

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

SHERIFF RUBEN MARTÉ,

Plaintiff,

v.

TODD ROKITA, in his official capacity
as Attorney General of Indiana,

Defendant.

Civil Action No. 1:26-cv-701-JPH-MJD

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR A PRELIMINARY
INJUNCTION**

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INTRODUCTION

The newly added Section 9 of Indiana Code Chapter 18.2, set to go into effect on July 1, 2026, would require state and local law enforcement to violate the Fourth Amendment to the U.S. Constitution by detaining individuals based solely on a federal civil immigration detainer request, without a judicial warrant or probable cause that the individuals have committed any crime. Sheriff Ruben Martí, the elected Sheriff of Monroe County, Indiana, seeks a preliminary injunction to prevent the law from going into effect and ensure that he can carry out his oath to uphold the Constitution.

Well before Section 9 was enacted, Sheriff Martí adopted a policy—Standard Operating Procedure MCSO-012 (“MCSO-012”)—directing his officers not to honor immigration detainer requests issued by U.S. Immigration and Customs Enforcement (“ICE”) unless accompanied by a judicial warrant. This policy was designed to ensure that officers respect detainees’ Fourth Amendment rights. Holding an individual past the time they would otherwise be released, as ICE detainer requests ask local law enforcement to do, constitutes a new seizure and must therefore meet the standards set by the Fourth Amendment. But seizures pursuant to ICE detainer requests do not meet those standards. They are not made pursuant to a warrant issued by a neutral and detached magistrate, nor is there any timely review of the seizure by such a magistrate. And they are not based on probable cause that any crime has been committed. As courts in this district have recognized, “seizures conducted solely on the basis of known or suspected civil immigration violations” therefore “violate the Fourth Amendment when conducted under color of state law.” *See Lopez-Aguilar v. Marion Cty. Sheriff’s Dep’t*, 296 F. Supp. 3d 959, 975 (S.D. Ind. 2017), *rev’d on other grounds*, 924 F.3d 375 (7th Cir. 2019); *see also Buquer v. City of Indianapolis*, No. 1:11-cv-00708, 2013 WL 1332158, at *11 (S.D. Ind. Mar. 28, 2013).

Section 9 would require the Monroe County Sheriff's Office ("MCSO")—and law enforcement across the state—to unquestioningly comply with all ICE detainer requests, despite the fact that such compliance would violate the Fourth Amendment. Sheriff Marté therefore faces an impossible situation. He cannot order his officers to comply with Section 9 without violating his oath to protect and uphold the Constitution and exposing MCSO to significant civil liability from suits by individuals whose rights would be violated by the unlawful detentions. But if he refuses to follow Section 9's mandate, he will violate his responsibility to uphold state law and will risk civil liability from a suit by the Attorney General to enforce the law.

This Court's swift action is needed. To avoid imminent violations of the Constitution and maintain the status quo, this Court should grant Sheriff Marté's motion and preliminarily enjoin enforcement of Section 9(a)(3) before July 1.

FACTUAL BACKGROUND

I. Senate Enrolled Act 76

On March 5, 2026, Indiana Governor Mike Braun signed into law Senate Enrolled Act 76 ("SEA 76"), An act to amend the Indiana Code concerning state and local administration. SEA 76 makes significant changes to Chapter 18.2 of the Indiana Code, which governs the handling and exchange of citizenship and immigration status information and local participation in the enforcement of federal immigration laws.

Among the changes made by the new law is the addition of a new provision, Section 9, which governs how state and local governments must handle civil immigration detainer requests issued by ICE (commonly referred to as "ICE detainer requests"). Section 9 requires a governmental body that has custody of an individual who is the subject of an immigration detainer request to notify the judge and individual of that detainer, record the detainer in the

individual's case file, and "comply with all requests made in the immigration detainer request." Pub. L. No. 106 § 8(a) (to be codified at Ind. Code § 5-2-18.2-9). SEA 76 defines an "immigration detainer request" as "a request issued by an authorized immigration officer to a law enforcement agency to detain an individual pursuant to 8 CFR 287.7 or any successor provision or other applicable federal authority." Pub. L. No. 106 § 3 (to be codified at Ind. Code § 5-2-18.2-1.7). It does not require that an immigration detainer request be accompanied by either a judicial warrant or an administrative warrant.

Section 9 establishes a limited mechanism by which an individual subject to an immigration detainer request may challenge the request. *Id.* § 8(b). This mechanism requires that the individual subject to the detainer raise one of two specific grounds for challenging the detainer request, and it directs the governmental body, once a challenge is raised by the individual, to "contact the authorized immigration officer to determine whether the individual has been misidentified or is a citizen of the United States." *Id.* It does not authorize the governmental body or any of its employees to raise their own challenge to the detainer.

Although Section 9 provides that no governmental body or employee of such a body will be "criminally or civilly liable for any action taken in compliance with an immigration detainer request under this section," the release from liability only applies "as long as the action does not violate federal or state law." *Id.* § 8(c). The provision contains no exception to the mandatory requirement that state and local officials comply with detainer requests, even when compliance would violate federal or state law, nor does it authorize officers to end their compliance with an immigration detainer request that is being challenged or when an officer otherwise has reason to believe that the individual being detained is not removable.

Section 9, and the rest of Chapter 18.2, are enforceable through Section 5. As amended by SEA 76, that provision authorizes the Attorney General to seek both an injunction and “a civil penalty of not more than ten thousand dollars (\$10,000) for each knowing or intentional violation” of Chapter 18.2. Pub. L. No. 106 § 6 (to be codified at Ind. Code § 5-2-18.2-5).

The amendment to Section 5 of Chapter 18.2 was effective upon passage of the law. The new Section 9 of Chapter 18.2 will go into effect on July 1, 2026.

II. 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 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.”). 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.¹ 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. 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.

¹ ICE has posted a sample Form I-247A online. *See* DHS, *Immigration Detainer – Notice of Action* (Mar. 2017), <https://perma.cc/W58J-MWTF>.

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.²

No neutral magistrate reviews an ICE detainer or the purported finding of probable cause of removability contained therein before the detainer is 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.³

III. Sheriff Marté's Immigration Policy

In 2023, Sheriff Marté adopted MCSO-012 to establish how MCSO officers are to handle issues related to interactions with noncitizens and with ICE. Sheriff Marté revised MCSO-012 in 2024, 2025, and 2026. In drafting MCSO-012, Sheriff Marté sought to strike a balance between

² 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. ICE, *Policy Number 10074.2: Issuance of Immigration Detainers by ICE Immigration Officers 2* (Mar. 24, 2017), <https://perma.cc/W3KT-GDFP>. However, ICE maintains that there is no legal requirement that a detainer request be accompanied by an administrative warrant, *see id.* at 2 n.2, and Section 9 requires compliance with a detainer request whether or not accompanied by an administrative warrant, *see* Pub. L. No. 106 §§ 3, 8.

³ Following a Ninth Circuit decision that held that “[d]etaining persons for more than 48 hours pursuant to an immigration detainer implicates *Gerstein*,” *Gonzalez v. ICE*, 975 F.3d 788, 826 (9th Cir. 2020), 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* ICE, *Immigration Detainers* (May 13, 2025), <https://perma.cc/MYY4-7UVE>. But the agency maintains that such review is not required, and it has declined to extend these neutral review procedures to detainees issued elsewhere.

safeguarding constitutional rights and supporting the federal government's immigration enforcement efforts in compliance with state law. As currently written, 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 with DHS and other agencies. It also sets reasonable limits on the Office's engagement with federal immigration enforcement. Most notably, it directs officers not to detain someone past their release date based solely on a detainer request not accompanied by a judicial warrant (that is, a non-criminal or administrative detainer request). However, 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.

Because compliance with ICE detainer requests that are not accompanied by a judicial warrant would violate the Fourth Amendment rights of those detained and expose Sheriff Marté and MCSO to civil liability, Sheriff Marté does not believe that he can lawfully amend his policy to require officers to comply with Section 9. That leaves him in an impossible situation. If Sheriff Marté complies with Section 9 and directs his officers to honor ICE detainer requests, he will be forced to violate his oath to defend and uphold the U.S. Constitution. He also will face the imminent risk of a lawsuit from a detainee and the risk of substantial civil liability, potentially of millions of dollars.⁴ But if Sheriff Marté does not amend MCSO-012 to incorporate Section 9's mandatory detainer requirement, he risks being subject to an injunction and civil penalties of up to \$10,000 for each violation of the law. Pub. L. No. 106 § 6(b). That

⁴ See, e.g., Judgment, *Orellana Castaneda v. County of Suffolk*, No. 17-cv-4267 (E.D.N.Y. Nov. 12, 2025), Dkt. 287 (jury award of \$112 million in damages to class of people held in county jail solely on immigration detainers); *Orellana Castaneda v. County of Suffolk*, No. 17-cv-4267, 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 WL 2319643 (2d Cir. June 16, 2025).

risk is far from speculative—indeed, even before the passage of SEA 76, the Attorney General took issue with Sheriff Marté’s policy of directing MCSO officers not to honor ICE detainer requests without a judicial warrant, and he filed suit against Sheriff Marté and MCSO in state court over a prior version of MCSO-012.⁵

LEGAL STANDARDS

A plaintiff seeking preliminary injunctive relief must show “that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The Seventh Circuit “employs a sliding scale approach: the more likely the plaintiff is to win, the less heavily need the balance of harms weigh in his favor.” *Valencia v. City of Springfield*, 883 F.3d 959, 966 (7th Cir. 2018) (cleaned up). “The purpose of a preliminary injunction is to preserve the status quo pending a final hearing on the merits.” *Am. Hosp. Ass’n v. Harris*, 625 F.2d 1328, 1330 (7th Cir. 1980).

ARGUMENT

I. The Fourth Amendment Prohibits the Sheriff from Detaining an Individual Solely on the Basis of an ICE Detainer Request

The Fourth Amendment to the U.S. Constitution protects “[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. “[I]t is uncontroversial that the Fourth Amendment applies to [noncitizens] and citizens alike,” and immigration enforcement must therefore be conducted in a manner consistent with the Fourth Amendment. *Cotzojay v. Holder*, 725 F.3d 172, 181 (2d Cir. 2013).

⁵ That litigation has been stayed pending the outcome of this case. See Order Granting Motion for Stay, *Rokita v. Marté*, No. 53C06-2407-PL-001733 (Ind. Cir. Ct. Apr. 20, 2026).

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]henver 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).

Seizures pursuant to ICE detainer requests do not comply with these requirements. They therefore cannot satisfy the Fourth Amendment, and holding an individual on an ICE detainer, without more, would violate that individual’s constitutional rights. Indeed, courts in this district have consistently held that “seizures conducted solely on the basis of known or suspected civil immigration violations violate the Fourth Amendment when conducted under color of state law.” *See 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 Buquer v. City of Indianapolis*,

No. 1:11-cv-00708, 2013 WL 1332158, at *11 (S.D. Ind. Mar. 28, 2013). This Court should reach the same conclusion and enjoin Section 9, which would require such constitutional violations.

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.

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). 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 stylized as “administrative warrants,” those too are signed by ICE immigration officers rather than neutral magistrates. ICE, *Policy Number 10074.2: Issuance of Immigration Detainers by ICE Immigration Officers 2* (Mar. 24, 2017), <https://perma.cc/W3KT-GDFP>.

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. Neither does Section 9. And ICE policy does not

provide for neutral review of the detainer after an individual is taken into custody in Indiana. 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”).

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*, 296 F. Supp. 3d at 976; *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. Numerous courts—including in this district—have held that arrests by local officers solely in response to detainer requests therefore violate the Fourth Amendment. *See, e.g., Lopez-Aguilar*, 296 F. Supp. 3d at 976; *Buquer*, 2013 WL 1332158, at *11; *Davila v. N. Reg’l Joint Police Bd.*, 370 F. Supp. 3d 498, 514 (W.D. Pa. 2019); *Orellana v. Nobles County*, 230 F. Supp. 3d 934, 944 (D. Minn. 2017). And Section 9 requires blanket compliance with *all* ICE detainer requests, with no inquiry into whether there is probable cause of any criminal violation. The provision therefore requires state and local officers to violate the Fourth Amendment. *See C.F.C. v. Miami-Dade County*, 349 F. Supp. 3d 1236, 1259 (S.D. Fla. 2018) (concluding that plaintiffs plausibly alleged that “the County violated their Fourth

Amendment rights when it arrested [them] based on a detainer and without probable cause that either of them had committed a crime”).

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 marks and citation omitted).

In a few narrow circumstances, courts have allowed seizures in the civil context. A court in this district 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, a court in this district found history “silent or equivocal” on whether such detentions are reasonable⁶ and held that “the balance of interests” weighed “decisively” against them, given that immigration is a matter of federal concern and state and local governments have “no legitimate interest in effecting the seizure.” *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.

The fact that an ICE detainer can be understood as a request for assistance by 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,⁷ local law enforcement do not—even if the seizure is made at ICE’s request. “The Government of the United States has broad, undoubted power over

⁶ 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 it is far from equivocal about whether there is a tradition of warrantless detentions of noncitizens by *state and local* officials: there is no such tradition because immigration enforcement has historically been a matter of exclusively federal concern. *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.”).

⁷ 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.

the subject of immigration and the status of” immigrants. *Arizona*, 567 U.S. at 394. But “the system Congress created” specifies only “limited circumstances in which state officers may perform the functions of an immigration officer.” *Id.* at 408. “Only when acting under color of federal authority, that is, as directed, supervised, trained, certified, and authorized by the federal government, may state officers effect constitutionally reasonable seizures for civil immigration violations.” *Lopez-Aguilar*, 296 F. Supp. 3d at 977.

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)); *Arizona*, 567 U.S. at 410 (excluding compliance with detainer requests from a list of examples of acceptable cooperation). Indeed, the cooperation clause does not reference or require any training or supervision of local officials in carrying out such detentions, as the Fourth Amendment requires. If local law enforcement could constitutionally arrest individuals for alleged civil immigration violations any time they were responding to a federal request, the elaborate training, supervision, and certification requirements for 287(g) agreements would be pointless. *See C.F.C.*, 349 F. Supp. 3d at 1259.

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 implicated 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.” *Id.*

C. 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 the Fourth Amendment, Section 9’s mandate would still require

local officers to violate the Constitution. Because the state law flatly requires compliance with detainer requests in all circumstances, it does not allow for the particularized inquiry into probable cause required by the Fourth Amendment. Moreover, ICE detainer requests provide nothing beyond a bare assertion that federal authorities have probable cause, and that assertion is frequently incorrect—ICE has repeatedly issued wrongful detainer requests for U.S. citizens and other individuals who are not subject to removal. 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. The Seventh Circuit has never extended the collective knowledge doctrine to the immigration context, and in any event, detainers do not contain sufficient information about probable cause for the doctrine to apply.

1. Section 9 does not allow officers to make individualized determinations of probable cause.

Section 9 does not provide any opportunity for local law enforcement to assess for themselves whether there is any probable cause to support the detention of an individual. Instead, the law sets a blanket requirement that officers “comply with *all* requests made in the immigration detainer request,” Pub. L. No. 106 § 8(a)(3) (emphasis added); the request itself is meant to be substituted for any local law enforcement inquiry into probable cause. In other words, local officers must arrest an individual based solely on the existence of an ICE detainer request, even where they harbor reasonable doubts about probable cause of removability.

That cannot be reconciled with the Fourth Amendment, which requires a particularized inquiry into probable cause. The Supreme Court has repeatedly emphasized that probable cause cannot be established by blanket rule. *See, e.g., Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) (rejecting proposed rule that a person present in an area where criminal activity is expected can be reasonably suspected of committing a crime). Instead, “a search or seizure of a person must be

supported by probable cause particularized with respect to that person.” *Pringle*, 540 U.S. at 373 (quoting *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979)).

The Fourth Amendment also requires that local officers be allowed to assure themselves that probable cause exists. *Moore v. The Marketplace Rest.*, 754 F.2d 1336, 1345-46 (7th Cir. 1985) (“[I]t is incumbent upon law enforcement officials to make a thorough investigation and exercise reasonable judgment before invoking the awesome power of arrest and detention.”). There are many situations in which local officers might doubt whether an individual for whom they receive an ICE detainer request is actually removable. For instance, the circumstances or the detainer request itself may suggest a possible case of mistaken identity; an officer may personally know the detainee and his status; or the detainee may reveal information that undermines probable cause. An officer may also receive a detainer request that is flawed or incomplete, as when ICE fails to check any boxes indicating the existence of probable cause.

In any of these situations—which, as discussed *infra*, are not uncommon—Section 9 would still require the local officer to honor the ICE detainer request and continue to detain the individual. Indeed, while Section 9 provides a mechanism for “[a]n individual who is the subject of an immigration detainer request” to “challenge the immigration detainer request,” it provides no means for an officer to *sua sponte* raise a concern about a potential error in the request. Pub. L. No. 106 § 8(b). Nor does the law allow a local officer to unilaterally decide to cease compliance with a detainer request or release an individual. All an officer is authorized to do under the law is “contact the authorized immigration officer to determine whether the individual has been misidentified or is a citizen of the United States” once the individual has raised that concern. *Id.* But such unquestioning adherence to a detainer request is not allowable: “A police officer may not close her or his eyes to facts that would help clarify the circumstances of an

arrest.” *BeVier v. Hucal*, 806 F.2d 123, 128 (7th Cir. 1986). And “[t]he continuation of even a lawful arrest violates the Fourth Amendment when the police discover additional facts dissipating their earlier probable cause.” *Id.*; *see also Brown v. Ramsay*, 785 F. Supp. 3d 1214, 1219-20, 1225-28 (S.D. Fla. 2025) (holding that a policy of honoring ICE detainer requests with no additional investigation violated the plaintiff’s Fourth Amendment rights when he flagged that he was a citizen); *Villars v. Kubiowski*, 45 F. Supp. 3d 791, 797, 802 (N.D. Ill. 2014) (similar). Section 9 therefore strips local law enforcement of their ability to comply with their constitutional obligation to decline to arrest where they doubt probable cause exists.

2. 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.⁸ 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 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.

Moreover, Section 9 requires compliance with all ICE detainer requests, whether or not the request is based on probable cause. And although it is ICE’s current policy to assert that there

⁸ 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.*” DHS, *Immigration Detainer – Notice of Action* (Mar. 2017), <https://perma.cc/W58J-MWTF> (emphasis added).

is probable cause of removability, 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 WL 914773, at *3 (C.D. Cal. Feb. 7, 2018).

Even when ICE detainer requests do allege that there is probable cause that an individual is removable, they are frequently inaccurate. Courts have questioned the data underlying ICE's probable cause determinations. *See, e.g., Gonzalez v. ICE*, 975 F.3d 788, 797, 811-12 (9th Cir. 2020) (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 probable cause. *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*, 785 F. Supp. 3d at 1219-20, 1230 (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 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* María Luisa Paúl, *Here Are the U.S. Citizens Caught in Trump’s Immigration Crackdown*, Wash. Post (May 3, 2025), <https://perma.cc/WWJ9-497Z>; *see also* Transactional Records Access Clearinghouse, *ICE Detainers Placed on U.S. Citizens and Legal Permanent Residents* (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), <https://perma.cc/3YJC-VYKC>; Eyder Peralta, *You Say You’re an American, but What if You Had to Prove It or Be Deported?*, NPR (Dec. 22, 2016) (documenting 693 U.S. citizens held in local jails and 818 more held in immigration detention centers from 2007 through 2015), <https://perma.cc/X4PR-85ZD>; ACLU, *Recent Cases of U.S. Citizens Subjected to Unlawful Immigration Detainers* (Aug. 20, 2015), <https://perma.cc/V5Q7-VGXQ>.

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.” *United States v. Hensley*, 469 U.S. 221, 232 (1985); *see also 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”). But that is exactly what Section 9 requires. Despite the fact that the I-247A form does not communicate the basis for ICE’s probable cause determination or the certainty of that determination, local law enforcement must unquestioningly comply with “all requests” it makes. Pub. L. No. 106 § 8(a). And nothing in the law limits that obligation to situations in which ICE alleges probable cause of removability at all. Even if ICE altered its policy to no longer require that detainer requests be based on probable cause, Section 9 would still mandate that local law enforcement comply with a request to detain

an individual. The law therefore requires that local law enforcement act in disregard of the basic requirements of the Fourth Amendment.

3. 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 WL 2820143, at *6 (D. Or. May 30, 2020) ("[T]he collective knowledge doctrine applies to cases of criminal investigation."). The Seventh Circuit has applied the collective knowledge doctrine only to criminal investigations, and it has 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"). There is no reason for this Court to do so. 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).

Even if the collective knowledge doctrine could apply in the immigration context, ICE detainees do not provide the level of communication and cooperation between the directing and arresting officers required for probable cause to be imputed. The Supreme Court recognized the collective knowledge doctrine in the context of brief investigatory stops, reasoning that the time-sensitive need to communicate information about a fleeing suspect could justify imputing probable cause in light of the minimal intrusion that occurs during such stops. *Hensley*, 469 U.S. at 231 (officers may rely on police bulletins in making traffic stops because “the intrusion on personal security is minimal”). The Seventh Circuit has expressed hesitation about applying the doctrine to more intrusive police actions, and it has held that such actions require “increased specificity” in the information communicated and “more exigent circumstances,” such as a crime in progress. *United States v. Celio*, 945 F.2d 180, 183-84 (7th Cir. 1991).

ICE detainees do not meet this standard. *See Ochoa*, 266 F. Supp. 3d at 1258. ICE detainees 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 elaborate on any 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 detainee request itself. *Id.* at 1258. That is insufficient

to establish collective knowledge. *See Lopez-Flores*, 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.

D. The Fifth Circuit’s contrary conclusion in *El Cenizo* was based on flawed reasoning and distinguishable facts.

Although the Fifth Circuit in *City of El Cenizo v. Texas*, 890 F.3d 164 (5th Cir. 2018), upheld the constitutionality of a state law similar to Section 9, that decision both involved different facts and rested on incorrect conclusions about what the Fourth Amendment requires. Factually, the state law at issue in *El Cenizo* exempted state and local law enforcement agencies from complying with ICE detainer requests “when the individual in custody ‘has provided proof that the person is a citizen of the United States or that the person has lawful immigration status in the United States, such as a Texas driver’s license or similar government-issued identification.’” 890 F.3d at 185 (quoting Tex. Code Crim. Proc. art. 2.251(b)). As a result, the Fifth Circuit concluded that the “plaintiffs [were] . . . wrong to suggest that the ICE-detainer mandate requires officers to ignore facts that negate probable cause” and that a Fourth Amendment violation was therefore unlikely. *Id.* at 189. But as discussed, *supra* pp. 19-20, the same is not true here. Section 9 requires exactly the sort of “blind obedience” to ICE detainer requests that was not present in *El Cenizo*, making it significantly more likely that state and local law enforcement will detain an individual unlawfully. *Id.* Indeed, the court in *El Cenizo* recognized that “compliance with ICE’s requests would violate the Fourth Amendment” if local law enforcement detained individuals “where probable cause was lacking.” *Id.* at 189-90. That is the precise situation that Section 9 will put law enforcement officers in if allowed to go into effect.

The Fifth Circuit in *El Cenizo* also reached conclusions about Fourth Amendment doctrine and immigration law that are inconsistent with the consensus of courts elsewhere, including in this Circuit, and it did so based on inadequate exploration of the issues. For example, *El Cenizo* held that the Fourth Amendment does not require probable cause of criminality to detain in the immigration context, but it did so without considering the significant differences between the immigration context and the contexts in which civil detentions have historically been allowed. 890 F.3d at 188; *see also supra* pp. 14-16. 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, concluding merely that “federal immigration officers may seize [individuals] based on an administrative warrant attesting to probable cause of removability” without explaining why the same would be true for local officers. *El Cenizo*, 890 F.3d at 187; *see also supra* pp. 16-18. And it held that the collective knowledge doctrine applies to the immigration context without explaining how a bare request to detain can “provide[] the required communication.” *El Cenizo*, 890 F.3d at 187 (internal quotation mark and citation omitted); *see supra* pp. 23-25. Those conclusions are contrary to those reached by many other courts, including in this district. *See Lopez-Aguilar*, 296 F. Supp. 3d at 975; *Buquer*, 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.

Finally, the Fifth Circuit overread the Supreme Court’s decision in *City of Los Angeles v. Patel*, 576 U.S. 409 (2015), to set too high a bar for a Fourth Amendment challenge to a state law. The court acknowledged that *Patel* directed courts to “consider only applications of the challenged statute in which it actually authorizes or prohibits conduct.” *El Cenizo*, 890 F.3d at 187 (cleaned up). But it went on to consider not the conduct required by the state law at issue,

but instead what it understood to be required by ICE’s current policies. *Id.* at 189-90. In doing so, the court noted that while the state law lacked procedural protections against Fourth Amendment violations, such violations were not guaranteed to occur, and so they could not be addressed through a facial challenge. *Id.* at 190. *Patel* held precisely the opposite. There, the Supreme Court invalidated a statute in a facial, pre-enforcement challenge because the law authorized warrantless searches without incorporating a procedural safeguard the Fourth Amendment required to be available in every case. 576 U.S. at 419-21. The statute’s inconsistency with the procedural requirements of the Fourth Amendment was fatal even though, as the Court noted, the safeguard would “rare[ly]” be invoked and “the vast majority” of searches under the challenged statute would be unobjectionable. *Id.* at 421, 427. The same is true here. Section 9 fails to provide even basic protections against unlawful seizures or to satisfy the foundational requirements of the Fourth Amendment, and it is therefore invalid on its face.

II. Sheriff Marté Satisfies the Other Requirements for a Preliminary Injunction

For the reasons explained above, Sheriff Marté is likely to succeed on the merits of his claim that Section 9 violates the Fourth Amendment, rendering injunctive relief necessary to prevent imminent violations of constitutional rights. Under this Circuit’s sliding scale approach, that likelihood of success weighs strongly in favor of a preliminary injunction. *See Valencia*, 883 F.3d at 966. But the remaining injunctive factors also strongly support injunctive relief. Such relief is appropriate and necessary to ensure that the Sheriff—and the public as a whole—are not subject to an unconstitutional provision of law.

Sheriff Marté will suffer irreparable harm if the Court does not enjoin Section 9 of Chapter 18.2 before it goes into effect. The law requires him to violate his oath to uphold the Constitution by directing his officers to engage in conduct that violates the Fourth Amendment

rights of those they are sworn to protect and defend. And the law would also expose MCSO to significant risk of civil liability to those individuals who officers would be required to detain in compliance with ICE detainer requests. *See, e.g.,* Judgment, *Orellana Castaneda v. County of Suffolk*, No. 17-cv-4267 (E.D.N.Y. Nov. 12, 2025), Dkt. 287 (jury award of \$112 million in damages to class of people held in county jail solely on immigration detainers). Those actions, and the associated harms, cannot be undone.

The third and fourth preliminary injunction factors also weigh in favor of granting relief. Because enforcement of an unconstitutional law is always contrary to the public interest, “the public interest is not harmed by preliminarily enjoining the enforcement of a statute that is probably unconstitutional.” *Higher Soc’y of Ind. v. Tippecanoe County*, 858 F.3d 1113, 1116 (7th Cir. 2017) (citation omitted). Indeed, a preliminary injunction here would ensure that a statute requiring the unlawful detention of individuals does not go into effect, protecting the public from irreparable harm caused by the violation of constitutional rights. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976). And a preliminary injunction is all the more warranted because it would merely preserve the status quo, pausing the enactment of a new statutory mandate until this Court can rule on its constitutionality. *Harris*, 625 F.2d at 1330.

Moreover, any possible harm to the government if preliminarily enjoined from enforcing Section 9 cannot outweigh the severe harm that would result to Sheriff Marté and the public more broadly if the law were allowed to go into effect. The Attorney General has no interest in assisting in immigration enforcement, a matter of federal concern. *See Lopez-Aguilar*, 296 F. Supp. 3d at 977. Sheriff Marté, on the other hand, has a significant interest in having policies in place that both ensure that his officers do not violate individuals’ constitutional rights and protect public safety. In enacting MCSO-012, Sheriff Marté relied on his best understanding of the U.S.

Constitution and directed his officers not to take actions that would put the constitutional rights of individuals in the community at risk. He also exercised his judgment that the law enforcement needs of the County are best met by prioritizing enforcement of criminal laws rather than assisting in federal immigration enforcement. And he determined that the Office's active engagement in immigration enforcement could build harmful walls between officers and the community, which could make it less likely that residents would report violations of the law and assist in any resulting investigations and prosecutions. Requiring MCSO officers to honor all ICE detainer requests would distract them from their core law enforcement responsibilities and weaken the trust of the community, undermining public safety for all—immigrants and U.S. citizens alike.

Forcing Monroe County to hold people in extended custody on purely non-criminal grounds without a judicial warrant could also subject the County to substantial risk of liability for federal civil rights violations. This liability would be borne by the Sheriff's Office—not the Attorney General—and would further deplete the pool of money to be used in the way that the Sheriff views as best for the residents of the County.

In light of these clear harms to Monroe County, its residents, and the public interest, this Court should enjoin Section 9 of Chapter 18.2.

CONCLUSION

For the reasons stated herein, this Court should grant Sheriff Marté's motion for a preliminary injunction and enjoin Section 9(a)(3) from going into effect on July 1, 2026.

Dated: April 30, 2026

Respectfully submitted,

/s/ Alexandra Lichtenstein

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CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2026, I electronically filed the foregoing brief using the CM/ECF system. I further certify that a copy of the foregoing will be served by mail upon Defendant Todd Rokita, for whom counsel has not yet entered an appearance.

/s/ Alexandra Lichtenstein
Alexandra Lichtenstein