enforcement officer of the State, he is well aware that such a reading of the statutes would make them illegal.

General has not sufficiently alleged otherwise. He merely wants the Sheriff to enforce immigration "policy" because ICE cannot or will not. Regardless, the bottom line is that the Attorney General has failed to plead facts that will allow him to litigate his misplaced desire.

III. The Attorney General's attempt to force local law enforcement to become deputies of the federal government is impermissible under State and Federal Constitutional law, as well as the doctrines enshrined in the Home Rule Act.

Elected sheriffs do and should play a vital role in protecting the health, safety, and welfare of their communities. That is their duty. Under the Indiana Constitution, every county in the state has an elected sheriff. Ind. Const. Art. 6, § 2(a). State law vests the sheriff with broad power to enforce criminal laws, *see* I.C. § 36-2-13-5(a), and with the power to oversee members of the county police force as they deem fit. I.C. § 36-8-10-4(a). The sheriff also oversees "[t]he expenses of the county police force," *id.*; I.C. § 36-8-10-4(b), and must exercise his or her discretion to manage those resources, as well as the departmental budget and the efforts and time allocation of deputies and staff. By vesting the sheriff with these rights and responsibilities, the State Constitution and state law make clear that sheriffs should and do have discretion to decide how to utilize local resources to ensure public safety and carry out their constitutional responsibilities and the mission of their departments. 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. As a State we honor and protect that discretion. I.C. § 36-

1-3-2 ("The policy of the state is to grant [local] units all the powers that they need for the effective operation of government as to local affairs.")

The Home Rule Act, enshrined in Indiana Code Chapter 36-1-3, validates these critical policy values. The 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." I.C. § 36-1-3-4(b). The legislature's purpose here is unambiguous: the transference of 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 Attorney General's claims appear to be based on an impermissible reading of the applicable statues. By their plain language, the statutes set outer boundaries about the *restrictions* that local law enforcement agencies might place on their dealings. They do not impose some kind of active obligation upon local law enforcement to do ICE's job for it, which seems to be what the Attorney General wants. Such a reading could be disastrous for several reasons.

First, Courts must and should harmonize local and state law whenever possible. The Home Rule Act explicitly recognizes that fundamental principle, requiring Courts to resolve "[a]ny doubt as to the existence of a power of a [local] unit . . . in favor of its existence." I.C. § 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). The relevant statutes neither grant nor

deny any powers to the Sheriff. They do not impose any affirmative obligations beyond those outer limits set on restrictions already enshrined in federal law. Thus, whatever policies the Sheriff may adopt are solely within his discretion.

No state statute can restrict municipal power by implication, or with a general and imprecisely worded statement of principles. *See, e.g., 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—which includes the Sheriff—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)). Put another way: the Sheriff gets to set his policies, not the Attorney General, the General Assembly, or federal immigration officials.

Second, the attempt to deputize local police in an attempt to assist with the policy goals of the current federal administration is at odds with the federal constitution insofar as it seeks to impose responsibilities on the Sheriff that are not his; and it is beyond the purview of the responsibilities of the State's chief law enforcement officer. "The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens." *Arizona v. United*

States, 567 U.S. 387, 394 (2012). Because immigration undoubtedly falls within the responsibility of the federal government, any attempt to deputize state agencies to engage in enforcement of immigration laws is violative of the Tenth Amendment to the United States Constitution ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."). Indeed, at least one court has found that to consider detainer requests to be mandatory would be unconstitutional. *Galarza v. Szalczyk*, 745 F.3d 634, 643 (3d. Cir. 2014) ("Under the Tenth Amendment, immigration officials may not order state and local officials to imprison suspected aliens subject to removal at the request of the federal government."). The Attorney General specifically sought out a federal enforcement agency and is now attempting to compel the Sheriff to carry out federal directives.

The Attorney General's attempt to abrogate federal law and the principles of separation of powers (in addition to state law) is also, sadly, not unique, as a spate of similar attempts have recently arisen nationwide.[12] It would strain credulity to imagine that these attempts are not associated with the recent and alarming political popularity of anti-immigrant animus. But politics and political concerns cannot and

[12] *See, e.g.,* https://www.washingtonpost.com/dc-md-va/2025/02/27/youngkin-virginia-police-order-ice/ (Virginia); https://www.police1.com/border-patrol/all-67-fla-sheriffs-sign-ice-agreements-allowing-for-street-level-immigration-enforcement (Florida); https://www.boston.com/news/local-news/2025/02/27/new-hampshire-state-police-apply-to-be-deputized-as-immigration-agents-through-ice/ (New Hampshire); https://www.cityandstateny.com/policy/2025/02/nassau-county-deputizes-local-cops- act-ice-agents/402777/ (New York); https://www.wpr.org/news/bill-sheriff-cooperation-ice-public-hearing-immigration (Wisconsin); https://www.flhouse.gov/api/document/house?listName=Press%20Releases&itemId=908 (Florida); https://gov.texas.gov/news/post/governor-abbott-directs-dps-to-deploy-tactical-strike-teams-to-support-homeland-security-operations (Texas)

do not trump the Tenth Amendment. The Attorney General has a duty to uphold the rule of law, not fashion it into a tool to do what is politically popular.

Local law enforcement agencies are free to enter what are known as 287(g) agreements wherein they *volunteer* to adopt ICE responsibilities. They have that power. They certainly cannot, however, be forced to. Not by the legislature and not by the Attorney General. The Sheriff here has not entered into any such agreement.

Third, the Attorney General's vague suggestion that the Sheriff should be doing more to assist ICE with its enforcement efforts would place the Sheriff in an impossible and dangerous situation. He would no longer be able to dictate the manner in which resources are being allocated if he has some obligation to federal authorities beyond what is plainly expressed in the relevant laws. He would essentially be being asked to serve two masters, at a detriment to the local community which he is bound to serve and protect. If required to enforce federal immigration policy, the Sheriff would no longer be in control of several of his core functions, he would run the risk of violating his oath to the Constitution, and he would be martialed as an apparatchik of a government that he is not bound to serve. The Sheriff, not ICE or the Attorney General would be liable for the Sheriff's actions. And should ICE ask the Sheriff to hold an inmate for longer than the release date arising from that inmate's circumstances—which ICE does plainly ask—the Sheriff would be required to violate the Constitution. For those reasons alone, the complaint should be dismissed.

Conclusion

The complaint should be dismissed. The Attorney General lacks standing to bring this suit. The complaint fails to allege the operative facts necessary to state grounds capable of resulting in relief. And the Attorney General's attempt to enforce the applicable statutes in this matter violates state and federal constitutional principles as well as Home Rule Law.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing document was served upon all Counsel of record via the Court's Electronic Filing System on this 11th day of March, 2025.

/s/ Andrew B. Jones
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