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Monroe Circuit Court 6
Monroe County, Indiana

Monroe County Circuit Court

Cause No. 53C06-2407-PL-001733

State of Indiana ex rel. Todd Rokita, Attorney General of Indiana, *Plaintiff,* *v.* **Ruben Marté,** in his official capacity as Monroe County Sheriff, and the **Monroe County Sheriff's Office,** *Defendants.*	

DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT

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INTRODUCTION

The Attorney General's First Amended Complaint against Sheriff Ruben Marté and the Monroe County Sheriff's Office (collectively, "the Sheriff") suffers from the same fatal flaws as the original Complaint and should be dismissed for the same reasons. As this Court recognized in granting in part the Sheriff's motion to dismiss, the Attorney General can identify no actual conflict between the Sheriff's Standard Operating Procedure MCSO-012 and Indiana Code Section 5-2-18.2-3.[1] The Amended Complaint provides no reason for this Court to alter that judgment. The Attorney General has not offered—and cannot offer—any new allegations to support his claim that MCSO-012 violates state law. Rather than supplementing the allegations in the Complaint, the Attorney General has chosen to simply reiterate the arguments he raised in his brief in opposition to the motion to dismiss the original Complaint, padding the Amended Complaint with legal conclusions rather than any additional facts.

This Court has already rejected those arguments once, and for good reason. As the Court recognized in ruling on the Defendants' motion to dismiss the original complaint, the Sheriff's policy fully complies with Section 3: it permits sharing the type of information addressed by that provision, and it in fact incorporates the text of the law in its directions to Monroe County officers. Indeed, MCSO-012 follows state law by setting reasonable guidelines for when and how the Monroe County

[1] As the Sheriff argued in his motion to dismiss the original Complaint, MCSO-012 also fully complies with Indiana Code Section 5-2-18.2-4. The Sheriff urges the Court to reconsider its ruling and dismiss the Section 4 claims for the reasons explained in that motion.

Sheriff's Office ("MCSO") will dedicate its scarce resources to assist in immigration enforcement, an area of federal responsibility. And because the Attorney General can offer no additional arguments as to why there is any conflict between the policy and state law, the Court should dismiss the Section 3 claims in the First Amended Complaint with prejudice rather than granting leave for yet another fruitless amendment.

STATEMENT OF FACTS

I. The 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 to oversee members of the county police force, *id.* § 36-8-10-4(a). The sheriff also handles "[t]he expenses of the county police force," *id.* § 36-8-10-4(b), and must exercise his discretion to allocate his office's resources and manage 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 use 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) (First Am. Compl. Ex. A). 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. 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 would feel comfortable reporting violations of law and assisting in any resulting investigations and prosecutions.

The policy provides that the Sheriff's Office 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." *Id*. 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[ning]) 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."[2] *Id.* Similarly, although the policy requires that officers notify another 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."[3] *Id.* at 2.

[2] 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).

[3] 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 Feb. 27, 2025), https://perma.cc/F6PC-XQRR.

II. Procedural History

On May 14, 2024, Attorney General Rokita sent a letter to Sheriff Marté "regarding the MCSO's immigration-related policies." First Am. Compl. ¶ 10. That letter asserted generally that MCSO-012 violated two provisions of Indiana State law: Ind. Code § 5-2-18.2-3, 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, and Ind. Code § 5-2-18.2-4, which bars governmental bodies from limiting or restricting the enforcement of federal immigration laws.

The Attorney General demanded that Sheriff Marté immediately rescind MCSO-012. *Id*. The Sheriff declined to do so, but he did amend MCSO-012 to make explicit the obligations employees have under state law to cooperate with federal immigration enforcement. *Id*. ¶ 11. Specifically, the Sheriff added to the policy a provision, Section IV.C, that largely restated 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) (First Am. Compl. Ex. A); *see also* First Am. Compl. ¶ 13.

Unsatisfied with this revised policy, the Attorney General filed this lawsuit alleging that MCSO-012 violates Indiana Code §§ 5-2-18.2-3 and 5-2-18.2-4 and seeking a permanent injunction against it under Indiana Code § 5-2-18.2-6. The Sheriff moved to dismiss or, in the alternative, for summary judgment on all claims. As the Sheriff explained, MCSO-012 preserves all the discretion required by Sections 3 and 4 and is therefore in full compliance with state law.

This Court granted the motion in part. Order on Defs.' Mot. to Dismiss 1 (Dec. 19, 2024). Although this Court found that the Attorney General had sufficiently stated a claim as to the alleged violation of Section 4, it held that "Plaintiff's Complaint, as originally filed, fails to adequately state a claim upon which relief could be granted insofar as Defendants' alleged violation of Indiana Code 5-2-18.2-3 is concerned, given that MCSO-12 essentially incorporates that statute and Plaintiff articulates no theory of how MCSO-12 violates a statute it appears to incorporate." *Id*. The Court dismissed that portion of the Complaint without prejudice and offered the Attorney General an opportunity to amend. *Id*. The Court also held that "in light of the Complaint amendment relief afforded to Plaintiff herein and for reasons sufficiently plead," it was premature to rule on the Sheriff's summary judgment motion and denied the alternative request for summary judgment without prejudice. *Id*.

On January 9, 2025, the Attorney General filed a First Amended Complaint. The First Amended Complaint incorporates many of the arguments raised in his opposition to the Sheriff's motion to dismiss. In particular, the Attorney General

identifies four provisions of MCSO-012 that he alleges violates state law: the third Sentence of Section II, which states that it is the policy of the MCSO not to "engage in enforcement of immigration or citizenship status unless required to do so by law"; the fourth sentence of Section II, which states that MCSO will not enter into any agreement for enforcement of immigration violations, including a 287(g) agreement; Section IV.A, which directs MCSO personnel not to request or run the immigration or citizenship status of an individual that they encounter in their official duties unless required to do so; and Section IV.E (2)-(3), which prohibits MCSO personnel from detaining or holding an individual beyond their scheduled release date solely on a non-criminal/administrative ICE detainer. First Am. Compl. ¶¶ 15-18. Based on these alleged violations, the Attorney General "requests that the Court enter an order enjoining Defendants from violating Indiana Code chapter 5-2-18.2." *Id.* at Relief Requested.

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. 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), *on transfer*, 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. *City of Gary v. Nicholson*, 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). Dismissal is proper when "the facts alleged in the challenged pleading are incapable of supporting relief under any set of circumstances." *Id.* (internal quotation marks and citation omitted).

ARGUMENT

I. The Attorney General's Complaint Rests on a Misinterpretation of Section 3

The Court previously found that the Attorney General "articulate[d] no theory of how MCSO-012" could "violate[] a statute it appears to incorporate." Order

on Defs.' Mot. to Dismiss 1 (Dec. 19, 2024). The First Amended Complaint offers nothing to change that conclusion. Instead, it merely reiterates the same legal arguments the Attorney General already raised in the previous round of briefing without addressing any of the fundamental flaws in those arguments. The Court should reject them again.

The Amended Complaint broadly asserts that the policy "violates Section 3 because it restricts communication and cooperation between MCSO's officers and employees and federal immigration authorities with regard to information of an individual's citizenship and immigration status. In particular, the policy bars officers and employees from requesting such information from ICE and limits their ability to gather such information in response to a request from ICE." First Am. Compl. ¶ 29. But this misunderstands the scope of Section 3. By its plain language, Section 3 of Chapter 18.2 applies narrowly to bar policies that limit the maintenance and sharing (but not the gathering) of information specifically about immigration and citizenship status. The provisions of MCSO-012 identified by the Attorney General fall outside the scope of Section 3 and are thus an allowable exercise of the Sheriff's discretion to adopt reasonable policies to protect public safety in his community, so long as they are not explicitly barred by state law.

a. Section 3 imposes a duty to cooperate only "with regard to" specified information

As a matter of plain language, Section 3 addresses only policies that govern the maintenance and sharing of information of an individual's citizenship or immigration status. The provision 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. As the Indiana Court of Appeals has previously held, the scope of that phrase is limited: "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), *on transfer*, 190 N.E.3d 349 (Ind. 2022).[4] It does not encompass policies on the sharing of other sorts of information, including information that might be helpful to or desired by federal immigration authorities.

Numerous federal courts construing the nearly identical language in 8 U.S.C. § 1373 have consistently held the same.[5] As these courts have explained, the only information encompassed by the phrase "citizenship or immigration status" is "an individual's category of presence in the United States—e.g., undocumented, refugee, lawful permanent resident, U.S. citizen, etc.—and whether or not an individual is a U.S. citizen, and if not, of what country." *City of Philadelphia v. Sessions*, 309 F. Supp. 3d 289, 333 (E.D. Pa. 2018), *aff'd in part, vacated in part on other grounds*,

[4] 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, the reasoning of that Court remains persuasive.

[5] "[W]hen a legislature adopts language from another jurisdiction, it presumably also adopts the judicial interpretation of that language." *Brownsburg Area Patrons Affecting Change v. Baldwin*, 714 N.E.2d 135, 140 (Ind. 1999).

916 F.3d 276 (3d Cir. 2019); *see also United States v. California*, 921 F.3d 865, 890 (9th Cir. 2019) ("[T]he phrase 'information regarding the citizenship or immigration status, lawful or unlawful, of any individual' is naturally understood as a reference to a person's legal classification under federal law[.]"); *County of Ocean v. Grewal*, 475 F. Supp. 3d 355, 371 (D.N.J. 2020) ("[S]ections 1373(a) and 1644 apply only to information specifically regarding an individual's immigration or citizenship status, *i.e.*, whether the individual is a U.S. citizen, green card holder, or holds some other legal or unlawful status in the United States[.]"), *aff'd sub nom. Ocean Cty. Bd. of Comm'rs v. Att'y Gen. of State of N.J.,* 8 F.4th 176 (3d Cir. 2021). The limited scope of Section 3 is unambiguous, and when "a statute is clear and unambiguous on its face, this court . . . must hold the statute to its clear and plain meaning." *S. Bend Trib. v. S. Bend Cmty. Sch. Corp.*, 740 N.E.2d 937, 938 (Ind. Ct. App. 2000) (internal quotation marks and citation omitted).

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

Nor does Section 3 address or limit policies regarding the *collection* of citizenship or immigration status information. As the Indiana Court of Appeals previously held, Section 3 does not bar local officials from setting policies limiting officers "from initiating an inquiry or investigation concerning a person's citizenship or immigration status." *City of Gary*, 181 N.E.3d at 403. 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.

Nowhere in the text of Section 3 is a prohibition on policies that limit law enforcement from asking those who they encounter about their immigration or citizenship status. Instead, Section 3 bars policies that, with respect to information of the citizenship or immigration status of any person, restrict "[c]ommunicating or cooperating with federal officials"; "[s]ending to or receiving" such information from the Department of Homeland Security (DHS); and "[m]aintaining," and "[e]xchanging" such 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. If the legislature had intended Section 3 to encompass policies regarding that sort of acquisition of information, it knew how to do so.[6] *See Mi.D. v. State*, 57 N.E.3d 809, 812-13 (Ind. 2016) (when the "legislature could have readily adopted" a term "but omitted it instead," the court should conclude that "rejection was intentional, not accidental"). 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*

[6] Indeed, the legislature amended Section 18.2 in 2024, after the Indiana Court of Appeals interpreted the law not to bar local officials from setting policies limiting officers' ability to investigate or collect information, and had the opportunity to add language addressing those sorts of policies. 2024 Ind. Acts 1163; *see also City of Gary*, 181 N.E.3d at 403. It chose not to do so.

Guidance Regarding Compliance with 8 U.S.C. § 1373, U.S. Dep't of Just. (last visited Feb. 27, 2025), https://perma.cc/8R8M-XTL2.

The Amended Complaint asserts that the Sheriff's policy violates Section 3 because Section 3 bans policies that restrict "communicating or cooperating with federal officials," First Am. Compl. ¶ 44, but the context and language of the provision make clear that the word "cooperation" is used in a narrow sense. Given the other verbs used in Section 3, that term is best understood as a bar on policies that restrict the sharing of relevant information, not policies that restrict the gathering of information not in the Sheriff's possession.[7] *See Mi.D*, 57 N.E.3d at 814 ("[U]nder *noscitur a sociis*, if a statute contains a list, each word in that list should be understood in the same general sense." (internal quotation marks and footnote omitted)). The clear focus of Section 3 is the sharing and maintenance of information already in the possession of law enforcement. A more capacious reading is inconsistent with the canons of construction and would stretch the language of the statute beyond what it can bear.

c. Any ambiguity in the state statute should be construed against preemption

Home rule principles further support the Sheriff's reading of Chapter 18.2. The Home Rule Act declares that a local government has "all powers granted it by

[7] Indiana Code § 5-2-18.2-7, which requires law enforcement agencies to provide written notice that officers have a duty to cooperate with state and federal agencies on immigration matters, does not change the natural reading of Section 3. That provision merely requires that law enforcement officers receive written notice of their duties with regard to citizenship information. It does not explain what types of cooperation are covered, so it sheds no additional light on the meaning of the word "cooperating" in Section 3.

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). 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, applies with equal force to sheriffs.

The Home Rule Act's rule of statutory interpretation, which requires courts to harmonize local and state law whenever possible, likewise applies here. 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.

II. MCSO-012 Fully Complies with State Law

a. MCSO-012 incorporates the language of Section 3

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 expressly incorporates Section 3 as Section IV.C of the policy. MCSO-012 1 (June 29, 2024) (First Am. Compl. Ex. A). As the Court already noted, "MCSO-12 essentially incorporates that statute and Plaintiff articulates no theory of how MCSO-12 violates a statute it appears to incorporate." Order on Defs.' Mot. to

Dismiss 1 (Dec. 19, 2024). Nothing has changed. The policy permits the full exchange of information addressed by Section 3, and it is therefore fully compliant with state law. *See City of Gary*, 181 N.E.3d at 402-03 (holding that a city ordinance that prohibited initiating an inquiry or investigation into the citizenship or immigration status of any person 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").

The First Amended Complaint attempts to respond to the Court's concerns about how MCSO-012 could violate a state law it incorporates by trying to manufacture daylight between the two provisions. The Attorney General argues the language of Section 3 and the language of MCSO-012 Section IV.C are not identical: the former addresses policies that restrict certain actions "with regard to *information of* the citizenship or immigration status of an individual," while the latter refers to taking those same actions "*regarding* the citizenship or immigration status" of an individual.[8] First Am. Compl. ¶¶ 58-59 (emphasis added). But he offers no explanation about why the slight difference in language would change the meaning of the provisions at all, and there is no reason to believe that it does. As discussed above, *see supra* pp. 9-11, both phrases refer only to policies regarding communications about the *fact* of a person's citizenship or immigration status,

[8] It is unclear how the Sheriff's decision to affirm the requirements of Section 3 as part of his policy—even if he did not repeat Section 3 verbatim—could possibly be a "transparent attempt to circumvent state law." First Am. Compl. ¶ 56.

nothing more. The term "information of" cannot reasonably be interpreted to broadly encompass *any* information that could be helpful to ascertaining immigration or citizenship status, or, as the Attorney General asserts, any information "*about* or *having a direct impact on* an individual's citizenship or immigration status," First Am. Compl. ¶ 60. As the Court of Appeals previously held, "the only relevant 'information of' is that information which identifies the person's citizenship and immigration status." *See City of Gary*, 181 N.E.3d at 402. Section 3 and MCSO-012 Section IV.C are functionally identical.

The Attorney General also suggests that even though MCSO-012 incorporates the language of Section 3, "MCSO clearly interprets this language differently than what a proper interpretation of state law requires," rendering the policy in violation of state law. First Am. Compl. ¶ 63. But this argument merely begs the question that is before the Court. It is not the Attorney General's view of the "proper interpretation" of state law that is determinative. The courts, not the Attorney General, have the responsibility to determine the proper meaning of Section 3. And MCSO-012 tracks precisely the requirements of Section 3 as that provision has previously been interpreted by the Indiana Court of Appeals. *See City of Gary*, 181 N.E.3d 402-03. To the extent the Attorney General believes otherwise, that belief is based on a misreading of the requirements of the statute.

b. All provisions of MCSO-012 comply with Section 3

The Sheriff's policy not only expressly incorporates Section 3's requirements—which should be the end of the matter, *see* Order on Defs.' Mot. to Dismiss 1 (Dec. 19, 2024)—but each individual provision of the policy is also

consistent with the unambiguous language of Section 3. None of the provisions identified by the Attorney General conflict with state law.

Section II. 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) (First Am. Compl. Ex. A). This statement merely sets out the priorities of the Sheriff's Office; it does not limit or restrict any particular behavior. Indeed, by incorporating the language of Section 3 in MCSO-012, Sheriff Marté has expressly *required* the maintenance and sharing of citizenship information, going even further than necessary to satisfy Section 3 and emphasizing the Sheriff's commitment to complying with the requirements of state and federal law. *Id*. (explaining that, "[i]n accordance with the requirements and provisions of Indiana Code 5-2-18.2-3," members of the Sheriff's Office may not prohibit or restrict the maintenance or exchange of citizenship information). In light of that specific statement of compliance with Section 3, it is clear that the general guidance in Section II of MCSO-012 does not conflict with state law.

Section IV.A. 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) (First Am. Compl. Ex. A). This policy governs only the

affirmative collection of information: Monroe County officers are free to share information they have with other agencies or receive information from those agencies, but they cannot undertake their own investigations into an individual's immigration or citizenship status. As discussed, *supra* at pp. 11-13, Section 3 does not address policies governing the collection of immigration and status information—it only prohibits policies that restrict the maintenance and exchange of information already in an officer's possession. Sheriff Marté is free to set a policy against inquiring into an individual's immigration status based on his determination that such a policy will best protect public safety in Monroe County. *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 and citation omitted)).

The fact that the policy prohibits Monroe County officers from running a "status check" on a detainee is not contrary to the requirements of Section 3. Section 3 addresses the sharing and maintenance only of the bare fact of an individual's citizenship and immigration status. *See supra* at pp. 9-11. As courts have held, that is a very narrow category of information, and it does not extend to the type of personal identifying information, like an individual's Social Security number, that officers might share with federal officials to facilitate a status check. *See Grewal*, 475 F. Supp. 3d at 376 (interpreting Section 3's federal analogue and holding that "nothing in the statute . . . requires States and local governments to

share personal identifying information"). MCSO-012 allows (and indeed, requires) officers to share citizenship and immigration-status information with federal immigration authorities, as directed by Section 3, while prohibiting the exchange of other information not addressed by that provision. That balance is wholly consistent with state law. *Cf. California*, 921 F.3d at 890 (where state law "expressly permit[ted] the sharing of" information covered by § 1373, it did not conflict with § 1373 even though it restricted sharing other information).

Moreover, it is entirely consistent with basic law enforcement principles to discourage officers from affirmatively collecting such information, particularly because it guards against racial profiling. 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 reasonably adopted a limitation on investigation of immigration status to prioritize the strength of community relationships. *See 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, and this policy strikes a balance between competing law

enforcement priorities. That decision is not in conflict with the requirements of Section 3.

III. The Attorney General's Claims on Section 3 Should be Dismissed with Prejudice

Rather than offering the Attorney General yet another bite at the apple, this Court should dismiss the Section 3 claims in the First Amended Complaint with prejudice. Every argument raised in the Amended Complaint regarding Section 3 was previously asserted in the Attorney General's opposition to the previous motion to dismiss—and therefore has already been rejected by this Court once. Rather than using the opportunity to amend as a chance to add allegations that would fix the core deficiencies in his complaint, the Attorney General has simply recycled arguments that this Court has already deemed insufficient and unpersuasive. As the lack of new allegations in the First Amended Complaint demonstrates, the Attorney General has nothing left to add that could bolster his assertion that MCSO-012 violates Section 3. Since what he has produced is insufficient to state a claim upon which relief could be granted, this Court should dismiss the Section 3 claims in the First Amended Complaint with prejudice. *See Arreola v. Godinez*, 546 F.3d 788, 796 (7th Cir. 2008) (noting that dismissal with prejudice is proper "where the amendment would be futile").

CONCLUSION

This Court should dismiss the First Amended Complaint and dismiss with prejudice the Section 3 claims.

February 28, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 28, 2025, service of a true and complete copy of the above and foregoing pleading or paper was made upon all counsel of record herein by electronic service using the Indiana E-Filing System:

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