

Monroe County Circuit Court
Cause No. 53C06-2407-PL-001733

**State of Indiana ex rel. Todd
Rokita, Attorney General of
Indiana,**

*Plaintiff/Counter-
Defendant,*

v.

**Ruben Martí, in his official capacity as
Monroe County Sheriff, and the
Monroe County Sheriff's Office,**

*Defendants/Counter-
Claimants.*

**DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR AMENDED
MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION

Sheriff Ruben Marté and the Monroe County Sheriff's Office (collectively, "Sheriff Marté") carefully crafted Standard Operating Procedure MCSO-012 ("MCSO-012"), in close consultation with legal counsel, to comply with state and federal law and to advance the Sheriff's law enforcement priorities. In 2024, the Attorney General brought this enforcement action, alleging that Sheriff Marté's policy violated Chapter 18.2 of the Indiana Code, which governs local participation in federal immigration enforcement. As a result of subsequent amendments to Chapter 18.2 made by Senate Enrolled Act 76 ("SEA 76") and revisions to MCSO-012, only one of the Attorney General's claims remains. That claim—which alleges that Sheriff Marté's policy violates Section 4 of Chapter 18.2 ("Section 4") by directing officers not to comply with immigration detainer requests absent a judicial warrant—fails. The Sheriff's policy complies with state and federal law, and, in fact, is necessary to prevent violations of the Fourth Amendment. Because the Attorney General's claim turns on pure questions of law, summary judgment should be granted to Sheriff Marté.

The Attorney General can identify no conflict between MCSO-012 and Section 4. Even as amended by SEA 76, Section 4 excludes from its scope policies that restrict violations of state or federal law. Numerous courts—including the Indiana Court of Appeals, *see City of Gary v. Nicholson*, 181 N.E.3d 390, 406-13

(Ind. Ct. App. 2021)¹—have held that it violates the Fourth Amendment for local law enforcement to detain individuals based solely on an administrative detainer request from ICE, and this Court has already held that compliance with such detainer requests likely violates the Fourth Amendment. The MCSO-012 provision that prohibits officers from honoring ICE detainer requests unless accompanied by a judicial warrant is therefore consistent with Section 4.²

Ultimately, this is not a case in which any facts, disputed or not, govern the outcome. This is a case about following the law as written—including the foundational law of the U.S. and Indiana Constitutions. MCSO-012 reflects a nuanced, carefully considered policy set by a democratically elected decisionmaker who was guided by respect for the law and the safety of the community. The Attorney General’s arguments to the contrary have no basis. This Court should

¹ The Court of Appeals’ decision in *City of Gary* was vacated on transfer to the Indiana Supreme Court because the Supreme Court determined that the plaintiffs lacked standing. *See* 190 N.E.3d 349, 352 (Ind. 2022). The Court of Appeals’ reasoning on merits, however, was not addressed by the Supreme Court and remains persuasive.

² In his previous motion for summary judgment preceding the amendments in SEA 76, Sheriff Marté argued that the Attorney General also was not entitled to an injunction because any alleged violation of Chapter 18.2 was not “knowing[] and intentional[.]” *See* Defs.’ Mem. Supp. Summ. J. 57-58 (Dec. 23, 2025). As amended by SEA 76, Chapter 18.2 no longer requires violations to be knowing or intentional for an injunction to issue; those mens rea requirements are reserved for the newly added civil penalties. *See* Ind. Code §§ 5-2-18.2-5, -6. The only relief that the Attorney General has sought in this case is “that the Court enter an order enjoining Defendants from violating Indiana Code chapter 5-2-18.2.” First Am. Compl. (“FAC”) 16. Because he has not sought any civil penalties, Sheriff Marté need not address the knowing-and-intentional argument here.

grant summary judgment on the Attorney General’s sole remaining claim to Sheriff Marté.

STATEMENT OF FACTS

I. ICE Detainer Requests

ICE detainer requests notify federal, state, and local law enforcement agencies holding an individual in custody that the U.S. Department of Homeland Security (“DHS”) seeks to take 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 holding agency’s authority to detain the individual is expired, and the individual would otherwise be entitled to be free.

ICE detainer requests are merely requests; consistent with the Tenth Amendment, they do not and cannot compel a state or local law enforcement agency to detain an individual. *See Galarza v. Szalczyk*, 745 F.3d 634, 645 (3d Cir. 2014) (“Because of this potential constitutional problem, and because Congress has made no mention in the INA that it intends for DHS to issue mandatory detainers . . . we must read the regulation as authorizing only permissive requests that local [law enforcement agencies] keep suspected [individuals] subject to deportation in custody.”); *see also* App’x B at 52 (AG Resp. to RFA No. 1) (“The Attorney General admits that federal law does not make compliance with an ICE detainer by local law enforcement officers mandatory.”).

There is no statutory authorization for ICE or any other federal immigration enforcement agency to request that state and local law enforcement officers detain individuals simply for being removable. *See* 8 U.S.C. §§ 1226(c)(3), 1357(d) (naming specific circumstances under which detainer requests are authorized). Instead, ICE has purported to grant itself the authority to issue detainer requests through regulation. *See* 8 C.F.R. § 287.7. That regulation does not require that a detainer request be accompanied by either a judicial or administrative warrant, nor does it require that the request be based on probable cause that an individual has committed a crime or is removable. *Id.*

The ICE detainer form, Form I-247A, contains sections for identifying the name, date of birth, citizenship, and sex of the individual against whom the detainer is lodged. App'x C at 1 (Sample Form I-247A). The federal officer filling out the form must also identify one of two bases for holding the individual: DHS has determined that probable cause exists that the individual is removable, or DHS transferred the individual to state or local custody for a proceeding or investigation. *Id.* If the detainer is based on probable cause of removability, the federal officer must check a box to identify one or more bases for that determination from a set list:

- (1) A final order of removal against the individual;
- (2) The pendency of ongoing removal proceedings against the individual;
- (3) Biometric confirmation of the individual's identity and a record check of federal databases that affirmatively indicate, by themselves or in

addition to other reliable information, that the individual either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or

- (4) Statements made by the individual to an immigration officer and/or other reliable evidence that affirmatively indicate the individual either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

Id.

The form does not contain any space for a federal officer to detail or provide the evidence that supports probable cause of removability, even if that is the basis identified for detaining the individual. No portion of the form asks whether there is probable cause to believe that the detainee has committed a crime, and there is nowhere on the form for a federal immigration official to indicate that such probable cause exists. Moreover, there is nothing on the form that requires that the detainer request be accompanied by a warrant, either judicial or administrative, to be operative.³

No neutral magistrate reviews an ICE detainer request or the purported finding of probable cause of removability contained therein before the detainer is

³ In response to litigation, ICE adopted an internal policy that detainer requests must be accompanied by either Form I-200 or Form I-205, both administrative warrants that are signed by ICE immigration officers rather than neutral magistrates. App'x C at 5 (ICE Policy No. 10074.2). However, ICE maintains that there is no legal requirement that a detainer request be accompanied by an administrative warrant. *See id.* at 5 n.2.

issued. Instead, it is filled out and signed by the federal officer making the request, and virtually any federal immigration officer can make the request. Nor does ICE policy provide for neutral review of the detainer after it is issued or after an individual is held pursuant to that detainer in Indiana.⁴

II. Sheriff Marté’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 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 statutes 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

⁴ The Ninth Circuit has held that “[d]etaining persons for more than 48 hours pursuant to an immigration detainer implicates” the principle articulated in *Gerstein v. Pugh*, 420 U.S. 103 (1975), that prompt and neutral review by a magistrate is required. *Gonzalez v. ICE*, 975 F.3d 788, 823-26 (9th Cir. 2020). Following that decision, ICE began providing neutral review of probable cause determinations within 48 hours of issuance of an ICE detainer by officers located within the Central District of California. *See* App’x C at 14-15 (ICE Immigration Detainer FAQ). But the agency maintains that such review is not required, and it has declined to extend these neutral review procedures to detainees issued elsewhere. *Cf. id.*

electorally responsible to their communities, sheriffs are best positioned to make decisions about how to allocate limited resources.

Sheriff Marté has done just that. In 2023, in furtherance of his obligation to manage his Department's resources efficiently and to effectively enforce criminal laws in the County, Sheriff Marté adopted Standard Operating Procedure MCSO-012. The policy, which was revised in 2024, 2025, and 2026, establishes how MCSO officers are to handle issues related to interactions with noncitizens and with ICE. *See* App'x A at 6-8 (MCSO-012 dated July 1, 2026).⁵ In adopting MCSO-012, Sheriff Marté sought to strike a balance between safeguarding constitutional rights and supporting the federal government's immigration enforcement efforts in compliance with state law. App'x B at 1 (Marté Aff. ¶ 5). Drawing on his knowledge of the community and his 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. *Id.* at 2, ¶¶ 7-8; *see also id.* at 2, ¶ 7 ("It is vital to the work of the Sheriff's Office that all members of the community feel comfortable engaging with law enforcement.").

The policy provides that MCSO officers are free to participate in federal immigration enforcement in several ways, including by maintaining, communicating, and exchanging citizenship and immigration status information

⁵ Except where otherwise noted, references to MCSO-012 are to the policy effective July 1, 2026.

with DHS and other agencies. It also sets reasonable limits on the Office's engagement with federal immigration enforcement. As relevant here, Section IV(E) of the policy directs officers not to detain someone past their release date based solely on a non-criminal administrative immigration detainer request not accompanied by a judicial warrant. *See* App'x A at 7. Nevertheless, whenever MCSO staff run a detained person's fingerprints through the law enforcement database, that process informs the federal government (including immigration officials) of the person's identity, providing the federal government with an opportunity to assess that person's immigration status and respond appropriately. *See* App'x B at 26-27 (email from ICE dated June 24, 2024). Consistent with state law, the policy also expressly provides that if an officer arrests anyone "and there is probable cause to believe that the person is not lawfully present in the United States," the Sheriff must be notified and must report the information "to the proper authority." App'x A at 4 (MCSO-012 dated June 10, 2025); *accord* App'x A at 7 (MCSO-012 dated July 1, 2026).

MCSO officers are free to, and frequently do, provide notice to federal immigration officers of upcoming hearings or release dates for individuals subject to detainer requests. *See* App'x B at 31-39 (communications between Monroe County Sheriff's Office and ICE); *see also* App'x B at 40 (email from ICE suggesting MCSO had been "willing to slow walk the release" of a person to give ICE time to pick them up, but was not willing to extend the person's detention overnight). The Sheriff's Office has instructed jail staff that if they receive a detainer request from ICE, they

must “place a ‘notification hold’” in the system “with the appropriate information for the point of contact from DHS who is requesting the detainer.” App’x B at 51 (email from K. Gibbons to jail staff dated Feb. 26, 2025); *see also* App’x B at 50 (email from J. Evoy to jail staff dated Feb. 20, 2025). Jail staff notify ICE of upcoming hearings or release dates for any individual flagged by DHS, often reaching out several times to provide updates. *See, e.g.*, App’x B at 31-43.

Despite Sheriff Marté’s efforts to communicate with ICE, the agency is often nonresponsive. ICE typically ignores Monroe County’s emails and phone calls, and the agency will not timely take individuals into custody even after receiving clear notice of their release time. *See, e.g.*, App’x B at 34 (email noting conversation between an MCSO officer and an ICE agent who “acknowledged that he received [the officer’s] email notifications” but said that he “[t]ypically . . . ignore[s] anything that comes from Monroe County because [they] refuse to hold”); App’x B at 35-36 (MCSO reaching out to ICE asking “to establish a clear line of communication” about detainees to “minimize any delay” in ICE taking custody of a “violent individual”); App’x B at 38 (jail commander reporting that he “was unable to arrange transport” when an individual was released because “[t]here was no answer” when he called federal officials).

As the Sheriff’s ongoing attempts to cooperate with federal officials demonstrate, MCSO-012 was not designed to undermine or frustrate federal immigration enforcement efforts. Instead, the policy simply reflects the reality that the Monroe County Sheriff’s Office has *no authority* to continue to detain someone

cleared for release based on a request from ICE alone.⁶ Indeed, holding someone beyond their release date would be illegal and could subject Monroe County to significant liability. *See, e.g., Orellana Castaneda v. County of Suffolk*, No. 17-cv-4267, 2026 U.S. Dist. LEXIS 157710, at *5, 2026 WL 2031336, at *1 (E.D.N.Y. June 24, 2026) (jury award of \$112 million in damages to class of people held in county jail solely on immigration detainers), *appeal filed*, No. 26-2059 (2d Cir. July 28, 2026); *see also Orellana Castaneda v. County of Suffolk*, No. 17-cv-4267, 2025 U.S. Dist. LEXIS 26726, at *2, 2025 WL 481723, at *1 (E.D.N.Y. Jan. 2, 2025) (awarding summary judgment on liability to class), *appeal dismissed*, No. 25-312, 2025 U.S. App. LEXIS 20530, 2025 WL 2319643 (2d Cir. June 16, 2025).

In constructing MCSO-012, Sheriff Marté relied on the advice of Attorney Cynthia Forbes, an outside legal consultant for the Sheriff who also works with the Indiana State Police,⁷ who shared the view that local law enforcement have no

⁶ Prior to SEA 76's mandate that state and local law enforcement honor all requests made in an ICE detainer request, *see* Ind. Code § 5-2-18.2-9(a)(3), it was common and longstanding practice throughout the state for law enforcement to choose not to hold individuals beyond when they would otherwise be released. *See, e.g.,* App'x B at 69 (State Prosecutors' Response to Motion for Summary Judgment, *Buquer v. City of Indianapolis*, No. 1:11-cv-00708 (S.D. Ind. Apr. 9, 2012)) ("If the release date for a prisoner (who is subject to a detainer) comes, he/she is released even if ICE is not there to pick up the person."); *id.* at 71 ("[W]hen prisoners are being processed for release from [the Department of Corrections], ICE is contacted and detainers may be issued; however, the facts reflect that the prisoners are released on their release date and not held longer than that for ICE to collect them. Such facts demonstrate that the conduct of local officials is reasonable and, thus, does not violate the Fourth Amendment.").

⁷ *See* App'x B at 5-6 (legal memo from Attorney Forbes dated Apr. 2, 2023); App'x B at 29-30 (email from Attorney Forbes dated June 29, 2024); *see also* Ind. Code § 36-8-10-10.6(e) (authorizing sheriffs to appoint a legal deputy). In the interest of

authority to hold individuals based solely on detainer requests and may face significant liability for doing so. *See* App’x B at 5-6. This advice was consistent with extensive authority, including a decision of the Indiana Court of Appeals and opinions issued by federal district courts in Indiana to have considered the question, *see infra* pp. 21-22, 25 (discussing *Gary*, *Buquer*, and *Lopez-Aguilar*), as well as the advice of the National Sheriff’s Association, *see* App’x B at 47-48 (email dated Feb. 24, 2025) (reminding sheriffs that they cannot detain someone based on an ICE detainer or administrative warrant).

III. Procedural History

Pre-Litigation Communications. On May 14, 2024, Attorney General Rokita sent a letter to Sheriff Marté “regarding the MCSO’s immigration-related policies.” FAC ¶ 10. The letter referred to an outdated, decades-old MCSO policy that predated Sheriff Marté’s tenure as Sheriff and which the Department no longer had on file, rather than to the then-operative 2023 policy. App’x B at 7-8; *see also* App’x B at 22 (email from Forbes to Torres dated May 28, 2024). Despite the fact that the Attorney General did not even have an accurate understanding of the Sheriff’s then-current policy, he immediately launched a press campaign against the Sheriff and other jurisdictions he (inaccurately) labeled as “sanctuary jurisdictions.” App’x B at 9 (discussing a press release highlighting the letters and plans to further promote the effort); App’x B at 12 (emphasizing the press team’s focus on the letters

transparency, the Monroe County Sheriff’s Office has elected to waive the attorney-client privilege and work product protection over pre-litigation conversations with Attorney Forbes.

immediately after they were sent, noting “Sanctuary Cities is the only thing really”); *see also* App’x B at 57-65 (articles describing targeting of other jurisdictions).

Eager to cooperate with the Attorney General, the Sheriff’s Office “completed a thorough review of [the office’s] policy to ensure compliance with Indiana law” and sent a copy of an updated policy to the Attorney General’s Office for review. App’x B at 21 (Forbes email dated June 6, 2024). To remove any doubts about compliance with state law, the updated policy incorporated a version of Section 3 and emphasized that employees of the Department could not be limited from communicating, cooperating, or exchanging information with federal officials or other government entities. *See* App’x A at 1 (MCSO-012 dated June 29, 2024). Staff in the Attorney General’s Office acknowledged the Sheriff’s willingness to cooperate, noting that MCSO was “interest[ed] in making [its] policies conform to state and federal law.” App’x B at 27 (Torres email dated June 12, 2024).

After reviewing the new policy, Chief Deputy Attorney General Torres responded to the Sheriff’s legal counsel with comments on the policy, adding notes on sections that, in her view, did not meet legal requirements. *See* App’x B at 20 (Torres email dated June 24, 2024); App’x B at 23-24 (Torres comments on policy).⁸

⁸ At certain points, Torres seemed to suggest that compliance with ICE detainers is required by federal law. *See* App’x B at 20 (describing MCSO-012 as not “comport[ing] with federal law”); App’x B at 28 (“I read 8 CFR 287.7 as clearly requiring a jail/LEO to continue to detain for up to 48 hours once they receive an ICE administrative detainer.”). As discussed above, however, ICE detainers are merely requests, and no federal law or regulation requires—or could require,

After reviewing Torres’s comments, Attorney Forbes communicated the concerns to the Sheriff and the County’s legal department, but reiterated her earlier conclusion that the Sheriff’s policy was lawful and would limit possible liability to MCSO based on violations of the Fourth Amendment. *See* App’x B at 29-30 (Forbes email dated June 29, 2024). Consistent with the advice of counsel, MCSO issued its revised policy effective June 29, 2024. *See* App’x A at 1-2 (MCSO-012 dated June 29, 2024); *see also* App’x B at 16-17 (emails dated July 8-9, 2024).

While negotiations between the Sheriff’s representatives and the Attorney General’s Office were ongoing, the Attorney General’s Office abruptly ended those discussions—including canceling a meeting already on the books—and instead filed this lawsuit. *See* App’x B at 16-18 (Torres emails dated July 7-9, 2024). The move surprised even high-ranking officials in the office, with Torres apologizing to the Sheriff’s representatives because she “thought [they] had more time for discussion.” *Id.* at 18.

The Attorney General’s Lawsuit. The Attorney General filed this lawsuit on July 11, 2024, alleging that the 2024 MCSO-012 violated Sections 3 and 4 of Chapter 18.2, *see* Ind. Code §§ 5-2-18.2-3, -4, and seeking a permanent injunction against it under Section 6 of that chapter, *see id.* § 5-2-18.2-6. Sheriff Marté moved to dismiss or, alternatively, for summary judgment. This Court denied the Sheriff’s motion except with respect to the Section 3 claim, which it dismissed without

consistent with the Tenth Amendment—local law enforcement to comply with them. *See supra* p. 3.

prejudice. Order on Defs.’ Mot. to Dismiss 1 (Dec. 19, 2024). The Attorney General filed an amended complaint, which Sheriff Marté again moved to dismiss. This Court denied that motion and directed the parties to proceed to discovery and dispositive motions. Order on Defs.’ Mot. to Dismiss FAC 2 (July 2, 2025).

Following the completion of discovery, the parties filed cross-motions for summary judgment. On March 5, 2026, after those motions were fully briefed, Indiana Governor Mike Braun signed into law SEA 76, which made significant changes to the provisions of Indiana state law on which the Attorney General’s complaint is based, including Section 3 and Section 4. *See* Pub. L. No. 106, <https://perma.cc/CWY7-MCPG>. As is relevant here, the amended Section 4 states that “[a] governmental body or a postsecondary educational institution may not *in any way* limit or restrict the enforcement of federal immigration laws, *regardless of whether the enforcement related activity is carried out by a federal, state, or local law enforcement agency*, to less than the full extent permitted by federal law *as long as the enforcement actions do not violate federal or state law*.” Ind. Code § 5-2-18.2-4 (emphasis added to indicate language inserted by SEA 76).

SEA 76 also amended the enforcement provisions in Sections 5 and 6. As amended, these sections authorize the Attorney General to seek an injunction against “an act or a practice constituting a violation” of Chapter 18.2, Ind. Code § 5-2-18.2-5(b)(1), which a court may enter upon finding a violation by a preponderance of the evidence, *see id.* § 5-2-18.2-6. These sections, as amended, also authorize the Attorney General to seek, and the court to impose, a civil penalty of not more than

ten thousand dollars (\$10,000) for each knowing or intentional violation.” *Id.* § 5-2-18.2-5(b)(2); *see id.* § 5-2-18.2-6.

In response to the changes made by SEA 76, Sheriff Marté revised most of the provisions of MCSO-012 challenged in this lawsuit to conform to the new law, and the parties agreed to a Consent Decree resolving all of the Attorney General’s claims other than the one challenging the Sheriff’s policy of directing officers not to comply with immigration detainer requests absent a judicial warrant under Section 4. *See Joint Notice Regarding Partial Settlement* (Aug. 17, 2026). This Court approved the Consent Decree on August 27, 2026. The Attorney General’s only remaining claim is that Sheriff Marté’s policy of directing his officers not to comply with immigration detainer requests without a judicial warrant violates Section 4. That claim is now ripe for summary judgment.

STANDARD OF REVIEW

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.*; *see also Hendricks v.*

State, 162 N.E.3d 1123, 1135 (Ind. Ct. App. 2021) (“Constitutional claims raise questions of law . . .”).

ARGUMENT

As a matter of law, MCSO-012’s detainer provision fully complies with Section 4. There are no disputes of any relevant facts on the Attorney General’s Section 4 claim, and Defendants are entitled to judgment in their favor.

I. Section 4 Only Applies to Policies That Restrict *Lawful* Immigration Enforcement Activities

The Attorney General’s only remaining claim concerns Section IV(E)(1) of MCSO-012, which states that “MCSO employees shall not hold or detain an individual beyond his scheduled release date solely based on a non-criminal/administrative immigration detainer (that is, an immigration detainer request that is not accompanied by a criminal judicial warrant).” App’x A at 7. This provision is fully consistent with Section 4, which bars governmental bodies from enacting policies that limit the enforcement of federal immigration laws “as long as the enforcement actions *do not violate federal or state law*.” Ind. Code § 5-2-18.2-4 (emphasis added). In other words, “a local government [may] prohibit actions that would violate the Constitution consistent with Indiana Code § 5-2-18.2-4.” App’x B at 55 (AG Resp. to RFA No. 7). That is what Sheriff Marté has done here.

As the Court of Appeals explained at length in *City of Gary*, a policy prohibiting the detention of individuals solely on the basis of ICE detainer requests is fully in line with Section 4 because such a policy ensures that the Sheriff’s Office is complying with constitutional requirements. *See* 181 N.E.3d at 406-13. And as

explained below, that underlying conclusion—that “neither a detainer nor an administrative warrant is issued by a neutral magistrate” or supported by probable cause of a crime as required by the Fourth Amendment, *id.* at 409—finds support in decisions from numerous federal courts, including in the very federal district court in which Sheriff Marté could face a lawsuit by someone he detained. It also comports with this Court’s previous preliminary injunction order, which found that compliance with ICE detainer requests likely violates the Fourth Amendment. *See* Order Granting Prelim. Inj. ¶ 22.⁹ Because detaining individuals based solely on ICE detainer requests violates the Fourth Amendment to the U.S. Constitution and Article 1, Section 11 of the Indiana Constitution, Sheriff Marté may prohibit his employees from engaging in such activity without running afoul of Section 4.

II. Sheriff Marté’s Detainer Policy Restricts Immigration Enforcement Activities That Would Violate Federal and State Law

The Fourth Amendment to the U.S. Constitution and Article 1, Section 11 of the Indiana Constitution protect “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV; *accord* Ind. Const. art. I, § 11. “[I]t is uncontroversial that the Fourth Amendment applies to [noncitizens] and citizens alike,” and immigration

⁹ After granting Defendants leave to file a counterclaim challenging the new provision of state law added by SEA 76 that *mandates* compliance with ICE detainers, the Court preliminarily enjoined the Attorney General from enforcing that provision against Defendants and declined to stay the injunction pending appeal. *See generally* Order Granting Defs.’ Mot. for Leave to File Countercl. (June 25, 2026); Order Granting Prelim. Inj. (June 30, 2026); Order Denying Mot. to Hold in Abeyance (Aug. 14, 2026). The Court of Appeals denied the Attorney General’s motion to stay on August 28, 2026.

enforcement must therefore be conducted in a manner consistent with constitutional requirements. *Cotzjoy v. Holder*, 725 F.3d 172, 181 (2d Cir. 2013).

Because an individual held pursuant to an ICE detainer 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 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 mark and citation omitted). And “inferences of probable cause” must be validated 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)). “[W]henever practicable,” that determination should be made before an arrest, when an officer seeks a warrant. *Terry v. Ohio*, 392 U.S. 1, 20 (1968). In limited circumstances not applicable here, officers may arrest individuals without a warrant, but even then, the Fourth Amendment demands that a neutral determination of probable cause be made promptly after arrest. *Gerstein v. Pugh*, 420 U.S. 103, 125 (1975). Similarly, the Indiana Constitution requires that a seizure be reasonable and be made pursuant to a warrant or to an

exception to the warrant requirement. *See Brown v. State*, 653 N.E.2d 77, 79 (Ind. 1995).

Seizures pursuant to ICE detainer requests do not comply with these requirements. They therefore cannot satisfy the Fourth Amendment or the Indiana Constitution, and holding an individual on an ICE detainer, without more, would violate that individual's constitutional rights.

A. ICE detainer requests are neither warrants nor accompanied by warrants

“[T]he deliberate, impartial judgment of a judicial officer” is a key protection that is “interposed between the citizen and the police.” *Wong Sun v. United States*, 371 U.S. 471, 481-82 (1963); *see also Gerstein*, 420 U.S. at 114 (“When the stakes are this high, the detached judgment of a neutral magistrate is essential if the Fourth Amendment is to furnish meaningful protection from unfounded interference with liberty.”). “The scheme of the Fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances. . . . Anything less would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches, a result [the Supreme] Court has consistently refused to sanction.” *Terry*, 392 U.S. at 21-22.

In most circumstances, that scrutiny should come before an arrest is made, as “[a]n arrest without a warrant bypasses the safeguards provided by an objective

predetermination of probable cause, and substitutes instead the far less reliable procedure of an after-the-event justification for the arrest or search, too likely to be subtly influenced by the familiar shortcomings of hindsight judgment.” *Beck v. Ohio*, 379 U.S. 89, 96 (1964). Therefore, “the police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure.” *Terry*, 392 U.S. at 20. There are only a few exceptions to the warrant presumption, none of which are applicable here. *See id.* (“[I]n most instances failure to comply with the warrant requirement can only be excused by exigent circumstances”); *Maryland v. Pringle*, 540 U.S. 366, 370 (2003) (“A warrantless arrest of an individual in a public place for a felony, or a misdemeanor committed in the officer’s presence, is consistent with the Fourth Amendment if the arrest is supported by probable cause.”). But when warrantless arrests are made, there must still be a “fair and reliable determination of probable cause . . . made by a judicial officer . . . promptly after arrest,” *Gerstein*, 420 U.S. at 125, generally within 48 hours, *see County of Riverside v. McLaughlin*, 500 U.S. 44, 55-57 (1991). “[P]rosecutorial judgment standing alone” does not “meet[] the requirements of the Fourth Amendment.” *Gerstein*, 420 U.S. at 117.

This requirement applies with equal force in the immigration context. *See Gonzalez v. ICE*, 975 F.3d 788, 824 (9th Cir. 2020) (“The critical question here is whether the Fourth Amendment principle that *Gerstein* articulated applies to the civil immigration context. The answer to this question is necessarily ‘yes.’”); *see also id.* at 824-25 (rejecting the government’s argument that *Gerstein* “do[es] not apply

in a deportation hearing” because *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984), which held that the exclusionary rule does not apply to deportation proceedings, “has no bearing on whether *Gerstein* applies to arrests or detention for civil immigration purposes”); *id.* at 825 n.26 (dismissing the government’s reliance on *United States v. Tejada*, 255 F.3d 1 (1st Cir. 2001), which concerned only the application of the Federal Rules of Criminal Procedure governing initial appearances, as similarly “irrelevant to the constitutional issue” of whether *Gerstein* applies in the immigration context).

ICE detainer requests do not satisfy these standards. The detainer requests are filled out and signed by an ICE officer, with no pre-review by a court or even an officer not actively involved in the case. *See N.S. v. Hughes*, 335 F.R.D. 337, 346-47 (D.D.C. 2020) (explaining that ICE agents are not independent, neutral judicial officers); *see also* Order Granting Prelim. Inj. ¶ 13 (“It should be noted that the ‘probable cause’ referenced in federal regulations and implemented by ICE is not made by a ‘neutral and detached magistrate’, but rather by an authorized ICE agent.”). Indeed, an officer need provide no evidence or explanation for why he believes there is probable cause that the individual is removable. Instead, he merely checks a box on a pre-written list of conclusory reasons for probable cause of removability. And while ICE detainer requests may sometimes be accompanied by documents styled as “administrative warrants,” those too are signed by ICE immigration officers rather than neutral magistrates. App’x C at 5 (ICE Policy No. 10074.2); *see also City of Gary*, 181 N.E.3d at 409 (explaining that neither a

detainer request nor an administrative warrant is a criminal warrant because neither is issued by a neutral and detached magistrate).

Nor is there any review of the probable cause determination after a seizure is made pursuant to an ICE detainer request. The detainers themselves do not require or suggest that a probable cause hearing be held during the up to 48 hours that they request local government officials detain a person subject to the request.¹⁰ And ICE policy does not provide for neutral review of the detainer after an individual is taken into custody in Indiana. *See supra* note 4. ICE detainer requests in Indiana are therefore never subject to the review of a neutral magistrate and cannot satisfy the Fourth Amendment. *See Buquer v. City of Indianapolis*, 797 F. Supp. 2d 905, 918-19 (S.D. Ind. 2011) (explaining that a now-enjoined Indiana law authorizing warrantless arrests on the basis of ICE detainers created constitutional issues in part because it did not “mention . . . any requirement that the arrested person be brought forthwith before a judge for consideration of detention or release”).

For similar reasons, a seizure based solely on an ICE detainer request also violates the Indiana Constitution. “Separate and apart from the federal Fourth Amendment analysis, Article 1, Section 11 of the Indiana Constitution provides an independent prohibition against unreasonable searches and seizures.” *Peterson v. State*, 674 N.E.2d 528, 533 (Ind. 1996). That guarantee receives “a liberal

¹⁰ Although the detainer request references a 48-hour timeframe, DHS by regulation excludes weekends and holidays from the calculation of that time. *See* 8 C.F.R. § 287.7(d). Thus, under the regulation, local detention may extend far beyond 48 hours, reaching as long as five days.

construction in its application.” *Idol v. State*, 119 N.E. 2d 428, 431 (Ind. 1954). Like the U.S. Constitution, the Indiana Constitution requires that a seizure either be justified through the “judicial sanction” of a warrant or that it “fall[] into one of the exceptions to the warrant requirement.” *Brown*, 653 N.E.2d at 79. But, as discussed, ICE detainers are not judicial warrants, and warrantless seizures based on such detainers do not fall within any exception to the warrant requirement. Indiana allows warrantless arrests when an officer “has reasonable and probable cause to believe the person has committed a felony,” *Funk v. State*, 427 N.E.2d 1081, 1085 (Ind. 1981), or when a “misdemeanor is committed within their view,” *Hart v. State*, 145 N.E. 492, 493 (Ind. 1924). *Accord*, e.g., *Doering v. State*, 49 Ind. 56, 58-59 (1874). The power to effectuate a warrantless arrest does not extend to *civil infractions* at all. An arrest pursuant to an ICE detainer request therefore also violates the Indiana Constitution.

B. ICE detainer requests do not give local law enforcement probable cause to arrest an individual

Regardless of whether an arrest is made pursuant to a warrant, the Fourth Amendment requires that there be “probable cause to believe that the suspect is involved in criminal activity.” *Brown v. Texas*, 443 U.S. 47, 51 (1979) (internal quotation mark and citation omitted); *see also Fox v. Hayes*, 600 F.3d 819, 837 (7th Cir. 2010) (“[A]n arrest is reasonable under the Fourth Amendment so long as there is probable cause to believe that some criminal offense has been or is being committed.” (emphasis omitted)). “In general,” with rare exceptions not present here, “civil matters do not justify arrests or custodial seizures amounting to

arrests.” *Lopez-Aguilar v. Marion Cty. Sheriff’s Dep’t*, 296 F. Supp. 3d 959, 976 (S.D. Ind. 2017), *rev’d on other grounds*, 924 F.3d 375 (7th Cir. 2019); *see also Allen v. City of Portland*, 73 F.3d 232, 237 (9th Cir. 1995) (explaining that “[b]y its definition, probable cause can only exist in relation to criminal conduct,” and the existence of a “civil dispute” cannot justify an arrest under the Fourth Amendment); *Doe v. Metro. Police Dep’t of D.C.*, 445 F.3d 460, 469 (D.C. Cir. 2006) (holding that plaintiffs had stated a claim that their Fourth Amendment rights had been violated because they “were arrested for a civil offense”).

Arrests pursuant to ICE detainer requests fail this requirement too. As the Supreme Court has recognized, “[a]s a general rule, it is not a crime for a removable [immigrant] to remain present in the United States.” *Arizona v. United States*, 567 U.S. 387, 407 (2012). “Because civil immigration violations do not constitute crimes, suspicion or knowledge that an individual has committed a civil immigration violation, by itself, does not give a law enforcement officer probable cause to believe that the individual is engaged in criminal activity.” *Santos v. Frederick Cty. Bd. of Comm’rs*, 725 F.3d 451, 465 (4th Cir. 2013); *see also Arizona*, 567 U.S. at 407 (noting that “[i]f the police stop someone based on nothing more than possible removability, the usual predicate for an arrest is absent”). And without probable cause of criminal activity, “the Fourth Amendment does not permit” local law enforcement officers to detain someone—such detention cannot be justified “solely on unlawful presence.” *Melendres v. Arpaio*, 695 F.3d 990, 1000 (9th Cir. 2012).

ICE detainer requests, however, ask state and local law enforcement to hold individuals based solely on purported civil immigration violations. On their face, they state only that there is probable cause that an individual is removable, not that there is any reason to believe that the individual has committed a crime. *See* Order Granting Prelim. Inj. ¶ 13 (explaining that ICE detainer requests “only purport[] to assert probable cause to believe the person is in violation of civil law and not criminal law”). Numerous courts—including the Indiana Court of Appeals—have held that arrests by local officers solely in response to detainer requests therefore violate the Fourth Amendment. *See, e.g., City of Gary*, 181 N.E.3d at 408-09; *Lopez-Aguilar*, 296 F. Supp. 3d at 975; *Buquer v. City of Indianapolis*, No. 1:11-cv-00708, 2013 U.S. Dist. LEXIS 45084, at *35-37, 2013 WL 1332158, at *11 (S.D. Ind. Mar. 28, 2013); *Davila v. N. Reg’l Joint Police Bd.*, 370 F. Supp. 3d 498, 514 (W.D. Pa. 2019); *C.F.C. v. Miami-Dade County*, 349 F. Supp. 3d 1236, 1259 (S.D. Fla. 2018); *Orellana v. Nobles County*, 230 F. Supp. 3d 934, 944 (D. Minn. 2017). Indeed, this Court acknowledged that Sheriff Marté “advance[d] logical and persuasive arguments” on this issue “with case law support for his position that a number of jurisdictions . . . have declined to find that state and local law enforcement compliance with ICE Detainer Requests is or should be recognized as a civil exception to 4th Amendment protections and have affirmatively found such conduct to be violative of the 4th Amendment.” Order Granting Prelim. Inj. ¶ 22.

Detentions like those at issue here, which are “indistinguishable from a traditional arrest,” “intrude[] so severely on interests protected by the Fourth

Amendment as necessarily to trigger the traditional safeguards against illegal arrest”—that is, the requirement that there be probable cause of a crime. *Dunaway v. New York*, 442 U.S. 200, 212, 216 (1979). “The standard of probable cause . . . represent[s] the accumulated wisdom of precedent and experience as to the minimum justification necessary to make the kind of intrusion involved in an arrest ‘reasonable’ under the Fourth Amendment.” *Id.* at 208. “The history of the use, and not infrequent abuse, of the power to arrest cautions that a relaxation of the fundamental requirements of probable cause would leave law-abiding citizens at the mercy of the officers’ whim or caprice.” *Wong Sun*, 371 U.S. at 479 (internal quotation mark and citation omitted).

In a few narrow circumstances, courts have allowed seizures in the civil context. A federal court considering a previous Indiana law identified only two such examples: “seizures under writs of bodily attachment or bench warrants for civil contempt of court,” and “seizures to effect involuntary commitments, or ‘mental-health seizures.’” *Lopez-Aguilar*, 296 F. Supp. 3d at 976 (citations omitted). Such civil seizures are reasonable under the Fourth Amendment because they are part of longstanding historical practice and because the more limited degree of intrusion upon an individual’s privacy is outweighed by a particularly strong government interest. *Wyoming v. Houghton*, 526 U.S. 295, 299-300 (1999). For example, seizures under writs of bodily attachment and bench warrants for civil contempt of court date back to the founding, *United States v. Phillips*, 834 F.3d 1176, 1181 (11th Cir. 2016), and unlike those who are arrested on criminal charges or for removal

proceedings, individuals detained for civil contempt “carry the keys of their prison in their own pockets,” *Penfield Co. v. SEC*, 330 U.S. 585, 590 (1947). Moreover, such seizures are authorized by a neutral court and are vital to “ensuring compliance with, and the functioning of” the courts. *Lopez-Aguilar*, 296 F. Supp. 3d at 976. “[S]eizures to effect involuntary commitments” have a similarly robust history and are justified by an exigent need to prevent harm to the individual or others. *Id.* In contrast, arrests based on probable cause of removability neither fall within an identified historical tradition nor raise similarly powerful state interests. Indeed, one federal court found history “silent or equivocal” on whether such detentions are reasonable¹¹ and held that since immigration has historically been a matter of federal concern, the balance of interests weighs “decisively” in favor of individual privacy. *Id.* at 977. Detention of an individual based only on probable cause of removability by state or local law enforcement is therefore not reasonable under the Fourth Amendment.

Such detention is also unreasonable under Article 1, Section 11 of the Indiana Constitution. The reasonableness of a seizure under the Indiana Constitution “turn[s] on a balance of: 1) the degree of concern, suspicion, or

¹¹ The court in *Lopez-Aguilar* considered the history of detaining noncitizens without a warrant generally, without distinguishing between the actors making such detentions. A closer examination of the history reveals that there is no tradition of warrantless detentions of noncitizens by *state and local* officials because immigration enforcement has historically been a matter of federal jurisdiction. See, e.g., *Abel v. United States*, 362 U.S. 217, 233 (1960) (“Statutes providing for deportation have ordinarily authorized the arrest of deportable [immigrants] by order of an executive official.”).

knowledge that a violation has occurred, 2) the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities, and 3) the extent of law enforcement needs." *Litchfield v. State*, 824 N.E.2d 356, 361 (Ind. 2005). Immigration detainers are unreasonable on every factor. Immigration detainer requests are not based on probable cause that a crime has been committed. The detention requested by an immigration detainer is highly intrusive and akin to a traditional arrest. And local law enforcement does not have a strong or exigent need to seize an individual on the basis of removability because authority over the immigration system is vested exclusively in the federal government. *See Arizona*, 567 U.S. at 394-95; *Lopez-Aguilar*, 296 F. Supp. 3d at 977. Compliance with ICE detainer requests therefore violates the Indiana Constitution.

C. State and local law enforcement are differently situated than federal immigration officers

The fact that an ICE detainer request seeks state or local law enforcement assistance to federal immigration authorities does not change the Fourth Amendment reasonableness analysis. Even assuming that *federal* immigration officers have the power to arrest an individual solely on the basis of probable cause of removability,¹² local law enforcement do not—even if the seizure is made at ICE's request. State and local law enforcement lack the power to act as federal officials

¹² The Supreme Court has never held that such detentions are reasonable even when performed by a federal officer. In *Abel v. United States*, the case often cited for this proposition, the Supreme Court noted that the question whether an immigration arrest made by federal officials pursuant to an administrative warrant was valid under the Fourth Amendment was "not entitled to [its] consideration" because it had been waived below. 362 U.S. at 230.

and perform arrests for civil immigration violations unless they are authorized, directed, supervised, and trained by federal officials pursuant to a 287(g) agreement. *Lopez-Aguilar*, 296 F. Supp. 3d at 977-78; *see also C.F.C.*, 349 F. Supp. 3d at 1259 (“Numerous courts have determined that when *local* law enforcement agencies hold someone pursuant to a detainer—and without separate probable cause that the person has committed a crime—such detention gives rise to a Fourth Amendment claim” (emphasis added)). As the Supreme Court has observed, “it would disrupt” the carefully created “federal framework to put state officers in the position of holding aliens in custody for possible unlawful presence without federal direction and supervision.” *Arizona*, 567 U.S. at 413. A detainer request, on its own, does not provide the requisite federal oversight: it “seek[s] local assistance with detention of removable aliens without federal training or supervision” and therefore lacks a key feature present in “the myriad other ways local agencies may cooperate with federal officials in the enforcement of immigration law.” *City of Gary*, 181 N.E.3d at 407; *see also Lopez-Aguilar*, 296 F. Supp. 3d at 974 (noting that while detainer requests may “invite state cooperation,” they do not “subject state officers to federal supervision or federal direction in the execution of the detainer”).

The only provision of federal law that provides such authorization, direction, supervision, and training is 8 U.S.C. § 1357(g)(1), which allows jurisdictions to enter into 287(g) agreements with DHS. Those agreements specifically authorize state or local law enforcement to enforce federal immigration laws. The general cooperation clause contained in 8 U.S.C. § 1357(g)(10)(B), on the other hand, does not provide

law enforcement officers acting under color of state law the authority to arrest or detain individuals on suspicion of removability; it is merely a savings clause that clarifies that a 287(g) agreement is not required for certain types of cooperation with federal immigration officials. *See Lunn v. Commonwealth*, 78 N.E.3d 1143, 1158 (Mass. 2017) (“Significantly, the United States does not contend that § 1357(g)(10) affirmatively confers authority on State and local officers to make arrests pursuant to civil immigration detainers.” (emphasis omitted)). It does not authorize state and local officials to stand in the shoes of federal officers based on a detainer request. *See Lopez-Aguilar*, 296 F. Supp. 3d at 973 (noting that the Supreme Court identified only minor contributions by state and local officials as types of cooperation authorized by § 1357(g)(10)(B) and did not include honoring ICE detainers). Interpreting § 1357(g)(10)(B) more broadly would allow state and local officers to circumvent 287(g) requirements by relying on a “free-floating” grant of authority to act as federal officers based on bare requests for assistance. *Id.* at 975; *see also C.F.C.*, 349 F. Supp. 3d at 1259. That is not what the provision provides.

It is therefore clear that local officers simply do not have the same authority as federal officers, and those differences in authority cannot be divorced from the Fourth Amendment reasonableness analysis. The question of authority—and differences between federal and state authority—was central to the courts’ holdings in *Santos* and *Melendres*, two circuit-level cases in which local officers were found to have violated the Fourth Amendment when they seized individuals without a

warrant based on probable cause or reasonable suspicion of removability. In both cases, the Courts of Appeals concluded that a Fourth Amendment violation occurred precisely because the arresting local officers—unlike federal officers—lacked the authority to detain on the basis of immigration violations. *See Santos*, 725 F.3d at 464-65; *Melendres*, 695 F.3d at 1001. And although the Supreme Court in *Arizona*, considering a state law that authorized state and local officers to engage in immigration enforcement, struck down the provision allowing detentions of immigrants on preemption rather than Fourth Amendment grounds, the Court also noted pointedly that seizures by local officers based on civil immigration violations implicate Fourth Amendment concerns. 567 U.S. at 413. Courts have therefore been unwilling “to accept that anything less than formal extension of federal authority under the system Congress created,” as through the adoption of a 287(g) agreement between state and federal officials, “will authorize state enforcement of civil immigration violations.” *Lopez-Aguilar*, 296 F. Supp. 3d at 978. “Accordingly, federal permission to cooperate in federal immigration enforcement does not permit a state to require its law enforcement officers to comply with . . . ICE detainers, standing alone.”¹³ *Id.*

¹³ *Virginia v. Moore*, 553 U.S. 164 (2008), is not to the contrary. There, the Court, considering an arrest based on probable cause but barred by state law, held that constitutional reasonableness does not change based on state law requirements. *Id.* at 171. The Court said nothing about whether an action that is constitutional when taken by a federal officer must also be constitutional when taken by a local officer. It is well-recognized, even after *Moore*, that federal officers may take actions consistent with the Fourth Amendment that local officers may not. *Compare United States v. Brignoni-Ponce*, 422 U.S. 873, 884-85 (1975) (Border Patrol may stop vehicles on reasonable suspicion of removability), *with Arizona*, 567 U.S. at 413

D. Even if local law enforcement could make arrests based on probable cause of removability, ICE detainer requests do not provide such probable cause

Even if probable cause of removability were enough to render an arrest by local law enforcement reasonable under either the Fourth Amendment or the Indiana Constitution, ICE detainer requests do not contain such probable cause. And even if ICE itself were to have probable cause of removability, that probable cause would not be imputed to local law enforcement through the detainer request.

1. ICE detainer requests are not based on sufficient facts to establish probable cause of removability

Under ICE's current policy, most ICE detainer requests must be supported by an assertion that DHS has determined that probable cause of removability exists for the person named in the detainer.¹⁴ But that assertion is nothing more than a checked box identifying one or more conclusory bases for the probable cause determination from a set list. Form I-247A does not include a requirement that the issuing officer specify the evidence, factual details, or other reliable information that form the basis for such probable cause, in contrast to criminal warrants. And

(non-federal officials performing stops to verify immigration status raises Fourth Amendment concerns).

¹⁴ Although most detainers must assert probable cause of removability under ICE's current policy, *but see infra* note 15, no statute or regulation prevents the agency from changing that policy or requires that ICE detainer requests be based on probable cause. Indeed, ICE at times has argued that probable cause is not necessary for an ICE detainer request, *see Morales*, 793 F.3d at 217 n.3, and at other times has adopted policies that have allowed the issuance of a detainer based on evidence that it later admitted was not sufficient to establish probable cause of removability, *see Roy v. County of Los Angeles*, No. CV 12-09012-AB, 2018 U.S. Dist. LEXIS 27268, at *4, 2018 WL 914773, at *3 (C.D. Cal. Feb. 7, 2018).

the form is not accompanied by a sworn affidavit, particularized facts, or any indication of the evidence on which the agency is relying to establish probable cause.

Even when ICE detainer requests do allege that there is probable cause that an individual is removable,¹⁵ they are frequently inaccurate. Courts have questioned the data underlying ICE's probable cause determinations. *See, e.g., Gonzalez*, 975 F.3d at 797, 811-12 (class action suit by a U.S. citizen for whom ICE issued a detainer based on database errors). And numerous courts have found that ICE detainers have been issued in error, without even probable cause of removability. *See, e.g., Hernandez v. United States*, 939 F.3d 191, 201 (2d Cir. 2019) (finding that the U.S. citizen plaintiff had plausibly alleged that ICE lacked probable cause in issuing a detainer for him and "that the Government failed to conduct even a rudimentary inquiry into [his] citizenship"); *Brown v. Ramsay*, 785 F. Supp. 3d 1214, 1219-20, 1230 (S.D. Fla. 2025) (granting partial summary judgment to U.S. citizen plaintiff detained for a second time on an erroneous ICE detainer due to ICE's failure to review comments in its database); *Davila*, 370 F. Supp. 3d at 509-10, 531-32 (finding, at summary judgment, that ICE had mistakenly issued a detainer request for a U.S. citizen and had not sent local law

¹⁵ A detainer request may also be based on the fact that DHS transferred the individual to state or local custody for a proceeding or investigation. In that case, ICE offers no probable cause to believe that the individual is removable. In fact, the sole check box available for that option says that DHS "intends to resume custody of the [individual] to complete processing and/or *make an admissibility determination*." App'x C at 1 (Sample Form I-247A) (emphasis added).

enforcement an order to release her for several hours); *Makowski v. United States*, 27 F. Supp. 3d 901, 918 (N.D. Ill. 2014) (denying motion to dismiss claims by U.S. citizen held multiple times pursuant to ICE detainers, where “ICE officers relied on incorrect DHS records” and the agency failed to respond promptly to his claims of citizenship). ICE “has detained, removed, or issued detainers for thousands of U.S. citizens” and other individuals who are not subject to removal over the years, and it continues to do so. *See* App’x C at 18-27 (Wash. Post article dated May 3, 2025); *see also* App’x C at 28-29 (Transactional Records Access Clearinghouse report dated Feb. 20, 2013) (agency’s own records documenting 834 detainers placed on U.S. citizens and 28,489 placed on legal permanent residents between 2008 and 2012); App’x C at 31 (NPR article dated Dec. 22, 2016) (documenting 693 U.S. citizens held in local jails and 818 more held in immigration detention centers from 2007 through 2015); App’x C at 48-51 (ACLU report dated Aug. 20, 2015) (highlighting recent cases of U.S. citizens subjected to unlawful immigration detainers). When an ICE detainer request is issued in the absence of probable cause, an arrest made in objective reliance upon the detainer request violates the Fourth Amendment and the Indiana Constitution. *See Hernandez*, 939 F.3d at 209 (explaining that when the officer requesting detention lacked probable cause to make the request, “no other officer can rely on the information of the initiating officer”).

2. The collective knowledge doctrine does not apply

Even when the ICE officers who issue detainers may have probable cause of removability, the state and local officers who receive the detainers and carry out the seizures do not. Those officers lack any personal knowledge that any of the

individuals they seize are subject to removal. Instead, they rely on the conclusory assertions made by federal agents in the detainer request.

In the non-immigration context, courts have sometimes relied on the collective knowledge doctrine to hold that one officer's knowledge of facts constituting probable cause may be imputed to another. But the collective knowledge doctrine would not suffice to impute probable cause of removability here, even assuming that state and local law enforcement officers were empowered to arrest based on probable cause of removability alone. First, courts have generally “not previously applied this rule in the immigration context or to violations of civil law.” *Ochoa v. Campbell*, 266 F. Supp. 3d 1237, 1258 (E.D. Wash. 2017); *see also Lopez-Flores v. Douglas County*, No. 6:19-CV-00904-AA, 2020 U.S. Dist. LEXIS 94847, at *16, 2020 WL 2820143, at *6 (D. Or. May 30, 2020) (“[T]he collective knowledge doctrine applies to cases of criminal investigation.”). Courts in the Seventh Circuit have applied the collective knowledge doctrine only to criminal investigations and have not extended the doctrine to civil immigration matters. *See Pullen v. House*, 88 F. Supp. 3d 927, 934 (W.D. Wis. 2015) (noting that the plaintiff had cited only “a criminal case in which the government relied on the doctrine to justify an arrest” and did “not cite any authority for the proposition that the doctrine may apply in a civil case under § 1983”). Nor is the Sheriff aware of any court in Indiana that has done so. There is no reason for this Court to be the first. Because the doctrine relies on the idea that officers working collaboratively on an investigation are assumed to share knowledge, it is ill-suited to the immigration

context, where “state and local law enforcement and other officials are presumed to be unqualified and unable to perform the functions of federal immigration law enforcement officers, at least as those functions pertain to enforcement of civil immigration violations.” *Ochoa*, 266 F. Supp. 3d at 1254 (emphases omitted).

Moreover, ICE detainers do not provide the level of communication and cooperation between the directing and arresting officers required to impute probable cause, even if the collective knowledge doctrine could apply in the immigration context. Indiana courts have declined to apply the collective knowledge doctrine when the officer effectuating the seizure did not actually have the information establishing probable cause. *See, e.g., Jamerson v. State*, 870 N.E.2d 1051, 1057 (Ind. Ct. App. 2007) (holding doctrine is inapplicable where there is “an assertion of illegality” but “such assertion was not supported by any specific and articulable facts”). ICE detainers do not meet this standard. *See Ochoa*, 266 F. Supp. 3d at 1258. ICE detainers require only that a federal officer check a box next to a conclusory statement of alleged probable cause. *Id.* at 1252-53. They do not describe the evidence relied upon by the federal officer in making the probable cause determination, nor do they provide any insight into how certain the determination is. *Id.* at 1253. And unlike in a criminal investigation, federal immigration officers and local law enforcement officers may not be working closely together, or even communicating at all outside of the detainer request itself. *Id.* at 1258. That is insufficient to establish collective knowledge. *See Lopez-Flores*, 2020 U.S. Dist. LEXIS 94847, at *17-18, 2020 WL 2820143, at *6. When local law

enforcement officers continue to hold individuals based on ICE detainer requests alone, they lack even probable cause of removability, much less probable cause of a crime, and the seizures fail to satisfy the Fourth Amendment and the Indiana Constitution.

E. The Fifth Circuit’s contrary conclusion in *El Cenizo* was based on flawed reasoning

The Attorney General is likely to rely on the Fifth Circuit’s decision in *City of El Cenizo v. Texas*, 890 F.3d 164 (5th Cir. 2018), but that decision rested on conclusions about Fourth Amendment doctrine and immigration law that are inconsistent with the consensus of courts elsewhere, including the Indiana Court of Appeals and two federal district courts in Indiana. For example, the Fifth Circuit cited the existence of permissible civil seizures to support its view that the Fourth Amendment does not require probable cause of a crime to detain in the immigration context, without addressing the distinctions between civil seizures with historic pedigree and justified by important state interests and ICE detainer requests, which have neither. *Id.* at 188; *see also supra* pp. 26-27. Similarly, the court did not analyze the differences in authority to engage in immigration enforcement between federal and local officers as part of its Fourth Amendment reasonableness analysis. *El Cenizo*, 890 F.3d at 187; *see also supra* pp. 28-31. And it held that the collective knowledge doctrine applies to the immigration context without explaining how a bare-bones request to detain can “provide[] the required communication.” *El Cenizo*, 890 F.3d at 187 (internal quotation mark and citation omitted); *see supra* pp. 34-37. Those conclusions are contrary to those reached by many other courts, including the

Indiana Court of Appeals. *See, e.g., City of Gary*, 181 N.E.3d at 407-13; *Lopez-Aguilar*, 296 F. Supp. 3d at 975; *Buquer*, 2013 U.S. Dist. LEXIS 45084, at *35-37, 2013 WL 1332158, at *11. Those cases are more persuasive here, and the Fifth Circuit’s conclusory reasoning should not be given weight by this Court.¹⁶

* * *

ICE detainers and administrative warrants do not satisfy the requirements of the Fourth Amendment or the Indiana Constitution, and the Sheriff’s Office cannot lawfully continue to hold individuals beyond their release dates based solely on such a request without “violat[ing] federal or state law,” Ind. Code § 5-2-18.2-4. Accordingly, Sheriff Marté’s policy restricting compliance with ICE detainers falls outside the scope of Section 4. There are no disputes of any relevant facts on this claim, and MCSO-012 fully complies with Section 4.

CONCLUSION

This Court should grant summary judgment to Defendants on the Attorney General’s claim that MCSO-012 § IV(E) violates Section 4.

¹⁶ Moreover, in *El Cenizo*, the Fifth Circuit caveated its conclusions by cautioning that honoring ICE detainer requests can, in practice, violate the Fourth Amendment. *See* 890 F.3d at 187, 189-90 (explaining that “compliance with ICE’s requests would violate the Fourth Amendment” if local law enforcement detained individuals “where probable cause was lacking,” but holding that the plaintiffs could not meet the “exacting standard” for demonstrating a facial challenge to the Texas law authorizing detentions based on detainer requests). *El Cenizo* therefore does not undermine the conclusion that compliance with ICE detainers may violate federal law.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on August 28, 2026, 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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