

STATE OF INDIANA) IN THE MONROE CIRCUIT COURT
) SS:
COUNTY OF MONROE) 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)
MONROE COUNTY SHERIFF'S OFFICE,)
)
 Defendants/Counter-Claimants.)

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

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INTRODUCTION

Indiana Code § 5-2-18.2-4 (“Section 4”) bars local policies that “in any way limit or restrict the enforcement of federal immigration laws . . . to less than the full extent permitted by federal law,” yet Defendants Sheriff Marté and the Monroe County Sheriff’s Office maintain, in defiance of this statute, a policy that effectively and indiscriminately prohibits Defendants’ officers from honoring ICE detainers across the board. Standard Operating Procedure MCSO-012 Section IV(E). By this stage in the litigation, the parties have briefed Defendants’ only defense of their policy under Section 4—their Fourth Amendment objection to Section 4’s application to compliance with ICE detainer requests—multiple times over. That includes the Attorney General’s recent brief in support of his amended motion for summary judgment, which sets forth the case against MCSO-12, and Defendants’ Fourth Amendment defense, in comprehensive detail. Rather than repeating at length those same arguments yet another time, this concise response to Defendants’ Amended Motion for Summary Judgment merely identifies and addresses the small handful of issues raised by Defendants’ amended summary judgment brief that are not already plainly disposed of by the Attorney General’s prior briefing.

ARGUMENT

I. Compliance with an ICE Detainer Does Not Violate the Fourth Amendment or Article I § 11.

The foundation of Defendants’ summary judgment argument is the premise that they are free to prohibit compliance with ICE detainers, despite Section 4, because such compliance would violate the Fourth Amendment and is thus not

“permitted by federal law.” Indiana Code § 5-2-18.2-4. For the reasons explained in the Attorney General’s previous briefing, that premise is legally unsound: compliance with an ICE detainer request is fully consistent with the Fourth Amendment. Defendants’ arguments to the contrary all come to naught.

All ICE detainees are accompanied by an administrative warrant, and these warrants contain a probable cause determination. *See* Decl. of John Raven ¶ 8. That satisfies the Fourth Amendment, which does not require that the detention of a deportable alien be supported by a *criminal judicial* warrant. This is confirmed by Supreme Court precedent, which has concluded that there is “overwhelming historical legislative recognition of the propriety of administrative arrest for deportable aliens.” *Abel v. United States*, 362 U.S. 217, 233 (1960). The historical evidence for this proposition is “impressive” and comes from “almost the beginning of the nation”—since 1798, the law has “authorized the arrest of deportable aliens by order of an executive official.” *Id.* at 233–34. And because federal officials may detain aliens based on an administrative warrant consistent with the Fourth Amendment, State officials may also do so. *Virginia v. Moore*, 553 U.S. 164, 172 (2008). Indeed, it has long been settled that one officer (state law enforcement) may lawfully detain an individual, even where he does not personally know the facts establishing probable cause, “so long as the knowledge of the officer directing the arrest”—the ICE official who filled out the administrative warrant—“is sufficient to constitute probable cause.” *Tangwall v. Stuckey*, 135 F.3d 510, 517 (7th Cir. 1998) (emphasis and citation omitted).

Defendants resist this conclusion, citing *Jamerson v. State*, 870 N.E.2d 1051 (Ind. Ct. App. 2007), for the incorrect proposition that the collective knowledge doctrine requires detailed facts supporting probable cause be communicated to the arresting official. But *Jamerson* lends no support to Defendants. For starters, Defendants’ flawed reading of *Jamerson* is contrary to federal Seventh Circuit precedent, which makes clear that under the collective knowledge doctrine, an officer may act at the direction of another officer or even another law enforcement agency without personally receiving all of the information used to establish probable cause. See *United States v. Williams*, 627 F.3d 247, 252–53 (7th Cir. 2010); *Tangwall v. Stuckey*, 135 F.3d 510, 517 (7th Cir. 1998). And in any event, *Jamerson* is readily distinguishable—for reasons that later Indiana appellate precedent has itself recognized. See *Dunson v. State*, 64 N.E.3d 250 (Ind. Ct. App. 2016).

The *Jamerson* court declined to apply the collective knowledge doctrine in the narrow circumstances of that case because the arresting officers had no direct communication with the detective who had made the probable cause determination and, in fact, did not even know the detective’s identity. 870 N.E.2d at 1057. That is wholly unlike compliance with an ICE detainer, which identifies a federal immigration officer, communicates DHS’s determination that there is probable cause, gives the basis for that determination, and invites follow-ups from local officials. Subsequent Indiana case law has declined to follow *Jamerson* in directly analogous circumstances. In *Dunson*, the Court of Appeals found *Jamerson* “readily distinguishable” because the officer with knowledge of probable cause “was known to

[the arresting officer] and was working in conjunction with [him] and other officers to investigate the reports regarding a disturbance.” 64 N.E.3d at 255. The *Dunson* court upheld the seizure in that case even though the officer with knowledge did not explain the basis for her reasonable suspicion, and the court in fact definitively *rejected* any requirement that officers must relay exact factual details underlying probable cause for the collective knowledge doctrine to apply. *Id.* at 255–56. *Jamerson* is off-point here under the very same reasoning.

Defendants also contend that *Ochoa v. Campbell*, 266 F. Supp. 3d 1237 (E.D. Wash. Jul. 31, 2017), determined that the collective knowledge doctrine does not apply in the context of ICE detainers, Defs.’ Br. at 35–36, but that is also not so. All *Ochoa* held was that the plaintiff there had shown she was likely to succeed on the merits of her Fourth Amendment claim because the local officers were not acting upon a “request” from federal agents when they seized her. *Ochoa*, 266 F. Supp. 3d at 1255–57. ICE presented only an administrative warrant (Form I-200) to the local authorities, not a detainer request, and the court determined that the administrative warrant, standing alone, was insufficient to convey a request for cooperation. *Id.* (Form I-200). Detainer requests have more detail, and courts have found this distinction significant. *See United States v. Gomez-Robles*, No. CR-17-0730-TUC-CKJ (JR), 2017 WL 6558595, at *5 (D. Ariz. Nov. 28, 2017). Moreover, *Ochoa* heavily relied upon *Trujillo Santoyo v. United States*, 5:16–cv–855–OLG, 2017 WL 2896021, at *6 (W.D. Tex. June 5, 2017), but that case was abrogated by *City of El Cenizo v. Texas*, 890 F.3d 164 (5th Cir. 2018).

Defendants point to several other cases throughout their brief as purportedly showing that “[n]umerous courts . . . have held that arrests by local officers solely in response to detainer requests therefore violate the Fourth Amendment,” Defs.’ Br. at 25, but none of them are persuasive and all are contrary to the heavy weight of longstanding historical practice. In *Lopez-Flores v. Douglas County*, 2020 WL 2820143, at *5–6 (D. Or. May 30, 2020), the court determined that defendants’ extension of plaintiff’s detention based on an ICE detainer violated the Fourth Amendment, but did so based in part on its determination that the collective-knowledge doctrine did not apply in the civil immigration context. As *City of El Cenizo* explains, this conclusion is incorrect. See 890 F.3d at 173. Defendants also cite *Lopez-Aguilar v. Marion County Sheriff’s Department*, 296 F. Supp. 3d 959 (S.D. Ind. 2019), but not only was that decision reversed on other grounds by the Seventh Circuit, see *Lopez-Aguilar*, 924 F.3d 375 (7th Cir. 2019), its reasoning also conflicts with the weight of authority, set forth in the Attorney General’s prior briefing, which holds that local law enforcement officials may cooperate with federal immigration officials pursuant to ICE detainers to detain aliens. See Pl.’s Resp. in Opp’n to TRO at 20. And *Buquer v. City of Indianapolis*, 2013 WL 1332158, at *11 (S.D. Ind. Mar. 28, 2013), which held that certain ICE detainers do “not provide lawful cause for arrest under the Fourth Amendment,” was decided before ICE’s current detainer policy became effective in April 2017. Unlike at the time *Buquer* was decided, ICE detainers now must not only be supported by probable cause to believe that the subject is an alien who is removable from the United States but also must be accompanied by an

administrative arrest warrant signed by an authorized ICE immigration officer. *Policy No. 10074.2: Issuance of Immigration Detainers by ICE Immigration Officers* § 2.4, U.S. IMMIGR. & CUSTOMS ENFT (Mar. 24, 2017), <https://perma.cc/CJ5Q-HDFZ>. Finally, *Santos v. Frederick County Board of Commissioners* held that “absent express direction or authorization by federal statute or federal officials, state and local law enforcement officers may not detain or arrest an individual solely based on known or suspected civil violations of federal immigration law.” 725 F.3d 451, 465 (4th Cir. 2013). But when a local law enforcement officer detains an individual in response to an ICE detainer, the required authorization by federal officials *is present*, meaning that no constitutional issues arise.

In contrast to these inapposite decisions, the Fifth Circuit’s decision in *City of El Cenizo* is directly on point and highly persuasive. Defendants attempt to undermine *City of El Cenizo* by arguing that ICE detainer requests lack historic pedigree. But that disregards *Abel* and the robust historical evidence supporting seizures in the civil immigration context. As Defendants concede, “[t]he Fourth Amendment does not require warrants to be based on probable cause of a crime, as opposed to a civil offense. Nothing in the original public meaning of ‘probable cause’ or ‘Warrants’ excludes civil offenses.” *United States v. Phillips*, 834 F.3d 1176, 1181 (11th Cir. 2016). And in the immigration context, “[a]rrests based on probable cause of removability—a civil immigration violation—have been long recognized in the courts.” *Tenorio-Serrano v. Driscoll*, 324 F. Supp. 3d 1053, 1066 (D. Ariz. 2018) (citing *Abel*, 362 U.S. at 230).

Defendants also argue that *City of El Cenizo* failed to consider the difference between federal and local officers in making the arrest, but it is black-letter law that “the constitutionality of a warrantless arrest under the Fourth Amendment does not depend on whether state law authorizes state or local officers to make the arrest, but on whether there is probable cause.” *Gonzalez v. U.S. Immigration and Customs Enforcement*, 975 F.3d 788, 818 (9th Cir. 2020). The reasoning of *City of El Cenizo* is on-point and persuasive, and Defendants’ attempts to undermine it ultimately fail.

Neither does honoring detainer requests violate Article I § 11 of the Indiana Constitution. As explained in the Attorney General’s brief in response to Defendants’ motion for a temporary restraining order, Indiana law permits detention following a warrantless arrest for up to 48 hours *See Griffith v. State*, 788 N.E.2d 835 (Ind. 2003). Moreover, the probable cause supporting a warrantless arrest may be established through “collective knowledge.” *See Miller v. State*, 188 N.E.3d 871 (Ind. 2022); *see also State v. Gray*, 997 N.E.2d 1147, 1153 (Ind. Ct. App. 2013). Consequently, Article I § 11 is no impediment to Defendants honoring a detainer request to hold an individual for up to 48 hours when an ICE official presents a detainer request based on probable cause of removability.

II. Defendants’ Policy Violates Section 4 Even on their Own Flawed Understanding of the Fourth Amendment and Article I § 11.

For the reasons explained above and in the Attorney General’s prior briefing, the Fourth Amendment poses no obstacle to compliance with ICE detainers, and Defendants’ policy of noncompliance thus violates Section 4 by “in any way limit[ing] or restrict[ing] the enforcement of federal immigration laws . . . to less than the full

extent permitted by federal law.” Indiana Code § 5-2-18.2-4. But even if Defendants were right that complying with an ICE detainer request violates the Fourth Amendment or Article I § 11 *in some* circumstances, their policy of noncompliance would still violate Section 4. Defendants’ far-reaching policy forbids compliance with ICE detainers even in circumstances where compliance is constitutional under Defendants’ own flawed interpretation of the Fourth Amendment.

Part IV(E)(1) of MCSO-012 provides that “MCSO employees shall not hold or detain an individual beyond his scheduled release date solely based on a non-criminal/administrative immigration detainer (that is, *an immigration detainer request that is not accompanied by a criminal judicial warrant*).” (emphasis added). Their policy thus prohibits detainer compliance in *all* circumstances absent an accompanying criminal judicial warrant. But even Defendants have effectively acknowledged that a detainer need not always be accompanied by a criminal judicial warrant in order to be lawful.

In some circumstances, for example, a detainer request may not be accompanied by a criminal judicial warrant, but the arresting officer may have actual knowledge that such a judicial warrant has in fact been issued for the alien in question. Probable cause exists where local law enforcement officers “have knowledge of the fact that the person being arrested is wanted by the federal authorities and that a federal arrest warrant has been issued,” *United States v. Bowdach*, 561 F.2d 1160, 1168 (5th Cir. 1977). Accordingly, law enforcement’s knowledge of the existence of an arrest warrant may provide probable cause to arrest an individual, even if law

enforcement does not possess a copy of the warrant. *See Shotts v. State*, 925 N.E.2d 719, 725–27 (Ind. 2010). For example, where an officer “verif[ies] the existence of [a] warrant” by “check[ing] with the NCIC” database, it is “reasonable for [the officer] to presume the warrant [is] valid and supported by probable cause.” *Id.* at 725. Defendants do not and cannot dispute this settled law.

Yet Defendants’ policy prohibits compliance with a detainer even when the officer knows an arrest warrant has been issued, solely because the warrant does not accompany the detainer. This is clearly a violation of Section 4 as it restricts immigration enforcement activity to less than the full extent allowed by federal and state law. Accordingly, because Defendants’ policy is a blanket ban on detaining without a criminal judicial warrant, it violates Section 4 *at a minimum* in those circumstances in which the criminal judicial warrant is not required.

Likewise, Defendants themselves have honored a detainer in the past year where it was accompanied by a civil removal order but not by a criminal judicial warrant. *See* Ex. 1 to Pl.’s Resp. in Opp’n to Def.’s Mot. for TRO at 9. And to be clear, the immigration judge who issues a civil removal order is an executive branch officer—not an Article III judge—similar to the executive branch officers who issue detainer requests. *See* 8 U.S.C. § 1229a; 8 U.S.C. § 1101(b)(4). Thus, by their own conduct, Defendants show that they can comply with detainers in certain circumstances even where the detainer is not accompanied by a criminal warrant. Yet their current policy prohibits such compliance.

Defendants do not grapple with this fatal infirmity in their summary judgment argument. Instead, Defendants attempt to deploy essentially the same arguments they used against Section 9 to justify their policy under Section 4. But even if those arguments had any merit with respect to Section 9 (they do not), they have none against Section 4. Section 4 operates differently than Section 9. The latter mandates compliance with ICE detainment orders in all circumstances where the detainer was validly issued. Section 4, by contrast, operates to preserve local law enforcement's ability to comply with detainers from interference by restrictive local policies. Even if compliance with Section 9 were unlawful in some circumstances, that would have no impact on Section 4, which would still prohibit Defendants' policy since it is more restrictive than even Defendants' own view of the Fourth Amendment would require.

The all-encompassing language of MCSO-012 places a heavy-handed restriction on local officials by prohibiting detainer compliance in all circumstances. Even if there are only some circumstances in which complying with an ICE detainer is legal—and as shown above, there are several even under Defendants' own theory of the Fourth Amendment—MCSO-012 is in irreconcilable conflict with Section 4, rendering it unlawful.

CONCLUSION

For these reasons, the Attorney General respectfully requests that the Court deny Defendants' motion for summary judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 11, 2026, the foregoing document was served upon the following person(s) via IEFS, if Registered Users, or by depositing the foregoing document in the U.S. Mail, first class, postage prepaid, if exempt or non-registered user:

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