

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

*Defendants/Counter-
Claimants.*

**DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S
AMENDED MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION

The Attorney General is correct that what remains of his claims against Sheriff Ruben Marté and the Monroe County Sheriff's Office (collectively, "Sheriff Marté") presents a question of law that is ripe for summary judgment. And the parties agree that "[n]othing has changed in this case or in Indiana law" to alter the legal arguments about whether compliance with immigration detainer requests violates the Fourth Amendment and the Indiana Constitution. Pl.'s Suppl. Mem. in Supp. Mot. Summ. J. ("Pl.'s Br.") 8. But because the Attorney General's interpretation of Section 4 runs counter to the requirements of the Fourth Amendment and the Indiana Constitution—as recognized by significant precedent—he is wrong about how this motion should be resolved. It is Sheriff Marté, not the Attorney General, who is entitled to summary judgment.

As Sheriff Marté has consistently explained, detaining individuals based solely on an administrative immigration detainer request violates the Fourth Amendment to the U.S. Constitution and Article 1, Section 11 of the Indiana Constitution. Therefore, Sheriff Marté's policy barring compliance with such requests necessarily falls outside the scope of Section 4, which expressly exempts policies that restrict actions that would violate state or federal law. In other words, if the Court finds that local law enforcement cannot constitutionally detain someone based solely on an immigration detainer request, then the Sheriff's policy cannot violate Section 4.

The Attorney General attempts to argue in the alternative that even if Sheriff Marté's view of the Fourth Amendment and its state analog were correct, his

policy would still violate Section 4, as there are at least some circumstances in which detainer compliance without a judicial warrant would be lawful. But no such circumstances exist. The Sheriff's policy maps the constitutional boundaries: in the absence of a judicial warrant, compliance with *any* immigration detainer request would violate federal and state law, no matter the circumstances. The Attorney General's motion for summary judgment should be denied.

ARGUMENT

I. Compliance with ICE Detainer Requests Absent a Judicial Warrant Violates the U.S. and Indiana Constitutions

Seizures pursuant to ICE detainer requests do not comply with the Fourth Amendment or the Indiana Consitution because the requests are not accompanied by judicial warrants or subject to prompt judicial review by a neutral magistrate, and are not based on probable cause of a crime. *See* Defs.' Mem. in Supp. Am. Mot. Summ. J. ("Defs.' Br.") 17-28. The Attorney General's arguments resisting this conclusion are largely premised on the mistaken assumption that if federal officers can detain a noncitizen on probable cause of removability and an administrative warrant, then local officers must be able to do the same based on a federal request.¹

¹ The Attorney General's arguments about the number of immigration detainer requests the Sheriff receives and the purported "dangerousness" of the individuals for whom those requests are made are irrelevant to the purely legal question of whether compliance with such requests violates the Fourth Amendment. *See* Pl.'s Br. 5-6. The facts cited by the Attorney General are also far from undisputed—the Attorney General focuses on a particular person who he alleges the Sheriff released despite being subject to an immigration detainer request, *id.*, but ICE did not send MCSO a detainer request until after the individual had been released. *See* Defs.' Mem. in Supp. Mot. Summ. J. 19 (Dec. 23, 2025). Moreover, as the Sheriff has

Whether *federal* officers may arrest a person based solely on probable cause of removability is not the question before the Court² and, even if they may, the Attorney General is wrong to suggest that “local officers can do the same without violating the Fourth Amendment.” Pl.’s Br. 9. As Sheriff Marté explained in his amended motion for summary judgment, state and local law enforcement are differently situated than federal immigration officers, *see* Defs.’ Br. 28-31, and “[n]umerous 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 [violation],” *C.F.C. v. Miami-Dade County*, 349 F. Supp. 3d 1236, 1259 (S.D. Fla. 2018) (emphasis added); *see also id.* at 1259-61 (collecting cases).

The Supreme Court has made clear that immigration enforcement is a matter of federal concern over which state and local officials have no independent authority, and the system Congress created for immigration enforcement vests primary responsibility in the federal government. *See Arizona v. United States*, 567 U.S. 387, 394-96, 409-10 (2012). Where state and local officers have a role to play,

explained, MCSO officers frequently notify federal immigration officials about upcoming hearings or individuals’ release dates, but ICE is often nonresponsive. *See* Defs.’ Br. 8-9.

² This case does not call into question any immigration enforcement activities by federal officers or ask the Court to decide if detentions by those officers are constitutional. *Contra* Pl.’s Br. 12 (“Defendants’ argument amounts to the assertion that all detentions by *any* officer for civil-immigration offenses are unconstitutional.” (emphasis added)). The Sheriff’s argument is that whether or not federal officers may arrest a person based solely on probable cause of removability, local law enforcement may not. *See* Defs.’ Br. 28.

Congress has explicitly and narrowly defined it. *See id.* at 408 (“[T]he system Congress created . . . specifies limited circumstances in which state officers may perform the functions of an immigration officer.”). As relevant here, state and local officers lack the power to act as federal officials and perform arrests for civil immigration violations unless they are authorized, directed, supervised, and trained by federal officials pursuant to a 287(g) agreement under 8 U.S.C. § 1357(g)(1). *See Lopez-Aguilar v. Marion Cty. Sheriff’s Dep’t*, 296 F. Supp. 3d 959, 978 (S.D. Ind. 2017) (noting that courts have 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, “will authorize state enforcement of civil immigration violations” (citing *Santos v. Frederick Cty. Bd. of Comm’rs*, 725 F.3d 451, 463-66 (4th Cir. 2013))), *rev’d on other grounds*, 924 F.3d 375 (7th Cir. 2019); *see also Melendres v. Arpaio*, 695 F.3d 990, 1000-01 (9th Cir. 2012) (holding that local officers are differently situated from federal officers and cannot arrest for civil immigration offenses without being granted the powers of a federal officer through a 287(g) agreement).

Putting state and local officers “in the position of holding aliens in custody for possible unlawful presence without federal direction or supervision” would “disrupt” the framework Congress created. *Arizona*, 567 U.S. at 413. A 287(g) agreement subjects state and local officers to extensive training and supervision that allows them to stand in the shoes of federal officers. *See id.* at 408-09. The request for assistance in the detainer itself cannot supply the requisite federal oversight. *See*

City of Gary v. Nicholson, 181 N.E.3d 390, 409 (Ind. Ct. App. 2021), *vacated on trans.*, 190 N.E.3d 349 (Ind. 2022); *Lopez-Aguilar*, 296 F. Supp. 3d at 974. Nor does general federal permission to cooperate in federal immigration enforcement, as in 8 U.S.C. § 1357(g)(10)(B), permit local law enforcement to constitutionally detain someone. Section 1357(g)(10)(B) is merely a savings clause that clarifies that a 287(g) agreement is not required for certain types of cooperation with federal immigration officials, and does not authorize local officers to stand in the shoes of federal officers based on a detainer request. *See* Defs.’ Br. 29-30 (citing cases).³

In arguing that local officers may detain individuals under the same circumstances as federal officers, the Attorney General continues to rely on *Virginia v. Moore*, 553 U.S. 164 (2008). *See* Pl.’s Br. 9-10. But as the Sheriff has repeatedly pointed out, nothing in *Moore* supports the principle for which the Attorney General cites it. In *Moore*, the Supreme Court held that constitutional reasonableness does not change based on state law requirements in the context of considering whether an arrest based on probable cause but barred by state law violated the Fourth Amendment. *See* 553 U.S. at 171. It did not address whether an action that is

³ For this reason, it makes no difference whether or not § 1357(g)(10)(B) is entitled to a “presumption of constitutionality.” Pl.’s Br. 10 (citation omitted). The statute simply does not confer upon state and local officers a “free-floating” right to act as federal immigration officers based on bare requests for assistance. *Lopez-Aguilar*, 296 F. Supp. 3d at 975. Similarly, although the Attorney General also cites 8 C.F.R. § 287.7(a), that regulation merely authorizes federal officers to issue detainer requests and says nothing about whether state and local officers may constitutionally comply with them. And more importantly, it is the responsibility of courts, not the agency, “to say what the law is.” *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024) (quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803)); *see also infra* note 4.

constitutional when taken by a federal officer must also be constitutional when taken by a local officer. And the Supreme Court’s subsequent decision in *Arizona* recognizes that the actions that state and local officers may take consistent with the Fourth Amendment may be more limited. *Compare Arizona*, 567 U.S. at 413 (non-federal officials performing stops to verify immigration status raises Fourth Amendment concerns), *with United States v. Brignoni-Ponce*, 422 U.S. 873, 884-85 (1975) (Border Patrol may stop vehicles on reasonable suspicion of removability).

The Attorney General also continues to rely on the collective knowledge doctrine, which he says allows local law enforcement to rely on the probable cause determination of a federal immigration officer. *See* Pl.’s Br. 13. But as Sheriff Marté has explained, probable cause of removability is insufficient to support detention by local officers. *See* Defs.’ Br. 23-28. And even if it were enough, and ICE in some cases possessed such probable cause, that probable cause could not be imputed to MCSO officers. Not only is it far from clear that the collective knowledge doctrine applies in the civil immigration context, *see id.* at 35-36, but immigration detainer requests by design also fail to provide the level of communication and cooperation between the directing and arresting officers required to impute probable cause in any event, *see id.* at 36-37. Thus, the Attorney General’s efforts to rely on the collective knowledge doctrine are unpersuasive.

Equally unpersuasive is the Attorney General’s effort to dismiss all of the cases cited by Sheriff Marté—including cases from the Indiana Court of Appeals and the federal district in which the Sheriff could potentially face a lawsuit over his

detention practices—simply because they came to different conclusions than the Fifth Circuit in *City of El Cenizo v. Texas*, 890 F.3d 164 (5th Cir. 2018). *See* Pl.’s Br. 10-12. As Sheriff Marté has explained, the Fifth Circuit’s decision was based on flawed and conclusory reasoning about how Fourth Amendment doctrine should apply in the immigration context. *See* Defs.’ Br. 37 (explaining that the Fifth Circuit failed to address how the historical justifications underlying the narrow civil exceptions apply to ICE detainers, whether the differences in authority to engage in immigration enforcement should affect the reasonableness analysis, or why an ICE detainer contains sufficient information to trigger the collective knowledge doctrine); *see also id.* at 38 n.16 (noting that even in *City of El Cenizo*, the Fifth Circuit acknowledged that honoring ICE detainer requests can, in practice, violate the Fourth Amendment). The cases cited by the Sheriff—including those from courts in this state—are more directly applicable to this lawsuit, contain more thorough reasoning, and are far more persuasive. *See* Defs.’ Br. 19-28; *see also, e.g., City of Gary*, 181 N.E.3d at 406-13; *Lopez-Aguilar*, 296 F. Supp. 3d at 975-78; *Buquer v. City of Indianapolis*, No. 1:11-cv-00708, 2013 U.S. Dist. LEXIS 45084, at *35-40, 2013 WL 1332158, at *10-11 (S.D. Ind. Mar. 28, 2013).

As in prior rounds of briefing, the Attorney General seeks to undermine the persuasive value of these cases on various grounds. First, he notes that the *City of Gary* and *Lopez-Aguilar* decisions were vacated for jurisdictional reasons. Pl.’s Br. 11. But the Indiana Supreme Court and the Seventh Circuit, respectively, did not address the reasoning of these decisions on the merits, so that reasoning remains

persuasive. *See City of Gary v. Nicholson*, 190 N.E.3d 349, 351-52 (Ind. 2022) (finding that the plaintiffs failed to allege a sufficient injury for standing purposes); *Lopez-Aguilar v. Marion Cty. Sheriff's Dep't*, 924 F.3d 375, 393-98 (7th Cir. 2019) (finding that the plaintiff lacked standing to seek equitable relief under *Lyons*).

Next, the Attorney General emphasizes that in *City of Gary*, the Court of Appeals did not discuss “the relevant Supreme Court precedents, such as *Abel*,” relied upon the Attorney General here. Pl.’s Br. 12. But the Indiana Court of Appeals *did* address *Abel v. United States*, 362 U.S. 217 (1960), observing that in that case, the Supreme Court declined to decide the constitutionality of detainers and administrative warrants under the Fourth Amendment. *See City of Gary*, 181 N.E.3d at 409 n.12. And the Court of Appeals further recognized some of the important differences between actions taken by federal officers, which were at issue in *Abel*, and those taken by state and local officers. *See id.* at 398-99, 407-13.

Finally, the Attorney General asserts that there has been a change in ICE policy since *Buquer* was decided. Pl.’s Br. 11. But he fails to explain why that change—requiring detainer requests to be accompanied by administrative warrants attesting to probable cause of removability—would have altered the court’s reasoning or holding in the case. *See Buquer*, 2013 U.S. Dist. LEXIS 45084, at *38-39, 2013 WL 1332158, at *11 (noting that even the state law at issue required local officers to possess “a removal order from an immigration court, a detainer or notice of action from DHS, or probable cause to believe that an individual was indicted or convicted of an aggravated felony” before conducting an arrest, “being in possession of any of

th[ose] documents” still would “not provide lawful cause for arrest under the Fourth Amendment”).

The Attorney General offers several other responses to Sheriff Marté’s arguments about why compliance with ICE detainer requests violates the Fourth Amendment, but they fare no better.

First, he emphasizes that the Fourth Amendment “does not require warrants to be based on probable cause of a crime, as opposed to a civil offense.” Pl.’s Br. 12. But there are only a few narrow exceptions to the general rule that a seizure requires probable cause of a crime, as for “seizures under writs of bodily attachment,” “bench warrants for civil contempt of court,” and “seizures to effect involuntary commitments” to prevent harm to the individual or others. *Lopez-Aguilar*, 296 F. Supp. 3d at 978. The justifications underlying these strictly limited exceptions are wholly absent here. Such seizures are reasonable under the Fourth Amendment because they are part of longstanding historical practice and because the limited degree of intrusion upon an individual’s privacy is outweighed by a particularly strong government interest. *See Wyoming v. Houghton*, 526 U.S. 295, 299-300 (1999); *see also* Defs.’ Br. 26-27 (discussing the history and government interests implicated by these exceptions).

The same cannot be said of detentions by local officials based on immigration detainer requests. The Attorney General’s examples of *federal* immigration enforcement cannot establish a historical tradition of warrantless detention of noncitizens by *local* officials—no such tradition exists. And since immigration has

historically been a matter of federal concern, the balance of interests weighs in favor of individual privacy. *See Lopez-Aguilar*, 296 F. Supp. 3d at 977. Indeed, the detention here “intrudes so severely on interests protected by the Fourth Amendment as necessarily to trigger the traditional safeguards against illegal arrest”—that is, that there be probable cause of a crime. *Dunaway v. New York*, 442 U.S. 200, 216 (1979); *see also City of Gary*, 181 N.E.3d at 409 (following the “numerous decisions of federal circuit and district courts that detentions based only on civil immigration violations violate the Fourth Amendment”); Order Granting Prelim. Inj. ¶ 22 (June 30, 2026) (noting that Sheriff Marté had advanced “logical and persuasive arguments with case law support for his position that a number of jurisdictions, including the Indiana Court of Appeals and the Southern District of Indiana, . . . 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 the Fourth Amendment).

Second, the Attorney General contends that a probable cause hearing need not take place before or after ICE issues a detainer, because this requirement only applies in criminal proceedings and because there can be no violation of this requirement in any event if a person is released before the 48-hour mark. Pl.’s Br. 13-14. But he is wrong on both fronts.

To begin, the Fourth Amendment principle articulated in *Gerstein v. Pugh*, 420 U.S. 103 (1975), “applies to the civil immigration context.” *Gonzalez v. ICE*, 975 F.3d 788, 824 (9th Cir. 2020). In arguing otherwise, the Attorney General relies on

United States v. Tejada, 255 F.3d 1, 3 (1st Cir. 2001), and *Carlson v. Landon*, 342 U.S. 524, 537 (1952). Pl.’s Br. 14. But those cases involve “different context[s]” and therefore “ha[ve] no bearing on whether *Gerstein* applies to arrests or detention for civil immigration purposes.” See *Gonzalez*, 975 F.3d at 825. *Tejada* concluded that the Federal Rules of Criminal Procedure do not govern immigration detention. See 255 F.3d at 3-5. As the court in *Gonzalez* observed, that reasoning “is irrelevant to the constitutional issue here.” 975 F.3d at 825 n.26. *Carlson* considered whether the denial of bail to noncitizen Communists being held pending deportation, based solely on legislative findings about a particular class of noncitizens and without individualized determinations of dangerousness or flight, violated the Due Process Clause of the Fifth Amendment and the Excessive Bail Clause of the Eighth Amendment. See 342 U.S. at 537-46. It did not address the Fourth Amendment, much less the applicability of *Gerstein* in this context. And while *Carlson* did state that “[d]eportation is not a criminal proceeding and has never been held to be punishment,” Pl.’s Br. 14 (quoting 342 U.S. at 537), that does not resolve whether the *Gerstein* protection attaches. See *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980) (noting that the Supreme Court has “jealously guarded” the “requirement of neutrality” in “both civil and criminal cases”); *Gerstein*, 420 U.S. at 125 (noting that its rule applies whenever there is “any significant pretrial restraint of liberty,” not merely when there is a criminal arrest).

The Fourth Amendment applies to immigration detentions and demands the same baseline standards as other detentions. See *Morales v. Chadbourne*, 793 F.3d

208, 215 (1st Cir. 2015) (finding it clearly established that “immigration stops and arrests [are] subject to the same Fourth Amendment requirements that apply to other stops and arrests—reasonable suspicion for a brief stop, and probable cause for any further arrest and detention”). Indeed, courts have consistently applied standard Fourth Amendment rules to immigration searches and seizures, often relying exclusively on criminal cases. *See, e.g., Brignoni-Ponce*, 422 U.S. at 880-81 (applying *Terry v. Ohio*, 392 U.S. 1 (1968)); *United States v. Ortiz*, 422 U.S. 891, 896-97 (1975) (traffic checkpoint searches); *Almeida-Sanchez v. United States*, 413 U.S. 266, 269-70 (1973) (roving patrol searches). That is important because eliminating Fourth Amendment protections in the immigration context would subject U.S. citizens and noncitizens alike to “unfounded invasions of liberty.” *Gerstein*, 420 U.S. at 112. Because immigration detention imposes the same “serious” consequences as criminal pretrial detention, *id.* at 114, and carries a similar danger of unilateral police action, neutral review is equally important in that context. *Cf. Parham v. J.R.*, 442 U.S. 584, 606 (1979) (civil involuntary commitment requires initial review “by a neutral factfinder” because “the risk of error . . . is sufficiently great” (citation omitted)); *Marshall v. Barlow’s, Inc.*, 436 U.S. 307, 322-23 (1978) (civil administrative searches require review by a “neutral officer” because “warrantless searches devolve[] almost unbridled discretion upon executive and administrative officers”). That the immigration context is distinct from the criminal context does not establish that *Gerstein* is inapplicable.

Additionally, it is no answer to the constitutional problem to say that detainers only ask local officers “to hold the subject . . . for *up to* 48 hours.” Pl.’s Br. 14. As an initial matter, the neutral review should generally occur *before* the detention, particularly in a situation like this one where there is no risk that the individual will flee. *See* Defs.’ Br. 18 (“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.”); *see also id.* at 19-22. No such review occurs here. Indeed, detainees *never* receive the review to which they are constitutionally entitled, either during the 48 hours that ICE detainers request an individual be held by local officials or immediately after ICE takes custody of an individual. *See Buquer v. City of Indianapolis*, 797 F. Supp. 2d 905, 918-19 (S.D. Ind. 2011); *Garay v. City of Las Vegas*, No. 2:20-cv-119, 2024 U.S. Dist. LEXIS 57715, at *13, 2024 WL 1345211, at *5 (D. Nev. Mar. 27, 2024). In any event, that a probable cause determination made within 48 hours of arrest “will, as a general matter, comply with the promptness requirement of *Gerstein*,” does not provide a free pass to unreasonably detain individuals for anything up to 48 hours. *County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991) (explaining that a probable cause determination does not necessarily pass constitutional muster “simply because it is provided within 48 hours” if the arrestee can prove that the determination was delayed unreasonably). And by regulation, detention pursuant to a detainer request may extend far beyond 48 hours, reaching as long as five days—a delay that far exceeds the presumptively

reasonable timeframe for neutral review. *See* 8 C.F.R. § 287.7(d) (excluding weekends and holidays from calculation of time).

In sum, Sheriff Marté has established that compliance with ICE detainer requests violates the Fourth Amendment to the U.S. Constitution, and the Attorney General offers no persuasive reason for this Court to depart from the general consensus of courts to hold otherwise. And as Sheriff Marté has repeatedly explained, such compliance would also violate Article 1, Section 11 of the Indiana Constitution. *See* Defs.’ Br. 22-23, 27-28; *see also* Defs.’ Mot. for Prelim. Inj. 18, 23 (June 23, 2026). Indiana does not allow warrantless arrests for civil infractions, *see* Defs.’ Br. 22-23, and immigration detainers are unreasonable on every factor used to assess the reasonableness of seizures more generally: they are not based on probable cause that a crime has been committed; the detention requested 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, *see id.* at 27-28.⁴

⁴ To the extent the Attorney General suggests in his current motion that compliance with ICE detainer requests must be constitutional because, “in addition to the provisions of Chapter 18.2 that require detainer compliance, Indiana law has long authorized arrests based on immigration detainers,” and that law enjoys a “presumption of constitutionality,” Pl.’s Br. 10 (citation omitted), he is wrong. The law he cites was enjoined by a federal court on the grounds that it was unconstitutional (including under the Fourth Amendment). *See Buquer*, 2013 U.S. Dist. LEXIS 45084, at *2-6, *8-9, *35-40, 2013 WL 1332158, at *1-2, *10-11. It cannot rescue the constitutionality of compliance with ICE detainers here. It is also unclear what role, if any, the presumption of constitutionality has to play in this case. Cases that substantively apply this presumption tend to do so where some form of factual deference is appropriate under the constitutional test at issue, *see*,

II. Because Compliance with ICE Detainer Requests Absent a Judicial Warrant Would Violate Federal and State Law, Sheriff Marté’s Policy Falls Outside the Scope of Section 4

As explained in Defendants’ amended motion for summary judgment, Sheriff Marté’s detainer policy is consistent with Section 4 because it prohibits Monroe County officers from violating federal and state law—namely, the U.S. and Indiana Constitutions. *See* Defs.’ Br. 16-17. Section 4 expressly excludes from its scope policies that restrict violations of federal or state law, *see* Ind. Code § 5-2-18.2-4, and thus there can be no conflict between that provision and MCSO-012 Section IV(E).

The Attorney General contends that even if Sheriff Marté were correct “that compliance with ICE detainers in *certain* circumstances where no criminal judicial warrant accompanies the detainer would be unlawful,” that could not save his policy categorically barring compliance with ICE detainers absent a warrant under Section 4. Pl.’s Br. 15. Section 4 prevents local governments from limiting federal immigration enforcement to less than the fullest extent permitted by federal law, and so, the Attorney General reasons, the Sheriff’s policy violates it by prohibiting compliance even in those circumstances where compliance would be constitutionally permissible. *See id.* at 14-15.

e.g., *Whistle Stop Inn, Inc. v. City of Indianapolis*, 51 N.E.3d 195, 198-99 (Ind. 2016); *State v. Katz*, 179 N.E.3d 431, 441, 447-51 (Ind. 2022), or where two reasonable interpretations of a statute are available, *see, e.g.*, *Sawlani v. Lake Cty. Assessor*, 267 N.E.3d 419, 422-23 (Ind. 2025). Neither is the case here. And in any event, a presumption of constitutionality cannot prevail where, as here, there are constitutional problems that are clear and inherent in the law.

This argument fundamentally misunderstands Sheriff Marté’s arguments and the contours of the constitutional right. MCSO-012 bars MCSO officers from complying with immigration detainer requests in the absence of a judicial warrant because there are *no* circumstances in which local law enforcement may constitutionally comply with an immigration detainer request that is not accompanied by a judicial warrant. An immigration detainer request is not based on probable cause of crime sufficient to support detention, nor is it ever reviewed by a neutral magistrate. Those constitutional infirmities do not fluctuate based on the circumstances of a particular case, and they are not remedied simply because a detainer request is based on probable cause of removability or accompanied by an administrative warrant. MCSO-012 only bars conduct that is not permitted under either the state or the federal constitution, and it is therefore fully outside the scope of Section 4.

In insisting that compliance with ICE detainer requests absent a judicial warrant “would be permissible” in at least “some . . . circumstances” even “under Defendants’ mistaken view of the law,” Pl.’s Br. 15, the Attorney General attributes positions to Sheriff Marté that he has never espoused and misrepresents the scope of his policy. Sheriff Marté does not argue that compliance with immigration detainer requests is constitutional so long as the detainer “contain[s] enough detail about the factual bases for ICE’s probable cause determinations.” *Contra id.* Instead, he points out that *even if* probable cause of removability were enough to render compliance with ICE detainer requests constitutional—and it is not, *see*

supra pp. 2-3, 9-10—then such compliance would *still* not be allowable here, where MCSO officers do not have even such probable cause, *see supra* p. 6. *See also* Defs.’ Br. 23-28, 32-37. Moreover, MCSO-012 simply does not apply to situations in which “an officer may be aware or is notified that a criminal judicial warrant has been issued” for an individual but “the warrant does not accompany the detainer sent by ICE.” *Contra* Pl.’s Br. 16 (emphasis omitted). Detention of an individual who has an outstanding criminal judicial warrant would not be governed by MCSO-012, because that individual would be held on the *warrant*, not on a detainer request. Immigration detainer requests ask officers only to “[m]aintain custody of the [individual] . . . beyond the time when he/she would otherwise have been released from your custody.” App’x C at 1. They are therefore not yet in effect when MCSO maintains custody of an individual based on the existence of a criminal warrant for that individual from another jurisdiction. MCSO-012 is inapplicable to that circumstance, and the Attorney General cannot rely on such a scenario to argue that the policy violates Section 4.

Finally, to the extent the Attorney General suggests that there must be some circumstances in which compliance with an immigration detainer request would be lawful because MCSO complied with a single immigration detainer request in September 2025 without a judicial warrant, *see* Pl.’s Br. 3, 16, he reads too much into this evidence.⁵ That detention is legally irrelevant to this case. Sheriff Marté’s

⁵ As a factual matter, the Attorney General’s description of this detention is misleading. *See* Pl.’s Br. 16. The individual they identify was not held on an immigration detainer request alone, but based on a final order of removal signed by

position has been and remains that compliance with an immigration detainer request that is unaccompanied by a judicial warrant violates the requirements of the Fourth Amendment and the Indiana Constitution. The detention mentioned by the Attorney General does not change the Sheriff's legal arguments, nor does it function as a concession that there are circumstances in which compliance with an immigration detainer request is lawful in the absence of a judicial warrant.

CONCLUSION

This Court should deny the Attorney General's motion for summary judgment.

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Respectfully submitted,

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an immigration judge and an allegation of illegal reentry after prior removal, which is a federal crime. Ex. 1 to Pl.'s Resp. in Opp'n to Defs.' Mot. for TRO at 9 n.1. That was consistent with the policy of MCSO-012 at the time, which barred detentions based on "a non-criminal/administrative ICE detainer" alone but did not require a criminal judicial warrant. *Compare* App'x A at 4 (MSCO-012 dated June 10, 2025), *with* App'x A at 7 (MCSO-012 dated July 1, 2026).

CERTIFICATE OF SERVICE

I certify that on September 11, 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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